

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GAME SHOW NETWORK, LLC and WORLDWINNER.COM  
Petitioner

v.

JOHN H. STEPHENSON  
Patent Owner

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Case IPR2013-00289 (SCM)  
Patent 6,174,237 B1

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Before SALLY C. MEDLEY, SCOTT R. BOALICK, and KEVIN F.  
TURNER, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On June 18, 2013, the following individuals participated in a  
conference call:

- (1) Mr. Brenton Babcock and Mr. Ted Cannon, counsel for Petitioner;
- (2) Mr. Daniel McDonald and Mr. Robert Kalinsky, counsel for

Patent Owner; and

(3) Sally Medley, Scott Boalick, and Kevin Turner, Administrative Patent Judges.

The purpose of the conference call was for Patent Owner to seek authorization to file a motion to strike portions of Exhibit 1005, which is a declaration of E. James Whitehead, Jr., Ph.D. (“Whitehead declaration”) submitted by Petitioner. Counsel for Patent Owner explained that the Whitehead declaration contained arguments that should have been part of the petition and therefore the petition, in effect, exceeds the 60 page limit.

As explained, the request was not well articulated. The declaration and petition are two separate documents. There was no indication from counsel for Patent Owner that Petitioner had attempted to incorporate any substance from the Whitehead declaration as part of the petition. Facially, the separate Whitehead declaration cannot be considered part of the petition. The petition itself is not over the 60 page limit. Thus, there is no apparent page limit violation.

Alternatively, counsel for Patent Owner expressed concern that the Whitehead declaration contains arguments that should have been part of the petition. Declaration testimony generally is considered as evidence, not argument. The petition should contain arguments and direct attention to the evidence in support of the arguments. As explained during the call, to the extent that Petitioner omits certain arguments in the petition, Petitioner does that at its own risk because the Board may not consider arguments made elsewhere. Moreover, if a declaration is based on argument or conclusory assertions, not supported by a factual basis, the Board may give such testimony little if any weight.

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In light of the explanation provided by the Board, counsel for Patent Owner withdrew its request to file a motion to strike. Accordingly, Patent Owner is not authorized to file a motion to strike portions of the Whitehead declaration.

PETITIONER:

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