

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WARGAMING GROUP LIMITED,
Petitioner,

v.

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

Case IPR2017-01082
Patent 7,682,243 B2

Before BARBARA A. BENOIT, STACEY G. WHITE, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Request to File a Reply to
Patent Owner's Preliminary Response
37 C.F.R. § 42.108(c)

I. DISCUSSION

On August 9, 2017, Wargaming Group Limited (“Petitioner”) requested, via email, a conference call with the Board to make a showing of good cause pursuant to 37 C.F.R. § 42.108 to file a reply limited to addressing Patent Owner’s assertion that a real party-in-interest to Petitioner, Wargaming.net LLP, was served with a complaint for infringement of U.S. Patent 7,682,243 B2 (“the ’243 patent”) more than one year before the filing of the Petition in this proceeding. In particular, Patent Owner argues that the Petition is time barred under 35 U.S.C. § 315(b) because Wargaming.net LLP “was served with a complaint alleging infringement of the ‘243 patent on December 14, 2015, in accordance with the laws of England and Wales” pursuant to the Hague Convention. Prelim. Resp. 4 (citing Exs. 2001 and 2002).

On August 11, 2017, a conference call was held with the Board and counsel for the parties. Harper Batts, lead counsel for Petitioner, William Mandir, lead counsel for Patent Owner, and backup counsel for the parties attended. Our Rules provide: “A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.” 37 C.F.R. § 42.108(c).

As an initial matter, counsel for Petitioner, Mr. Batts, stated that Petitioner does not dispute that, if service of the complaint occurred pursuant to the Hague Convention more than one year before the filing of the Petition, as asserted by Patent Owner, the Petition would be time barred under 35 U.S.C. § 315(b). Mr. Batts, however, stated that Petitioner disputes that such service took place. In arguing good cause exists for the filing of a

reply, Mr. Batts represented that Petitioner was not aware of the alleged service identified by Patent Owner and that Patent Owner did not file the service documents in the related civil case. Mr. Batts further stated that Petitioner investigated the issue after it was raised in the Patent Owner Preliminary Response and, if authorized to file a reply, will file as evidence a declaration from Mr. Costas A. Joannou, the individual upon whom Patent Owner alleges service was made. Mr. Batts also stated that a reply of two pages would be sufficient.

Counsel for Patent Owner, Mr. Mandir, argued that Petitioner has not shown good cause for filing a reply. In particular, Mr. Mandir argued that a reply should not be authorized because Petitioner bears the burden of proving compliance with 35 U.S.C. § 315(b) and should have produced evidence in support of its assertion of standing with the Petition.

We agree with Patent Owner that Petitioner bears the burden of proving that it has standing to file a petition for *inter partes* review, including that it is not barred under 35 U.S.C. § 315(b). *See* 37 C.F.R. § 42.104(a) (“The petitioner must certify that the patent for which review is sought is available for *inter partes* review and that the petitioner is not barred or estopped from requesting an *inter partes* review challenging the patent claims on the grounds identified in the petition.”). In its Petition, however, Petitioner did produce evidence in support of its assertion of standing, specifically a declaration of its general counsel, Roman Zanin. *See* Ex. 1011. Roman Zanin provides testimony regarding attempted service on Wargaming entities abroad (Ex. 1011 ¶ 3) and further testifies that “Wargaming.net LLP and Wargaming Group Limited . . . were never

served” (Ex. 1011 ¶ 6). Therefore, there is evidence in the record supporting Petitioner’s assertion of standing. Petitioner requests a reply to address evidence of which it states it was previously unaware, namely the service documents filed with the Preliminary Response.

Having considered the arguments of both Petitioner and Patent Owner, we determine good cause exists for Petitioner to file a reply limited to two pages, not including supporting evidence filed therewith.¹ The reply and accompanying evidence are limited to addressing Patent Owner’s assertion and evidence that service occurred on Wargaming.net LLP more than one year before the Petition was filed. *See* Prelim. Resp. 3–5. The reply shall be filed no later than August 18, 2017.

II. ORDER

Accordingly, it is:

ORDERED that Petitioner is authorized to file a reply to the Preliminary Response limited to addressing Patent Owner’s assertion and evidence that service occurred on Wargaming.net LLP more than one year before the Petition was filed; and

FURTHER ORDERED that the reply shall be limited to two (2) pages and shall be filed no later than August 18, 2017.

¹ During the call, we advised the parties that any declarant upon whose testimony a party relies is subject to deposition, including those individuals upon whose testimony Petitioner relies to assert that it has standing to file the Petition.

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