

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

PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Pursuant to 35 U.S.C. § 315(b)-(c) and 37 C.F.R. § 42.23, Game and Technology Co., Ltd. (“GAT”) respectfully requests that the Board deny Activision Blizzard, Inc.’s (“Activision Blizzard”) Motion for Joinder, together with Activision Blizzard’s Petition for *Inter Partes* Review of U.S. Patent No. 7,682,243 (“the ‘243 patent”), seeking cancellation of claims 1-7 of the ‘234 patent, IPR2018-00193 (“Second Activision Blizzard IPR”), and joinder of this proceeding with *Wargaming Group Limited v. Game and Technology Co., LTD.*, IPR2017-01082 (“Wargaming IPR”).

II. STATEMENT OF MATERIAL FACTS

GAT, Activision Blizzard, and other entities are involved in litigation over the ‘243 patent and related patents in *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.).

The complaint in *Game and Technology Co. Ltd v. Blizzard Entertainment, Inc.*, 2:16-cv-06499 (C.D. Cal.) was filed by GAT against Activision Blizzard, on July 9, 2015.

On September 30, 2016, Activision Blizzard filed its first Petition for *Inter Partes* Review (IPR2016-01918, “First Activision Blizzard IPR”) seeking cancellation of claims 1-8 of the ‘243 patent. IPR2016-01918, Paper 1. GAT filed

its Preliminary Response in the First Activision Blizzard IPR on January 9, 2017, and the Board denied institution on March 21, 2017. IPR2016-01918, Papers 11, 14.

On March 13, 2017, Wargaming Group Limited (“Wargaming”) filed its Petition for *Inter Partes* Review (Wargaming IPR) seeking cancellation of claims 1-7 of the ‘234 patent. IPR2017-01082, Paper 1.

On July 12, 2017, GAT filed a Preliminary Response in the Wargaming IPR. IPR2017-01082, Paper 8.

On October 6, 2017, the Board instituted review of claims 1-7 of the ‘243 patent in the Wargaming IPR. IPR2017-01082, Paper 14.

On November 6, 2017, Activision Blizzard submitted the Second Petition for *Inter Partes* Review of claims 1-7 of the ‘243 patent and the Motion for Joinder.

III. ARGUMENT

Because Activision Blizzard’s Petition for *Inter Partes* Review in the Second Activision Blizzard IPR is barred under 35 U.S.C § 315(b),¹ Activision

¹ Activision Blizzard’s Petition Should be Denied Under 35 U.S.C. § 315(b) because Activision Blizzard concedes that the Petition for *Inter Partes* Review in the Second Activision Blizzard IPR was filed more than one year after service of the complaint in *Game and Technology Co. Ltd v. Activision Blizzard Entertainment, Inc.*, 2:16-cv-06499 (C.D. Cal.), in violation of 35 U.S.C. § 315(b). See Motion for Joinder at 14.

Blizzard may only participate in an IPR under 35 U.S.C. § 315(c). However, Activision Blizzard should not be allowed to join the Wargaming IPR.

Alternatively, if Activision Blizzard is allowed to join the Wargaming IPR, additional restrictions should be applied to Activision Blizzard.

As the moving party, Activision Blizzard has the burden of proof to establish entitlement to joinder. 37 C.F.R. §§ 42.20(c), 42.122(b); *see also Samsung Elecs. Co., LTD. v. Arendi S.A.R.L.*, IPR2014-01144, Paper 11 at 4 (Oct. 2, 2014). The factors determinative of whether to grant a motion for joinder are: (1) the reasons why joinder is appropriate; (2) whether the party to be joined has presented any new grounds of unpatentability; (3) what *impact joinder would have on the trial schedule* for the existing review; and (4) *how briefing and discovery may be simplified*. *See Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (emphasis added). Based on such factors, Activision Blizzard has not sufficiently shown entitlement to joinder because the impact of joinder would negatively affect the trial schedule in the Wargaming IPR and joinder would, in fact, complicate discovery in the Wargaming IPR.

A. Activision Blizzard's Separate Expert Precludes Understudy Role

Activision Blizzard asserts it will act as an “understudy,” citing *SL Corp. v. Adaptive Headlamp Techs., Inc.*, IPR2016-01368, Paper 9 (Nov. 16, 2016) and *Teva Pharms. USA, Inc. v. Allergan, Inc.*, IPR2017-00578, Paper 9 (Mar. 31,

2017). Motion for Joinder at 7. Activision Blizzard argues joinder is appropriate because the Second Activision Blizzard IPR “will not present issues that might complicate or delay the Wargaming IPR.” Motion for Joinder at 5.

In the cited cases, the “understudy” agreed to rely on the initial petitioner’s expert and, in *Teva Pharms.*, even agreed to withdraw its own expert’s declaration. *See SL Corp.* Paper 9 at 5; *Teva Pharms* Paper 9 at 3. But contrary to such cases, Activision Blizzard has submitted a separate declaration from its own expert. *See* Ex. 1017. Accordingly, Activision Blizzard cannot be acting as an “understudy” by introducing new evidence in the form of independent expert declaration, even if the new evidence simply reaffirms previous evidence. Moreover, Activision Blizzard’s use of a second declarant will complicate the Wargaming IPR because GAT will be required to depose the second declarant. Even presuming the experts will agree, GAT will, at a minimum, be required to depose both experts to confirm such agreement. Therefore, Activision Blizzard cannot, in fact, truly act as an “understudy,” which will complicate discovery in the Wargaming IPR. *See Kyocera Corp. v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (describing simplification of discovery and impact of joinder on trial schedule).

B. Granting Activision Blizzard’s Motion Will Impact the Schedule

Activision Blizzard acknowledges the Board has denied joinder in the past when the moving party offers its own expert declaration, but asserts that the

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