UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.

Petitioner

V.

GAME AND TECHNOLOGY CO., LTD

Patent Owner

Patent No. 7,682,243

Filing Date: June 23, 2005

Issue Date: March 23, 2010

Title: METHOD FOR PROVIDING ONLINE GAME WHICH CHANGES PILOT DATA AND UNIT DATA IN GEAR AND SYSTEM THEREOF

Inter Partes Review No.: IPR2018-00157

PETITIONER'S REPLY IN SUPPORT OF ITS MOTION FOR JOINDER TO RELATED *INTER PARTES* REVIEW OF U.S. PATENT NO. 7,682,243 (CASE NO. IPR2017-01082) UNDER 35 U.S.C. §§ 315(c) AND 37 C.F.R. § 42.122(b)

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Patent Owner's argument that joinder of the Blizzard IPR (IPR2018-00157) will impact the trial schedule for the Wargaming IPR (IPR2017-01082) ignores Petitioner's concessions and the facts of this case. The Motion for Joinder should be granted.

I. Joinder Should Not Impact the Wargaming IPR Schedule

Patent Owner makes much of the separate expert declaration submitted by Petitioner, but just as with *Teva Pharms. USA, Inc. v. Allergan, Inc.*, IPR2017-00578, paper 9 (P.T.A.B. March 31, 2017), this separate declaration should not preclude joinder. Petitioner Blizzard submitted the Crane Declaration (Ex. 1017) as a precaution, in the event that Petitioner Wargaming would settle prior to Due Date 1 in the Wargaming IPR, currently January 29, 2018.[1] Patent Owner's Preliminary Response in the present case is due February 6, 2018. While the Crane Declaration is separate from the Kitchen Declaration filed in the Wargaming IPR, it is substantively identical. Mr. Kitchen's deposition should occur prior to Due Date 1, and neither the Petition nor the Crane Declaration raises any new issues that would otherwise necessitate cross-examination of Mr. Crane in this case.

A. Petitioner's Concessions Ensure It Will Act as an Understudy

In its Motion for Joinder, Petitioner acknowledges that it would act as

[1] Petitioner has provided Mr. Crane's declaration because Petitioner could not retain Mr. Kitchen as an expert due to conflicts. *See* Paper 3 at 9.

understudy, as long as Wargaming remains a petitioner in the Wargaming IPR, and made the following assurances—

1. Petitioner agrees to not file separate written submissions;
2. Petitioner agrees to not cross-examine any GAT witness(es);
3. Petitioner agrees to not argue at oral hearing;
4. Petitioner agrees to rely on Wargaming's expert in the event joinder is granted as long as Wargaming continues to participate in the IPR proceeding; and
5. Petitioner agrees to withdraw its expert declaration of Mr. David Crane and proceed using the arguments and evidence put forth by Wargaming in its IPR based on the progress of the Wargaming IPR.[2]

See Paper 3 at 7, 10. Indeed, the PTAB has previously found these concessions, especially those with respect to the use of another expert, weigh in favor of joinder. *See* Paper 3 at 8-10; *Teva Pharms. USA, Inc. v. Allergan, Inc.*, IPR2017-00578, paper 9 at 3 (P.T.A.B. March 31, 2017); *SAP America Inc. v. Clouding IP, LLC*, IPR2014-00306, Paper 13 at 4 (P.T.A.B. May 19, 2014); *Intel Corp. v. DSS Tech.*

[2] In particular, Petitioner agrees it would withdraw its expert declaration at the latest by Due Date 1 (currently January 29, 2018) in the Wargaming IPR. Petitioner notes that its assurances are consistent with the first two additional requirements Patent Owner demands. *See* Paper 9 at 9. Without explanation, Patent Owner further requires an additional assurance (#4), which is unnecessary and inappropriate in this case. *See id.* Further, Petitioner fully agrees to assume a back-seat, understudy role in the Wargaming IPR, without any right to separate or additional briefing or discovery, unless authorized by the Board.

Management, Inc., IPR2016-00287 and IPR2016-01311, Paper 8 at 3 (P.T.A.B. Aug. 29, 2016). Patent Owner's assertions that Petitioner, (1) has not agreed to forego additional discovery, (2) has plans to submit and to continue to rely on a new expert declaration separate from Wargaming while Wargaming is a participant, and (3) has not agreed to withdraw its expert declaration, are inaccurate. *See* Paper 9 at 4, 9.

Moreover, Patent Owner's assertion that Petitioner cannot act as an understudy is not supported by the case Patent Owner cites. Paper 9 at 4-7. In *Kyocera*, the PTAB merely *authorizes a party to file* a motion for joinder and mentions the factors to be considered in such a motion, such as impact on trial schedule—thus, the holding in *Kyocera* has little relevance as to whether a motion for joinder *should be granted*. *Kyocera Corp. v. Softview LLC,* IPR2013-00004, Paper 15 at 4 (P.T.A.B. April 24, 2013).

B. Cross-Examination of Mr. Crane Is Likely Unnecessary

Patent Owner claims that granting joinder will create schedule changes as a result of its "opportunity to cross-examine Petitioner's proffered expert." *See* Paper 9 at 5 (citing *ZTE Corp. v. Adaptix, Inc.*, IPR2015-01184, Paper 10 at 5 (July 24, 2015)). Unless Wargaming withdraws from its IPR prior to Due Date 1, the Patent Owner Response deadline, separately cross-examining Mr. Crane in the Blizzard IPR is unnecessary. As of Due Date 1, Petitioner agrees to withdraw its expert

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