

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., and
ROCKSTAR GAMES, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Cases IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)¹
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.

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

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On June 1, 2016, a conference call was held for the following six proceedings: IPR2015-01951, IPR2015-01953, IPR2015-01964, IPR2015-01970, IPR2015-01972, and IPR2015-01996 (the “Proceedings”). The following individuals were present on the call: Mr. Baughman and Mr. Davis, lead and backup counsel, respectively, for Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Ind., 2K Sports, Inc., and Rockstar Games, Inc. (collectively, “Petitioner”); Mr. Hannah, lead counsel for Acceleration Bay, LLC (“Patent Owner”); and Judges Medley, Pettigrew, and Fink.

The call was scheduled pursuant to an email from Patent Owner requesting the Board’s authorization to apply for a subpoena to compel the testimony of Petitioner’s declarant, Mr. Christopher Butler. According to the email, Mr. Butler will agree to appear for deposition if Patent Owner issues a subpoena. On the call, counsel for Patent Owner explained that Mr. Butler is an employee of a third-party and his employer would not voluntarily allow him to appear for deposition in the absence of a subpoena. Petitioner does not oppose the request.

A party in a contested case may apply to a United States District Court for a subpoena to compel testimony. 35 U.S.C. § 24. A party seeking a subpoena to compel testimony must first obtain authorization from the Board. 37 C.F.R. § 42.52(a). Petitioner provided Mr. Butler’s direct

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testimony in these Proceedings as supplemental evidence via declaration, so cross-examination of Mr. Butler is authorized as routine discovery. 37 C.F.R. § 42.51(b)(1)(ii). Because the requested discovery is routine and Patent Owner's request for authorization to seek a subpoena is unopposed, we waive the requirement that Patent Owner file a motion for authorization and hereby grant Patent Owner's request for authorization to compel Mr. Butler's cross examination testimony. *See* 37 C.F.R. § 42.5(b).

The default time limit for compelled testimony is four hours for cross-examination, and two hours for redirect examination. 37 C.F.R. § 42.53(c)(1). The parties did not request any deviation from this default time limit. Because Mr. Butler's deposition is for the purposes of cross-examination, the scope of the deposition is limited to the scope of his declaration in these cases. 37 C.F.R. § 42.53(d)(5)(ii).

ORDER

Accordingly, it is:

ORDERED that Patent Owner's request for authorization to compel the testimony of Mr. Christopher Butler is *granted*;

FURTHER ORDERED that Patent Owner is authorized to obtain a subpoena, pursuant to 35 U.S.C. § 24, from the United States District Court for the district where the testimony of Mr. Butler is to be taken;

FURTHER ORDERED that the scope of the subpoena shall be limited to cross-examination on the direct testimony provided in Mr. Butler's declaration in these Proceedings; and

IPR2015-01951, IPR2015-01953 (Patent 6,714,966 B1)
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IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

FURTHER ORDERED that Patent Owner's cross-examination is not to exceed four hours, and Petitioner is permitted to attend the deposition and conduct redirect examination not to exceed two hours.

FOR PETITIONER:

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