

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WARGAMING GROUP LIMITED  
Petitioner

v.

GAME AND TECHNOLOGY CO., LTD.,  
Patent Owner

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Case IPR2017-01082  
Patent 7,682,243

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**PATENT OWNER'S OPPOSITION TO MOTION TO EXCLUDE**

## I. INTRODUCTION

Game and Technology Co., Ltd. opposes Wargaming's Motion to Exclude Exhibit 2027 because the Order dated October 24, 2017, (Paper 16) is inapplicable to Exhibit 2027.

In its Reply Brief dated August 16, 2017, Petitioner denied that service by Mr. Talbot ever "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 16 at 2. To address this discrete factual dispute, the Board set an initial briefing schedule in the Order (Paper 16)

The limited discovery of Paper 16 relates to whether "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'* ... the Board authorized Petitioner to file a reply limited to addressing Patent Owner's assertion that Wargaming.net LLP *was so served [in England].*" Paper 16 at 2 (emphasis added). Specifically, the Order limited the time to file *declarations by Mr. Talbot and Mr. Joannou, the persons to be deposed before the initial briefing.* The Board's only comments with respect to declarations were regarding a potential declaration by Mr. Talbot (Paper 16 at 3, emphasis added):

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.

In its opening brief, however, Petitioner changed course and argued a new theory. Rather than arguing that service had never occurred (*see* Reply (Paper 12) at 1 "Petitioner instead denied that Wargaming.net LLP was served in the manner described by Mr. Talbot"). That is, Petitioner changed its position and presents a *new theory*. According to Petitioner, while service by Mr. Talbot may have in fact been conducted—as the deposition testimony clearly showed—that service was allegedly improper on technical grounds. Because Petitioner introduced issues well beyond the discrete factual dispute identified by the Board for initial briefing, Patent Owner has responded by demonstrating that Petitioner has been properly served in Cyprus.

The Patent Owner's Response Brief included a declaration by Patent Owner's litigation counsel, Joseph Zito, regarding the propriety of service and the

documents that Mr. Zito sent to Roman Zanin, General Counsel for Wargaming Group Limited, in Cyprus (Ex. 2027).

Specifically, Mr. Zito's declaration (Ex. 2027) is directed to the service of Wargaming in Cyprus, of which receipt was admitted by Mr. Zanin (Ex. 1011 at 3, pp. 1-2). This service is consistent with FRCP 4(f)(1) providing "(f) Serving an Individual in a Foreign Country ... (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents" at Article 10(a) "Provided the State of destination does not object, the present Convention shall not interfere with – a) the freedom to send judicial documents, by postal channels, directly to persons abroad,..." Cyprus is a member state of the Hague Convention which does not object to Article 10(a). *See* Exhibit 2025.

As shown above, the restriction on timings of declarations in Paper 16 is unrelated to the issue of service upon Wargaming in Cyprus. Petitioner changed its position from arguing that service had never occurred in London, to the new issue of whether that service was technically proper. As Petitioner has raised the more general issue of service, as opposed to whether Wargaming ever received any service documents at all, Game and Technology should be permitted to rely upon facts with respect to any service upon Wargaming, including service upon

Wargaming in Cyprus. Paper 16 at 2, citing Paper 14 at 7.

As the declaration of Mr. Zito (Ex. 2027) is not relevant to the deposition of Mr. Talbot, Wargaming's characterization of Exhibit 2027 as being untimely filed is misguided. Moreover, since Petitioner has changed its position, and now raises the more general issue of service, Patent Owner submits that it should be able to respond to this new issue by showing whether any service upon Wargaming was proper.

For at least these reasons, Patent Owner respectfully requests the Board deny Petitioner's Motion to Exclude Exhibit 2027. Patent Owner submits that this opposition is timely filed at least because the only due date to Oppose Motions to Exclude set forth in the Order (Paper 16) is June 28, 2018.

Respectfully submitted,

/John M. Bird/ # 46,027, John M. Bird for

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