

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case IPR2016-00963
Patent 6,829,634 B1

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

PETTIGREW, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Petitioner's Motion for Joinder
37 C.F.R. § 42.122(b)

I. INTRODUCTION

Bungie, Inc. (“Petitioner” or “Bungie”) filed a Petition for *inter partes* review of claims 1–18 of U.S. Patent No. 6,829,634 B1 (Ex. 1001, “the ’634 patent”). Paper 2 (“Pet.”). Concurrently with its Petition, Bungie filed a Motion for Joinder with *Activision Blizzard, Inc. v. Acceleration Bay, LLC*, Case IPR2015-01964 (“the Activision IPR”). Paper 3 (“Mot.”). Bungie represents that petitioners in the Activision IPR—Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc. (“the Activision Petitioners”)—do not oppose the Motion for Joinder. Mot. 2. Acceleration Bay, LLC (“Patent Owner”) did not file an opposition to Bungie’s Motion for Joinder after being given an opportunity to do so. *See* Paper 5. Patent Owner elected to waive its Preliminary Response. Paper 8.

For the reasons explained below, we institute an *inter partes* review of claims 1–18 of the ’634 patent and grant Bungie’s Motion for Joinder.

II. RELATED PROCEEDINGS

Petitioner and Patent Owner identify the following pending judicial matters as relating to the ’634 patent: *Acceleration Bay LLC v. Activision Blizzard, Inc.*, Case No. 1:15-cv-00228-RGA (D. Del., filed Mar. 11, 2015); *Acceleration Bay LLC v. Electronic Arts Inc.*, Case No. 1:15-cv-00282-RGA (D. Del., filed Mar. 30, 2015); and *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, Case No. 1:15-cv-00311-RGA (D. Del., filed Apr. 13, 2015). Pet. 4–5; Mot. 2; Paper 7, 1. Petitioner indicates it is not a party to the underlying district court proceedings. Pet. 5; Mot. 2.

In the Activision IPR, we instituted an *inter partes* review of claims 1–18 of the ’634 patent on the following grounds:

IPR2016-00963
Patent 6,829,634 B1

References	Basis	Challenged Claims
Lin ¹	§ 102(a)	10, 15, and 18
Lin	§ 103(a)	1–18

Activision Blizzard, Inc. v. Acceleration Bay, LLC, Case IPR2015-01964, slip op. at 20 (PTAB Mar. 31, 2016) (Paper 10) (“Activision Dec.”). We also instituted another *inter partes* review of the ’634 patent and four other *inter partes* reviews of related patents based on petitions filed by the Activision Petitioners:

IPR2015-01951 IPR2015-01953	U.S. Patent No. 6,714,966 B1
IPR2015-01996	U.S. Patent No. 6,829,634 B1
IPR2015-01970 IPR2015-01972	U.S. Patent No. 6,701,344 B1

See Pet. 4. Bungie has filed corresponding petitions for *inter partes* review accompanied by motions for joinder with these instituted *inter partes* reviews. See *id.* at 5; Paper 7, 1.

The Activision Petitioners also have filed six other petitions for *inter partes* review of the ’634 patent and related patents:

IPR2016-00727	U.S. Patent No. 6,829,634 B1
IPR2016-00747	U.S. Patent No. 6,732,147 B1
IPR2016-00726	U.S. Patent No. 6,910,069 B1
IPR2016-00724	U.S. Patent No. 6,920,497 B1
IPR2016-00931	U.S. Patent No. 6,701,344 B1
IPR2016-00932	U.S. Patent No. 6,714,966 B1

¹ Meng-Jang Lin, et al., *Gossip versus Deterministic Flooding: Low Message Overhead and High Reliability for Broadcasting on Small Networks*, Technical Report No. CS1999-0637 (Univ. of Cal. San Diego, 1999) (Ex. 1004 (Exhibit B)) (“Lin”).

See Pet. 4.

III. INSTITUTION OF *INTER PARTES* REVIEW

The Petition in this proceeding asserts the same grounds of unpatentability as those on which we instituted review in the Activision IPR. *Compare* Pet. 14–40, *with* Activision Dec. 20. Indeed, the Petition filed in this proceeding is a “practical copy” of the petition in the Activision IPR “with respect to the instituted grounds, including the same claims, analysis of the prior art, and expert testimony.” Mot. 1.

For the same reasons set forth in our institution decision in the Activision IPR, we determine that the information presented in Bungie’s Petition shows a reasonable likelihood that Petitioner would prevail in showing that (a) claims 10, 15, and 18 are anticipated by Lin, and (b) claims 1–18 would have been obvious over Lin. *See* Activision Dec. 8–19. Accordingly, we institute an *inter partes* review on the same grounds as those on which we instituted review in the Activision IPR. We do not institute *inter partes* review on any other grounds.

IV. GRANT OF MOTION FOR JOINDER

The Petition and Motion for Joinder in this proceeding were accorded a filing date of April 29, 2016. *See* Paper 4. Thus, Petitioner’s Motion for Joinder is timely because joinder was requested no later than one month after the institution date of the Activision IPR, i.e., March 31, 2016. *See* 37 C.F.R. § 42.122(b).

The statutory provision governing joinder in *inter partes* review proceedings is 35 U.S.C. § 315(c), which reads:

If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes*

review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

A motion for joinder should (1) set forth 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 trial schedule for the existing review; and (4) address specifically how briefing and discovery may be simplified. *See Kyocera Corp. v. Softview LLC*, Case IPR2013-00004, slip op. at 4 (PTAB Apr. 24, 2013) (Paper 15).

As noted, the Petition in this case asserts the same invalidity grounds on which we instituted review in the Activision IPR. *See Mot. 1, 4*. Bungie also relies on the same prior art analysis and expert testimony submitted by the Activision Petitioners. *See id.* at 4. Indeed, the Petition is nearly identical to the petition filed by the Activision Petitioners with respect to the grounds on which review was instituted in the Activision IPR. *See id.* at 4–5. Thus, this *inter partes* review does not present any ground or matter not already at issue in the Activision IPR.

If joinder is granted, Bungie anticipates participating in the proceeding in a limited capacity absent termination of at least one of the Activision Petitioners as a party. *Id.* at 7. Bungie agrees to “coordinate with the [Activision] Petitioners to consolidate filings, manage questioning at depositions, manage presentations at the hearing, ensure that briefing and discovery occur within the time normally allotted, and avoid redundancies.” *Id.* at 8. Bungie also states it “is willing to take a ‘backseat’ role to the [Activision] Petitioners, in which it would not file any separate papers

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