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 IPR2015-01972[1]
U.S. Patent No. 6,701,344

PATENT OWNER'S MOTION FOR OBSERVATIONS

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

Patent Owner Finjan, Inc. submits the following observations of the October 27, 2016 cross-examination of David Karger (Ex. 2109) and October 27, 2016 cross-examination of Mr. Gerard Grenier (Ex. 2110):

I. Dr. Karger's Cross-Examination

1. In Exhibit 2109, Pg. 18, line 11–Pg. 19, line 1, the witness testified:

> Q.· Okay.· And would a person of skill in the art have known about these models in the years 2000?
>
> A.· Yes, I believe so.
>
> Q.· Would a person of skill in the art who was designing software to run on the Internet have known about the OSI and TCP/IP models in 2000?
>
> A.· Yes.
>
> Q.· And would a person of skill in the art who was designing routers have known about these models in 2000?
>
> A.· Yes.
>
> Q.· So these models were familiar to a person of skill in the art in the year 2000?
>
> A.· Yes.

This testimony is relevant because it contradicts Petitioner's implication that a POSITA reading the '344 Patent would not have understood the OSI model. *See* Pet. Reply, pg. 8 ("Because '344 never refers to the "OSI" model or "layer," let

alone an "application layer," PO improperly relies on POSITA's supposed understandings to fabricate this limitation.").

2. **In Exhibit 2109, Pg. 48, line 15– Pg. 49, line 12, the witness testified:**

> "What is a neighbor participant in the context of the '344 patent?")
>
> A.· So "neighbor participants" is a term that's used in some of the claims of the '344 patent, and "participant" is a term that has a plain and ordinary meaning. With regard to "neighbors," column 4, line -- where did it go? -- line 27 of the patent states that "in one embodiment each computer is connected to four other computers referred to as neighbors." So the interpretation is that "neighbors" here is a name for the computers to which the -- a particular computer is connected.
>
> Q.· Can you read the next sentence in parentheses after the one you just read?
>
> A.· Yes.· "Actually a process executing on a computer is connected to four other processes executing on this or four other computers."

This testimony is relevant because it reveals that Petitioner ignored clarifying text in the specification in arriving at its proposed constructions for the terms "participant" and "connection". *See* Pet. Reply, pg. 2 ("But the specification doesn't limit a network "participant" this way (e.g., Ex1101 1:44-49, 1:40-43, 1:54-67; 2:14-20; 2:31-38), referring instead to connections between computers (e.g., id. 4:24-25, 4:51-57).).").

3. **In Exhibit 2109, Pg. 75, line 15–Pg. 76, line 4, the witness testified:**

> "So whether or not the '344 patent describes a flooding algorithm per your definition, does that necessarily mean that a person reading this document would be using it to design a network layer protocol?")
>
> A.· So as I assert in my declaration, flooding is a process of relaying packets from node to node in order to broadcast them through the network, and the OSI model does characterize this as a network layer functionality….

and

> In Exhibit 2109, Pg. 65, lines 13–17, the witness testified:
>
> Q.· Does the '344 patent mention packets?
>
> A.· (Witness reviews document.) So I don't recall whether the word "packet" appears in the patent, if that's what you're asking.

This testimony is relevant because contradicts Petitioner's argument that the invention of the '344 Patent is not limited to the application layer. *See* Pet. Reply, pgs. 2, 8.

4. **In Exhibit 2109, Pg. 80, line 12 - pg. 81, line 10, the witness testified:**

> Flooding is a particular -- or is a class of protocols that distribute information broadly by forwarding it and having each node that receives a packet forwarded further to its other neighbors.

> Q.· Do you understand the '344 patent to describe a technique wherein that network layer functionality is abstracted away?
>
> MR. DAVIS:· Objection.· Form.
>
> A.· You're asking if the patent describes the technique of abstracting away layers?
>
> Q.· No.· I'm asking whether the '344 patent describes a technique wherein that particular network layer functionality is abstracted away?
>
> MR. DAVIS:· Objection.· Form.
>
> A.· (Witness reviews document.) So I would say that the patent is making use of an abstraction of functionality when it talks about sending messages between neighbors without describing all of the details of how that sending of messages between neighbors actually takes place.

This testimony is relevant because contradicts Petitioner's argument that the invention of the '344 Patent is not limited to the application layer. *See* Pet. Reply, pgs. 2, 8.

5. **In Exhibit 2109, Pg. 97, line 6 - pg. 98, line 6, the witness testified:**

> "So would it be fair to say that you could have a point-to-point connection between processes that are implemented through a point-to-point network protocol?")
>
> A.· So as we've discussed before, I think, a connection is a general plain and ordinary meaning term, and so it is certainly legitimate to talk about a connection between a pair of processes, and one could

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