

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RELOADED GAMES, INC.
Petitioner

v.

PARALLEL NETWORKS LLC
Patent Owner

Case No. IPR2014-00950
Patent 7,188,145

**PETITIONER'S MOTION FOR JOINDER
UNDER 35 U.S.C. 315(c) and 37 C.F.R. § 42.122(b)**

RELIEF REQUESTED

Petitioner Reloaded Games, Inc. (“Reloaded”) hereby moves for joinder of the petition for *inter partes* review of claims 1, 4, 5, 8, 9, 11-15, 18, 19, 22, 23 and 25-28 (“Challenged Claims”) of U.S. Patent No. 7,188,145 (“the ‘145 Patent”) filed today (“Second Petition”) with the instituted *inter partes* review styled *Reloaded Games, Inc. v. Parallel Networks LLC*, Case No. IPR2014-00136 (KLD), pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b). In this Motion, Petitioner requests that the Second Petition be joined with IPR2014-00136.

STATEMENT OF MATERIAL FACTS

1. On November 11, 2013, Reloaded filed a Petition for *Inter Partes* Review requesting review of claims 1-36 of the ‘145 Patent.
2. On May 16, 2014 the Board issued a decision instituting trial on claims 2-4, 6, 7, 10, 16-18, 20, 21, 24 and 29-36 in IPR2014-00136.
3. Today, Petitioner filed a petition for *inter partes* review that challenges additional claims that either: (1) are merely the independent claims (claims 1 and 15) from which instituted dependent claims in IPR2014-00136 depend therefrom (and which would be unpatentable if the instituted dependent claims are found to be unpatentable), or (2) depend directly or indirectly from independent claims 1 and 15 and add insubstantial additional limitations as compared to these independent claims. The grounds of invalidity presented in the

Second Petition are premised upon the same grounds already adopted in the Decision (§103 in view of Smith and Inohara) and only apply citations from those references necessary to the recitations of claims 1, 4, 5, 8, 9, 11-15, 18, 19, 22, 23 and 25-28.

4. More particularly, the Second Petition argues that claim 1 is obvious based on the combination of Smith (Ex. 1006) and Inohara (Ex. 1007). The Board previously found that claim 2, which depends from claim 1 and therefore includes the limitations of claim 1, is likely obvious on the same grounds. Claims 4, 5, 8, 9 and 11-14 depend directly or indirectly from claim 1.¹ Similarly, the Board instituted an IPR on claim 16, which is dependent on claim 15 and therefore includes the limitations of claim 15, on the same grounds of Smith in view of Inohara. Again, the remaining Challenged Claims depend either directly or indirectly from claim 15.

5. On May 30, 2014, Patent Owner, in the related litigation, sought to lift a pending stay in the case on the grounds that it wanted to proceed with an infringement claim against Petitioner, and other parties, on the claims of the '145 Patent that were not instituted in IPR2014-00136. *See Exhibit 1014, Parallel*

¹ Claim 5 depends from claim 4, which was also previously instituted in IPR2014-00136.

Networks LLC v. Reloaded Games, Inc., Case No. 1:13-cv-827-RGA (D. Del.),
Motion to Lift Stay, at 2.

6. For these reasons, Petitioner considered the filing of the second petition necessary and appropriate.

GOVERNING RULES

37 C.F.R. § 42.122 Multiple proceedings and Joinder.

b) *Request for Joinder.* Joinder may be requested by a patent owner or petitioner. Any request for joinder must be filed, as a motion under § 42.22, no later than one month after the institution date of any *inter partes* review for which joinder is requested. The time period set forth in § 42.101(b) shall not apply when the petition is accompanied by a request for joinder.

DISCUSSION

The Board has authority under 35 U.S.C. § 315(c) to join a properly-filed second *inter partes* review petition to an instituted *inter partes* review proceeding. A motion for joinder should: (1) set forth the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; (3) explain what impact (if any) joinder would have on the already instituted action; and (4) address specifically how briefing and discovery may be simplified. *See* IPR2013-00004, Paper 15 at 4; Frequently Asked Question (“FAQ”) H5 on the Board’s

website at <http://www.uspto.gov/ip/boards/bpai/prps.jsp>.

First, this request for joinder is timely as the time periods set forth in 37 C.F.R. §42.101(b) do not apply to the Second Petition because it is accompanied by this request for joinder. 37 C.F.R. § 42.122(b). Trial was instituted on May 16, 2014 and the instant motion and the Second Petition have been filed on or before June 16, 2013. Therefore, this motion is made within one month of the date the trial was instituted in IPR2014-00136 as required by Rule 42.122(b).

Not only is joinder procedurally proper, but it is also substantively appropriate under the circumstances. First, the Second Petition involves the same parties – Reloaded Games and Parallel Networks – and the same patent. Second, the Second Petition raises a limited number of additional issues. In particular, the grounds of invalidity presented in the Second Petition are premised upon the same references (Smith and Inohara) already relied upon in the Institution Decision. The Second Petition merely adds citations to those references necessary to meet the additional recitations of claims 1, 5, 8, 9, 11-15, 19, 22, 23 and 25-28. While these claims were included in the First Petition (IPR2014-00136), they were challenged only on anticipation grounds. In the Second Petition, Reloaded has included these claims, arguing grounds of obviousness for these claims, in part based on the Board's claim interpretation of the term "allowing" in its IPR2014-00136 Institution Decision. Thus, the prior art and grounds in the Second Petition will

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