

Paper No. ____
Filed: August 13, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

WORLDS INC.,
Patent Owner.

Case IPR2015-01319
Patent 8,082,501

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION FOR ROUTINE OR ADDITIONAL DISCOVERY**

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I. INTRODUCTION

Pursuant to the Board's July 30, 2015 Order (Paper 8), Petitioner Bungie, Inc. ("Bungie") submits this Opposition to Patent Owner Worlds Inc.'s ("Patent Owner" or "PO") Motion for Routine or Additional Discovery (Paper 9).

PO's motion cites to (1) a Software Publishing and Development Agreement ("DevPub Agreement") between Bungie and Activision Publishing, Inc. ("Activision"), and (2) a 2012 lawsuit between Worlds and Activision ("Worlds/Activision lawsuit"), but neither support the contention of any unnamed real party in interest ("RPI") or otherwise justify the requested discovery. Bungie, the developer of the *Destiny* videogame, is responsible for defense of intellectual property claims against *Destiny*. Nothing in the DevPub Agreement allows any party other than Bungie to control these IPR proceedings. PO's arguments in its motion regarding the DevPub Agreement are based on an erroneous and illogical reading of that agreement, and fail to support its discovery request.

With regard to the Worlds/Activision lawsuit, that litigation addresses only third party products having nothing to do with Bungie – *Destiny* has never been a "product-at-issue" in that litigation. PO points only to a single letter sent to Activision's litigation counsel suggesting *Destiny* be added, something unsurprisingly never done, given the unrelated nature of *Destiny* and the late stage of that litigation. Mere bluster in an unrelated lawsuit against a Bungie business partner cannot trigger a standing bar under § 315(b) as to Bungie.

Neither the DevPub Agreement nor the unrelated Worlds/Activision litigation changes that Bungie is solely responsible for the cost and control of the

IPRs against PO's patents. Beyond the erroneous reading of the DevPub Agreement, PO's discovery requests are speculative, overly broad and unduly burdensome, and unlikely to yield any fruitful information. Accordingly, PO's request for discovery should be *denied*.

II. BACKGROUND

PO is a notorious patent assertion entity, known in the videogame industry for aggressively threatening and asserting through litigation the patents at issue in the current IPRs. Starting in 2002, PO began working with General Patent Corporation, which "represents clients in IP enforcement matters and licensing transactions on a contingency basis." Ex. 1033. In late 2008, following the issuance of U.S. Pat. No. 7,181,690, which is a parent to the patent at issue here, PO sued NCSoft, developer of several popular massively-multiplayer videogames. *Id.* Following filing of the suit, the CEO of PO proclaimed that PO intended to sue any company that made a successful massively-multiplayer videogame. Ex. 1034. In May 2011, PO spun-off its remaining operations to a wholly-owned subsidiary, retaining its patent portfolio which it indicated it "intends to continue to increase and to more aggressively enforce against alleged infringers." Ex. 1035 at 8.

On April 4, 2012, PO initiated a lawsuit against Activision alleging the *World of Warcraft* and *Call of Duty* videogame series infringed PO's patents. Ex. 2003. Bungie has nothing to do with the *World of Warcraft* and *Call of Duty* videogame series, both of which were developed by Activision's subsidiaries or corporate affiliates. Ex. 1031 ¶¶ 6-15. PO's motion cites to a single November 13, 2014 letter sent, over a year-and-a-half into litigation, to Activision's litigation

counsel suggesting *Destiny* be added to the lawsuit. Ex. 2004. Neither *Destiny* nor any other Bungie product has ever been added to that lawsuit. Indeed, PO recently filed amended infringement contentions that remain limited to the *World of Warcraft* and *Call of Duty* videogames. Ex. 1036.

Bungie is a private, independent videogame developer in the business of designing and creating videogames. *See, e.g.*, Ex. 2002 at 7-8. Bungie has developed numerous videogames since the company was established in 1991, including the highly successful *Halo* franchise in conjunction with Microsoft. Ex. 1032. Activision is a videogame publisher in the business of mass-producing, marketing, and distributing videogames. *See, e.g.*, Ex. 2002 at 9-10. Activision acts as a publisher both for numerous third party videogame developers as well as for its own in-house development studios. *See, e.g.*, Ex. 1031 ¶¶ 6-15.

On April 16, 2010, Bungie and Activision entered into the DevPub Agreement, which provided that the videogame *Destiny* would be developed by Bungie and published by Activision. Ex. 2002.¹ Under the DevPub Agreement, Bungie remains the owner of the *Destiny* videogame and all other *Destiny* intellectual property. *Id.* at 6.

¹ The Board's Order states that "Counsel for Petitioner explained that he had not received a copy of the Bungie-Activision Agreement." Paper 8 at 2. To be clear, while aware of the agreement, counsel pointed out that PO scheduled a conference call without any notification to Bungie or the Board as to any specific discussion points.

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