

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.

Cases IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)¹²
Cases IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
Cases IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

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

FINK, *Administrative Patent Judge*.

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Order to be entered in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

² Bungie, Inc., who filed Petitions in IPR2016-00933, IPR2016-00934, IPR2016-00935, IPR2016-00936, IPR2016-00963, and IPR2016-00964, has been joined as a Petitioner in these proceedings.

IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)
IPR2015-01964, IPR2015-01996 (Patent 6,829,634 B1)
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ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On November 15, 2016, Petitioner contacted the Board by e-mail requesting a conference call seeking permission to file motions to strike regarding “Issue 1 . . . Patent Owner’s new antedating arguments with respect to the Lin reference in its reply in support of its motions to amend” and “claim charts that are incorporated by reference.” Petitioner also seeks permission to file motions to strike regarding “Issue 2 . . . Patent Owner’s substitute claims submitted with its reply briefs in support of the motions to amend in IPR2015-01964 and -01966.” Finally, Petitioner seeks guidance regarding “Issue 3 . . . the deposition of a third party declarant resident in France,” which Patent Owner submits is untimely and the issue briefed in Motions to Exclude. A conference call is not necessary.

Motions to Strike

Regarding Issues 1 and 2, it is within the Board’s discretion whether a reply contains evidence or argument that is outside the scope of a reply, *see Apotex Corp. v. Viiv Healthcare Co. et al.*, Case IPR2014-00876 (PTAB June 25, 2015) (Paper 39) (denying authorization to file a motion to strike allegedly improper reply arguments), or whether the reply improperly incorporates claim charts by reference, *see Arctic Cat, Inc. v. Polaris Indus., Inc.*, Case IPR2015-01781 *et al.* (PTAB Aug. 25, 2016) (Paper 31) (denying authorization to strike declaration allegedly improperly incorporated by reference). Specifically, upon review of the full record, we will determine

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whether arguments and evidence are outside the scope of the proper reply or whether the reply improperly incorporates claim charts by reference. *See Apotex*, slip op. at 2–3; *Arctic Cat*, slip op. at 2. Accordingly, we decline to authorize Petitioner to file the requested motions to strike.

Foreign, Third-Party Deposition

Regarding Issue 3, uncompelled testimony outside the United States may only be taken by agreement of the parties *or as the Board specifically directs*. *See* 37 C.F.R. § 42.53(b)(3). In other words, unless otherwise agreed to by the parties, the taking of uncompelled, foreign testimony is at the Board’s discretion.

In this case, the proceedings are in their final stages with Oral Hearing about three weeks away (i.e., December 7, 2016). Moreover, the requested deposition apparently relates to an issue in Patent Owner’s motions to exclude for which Petitioner’s oppositions are due within the next week (i.e., November 23, 2016).³ However, Petitioner should have been on notice as to any such issue from Patent Owner’s previously filed objections on either April 7, 2016 or October 21, 2016. *See, e.g.*, IPR2015-1951, Paper 77, 1 (referring to objections). Since then, we have had at least one conference call (i.e., last week) to address a variety of disputed issues, *see* IPR2015-1951, Paper 70, at which time the need for an additional deposition could also have been addressed without need for an additional call and with more time to avoid burdening the Board and Patent Owner. Accordingly, for the

³ Indeed, Petitioner’s oppositions are the only Petitioner-filed papers remaining in these proceedings.

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foregoing reasons, we determine that it would not be in the interests of justice to authorize Petitioner's request for a foreign, third-party deposition at this late juncture of these proceedings. *See* 37 C.F.R. § 42.5(c)(3).

ORDER

It is:

ORDERED that no call will be scheduled at this time;

FURTHER ORDERED Petitioner's requests for authorization to file motions to strike are denied; and

FURTHER ORDERED that the requested deposition of a foreign, third-party witness is denied.

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