

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner

v.

WORLDS INC.,
Patent Owner

IPR2015-01319
Patent 8,082,501

**BUNGIE'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

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I. INTRODUCTION

Petitioner Bungie, Inc. (“Bungie”) responds to Patent Owner Worlds Inc.’s (“Patent Owner”) Motion to Exclude Petitioner’s Evidence (Paper 33).

Patent Owner’s motion is a sideshow, targeting evidence that, while relevant and admissible, is unlikely to be consequential to the Board’s decision.

Nonetheless, Patent Owner misapprehends the purpose and import of Bungie’s evidence. The identified exhibits are not “directed to character ‘evidence’” as Patent Owner contends. Paper 33 at 1. Instead, as explained in more detail below, they are relevant to issues raised by Patent Owner itself. And as Patent Owner has not identified any sound basis for excluding Bungie’s evidence, its motion should be denied.

II. REASONS WHY REQUESTED RELIEF SHOULD BE DENIED

A. Exhibit 1033 – “Worlds.com Sues NCSoft for Infringing Key Virtual Worlds Patents” Press Release

Exhibit 1033 is a 2008 press release (not an article as suggested by Patent Owner) issued by Patent Owner and its partner, “General Patent Corporation (GPC), a leading patent licensing and enforcement firm,” regarding Patent Owner’s then-current patent enforcement activities and future patent enforcement plans. EX1033. Exhibit 1033 is evidence that contravenes Patent Owner’s

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contention that Bungie's motivation for challenging the patents is in acting on behalf of Activision. *See id.*

As an initial matter, it is unclear why Patent Owner is seeking to exclude Exhibit 1033. Exhibit 1033 was submitted in opposition to Patent Owner's motion for discovery regarding its contention that Activision is an un-named real party in interest. Paper 10 at 2. In denying Patent Owner's motion and rejecting Patent Owner's theory, the Board did not appear to rely on Exhibit 1033. Paper 11. While rejecting the same theory again in its Institution Decision, the Board did not appear to rely on Exhibit 1033. Paper 14 at 31-37. While Patent Owner presses the same theory a third time in its Patent Owner Response (Paper 20 at 36-42), it is believed that the Board can again resolve the issue using a similar rationale as the Board has previously identified.

Should the Board be inclined to rely on Exhibit 1033, however, Patent Owner's evidentiary objections are unfounded. In particular, Exhibit 1033 was not submitted to "attack[] the character of the Patent Owner." Paper 33 at 3. As is apparent in the context it was cited, Exhibit 1033 was submitted as background evidence and to corroborate Bungie's state of mind in initiating this proceeding. Paper 10 at 2-3. Patent Owner continues to contend that Bungie is a "proxy petitioner" operating at the behest of Activision, and that in denying this

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contention, the Board’s “reasoning [was] disingenuous and illustrate[d] the

Board’s abdication of its role in preventing the gamesmanship that § 315(b) was

designed to prevent.” Paper 20 at 40. But Patent Owner’s charge is

unsubstantiated—Bungie is not engaged in gamesmanship or acting as a proxy for

Activision and the Board has not abdicated its role. And Exhibit 1033 is evidence

that tends to support a simpler, if less exciting, explanation for initiating the

present proceeding: (1) Patent Owner made threats against Bungie and (2) Patent

Owner had a reputation in the industry for aggressively asserting its patents.

Paper 10. Accordingly, Patent Owner’s argument that Exhibit 1033 is irrelevant

under FRE 402 should be denied.

For similar reasons, Patent Owner’s argument that the probative value of Exhibit 1033 is substantially outweighed by a danger of unfair prejudice under FRE 403 should also be denied. As an initial matter, it is odd, at the least, to ask a fact finder to exclude evidence on the basis that the evidence would unduly prejudice that same fact finder. *See, e.g., U.S. v. Preston*, 706 F.3d 1106 (9th Cir. 2013) (“Rule 403 is inapplicable to bench trials.”). Moreover, it is unclear why Patent Owner believes the Board would (unfairly, presumably) “conclude that Patent Owner ... is a bad actor.” Paper 33 at 4. Bungie is not advocating for bias,

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