

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.

Case IPR2018-00157
Patent 7,682,243 B2

Before STACEY G. WHITE, DANIEL J. GALLIGAN, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION

Granting Joinder; Dismissing Petition for *Inter Partes* Review
35 U.S.C. § 315(c); 37 C.F.R. §§ 42.71, 42.122

I. INTRODUCTION

Activision Blizzard, Inc. (“Activision” or “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–7 of U.S. Patent No. 7,682,243 B2 (“the ’243 patent,” Ex. 1001), on which *inter partes* review was instituted in *Wargaming Group Ltd. v. Game and Technology Co., Ltd.*, Case No. IPR2017-01082 (the “Wargaming IPR”), and a Motion for Joinder (Paper 3, “Motion”) with the Wargaming IPR. Game and Technology Co., Ltd. (“Patent Owner”) filed an Opposition (Paper 9, “Opp.”) to the Motion, and Petitioner filed a Reply (Paper 10, “Reply”) in support of the Motion. Patent Owner also filed a Preliminary Response. Paper 11 (“Prelim. Resp.”).

For the reasons that follow, we join Activision as a party to the Wargaming IPR, but we do not institute a separate *inter partes* review.

A. Real Parties-in-Interest

Petitioner identifies the following real parties-in-interest: Activision Blizzard, Inc.; Blizzard Entertainment, Inc., Activision Publishing, Inc., and Activision Entertainment Holdings, Inc. Pet. 1.

B. Related Matters

Petitioner and Patent Owner cite the following judicial matters involving the ’243 patent: *Game and Technology Co. Ltd v. Wargaming.net LLP*, 2:16-cv-06554 (C.D. Cal.) and *Game and Technology Co. Ltd v. Blizzard Entertainment, Inc.*, 2:16-cv-06499 (C.D. Cal.). Pet. 2; Paper 6. The ’243 patent is currently the subject of the Wargaming IPR. In addition, the Board previously denied another petition for *inter partes* review of the ’243 patent filed by Activision. *Activision Blizzard, Inc. v. Game and Tech. Co.*, Case IPR2016-01918, slip op. at 18 (PTAB Mar. 21, 2017) (Paper 14).

C. The '243 Patent and Illustrative Claim

The '243 patent generally relates to “providing an online game, in which ability information of a unit associated with a pilot is enabled to change as ability information of the pilot changes.” Ex. 1001, 1:23–25. Of the challenged claims, claims 1, 6, and 7 are independent. Claim 1 is illustrative and is reproduced below.

1. An online game providing method for providing a pilot and a unit associated with the pilot at an online game, the method comprising the steps of:

controlling an online game such that a player can manipulate a pilot and a unit associated with said pilot, said pilot being a game character operated by a player, said pilot representing the player, said unit being a virtual object controlled by the player;

maintaining a unit information database, the unit information database recording unit information on said unit, in which the unit information includes ability of said unit and sync point information;

maintaining a pilot information database, the pilot information database recording pilot information on said pilot, in which the pilot information includes a unit identifier indicating said unit associated with said pilot, ability of said pilot and the ability of said unit associated with said pilot;

receiving a request for update on first pilot ability information of a first pilot;

searching for unit identifier information associated with the first pilot by referring to the pilot information database;

searching for sync point information associated with the searched unit identifier information by referring to the unit information database; and

updating and recording the first pilot ability information and unit ability information associated therewith in accordance with the searched sync point information such that said ability of unit is changed proportionally to changes in ability of the pilot by referring to said sync point,

wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit, and said steps of searching for unit identifier information and of searching for sync point information are performed by a processor.

D. References

Petitioner relies upon the following references:

Levine US 2003/0177187 A1 Sept. 18, 2003 Ex. 1004

“Dungeons and Dragons: Player’s Handbook: Core Rulebook I v.3.5” (“D&D Handbook”), © 2003 WIZARD OF THE COAST. Ex. 1005¹

E. Asserted Ground of Unpatentability

Petitioner challenges claims 1–7 of the ’243 patent as obvious over the combined teachings of Levine and D&D Handbook. Pet. 11.

II. ANALYSIS

The statutory provision governing joinder in *inter partes* reviews is 35 U.S.C. § 315(c), which provides:

JOINDER. – If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

¹ Based on the current record, Petitioner has made a threshold showing that D&D Handbook is a prior art printed publication under 35 U.S.C. §§ 102(a) and 102(b). *See* Pet. 10 (citing Ex. 1005, 5; Ex. 1008; Ex. 1012; Ex. 1003 ¶ 102). At this stage of the proceeding, Patent Owner does not argue substantively that D&D Handbook is not a printed publication. *See generally* Prelim. Resp.

Because a party may only be joined to an *inter partes* review if that party files a petition that “warrants the institution of an inter partes review,” we first address whether the Petition meets this standard. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition and the Preliminary Response shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we determine that the Petition satisfies the threshold for institution.

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard in an *inter partes* review). In applying a broadest reasonable construction, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). This presumption may be rebutted when a patentee, acting as a lexicographer, sets forth an alternate definition of a term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

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