

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., ROCKSTAR GAMES, INC., and
BUNGIE, INC.,
Petitioners,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case IPR2015-01970¹
Patent No. 6,701,344 B1

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

**PETITIONERS' CONSOLIDATED MOTION TO FILE DOCUMENTS
UNDER SEAL PURSUANT TO 37 C.F.R. §§ 42.14 & 42.54**

¹ Bungie, Inc., who filed a Petition in IPR2016-00933, has been joined as a
petitioner in this proceeding.

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Petitioners Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., Rockstar Games, Inc., and Bungie, Inc. (the “Petitioners”) respectfully submit this Motion to Seal (“Motion”) portions of Petitioners’ Consolidated Reply to Patent Owner’s Response (“Petitioners’ Reply”) and Exhibits 1024-1025 (“Karger Declarations”), 1043 and 1048, which are being filed concurrently herewith. Patent Owner Acceleration Bay, LLC (“PO”) has indicated that it is considering Petitioners’ Motion and has requested copies of the materials Petitioners intend to seal. Petitioners will file redacted versions of these documents after meeting and conferring with Patent Owner.

I. BACKGROUND

In this proceeding, PO served on Petitioners its Patent Owner Response (Paper 30) and Exhibits 2022-2029, 2032-2033, 2047-2049, and 2083, which PO filed under seal contemporaneously with its Motion for Entry of the Default Protective Order and to Seal Patent Owner Response and Certain Exhibits Under 37 C.F.R. §§ 42.14 and 42.54 (Paper 34, “PO’s Motion to Seal”).² As detailed in

² PO also filed (under seal) a second Motion for Entry of Default Protective Order and to Seal Certain Exhibits Under 37 C.F.R. §§ 42.14 and 42.54 (Paper 32) for

Petitioners' Consolidated Opposition to PO's Motion to Seal (Paper 39),
Petitioners do not oppose entry of the Board's Default Protective Order, but oppose
PO's Motion to Seal to the extent PO seeks to seal the entirety of the documents
that are the subject of its Motion, rather than only those portions that are actually
shown to be confidential. The Board has not yet ruled on PO's Motion to Seal, and
the documents are provisionally sealed pending the Board's decision. 35 U.S.C. §
316(a)(1); 37 C.F.R. § 42.14.

Petitioners' Reply and the Karger Declarations—which are being filed
concurrently with this Motion—cite to Patent Owner's Response and Exhibits that
PO alleges contain “highly confidential information” regarding “licensing practices”
and/or “internal research and development efforts of a third party.” Paper 34 at 1-3.
In addition, Exhibit 1043 is a transcript of the deposition of Dr. Robert Abarbanel,
taken on September 26, 2016, during which Dr. Abarbanel was questioned
regarding PO's Exhibit 2026, which PO alleges contains “highly confidential
information.” *Id.* at 2. Exhibit 1048 is a transcript of the deposition of Dr. David
Karger (Petitioner's expert), taken on July 8, 2016, which PO filed under seal in
related proceedings alleging that it contains “highly confidential information.” *See*,

certain Exhibits to PO's Contingent Motion to Amend. That motion—which is
also pending before the Board—is not relevant to the instant motion.

e.g., Exhibit 2034 in IPR2015-01951, -01953, -01972, -01996; IPR2015-01951, Paper 36 at 2. Accordingly, Petitioners move to file under seal the portions of Petitioners' Reply, the Karger Declarations (Exs. 1024-1025), and Exhibits 1043 and 1048 that cite to the purportedly "highly confidential information," at least until the Board rules on PO's Motion to Seal. If the Board denies PO's Motion to Seal in whole or in part, Petitioners would adjust their request to seal portions of Petitioners' Reply, Karger Declarations, and Exhibits 1043 and 1048 accordingly. Petitioners agree to be bound by the terms of the Board's Default Protective Order, which is attached hereto as Exhibit 1035³.

II. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION

Good cause for sealing portions of Petitioners' Reply, the Karger Declarations, and Exhibits 1043 and 1048 exists to the extent that the Board determines that good cause exists for sealing the Exhibits that are the subject of PO's Motion to Seal.

III. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54

³ Exhibit 1035 is a copy of the Board's Default Protective Order that was attached to PO's Motion to Seal as Exhibit A.

Petitioners and PO previously conferred regarding PO's Motion to Seal, and Petitioners did not oppose PO's request for entry of the Default Protective Order. See Paper 34 at 5-6. In addition, pursuant to 37 C.F.R. §42.54(a), Petitioners hereby certify that they have conferred with PO in good faith. As indicated above, PO has requested copies of the materials Petitioners intend to seal. Petitioners will file redacted versions of these documents after meeting and conferring with PO.

Dated: October 14, 2016

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