

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 IPR2015-01972¹
Patent No. 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 CONTINGENT MOTION TO AMEND**

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

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Patent Owner’s (“PO”) Motion (Pap.32, “Mot.”) fails to satisfy PO’s burden of establishing proposed cls.20-22 (“Claims”) are patentable, and should be denied. §42.20(c)²; *Synopsys v. Mentor Graphics*, 814 F.3d 1309, 1323 (Fed. Cir. 2016); *Masterimage*, IPR2015-00040, Pap.42, 4. PO fails to (1) establish written description support for the Claims, as interpreted by PO, or propose proper constructions, (2) provide sufficient information regarding the state of the art for newly added features, and (3) establish patentability over the prior art.³

I. PO INTRODUCES NEW MATTER THROUGH CONSTRUCTIONS

Rather than expressly amend, PO seeks to add “*application layer*” limitations through each construction (Mot.5-9)—presumably recognizing *the term lacks written description support* and is new matter violating §112, ¶1, §316(d)(3), §42.121(a)(2)(ii). PO’s “overlay computer network that overlays an underlying network” and “dynamic, overlay computer network” constructions require operation at the “application layer.” Mot.7, 9. PO seeks to limit other terms to the context of application programs (*e.g.*, “gaming participant,” “gaming data,” “connection”) and/or a logical broadcast channel that overlays an underlying network (*e.g.*,

² All section cites herein are to 35 U.S.C. or 37 C.F.R., as the context indicates. All emphasis added unless otherwise noted.

³ Karger’s second declarations (Exs1124-25) oppose Goodrich’s (Ex2022 and IPR2015-01970 Ex2022 originally; re-filed as Motion Ex2095 & 94, respectively).

“broadcast channel,” “game environment”), and interprets them to require “application layer” operation. Mot.6, 8, 9, 11. But PO can’t show “support in the original disclosure... for each claim that is added or amended.” §42.121 (b)(1). ‘334 gives no indication that the disclosed overlay network is at the application layer (*cf.* Mot.7)—nor would POSITA perceive one (Ex1124 ¶269).’344 lacks any discussion of network layers, the OSI layer construct or operation at the “application layer.” Ex1124 ¶269; *see Ariad Pharm. v. Eli Lilly*, 598 F.3d 1336, 1352 (Fed.Cir. 2010) (“a description that merely renders the invention obvious does not satisfy the requirement”).⁴ PO cannot circumvent §42.121(a)(2)(ii) by reading in this limitation.

PO has not shown the named-inventors acted as a lexicographer or disavowed scope. *Info-Hold v. Applied Media Techs.*, 783 F.3d 1262, 1266 (Fed. Cir. 2015). PO’s *constructions*, which duplicate *already recited* limitations (*e.g.*, “overlays an underlying network” and “a game application program”), are wrong: they “render other limitations superfluous.” *Baby Trend v. Wonderland*, IPR2015-00842, Pap.81, 72-75. The Motion, failing to reasonably construe new limitations, does not adequately provide information for determining patentability. *Id.* Alternatively, on this Motion, terms not construed at Institution (Pap.8, 6-8), should re-

⁴ Named-inventors’ declarations (Exs2024-2025) and the alleged invention disclosure form (Ex2028) are devoid of any discussion of an “application layer.”

ceive plain and ordinary meaning, *e.g.*: “**game environment**” (environment for a game); “**gaming participant**” (gaming participant in the network); “**gaming data**” (data related to gaming); “**connection**” (connection between gaming participants); “**overlay computer network that overlays an underlying network**” (computer network that overlays an underlying network); “**dynamic, overlay computer network**” (overlay computer network that is dynamic); and “**broadcast channel**” (channel on the network through which messages are broadcast). Ex1124 ¶271.

II. PO FAILS TO PROPERLY ADDRESS THE STATE OF THE ART

PO’s Motion should also be denied for failing to provide *any* information about whether added features were known, alone or in combination with any other elements, and, if known, why it would not have been obvious for POSITA to adapt that knowledge for use with the rest of each claim. *Toyota Motor v. Am. Vehicular Scis.* IPR2013-00422, Pap.25, 4. PO, *e.g.*, provides no information on whether newly added “dynamic, overlay network” and “join[ing] and leav[ing] [a] network using the broadcast channel” features were known in any setting (*e.g.*, gaming environments), alone or in combination with other elements. PO also requires that the claimed network operate at the “application layer” (Mot.22), but gives no indication whether PO’s interpretation of “application layer” was known. PO’s conclusory statement that “the closest material art...is already of record” (Mot.23) is “not meaningful” for establishing the “technical knowledge pertaining to the fea-

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