

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
ELECTRONIC ARTS INC.,
TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K SPORTS, INC., and
ROCKSTAR GAMES, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Cases IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)¹
Cases IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
Cases IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

Before LYNNE E. PETTIGREW and WILLIAM M. FINK, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be entered in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)
IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On April 27, 2015, a conference call was held for the following six proceedings: IPR2015-01951, IPR2015-01953, IPR2015-01964, IPR2015-01970, IPR2015-01972, and IPR2015-01996. The following individuals were present on the call: Mr. Baughman and Mr. Thomases, lead and backup counsel, respectively, for Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Ind., 2K Sports, Inc., and Rockstar Games, Inc. (collectively, “Petitioner”); Mr. Hannah, lead counsel for Acceleration Bay, LLC (“Patent Owner”); and Judges Medley, Pettigrew, and Fink.

The parties jointly requested a call to discuss proposed motions to be filed by the parties and a proposed change to DUE DATE 7, the date set for oral argument if requested by either party. Petitioner also requested a call to seek authorization to file a motion for supplemental information under 37 C.F.R. § 42.123(a)(1). We addressed all of these issues on the call.

A. Revised DUE DATES

The Scheduling Order in each of these proceedings set DUE DATE 7 (oral argument if requested) as December 14, 2016. Paper 12, 7 (DUE DATE APPENDIX).² Lead counsel for Petitioner stated he has a conflict

² For convenience, citations are to the record in IPR2015-01951 unless otherwise indicated.

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IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

with that date due to oral arguments scheduled in other proceedings before the Board. Patent Owner consented to Petitioner's request that the oral argument in these proceedings be rescheduled to another date when the panel and counsel for both parties will be available.

DUE DATE 7 is reset to December 7, 2016 for each of the proceedings addressed by this order. The specific format and time allotted will depend on the number of issues, as briefed in the Patent Owner Response and Reply, and the extent to which there is overlap of issues among the cases.

A REVISED DUE DATE APPENDIX that applies to each of the six proceedings is attached to this order. DUE DATES 4 through 7 have been revised, and DUE DATE 1 has been revised for IPR2015-01951, IPR2015-01953, IPR2015-01970, and IPR2015-01972, to place all proceedings on the same schedule. We remind the parties they may stipulate to different dates in any of the proceedings for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of stipulation specifically identifying the changed due dates must be filed promptly. The parties may not stipulate to an extension of DUE DATES 6 and 7.

B. Motions to Seal

During the call and in a list of proposed motions (Paper 15), Patent Owner indicated it expects to file one or more motions to seal pursuant to 37 C.F.R. § 42.54. Specifically, Patent Owner expects to file a motion to seal confidential information in an Invention Disclosure form and possibly a

IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)
IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

motion to seal confidential information contained in evidence related to secondary considerations of non-obviousness.

We referred the parties to Section A.3 of the Scheduling Order (Paper 12) for the procedures for filing confidential information in these proceedings. Among other things, a protective order is not in place in a case until one is filed and approved by the Board. If a motion to seal is filed, a proposed protective order should be presented as an exhibit to the motion. The parties are urged to use the Board's default protective order. Procedures for deviating from the default protective order are provided in the Scheduling Order. Generally, information subject to a protective order will become public if identified in a final written decision.

Petitioner indicated on the call it would work with Patent Owner to agree to a proposed protective order.

C. Motion to Compel Deposition Dates and Locations

Patent Owner's list of proposed motions included a "[m]otion to compel deposition dates and location of declarants in United States." Paper 15, 1. During the call, counsel for Patent Owner stated Patent Owner is not seeking authorization at this time to file such a motion, but included it as a proposed motion in the event Patent Owner finds it necessary to seek authorization in the future. The parties indicated they have been conferring in an attempt to arrange for Patent Owner's deposition of one of Petitioner's declarants who resides outside of the United States.

Cross-examination of the opposing party's declarants by deposition typically is provided under routine discovery. 37 C.F.R. §§ 42.51(b)(1)(ii),

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42.53(a). Our rules contemplate deposition testimony taken outside the United States only upon the agreement of the parties or as the Board specifically directs. 37 C.F.R. § 42.53(b)(3). We urge the parties to continue to work together to determine a mutually satisfactory procedure and location for the deposition of Petitioner's declarant. Only if the parties are unable to reach an agreement should the parties contact the Board for additional guidance.

D. Antedating a Prior Art Reference

Patent Owner's list of proposed motions also included a "[m]otion to swear behind prior art." Paper 15, 1. During the call, we explained to the parties that if Patent Owner plans to attempt to antedate a prior art reference, the proper procedure is to incorporate any antedating efforts into its Patent Owner Response rather than to file a separate motion.

E. Other Proposed Motions

Patent Owner also indicated it may file a motion for additional discovery pursuant to 37 C.F.R. § 42.51 and a motion to file supplemental information pursuant to 37 C.F.R. § 42.123, *see* Paper 15, 1, but indicated on the call that it is not seeking authorization for any such motions at this time. We remind the parties that, except as otherwise provided in our rules, Board authorization is required before filing a motion. A party seeking authorization to file a motion should send an email to the board to request a conference call to obtain authorization to file a motion.

Patent Owner also indicated it may file a motion to amend. Although the filing of a motion to amend is authorized under our rules, Patent Owner

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