

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
MOTIONS TO SEAL**

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 (1) Motion to Seal Certain Exhibits Under 37 C.F.R. § 42.14 (Paper 71), (2) Motion to Seal Certain Exhibits Under 37 C.F.R. § 42.14 (Paper 82), and (3) Motion to Seal Opposition to Motion to Exclude and Certain Exhibits Under 37 C.F.R. § 42.14 (Paper 87) (collectively, Patent Owner’s “Motions”). As Petitioners stated in their Oppositions (Papers 39, 40) to Patent Owner’s Prior Motions to Seal (Papers 33, 35), 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 and exhibit subject to Patent Owner’s Motions. In particular, Patent Owner has filed under seal *the entirety of* Patent Owner’s Opposition to Petitioners’ Consolidated Motion to Exclude Evidence (Paper 85) and multiple declarations thereto (*i.e.*, Exhibits 2112-17), and other exhibits filed with either Patent Owner’s Reply in support of Patent

Owner's Contingent Motion to Amend (*i.e.*, Exhibit 2107) or Patent Owner's Motion for Observations (*i.e.*, Exhibit 2109). *See* Papers 71, 82, and 87.

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 to the papers and exhibits that are the subject of Patent Owner's Motions. For example, the transcript of the deposition of Petitioners' expert, Dr. Karger (Exhibit 2109) includes Dr. Karger's testimony regarding the patentability of the challenged claims and Patent Owner's proposed substitute claims, but Patent Owner proposes keeping it from the public record in its entirety, without justification for doing so.

As explained in Petitioners' Oppositions to Patent Owner's Prior Motions to Seal, Petitioners raised this issue with Patent Owner in the context of Patent Owner's Prior Motions to Seal 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 does not “see anything else that says that [it] need[s] to file some sort of redacted version in the record.” Ex1168 (transcript of Aug. 2, 2016 meet and confer teleconference) at 8:25-9:3; *cf.* Patent Owner’s Reply in Support of Motion to Seal, Paper 48 at 1-2 (asserting “Patent Owner did not represent that it ‘was not aware of any authority requiring the filing of redacted versions of these documents.’”); *see also* Paper 49 at 1-2. But the Default Protective Order itself, which Patent Owner seeks to have entered in this matter (Papers 33 and 35), instructs 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 non-confidential 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.ii. 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.²

Accordingly, Petitioners oppose Patent Owner's Motions to the extent Patent Owner seeks the unsupported, wholesale sealing in their entirety of the documents that are the subject of its Motions, 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.³

² During the meet and confer discussions, Patent Owner represented to Petitioners that it would ask the Board for guidance on filing redacted copies of papers and exhibits on the parties' call with the Board seeking the Board's guidance on potential motions to strike. Ex1168 at 8:16-25. Patent Owner did not do so despite later claiming that the parties' dispute could have been "resolved through an instructive call with the Board." Paper 48 at 2; Paper 49 at 2.

³ Petitioners have filed a number of Motions to Seal (Papers 58, 91, 97) portions of its papers and exhibits that cite to the purportedly "highly confidential information" subject to Patent Owner's Motions to Seal. As stated in Petitioners' Motions, if the Board denies Patent Owner's Motions to Seal in whole or in part, Petitioners would adjust their request to seal accordingly. Paper 58 at 3-4; Paper 91 at 3-4; Paper 97 at 3. Petitioners are in the process of conferring with Patent Owner and

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