

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

PATENT OWNER'S RESPONSE BRIEF ON ISSUE OF WHETHER PETITION IS BARRED

UNDER 35 U.S.C. §315(b)

I. INTRODUCTION

Game and Technology Co., Ltd. (“Patent Owner”) respectfully submits that the Petition (Paper 1) should be dismissed as time-barred under 35 U.S.C. § 315(b). First, Wargaming.net LLP was served with a complaint more than one year before the filing date of the Petition in both the United Kingdom and Cyprus, each of which constitutes effective service. And second, even though Wargaming.net LLP was dismissed as a party (Ex. 1013 at 2, ¶ 1), the substitution of *parent company Wargaming Group Limited as a defendant* (Ex. 1013 at 2, ¶ 2) necessitates continuation of the same infringement action. Thereby, the order granting dismissal (Ex. 1026) does not, in effect, reset the service requirement of 35 U.S.C. § 315(b).

II. SERVICE ON WARGAMING

Wargaming.net LLP was twice served with a complaint more than one year before the filing date of the Petition in both the United Kingdom and Cyprus, each of which constitutes effective service.

A. *Effective Service by John Talbot*

John Talbot is an experienced process server, the owner of a process service business for twenty-seven years that specializes in providing service under Article 5 of the Hague Convention. Ex. 2018 at 2-3.

Mr. Talbot’s original statement that “[o]n Thursday the 10th day of

December 2015 at 1305 hours I served Wargaming.Net LLP, one of the Defendants herein, with the Summons in a Civil Action issued herein, together with the Complaint for Patent infringement, the Civil Cover Sheet, the Summons in a Civil Action, the Report on the Filing or Determination of an Action Regarding a Patent or Trademark and the U.S. Patent No. US 7,682,243 B2, together with the Hague Convention Summary of the Document to be Served and Notice, by delivering them to, and leaving them with, Costas A Joannou, who confirmed that he was authorised to accept service on behalf of Wargaming.Net LLP” was made only three days after service, and almost two years before the issue of whether service was proper, was raised. *See* Ex. 2002 at 1; Ex. 2002 (Supplemental) at 1; Ex. 2019 at 3.

Mr. Talbot sent his witness statement to Mr. Graham Bridgman, a solicitor, who certified the statement and applied to the Central Authority for a Hague Certificate of Service. Ex. 2018 at 1; Ex. 2001 (Supplemental) at 1; Ex. 2002 (Supplemental) at 1; Ex. 2019 at 3. The Hague Certificate of Service issued on January 6, 2016. Ex. 2002 (Supplemental) at 1; Ex. 2019 at 2.

Mr. Talbot also stated that when the “registered office turns out to be accountants,” he asks whether “there is anyone in particular I could leave [the documents] with.” Ex. 2018 at 9. Consistent with his practice, Mr. Talbot recalls personally serving Mr. Joannou, Wargaming’s authorized agent. *See e.g.*, Ex. 1025

at 63: 3-5. The contents of Mr. Talbot's file from that day, including a scrap of paper and Mr. Joannou's business card, aided Mr. Talbot's recollection. GAT Ex. 2018 at 11. The scrap of paper within Mr. Talbot's file has "kos" and "1.05" scribbled on it. Ex. 2013. This paper reminded Mr. Talbot of the time of service, and that "kos" was "the beginning of my attempt to write down the name of the person whom I personally served, Costas A Joannou.... While I was writing down his name, Mr. Joannou gave me his business card, at which point I didn't need to finish writing his name." Ex. 2018 at ¶ 11. Based on these facts, Mr. Talbot's statements are highly credible.

Almost two years later and after dispute over the issue of whether service was proper, Mr. Joannou has stated that that he has no recollection of receiving the documents. Ex. 1017 at ¶ 4. Mr. Joannou also states that he does not believe that he was in the office at the time of service by Mr. Talbot because Mr. Joannou had to leave his office for a meeting at 3 PM in Central London and had another meeting that was "brought forward." Ex. 1017 at ¶ 5. Mr. Talbot has testified that Mr. Joannou's travel time to his meeting would be "approximately one hour by train." Ex. 1023 at 69:24-70:9. Even if true, none of Mr. Joannou's circumstantial statements affirmatively establishes that service was not effected. Mr. Joannou does not establish that he was, for example, in a different location at the date and time of alleged service, and thus all of Mr. Joannou's statements should be

summarily dismissed because such statements do not, in fact, evidence a lack of service. Either Mr. Joannou does not remember the encounter from almost two years ago or Mr. Joannou's statements are in effort to mitigate damage to his personal business interest having billed almost 350,000 pounds in service fees to Wargamming.net. Ex. 1017 at Exhibit B.

B. Exhibit A to John Talbot's Witness Statement

Mr. Talbot has testified that he had served all documents including the Hague Notice and Summary. Ex. 1025 at 31:14-21; 73:3-23. While Ex. 2002 (Supplemental) did not include a true copy of Exhibit A with the Notice and Summary, all served documents included in the correct Exhibit A are of record in a combination of the documents shown in Ex. 2001 (Supplemental) (Notice and Summary), and Ex. 2002 (Supplemental) (Summons, Compliant, Cover Sheet, and Patent). The Declaration of Joseph Zito (Ex. 2021) and documents received from Legal Language Services (Ex. 2019) corroborate that the Notice and Summary were included in Exhibit A to Mr. Talbot's witness statement. These documents were sent by Legal Language Services sent to Mr. Zito. Ex. 2021. Patent Owner merely relies on the declaration of Joseph Zito to authenticate the documents that were received by him from Legal Language Services.¹

¹ The parties agreed that "if either party relies on documents, the party may rely on an affidavit to authenticate any such documents." See Order, Paper 16 at 3 (October 24, 2017).

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