

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

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

Case IPR2017-01082
Patent 7,682,243

**PETITIONERS' OBJECTIONS TO
PATENT OWNER'S DEMONSTRATIVES**

Pursuant to the Board's Order (Paper 57), Petitioners hereby object to portions of Patent Owner's oral hearing demonstratives that were served June 29, 2018 ("PO's Original Demonstratives" attached as Attachment A). Petitioners also object to untimely demonstratives that Patent Owner served *four days after the deadline* on July 3, 2018 ("PO's Second Set of Demonstratives" attached as Attachment B). *See also* Attachment D (second email in exchange, sent by R. Castellano on July 3).

I. Objections to PO's Original Demonstratives

As explained below, portions of PO's Original Demonstratives contain new, undisclosed arguments that were not contained in any prior briefing. Petitioner respectfully requests that they be stricken or excluded from consideration. *See* Paper 57 at 2; 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) ("A party may rely upon evidence that has been previously submitted in the proceeding and may only present arguments relied upon in the papers previously submitted. No new evidence or arguments may be presented at the oral argument.").

Petitioners are also concerned that the demonstratives indicate new arguments and theories that Patent Owner's new counsel, who substituted in after briefing was complete, is planning to introduce at the hearing next week. Petitioners respectfully request that Patent Owner be precluded from raising these new arguments and theories. *See id.*

Slide No. ¹	Objected-to Portion	Reason for Objection
Slide 3	The diagram on slide 3 and the bottom paragraph: “In order for a Gamer to have the option (i.e. 'may control' or 'permissive language') the Programmer must have programmed the Pilot to have the ability to control as an always available property. The Gamer cannot change the fundamental attributes that make a Pilot a Pilot and not just another Avatar. A pilot must be able to control the motions of a Unit so that a Gamer may exercise such control should he so choose.”	The Patent Owner Response and expert materials did not discuss computer programming issues or mention any of these programming considerations.
Slide 6	“Ability denotes skill, either native or acquired, and refers to action under its	Patent Owner’s prior briefing made no mention of ability

¹ PO’s Demonstratives do not contain page numbers. The slide numbering in this chart refers to the PDF page number, with the title slide being slide 1, and the last slide being slide 10.

	<p>plain meaning”</p> <p>“Petitioner conflates ‘ability’ with ‘capability,’ which pertains to unique fitness for a defined end, and does not necessarily refer to action”</p> <p>“PO’s proposed construction is consistent with the plain meaning of ability”</p> <p>“Petitioner’s proposed construction would rewrite the ‘ability’ recitation despite absence of a special definition of the term in the intrinsic record”</p>	<p>denoting “skill” or “action,” did not propose plain and ordinary meaning, and in fact proposed a different construction requiring an “innate ability.”</p>
Slide 5	<p>“Ability is to be construed according to its plain and ordinary meaning, which is consistent with the prior art.”</p>	<p>These are improper for the reasons explained above for Slide 6.</p>
Slide 7	<p>“Ability is not limited to the six basic abilities of D&D. <i>See</i> Reply at 7. The six abilities of D&D are examples of abilities, consistent with PO’s proposed construction requiring that</p>	<p>These are improper for the reasons explained above for Slide 6.</p>

	‘ability’ be interpreted to pertain to skill or action.”	
Slide 9	“HP is not an ability or skill and does not pertain to action such as illustrated by way of example by the six basic abilities in Dungeons & Dragons. The ‘243 Patent does not include a special definition of ‘ability’ that includes HP.”	These are improper for the reasons explained above for Slide 6.

II. Objections to PO’s Second Set of Demonstratives

Petitioners object to PO’s Second Set of Demonstratives as untimely and prejudicial: Patent Owner should not be permitted to revise and create new slides four days after the deadline with the unfair advantage of having reviewed Petitioner’s slides. Petitioners respectfully request that Patent Owner be precluded from using its Second Set of Demonstratives.

Additionally, PO’s Second Set of Demonstratives include the arguments listed above for PO’s Original Demonstratives. Petitioners object to those portions for the same reasons explained above. Furthermore, at least Slides 2, 4, 6, and 8 introduce new substantive material that was not included in PO’s Original

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