

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

GALLIGAN, *Administrative Patent Judge*.

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

I. BACKGROUND

On March 13, 2017, Wargaming Group Limited (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–7 of U.S. Patent No. 7,682,243 B2 (“the ’243 patent”). Paper 1. In its Preliminary Response, Game and Technology Co., Ltd. (“Patent Owner”) argued that the Petition is time barred under 35 U.S.C. § 315(b) because Wargaming.net LLP, a real party-in-interest to Petitioner, “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. After having a call with the parties on August 11, 2017, the Board authorized Petitioner to file a reply limited to addressing Patent Owner’s assertion that Wargaming.net LLP was so served. *See* Paper 11. In its reply, Petitioner denied that such service occurred and submitted a declaration of Mr. Costas A. Joannou (Ex. 1017), the individual upon whom Patent Owner alleges service of the complaint was made. Paper 12, 1.

In our Decision on Institution, we stated:

The current record presents competing evidence as to whether Wargaming.net LLP was served more than one year before the filing of the Petition. We determine that this record needs to be developed further before a determination can be made as to this issue. Thus, on this record, we do not deny institution of the Petition as time barred under 35 U.S.C. § 315(b). We reserve our determination on this issue pending further development of the record during trial.

Paper 14, 7.

II. DISCUSSION

On October 13, 2017, following institution of the trial, we had a conference call with the parties to discuss discovery that the parties need with respect to the issue of whether Wargaming.net LLP was served with a

complaint alleging infringement of the '243 patent more than one year before the filing of the Petition and the timing of that discovery. Mr. Harper Batts appeared for Petitioner, and Mr. William Mandir appeared for Patent Owner. On the call, we advised the parties that we want discovery and briefing on the service issue to take place early in the trial as it could be case-dispositive. Mr. Batts stated that the parties conferred and agreed to narrowly-tailored discovery to address the service issue. Mr. Batts also stated the parties agreed that, if either party relies on documents, the party may rely on an affidavit to authenticate any such documents. We also discussed the deposition of Mr. Talbot, upon whose Witness Statement of Service (Ex. 2002) Patent Owner relies. *See* Prelim. Resp. 4. During the call, Mr. Mandir stated that he had been in touch with Mr. Talbot regarding a possible deposition, and he agreed that allowing Petitioner to depose Mr. Talbot would be in the interests of justice (*see* 37 C.F.R. § 42.51(b)(2)(i)).

During the call, Mr. Batts expressed concern that Patent Owner could potentially introduce a new declaration from Mr. Talbot after the deposition. Mr. Batts requested that any additional declaration be produced in advance of the deposition so that multiple depositions could be avoided. We advised Patent Owner that any declaration testimony must be produced before the deposition. During the call, we also advised the parties that any documents a party intends to use at a deposition must be produced in advance of the deposition.

We asked the parties to contact their respective witnesses to inquire as to potential dates for depositions, and we asked that the parties meet and confer and advise the Board when the depositions will occur. On October 18, 2017, counsel for Patent Owner, on behalf of the parties, advised the

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Board via email that the parties agreed to conduct depositions of both Mr. Joannou and Mr. Talbot in London on November 2, 2017. Ex. 3001. Patent Owner's email further stated:

The parties have also agreed to send any exhibit or document to be used on examination of their own witness that is not already of record to the other party at least 4 days before the deposition. If any further declarations will be provided by either deponent, those declarations will be sent to the other party by no later than 5 p.m. Eastern on October 26th.

Id.

III. ORDER SETTING DEADLINES WITH RESPECT TO SERVICE ISSUE

In view of the foregoing, it is

ORDERED that discovery with respect the issue of whether Wargaming.net LLP was served with a complaint alleging infringement of the '243 patent more than one year before the filing of the Petition shall proceed in the manner outlined above and as agreed by the parties;

FURTHER ORDERED that Petitioner may file by November 17, 2017, a brief not to exceed ten (10) pages addressing the issue of whether Wargaming.net LLP was served with a complaint alleging infringement of the '243 patent more than one year before the filing of the Petition;

FURTHER ORDERED that Patent Owner may file by December 1, 2017, an opposition to Petitioner's brief not to exceed ten (10) pages; and

FURTHER ORDERED that Petitioner may file by December 8, 2017, a reply to Patent Owner's opposition not to exceed three (3) pages.

IV. ORDER SETTING REMAINING DEADLINES¹

A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. 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 the 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. Nor does stipulating to a different DUE DATE 4 modify the deadline, set in this Order, for requesting an oral argument.

In stipulating to different times, 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 B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

¹ This portion of the order does not apply to discovery and briefing pertaining to the issue of whether Wargaming.net LLP was served with a complaint alleging infringement of the '243 patent more than one year before the filing of the Petition.

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