

IN THE 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 IPR 2017-01082
Patent 7,682,243

**PETITIONER'S REPLY BRIEF ON THE ISSUE OF WHETHER
THE PETITION IS BARRED UNDER 35 U.S.C. § 315(b)**

Patent Owner originally claimed that the petition was barred because Wargaming.net LLP was served in London. Admitting that Mr. Talbot did not serve a signed and sealed summons due to a “printing error” (Paper 25 at 7), Patent Owner pivots to a new and equally flawed theory that it served *different* Wargaming entities in Cyprus by mail. Petitioner requests that the Board find that there was no proper service as required by §315(b), and that the order dismissing Wargaming.net LLP without prejudice nullified any attempted service.

I. Patent Owner failed to properly serve Wargaming.net LLP in the UK.

Patent Owner’s failure to serve a signed and sealed summons should not be excused because it is not a mere technical defect, it would cause unfair prejudice, and it is inconsistent with the purpose of §315(b). Failing to serve a court-issued summons is not a mere technical error that courts ordinarily excuse. Patent Owner quotes liberally from Wright & Miller yet omits the critical preceding sentence: “if the content and issuance requirements of Rule 4(a) and Rule 4(b) are completely ignored, the district court should not exercise its discretion to allow amendment but should direct [] re-issuance and re-service” 4B Wright & Miller, Fed. Practice and Proc. §1131 (4th ed.). Patent Owner also fails to address prejudice, because it clearly weighs against excusing the defect. Patent Owner has known since February 2016 that Wargaming was not aware of any proper service. Ex. 1027. Yet, Patent Owner did not disclose the purported date of service or file proof of

service before the petition was filed. Had it taken either step, Wargaming would have filed its petition earlier to avoid §315(b), and would have avoided the waste of London depositions. Finally, it is unfair to excuse a patent owner's failure to follow the procedural requirements for service and thereby negate the protection that Congress bestowed on petitioners by requiring full and proper service to trigger §315(b).

II. No entity or real-party-in-interest was properly served by mail.

Patent Owner should not be allowed to allege service by mail because it did not make that argument in its preliminary response, and did not disclose Mr. Zito's declaration before the November 2 deposition deadline. In addition, the Board should find that there was no proper service on any entity in Cyprus because (1) no documents were mailed by the court's clerk, and (2) there is no evidence that a form of mail was used that requires a signed receipt. While Patent Owner recites the Supreme Court's two-part test for service by mail under the Hague Convention, it failed to make a showing for the second prong: whether "service by mail is authorized under otherwise-applicable law." Paper 25 at 8. Federal Rule of Civil Procedure 4(f)(2)(C)(ii) authorizes service by mail in a foreign country when "using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt." Mr. Zito claims he mailed the documents—not the court's clerk. Ex. 2027 at 1. Further, Patent Owner did not offer proof that a form

of mail that requires a signed receipt was used. These reasons alone are sufficient to find that there was no proper service by mail, and the Board does not need to reach Patent Owner's fanciful alter ego argument.

III. The order dismissing Wargaming.net LLP nullified any service.

Patent Owner is wrong that “[t]he threshold issue as to the nullifying effect is whether the dismissal leaves ‘the parties as though the action had never been brought.’” Paper 25 at 9. The quote came from the Board’s summary of a patent owner’s argument that it rejected: “Several aspects of Patent Owner’s argument turn the Federal Circuit’s statement about the effect of a dismissal without prejudice on its head by attempting to elevate it to a threshold requirement” *See*. IPR2015-826, Paper 12 at 14. *Atlanta Gas* actually supports Petitioner because it confirms that the nullification effect is analyzed on a party-by-party basis. *Id.* at 12. Patent Owner is also wrong that the court’s order did not have the same effect as a dismissal without prejudice “[b]ecause of the substitution of Wargaming Group Limited” *Opp.* at 10. The district court’s order only substituted Wargaming Group Limited for Wargaming Public Company Limited, and not Wargaming.net LLP. Ex. 1026. Nothing in the court’s order otherwise changed the legal relationship between Wargaming.net LLP and the plaintiffs.

December 8, 2017

Respectfully submitted,

/Harper Batts/

Harper Batts, Reg. No. 56,160

BAKER BOTTS L.L.P.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Petitioner's Reply Brief on the Issue of Whether the Petition is Barred Under 35 U.S.C. § 315(b) contains no more than 3 pages and therefore complies with the page limitation specified in the Board's Order on Conduct and Schedule of the Proceeding. *See* Paper 16 at 4.

December 8, 2017

/Harper Batts/
Harper Batts

CERTIFICATE OF SERVICE

The undersigned certifies that on December 8, 2017, a complete copy of the foregoing paper was served via electronic mail to counsel for the Patent Owner at the email address designated in the Patent Owner's Mandatory Disclosures:

SUGHRUE MION PLLC
c/o John M. Bird
2100 Pennsylvania Ave NW
Suite 800
Washington, DC 20037
gat@sughrue.com
jbird@sughrue.com

December 8, 2017

/Harper Batts/
Harper Batts