

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)^{1,2}
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)
IPR2015-01970, IPR2015-01972 (Patent 6,701,344 B1)

ORDER

Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)
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 guidance regarding “the deposition of a third party declarant resident in France.” The e-mail further stated, “Patent Owner’s position is that the deposition is untimely and the issue will be briefed in the Motions to Exclude.” Based on these statements, we denied the request for a conference call and denied what we understood to be Petitioner’s request for a deposition of a foreign, third-party witness. *See, e.g.,* IPR2015-01951, Paper 82.³

Petitioner filed a request for rehearing, asserting that we misapprehended the facts concerning the requested deposition guidance. *See* Paper 93 (“Req. Reh’g”), 1. According to Petitioner, the issue is that the parties agree in principle to the deposition of a foreign, third-party declarant, Dr. Diot (*see* Ex. 1052)—whose declaration was submitted by Petitioner as supplemental evidence—but cannot agree as to whether he may appear by video or should be required to appear in person in the United States. Req. Reh’g 4–5. Petitioner therefore requests a conference call regarding this issue or an order authorizing Petitioner to make Dr. Diot available for

³ We hereinafter refer to the papers and exhibits in IPR2015-01951.

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deposition by video. *Id.* at 7–8. Except as noted in our guidance below, Petitioner’s request is *denied*.

As we noted in our previous order, uncompelled testimony outside the United States may only be taken by agreement of the parties or as the Board specifically directs. Paper 82 (citing 37 C.F.R. § 42.53(b)(3)). Given the late stage of the proceedings, we decline to parse the facts and circumstances of the present dispute and/or specifically direct the taking of the deposition at issue. However, to the extent the circumstances here are similar to those discussed in our previous Order directing the taking of Australian declarants’ depositions by videoconference, we instruct the parties to consider our previous Order in these proceedings as to what is a “reasonable, inexpensive solution” (Paper 17). *See* 37 C.F.R. §§ 42.1(b), 42.5(a).

ORDER

It is:

ORDERED that Petitioner’s request for rehearing is denied; and

FURTHER ORDERED the parties are instructed to consider Paper 17 as guidance.

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)

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