

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 No. IPR2015-01972¹
Patent Number 6,701,344 B1

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

**PETITIONERS' CONSOLIDATED OPPOSITION TO PATENT OWNER'S
MOTION FOR ENTRY OF THE DEFAULT PROTECTIVE ORDER AND
TO SEAL CERTAIN EXHIBITS UNDER 37 C.F.R. §§ 42.14 AND 42.54**

¹ Bungie, Inc., who filed a Petition in IPR2016-00934, has been joined as a
petitioner in this proceeding.

The undersigned on behalf of, and acting in a representative capacity for, Petitioners Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., Rockstar Games, Inc., and Bungie, Inc. (collectively “Petitioners”) hereby oppose in part Patent Owner’s Motion for Entry of the Default Protective Order and to Seal Certain Exhibits Under 37 C.F.R. §§ 42.14 and 42.54 (Paper 33). Petitioners do not oppose the entry of the Board’s Default Protective Order, but Petitioners do object to Patent Owner’s request, under that order, to seal the entirety of each document allegedly containing confidential information without submitting a redacted version such that the non-confidential information contained therein can be part of the public record, and without making the required showing of good cause for sealing the entirety of each document subject to Patent Owner’s motion. In particular, Patent Owner has also filed its Motion to Seal – which does not appear to contain any confidential information – and multiple declarations under seal. *See* Paper 33.

The Board has confirmed, in both its regulations and its orders, the clear intent that information in PTAB proceedings – including, in particular, information that impacts the Board’s deliberations – is to remain public. *See, e.g.,* 37 C.F.R. § 42.14 (“The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered.”); Paper 9, Scheduling

Order, §A.3 (“Redactions should be limited strictly to isolated passages consisting entirely of confidential information. The thrust of the underlying argument or evidence must be clearly discernible from the redacted version.”). This policy certainly pertains, for example, to expert declarations accompanying Patent Owner’s motion to amend, which Patent Owner proposes to keep from the public record in its entirety, without justification for doing so.

Indeed, the Default Protective Order itself, which Patent Owner seeks to have entered in this matter, requires that “[w]here confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and nonconfidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public.” Paper 35 (Proposed Protective Order) at 4.A.i. Again, Petitioners do not oppose entry of the Protective Order attached to Paper 35 – but they do believe the Board should insist that the requirements of the Protective Order be followed.

Petitioners raised this issue with Patent Owner by email dated July 26, 2016, and during a meet and confer teleconference on August 2, 2016, requesting that Patent Owner file versions of the documents at issue with redactions appropriately limited to actual confidential information, and citing 37 C.F.R. § 42.14 and Section

A.3 of the Scheduling Order in this proceeding (Paper 9). Patent Owner nonetheless stated during these discussions that it was not aware of any authority requiring the filing of redacted versions of these documents.

Accordingly, Petitioners oppose Patent Owner's Motion to the extent Patent Owner seeks the unsupported, wholesale sealing in their entirety of the documents that are the subject of its Motion (including the Motion itself (Paper 33)), rather than only those portions that are actually shown to be confidential information, and refuses to file redacted versions of the sealed documents that limit redactions to that confidential information.

Respectfully submitted by:

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