

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
ELECTRONIC ARTS INC.,
TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K SPORTS, INC., and
ROCKSTAR GAMES, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Cases IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)¹
Cases IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
Cases IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

Before SALLY C. MEDLEY, LYNNE E. PETTIGREW and
WILLIAM M. FINK, *Administrative Patent Judges*.

FINK, *Administrative Patent Judge*.

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be entered in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)
IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

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

On May 17, 2015, a conference call was held for the following six proceedings: IPR2015-01951, IPR2015-01953, IPR2015-01964, IPR2015-01970, IPR2015-01972, and IPR2015-01996 (the “Proceedings”). The following individuals were present on the call: Mr. Baughman and Mr. Thomases, lead and backup counsel, respectively, for Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Ind., 2K Sports, Inc., and Rockstar Games, Inc. (collectively, “Petitioner”); Mr. Hannah, lead counsel for Acceleration Bay, LLC (“Patent Owner”); and Judges Medley, Pettigrew, and Fink.

The parties jointly requested a call to discuss proposed changes to DUE DATES 1–3 and to seek the Board’s guidance regarding the form and scope of depositions of several of Petitioner’s declarants located in Australia and in the United States, as well as whether Patent Owner is entitled to depose witnesses whose declarations have not yet been filed in the Proceedings. We addressed all of these issues on the call.

A. Revised DUE DATES

In these Proceedings, DUE DATE 1 (Patent Owner’s response and Patent Owner’s motion to amend) is currently set for June 24, 2016. Paper 12 (REVISED DUE DATE APPENDIX).² Lead counsel for Patent Owner

² For convenience, we refer to IPR2015-01953, unless otherwise specified.

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stated that both he and back-up counsel have a trial scheduled to commence on June 13, 2016, and will therefore be unavailable just prior to DUE DATE

1. Due to this circumstance, as well as the Board's recent orders shortening Patent Owner's time for filing its preliminary responses to IPR petitions and oppositions to motions for joinder in eight related proceedings,³ Patent Owner requests DUE DATE 1 be extended by three weeks to July 24, 2016. Patent Owner also requests DUE DATE 2 (Petitioner's reply and Petitioner's opposition to motion to amend) be extended from September 19, 2016 to October 12, 2016 (three weeks and two days), and DUE DATE 3 (Patent Owner's reply to petitioner's opposition to motion to amend) be extended from October 19, 2016 to October 26, 2016. Petitioner does not agree to Patent Owner's proposed schedule change and argues that Patent Owner effectively has 3 months and 3 weeks for its response, while Petitioner has only 3 months for its reply.

We determine that Patent Owner has shown good cause for ordering the requested extensions to DUE DATES 1–3 for the reasons presented. *See* 37 C.F.R. § 42.5(c)(2). Although we recognize the requested extensions provide Patent Owner additional time for its response, without providing Petitioner a proportionately greater period of time for DUE DATE 2, the proposed schedule of new dates is not unreasonable based on the facts presented.

³ *See, e.g.*, IPR2016-00932, Paper 5 (shortening time for preliminary response and opposition). The other related proceedings are IPR2016-00931, IPR2016-00933, IPR2016-00934, IPR2016-00935, IPR2016-00936, IPR2016-00963, and IPR2016-00964.

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Accordingly, DUE DATES 1–3 are reset to July 15, 2016, October 12, 2016, and October 26, 2016, respectively, in each of the Proceedings as set forth in a REVISED DUE DATE APPENDIX attached to this order. We remind the parties they may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6) and we encourage the parties to work together to accommodate reasonable requested adjustments. *See* 37 C.F.R. § 42.1(c). A notice of stipulation specifically identifying the changed due dates must be filed promptly. The parties may not stipulate to an extension of DUE DATES 6 and 7.

B. Deposition Issues

1. Australia-based Declarants

During the call, Petitioner requested an order under 37 C.F.R. § 42.53(b)(3) concerning the form of deposition of declarants based in Australia,⁴ and an order under 37 C.F.R. § 42.53(d)(5)(ii) clarifying the scope of such depositions. According to Petitioner, the declarants, Peter Shoubridge and Steven Pietrobon (collectively, the “Australia declarants”) testified in support of the prior art status of references relied upon by Petitioner in these cases. *See, e.g.*, Ex. 1120, Ex. 1106. Petitioner has offered to make the Australian declarants available for deposition by audio or video teleconference, and maintains this is a sufficient form for deposition

⁴ We also discussed the availability for live deposition of declarants based in the United States. From the discussion, we understand the parties to be reaching agreement as to these depositions.

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given that the declarations at issue are short and cross-examination is limited to the scope of the direct testimony.

Patent Owner argues an audio or video conference is unacceptable. According to Patent Owner, the Exhibits in question (including the respective declarations) are each over 100 pages in length and the declarations go to a critical issue in the proceeding, whether or not the references at issue have been shown to be prior art. Patent Owner contends that an audio or video deposition does not provide a comparable opportunity to cross-examine the declarant as would a live (i.e., in-person) deposition due to the logistics of sending documents and placing them before the declarant, observing the witnesses' demeanor, and the inability to observe off the record exchanges between the witnesses and counsel. Patent Owner contends Petitioner knew it was relying on Australian-based declarants in this proceeding, and therefore should have been prepared to make them available for live depositions in the United States at its expense.

As a preliminary matter, we discern no disagreement between the parties that the declarations in question are limited solely to fact testimony in support of the dates and availability of references cited as prior art in the Proceedings,⁵ and that cross-examination should be limited accordingly. *See* 37 C.F.R. § 42.53(d)(5)(ii). Thus, although the references themselves are lengthy, as Patent Owner contends, the declarations are not directed to the

⁵ We note only Dr. Shoubridge's declaration, *see* Ex. 1120 ¶¶ 6–7, appears to be directed to prior art relied upon in the Board's Decisions on Institution. *See* Paper 8 (instituting *inter partes* review based on Shoubridge and Dadej, *Hybrid Routing in Dynamic Networks*).

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