

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case IPR2016-00933
Patent 6,701,344 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 1–12 and 16–19 of U.S. Patent No. 6,701,344 B1 (Ex. 1001, “the ’344 patent”). Paper 2 (“Pet.”). Concurrently with its Petition, Bungie filed a Motion for Joinder with *Activision Blizzard, Inc. v. Acceleration Bay, LLC*, Case IPR2015-01970 (“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 7. Patent Owner elected to waive its Preliminary Response. Paper 10.

For the reasons explained below, we institute an *inter partes* review of claims 1–12 and 16–19 of the ’344 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 ’344 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; Mot. 2; Paper 9, 1. Petitioner indicates it is not a party to the underlying district court proceedings. Pet. 4; Mot. 2.

In the Activision IPR, we instituted an *inter partes* review of claims 1–12 and 16–19 of the '344 patent on the following grounds:

Reference(s)	Basis	Challenged Claims
DirectPlay ¹ and Lin ²	§ 103(a)	1–12 and 16–19
Lin	§ 103(a)	1–11 and 16–19

Activision Blizzard, Inc. v. Acceleration Bay, LLC, Case IPR2015-01970, slip op. at 26 (PTAB Mar. 24, 2016) (Paper 9) (“Activision Dec.”). We also instituted another *inter partes* review of the '344 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
IPR2015-01964 IPR2015-01996	U.S. Patent No. 6,829,634 B1
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 9, 1.

¹ Bradley Bargaen & Peter Donnelly, *Inside DirectX®: In-Depth Techniques for Developing High-Performance Multimedia Applications* (1998) (Ex. 1003) (“DirectPlay”).

² 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”).

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The Activision Petitioners also have filed six other petitions for *inter partes* review of the '344 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

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. 15–48, *with* Activision Dec. 26. 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 1–12 and 16–19 would have been obvious over DirectPlay and Lin, and (b) claims 1–11 and 16–19 would have been obvious over Lin. *See* Activision Dec. 11–26. 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 22, 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 24, 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.* Thus,

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