

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 IN SUPPORT OF ITS
MOTION TO EXCLUDE EXHIBIT 2027**

Patent Owner does not deny that it ambushed Petitioner with a new service by mail theory and accompanying declaration by its trial lawyer Mr. Zito (Ex. 2027) well after the limited discovery period set by the Board on the service issue. Instead, Patent Owner argues that the Board's limited discovery order did not set a deadline for disclosing new facts, and that Patent Owner's late disclosure is justified by an alleged change in position by Petitioner. Petitioner submits that the Board should reject both excuses and exclude Mr. Zito's untimely and inadmissible declaration (Ex. 2027).

First, there is no merit to Patent Owner's contention that the Board's limited discovery order only set a discovery deadline for disclosed theories and facts. *See* Paper 31 at 2 and 4. While the Board's order referred to specific witnesses and a specific theory of service, that was for the simple reason that Patent Owner had not disclosed any other theories of service or relevant witnesses. Patent Owner's narrow interpretation of the Board's order should be rejected because the Patent Owner had no reasonable expectation that it could raise new, undisclosed theories of service after its initial theory failed—any theories of service should have been addressed in the preliminary response given that service issues are typically resolved by the Board in the institution decision. It is certainly fair for the Patent Owner to bear the burden of producing facts relevant to service of process in its preliminary response given that the facts surrounding any attempt to serve process

is in the unique possession of a patent owner. Finally, the Board should reject Patent Owner's interpretation of the order because it would perversely permit the Patent Owner to rely on new facts and declarations as long as they pertain to undisclosed theories and thereby prevent the Petitioner from challenging those facts and declarations through discovery, which would violate Petitioner's right to due process. For the reasons set forth in Petitioner's Motion to Exclude, the Board should find that its order required that all facts relevant to service of process be disclosed during the limited discovery period. Paper 30 at 1-3.

Second, there is no merit to Patent Owner's claim that its new theory of service by mail to Cyprus was necessitated by an alleged change in Petitioner's position on the service issue. According to Patent Owner, "Petitioner changed its position from arguing that service had never occurred in London, to the new issue of whether that service was technically proper." Paper 31 at 4. However, Patent Owner ignores that Petitioner's brief set forth why there is no credible evidence that Mr. Talbot (the process server) ever met Mr. Joannou (Wargaming.net LLP's agent). *See* Paper 24 at 8-10. But, more importantly, Patent Owner ignores that its many failings and mistakes are not mere "technical" defects—they are fundamental failings that rendered service in the U.K. impossible. *See* Paper 24 at 3-8.

For the foregoing reasons, Petitioner respectfully requests that the Board exclude Mr. Zito's declaration (Ex. 2027) as inadmissible hearsay because his

declaration was not provided during the period for taking testimony on the service issue and was not subject to cross-examination.

December 22, 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 in Support of its Motion to Exclude Exhibit 2027 contains no more than 3 pages and therefore complies with the page limitation specified by 37 C.F.R. § 42.24(c)(2).

December 22, 2017

/Harper Batts/
Harper Batts

CERTIFICATE OF SERVICE

The undersigned certifies that on December 22, 2017, a complete copy of the foregoing Petitioner's Reply in Support of its Motion to Exclude Exhibit 2027 was served via electronic mail to counsel for the Patent Owner at the email address designated in the Patent Owner's Mandatory Disclosures:

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December 22, 2017

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