

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.,

Petitioner,

v.

ACCELERATION BAY, LLC,

Patent Owner.

Case IPR2015-01972¹
U.S. Patent No. 6,701,344

**PATENT OWNER'S OBJECTIONS TO EVIDENCE IN PETITIONER'S
REPLY AND PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO AMEND UNDER 37 C.F.R. § 42.64**

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

Patent Owner Acceleration Bay, LLC (“Patent Owner”) objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Activision Blizzard, Inc., Electronic Arts, Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., Rockstar Games, Inc., and Bungie, Inc. (“Petitioner”) in its Reply to Patent Owner’s Response (“Reply”) and its Opposition to Patent Owner’s Motion to Amend. Paper Nos. 57 and 59. Patent Owner also incorporates its Objections to Evidence to Petitioner’s Petition for IPR, filed on April 7, 2016, below. Paper No. 10.

Petitioner’s Reply was filed on October 15, 2016. Patent Owner’s objections are timely under 37 C.F.R. § 42.64(b)(1). Patent Owner serves Petitioner with these objections to provide notice that Patent Owner will move to exclude these exhibits as improper evidence.

I. PETITIONER’S REPLY EVIDENCE

A. Peter J. Shoubridge & Arek Dadej, *Hybrid Routing in Dynamic Networks*, in IEEE Int’l Conf. on Commc’ns Conf. Rec. 1381 – 86 (Montreal 1997) (Exhibit 1105) (“Shoubridge”)

Patent Owner objects to Shoubridge for at least the following reasons:

1. Petitioner has failed to authenticate Shoubridge under FRE 901 and FRE 602. Specifically, Petitioner has failed to establish that Shoubridge is what Petitioner claims it to be. To the extent that Petitioner attempts to rely on the date that appears on Shoubridge to establish public accessibility as a printed

publication, the date is hearsay under FRE 801 and is inadmissible under FRE 802, and further, the date has not been authenticated and is inadmissible under FRE 901.

2. Additionally, Acceleration Bay objects to Shoubridge as improper prior art as it is not an enabling disclosure.

3. Because of these deficiencies, Petitioner has failed to establish that Shoubridge is a prior art printed publication. Therefore, Shoubridge is not relevant under FRE 401 and is inadmissible under FRE 402 and FRE 403.

B. Declaration of David R. Karger (Exhibit 1119)

Patent Owner objects to Exhibit 1119 for at least the following reasons:

1. Under FRE 702, Dr. David Karger's opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Additionally, Dr. David Karger is unqualified as an expert to provide technical opinions of a person of skill in the art. See Ex. 1119, Appendix A. As such, his opinions are inadmissible under FRE 702.

2. Under FRE 401 and FRE 402 (relevance), FRE 403 (probative value outweighed by prejudice, confusing of issues, wasting time) his opinions are also irrelevant, confusing, and of minimal probative value. Dr. David Karger improperly relies on Shoubridge and the Shoubridge Thesis for his analysis, and for the reasons discussed above, Exhibit 1119 is inadmissible.

C. Declaration of Peter J. Shoubridge (Exhibit 1120)

Patent Owner objects to Exhibit 1120 for at least the following reasons:

1. Exhibit 1120 is improper under the Federal Rules of Evidence. For example, under FRE 702, Dr. Peter Shoubridge's opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Additionally, Dr. Peter Shoubridge is unqualified as an expert, and is unqualified to provide opinions as to whether Shoubridge are prior art or have been published. As such, his opinions are inadmissible under FRE 702 and FRE 602.

2. Moreover, Petitioner has failed to authenticate Shoubridge through Exhibit 1120 under FRE 901. Specifically, Petitioner has failed to establish that the Shoubridge document referenced in Exhibit 1120 is what Petitioner claims it is, and has failed to authenticate the date by which Shoubridge was allegedly publicly accessible as a printed publication through Exhibit 1120. In addition, Acceleration Bay objects to Exhibit 1120 to the extent it was not executed in the United States. Patent Owner objects to Exhibit 1120 because it does not meet the requirements set forth under 37 C.F.R. § 1.68.

3. Acceleration Bay also objects because Exhibit 1120 is hearsay under FRE 801 and inadmissible under FRE 802. Accordingly, Exhibit 1120 is not relevant under FRE 401 and is inadmissible under FRE 402 and FRE 403.

D. Rebuttal Declaration of David R. Karger (Exhibit 1125)

Patent Owner objects to the admissibility of the Rebuttal Declaration of David R. Karger (Exhibit 1125) for at least the following reasons:

1. Patent Owner objects to Exhibit 1125 because portions of Exhibit 1125 lack relevance under **FRE 401** and **402** since they exceed the proper scope of Petitioner's Reply. *See* 37 C.F.R. § 42.23(b). Patent Owner further objects to Exhibit 1125 under **FRE 403** because of the prejudice arising from Patent Owner's inability to respond to the untimely evidence and arguments therein.

2. Patent Owner objects to Exhibit 1125 as untimely because it should have been introduced in its Petition. *See* 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.23(b). Patent Owner objects to Exhibit 1125 because it is supplemental information that is improper and untimely under 37 C.F.R. § 42.123.

3. Patent Owner objects to Exhibit 1125 because Dr. Karger's opinions are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Further, Dr. Karger is unqualified as an expert to provide technical opinions of person of skill in the art. *See* Ex. 1119, Appendix A (*Curriculum Vitae* of David R. Karger). Therefore, Dr. Karger's opinions are inadmissible under **FRE 702**.

4. Patent Owner also objects to Exhibit 1125 because it does not introduce evidence of Dr. Karger's personal knowledge of the subject matter of the

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