

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELECTRONIC ARTS INC.,  
Petitioner,

v.

WHITE KNUCKLE GAMING, LLC,  
Patent Owner.

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Case IPR2016-00634  
Patent 8,540,575 B2

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Before MICHAEL W. KIM, CARL M. DEFRANCO, and  
CHRISTA A. ZADO, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

SCHEDULING ORDER

This Order sets a schedule for trial, including due dates for the parties to take action upon institution of the trial. *See* Appendix. The trial will be administered in a just, speedy and inexpensive manner such that pendency before the Board is no more than one year after institution. 37 C.F.R. §§ 42.1(b) and 42.100(c).

*A. INITIAL CONFERENCE*

An initial conference call will be scheduled only upon request by either party within thirty (30) days after entry of this Order. To request a conference call, the parties should consult with each other and submit a list of proposed dates and times for the call. If an initial conference call is scheduled, the parties are directed to the *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012), for guidance in preparing for the call, and should be prepared to discuss any proposed changes to the schedule and any motions the parties anticipate filing during the trial.

*B. MEET AND CONFER REQUIREMENT*

The parties are encouraged to engage in meaningful discussions before seeking authorization under 37 C.F.R. § 42.20(b) to file a motion for relief with the Board. At a minimum, before requesting authorization, the parties shall confer with each other in a good-faith effort to resolve the issue for which relief is to be sought. Only if the parties cannot resolve the issue on their own may a party request a conference call with the Board in order to seek authorization to move for relief. In any request for a conference call with the Board, the requesting party shall: (1) certify that it has in good-faith conferred (or attempted to confer) with the other parties in an effort to resolve the issue; (2) identify with specificity the issue for which agreement has not been reached; (3) state the precise relief to be sought; and (4) propose specific dates and times at which both parties are available for the conference call.

### *C. DUE DATES*

The Appendix specifies due dates for the parties to take action in this trial. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of any stipulation, specifically identifying the changed due dates, must be filed promptly with the Board. The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to different dates, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section D, below).

#### *1. DUE DATE 1*

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised and fully briefed in the response will be deemed waived.

#### *2. DUE DATE 2*

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

3. *DUE DATE 3*

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. *DUE DATE 4*

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section E, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. *DUE DATE 5*

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

6. *DUE DATE 6*

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. *DUE DATE 7*

Oral argument (if requested by either party) is set for DUE DATE 7.

#### *D. CROSS-EXAMINATION*

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due.  
37 C.F.R. § 42.53(d)(2).

2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

The parties are reminded that the Testimony Guidelines appended to the *Trial Practice Guide*, 77 Fed.Reg. at 48,772 (App. D), apply to this proceeding. Pursuant to 37 C.F.R. § 42.12, the Board may impose an appropriate sanction on any party who fails to adhere to the Testimony Guidelines, including reasonable expenses and attorney fees incurred by a party affected by another party's misconduct.

#### *E. MOTION FOR OBSERVATION ON CROSS-EXAMINATION*

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness, because no further substantive paper is permitted after the reply. *See Trial Practice Guide*, 77 Fed. Reg. at 48,768. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

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