

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WARGAMING GROUP LIMITED and ACTIVISION BLIZZARD, INC.,
Petitioner,

v.

GAME AND TECHNOLOGY CO., LTD.,
Patent Owner.

Case IPR2017-01082
Patent 7,682,243 B2

Before STACEY G. WHITE, DANIEL J. GALLIGAN, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

ORDER

Granting Joint Motion to Limit Briefing and Evidence
37 C.F.R. §§ 42.1(b), 42.71(a)

The Institution Decision in this case instituted trial on one of the two grounds of unpatentability raised in the Petition. Paper 14. Subsequently, on April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in the petition. *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). By our Order of May 3, 2018, we modified our institution decision to institute on all of the grounds presented in the Petition. Paper 47.

A conference call was held with the parties on May 16, 2018, to discuss the parties’ proposed approach to proceed with the case. Subsequently, via email, we authorized the parties to file a Joint Motion to Limit Briefing and Evidence as to Ground 2 of the Petition, which is the subject of this Order. Paper 52 (“Mot.”). Ground 2 is a ground of unpatentability under 35 U.S.C. § 103(a) based on the combination of the Master of Orion II Strategy Guide (Ex. 1009) and U.S. Patent Application Publication No. 2003/0177187 (Ex. 1004). Paper 1, 6–7.

In their Joint Motion, “[t]he parties jointly move to limit the briefing and evidence for Ground 2 to the briefing and evidence that was submitted prior to the Board’s October 6, 2017 institution decision.” Mot. 2. The parties further state:

Given the late stage of the proceeding and considering the extensive briefing and discovery that has been completed, limiting the briefing and evidence for Ground 2 at this juncture promotes the efficient use of the Board’s resources and saves additional expense for the parties. While the parties understand that the Board’s final written decision may substantially incorporate its findings on Ground 2 as set forth in the Board’s institution decision, the parties’ agreement to forego further briefing and evidence should not be considered a default or

waiver of any rights, and the parties retain all rights to appeal any final written decision on all instituted grounds.

Mot. 3.

We agree with the parties that their proposed approach promotes efficiency, and, therefore, the approach furthers the Office's policy of "secur[ing] the just, speedy, and inexpensive resolution of every proceeding." 37 C.F.R. § 42.1(b). Furthermore, by proposing this approach, we do not deem the parties to have conceded patentability or unpatentability based on Ground 2 or to have waived any arguments based on that ground of unpatentability.

In consideration of the foregoing, it is hereby:

ORDERED that parties' joint motion to limit the briefing and evidence for Ground 2 to the briefing and evidence that was submitted prior to the Board's October 6, 2017 institution decision is *granted*; and

FURTHER ORDERED that we do not deem the parties to have conceded patentability or unpatentability based on Ground 2 or to have waived any arguments based on that ground of unpatentability.

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PETITIONER:

Harper Batts
Jeffrey Liang
BAKER BOTTS L.L.P.
harper.batts@bakerbotts.com
jeffrey.liang@bakerbotts.com

Sharon A. Israel
John D. Garretson
Tanya Chaney
SHOOK, HARDY & BACON L.L.P.
sisrael@shb.com
jgarretson@shb.com
tchaney@shb.com

PATENT OWNER:

Joseph J. Zito
Richard Castellano
DNL ZITO CASTELLANO
jzito@dnlzito.com
rcastellano@dnlzito.com

William H. Mandir
Peter S. Park
John M. Bird
Christopher J. Bezak
Fadi N. Kiblawi
SUGHRUE MION PLLC
wmandir@sughrue.com
pspark@sughrue.com
jbird@sughrue.com
cbezak@sughrue.com
fkiblawi@sughrue.com