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Paper 13
Date Entered: June 23, 2016

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.

Case IPR2016-00931
Patent 6,701,344 B1

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

PETTIGREW, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108
Dismissing Motion for Joinder
37 C.F.R. § 122(b)

I. INTRODUCTION

A. Background

On April 21, 2016, Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc. (collectively, "Petitioner") filed a Petition requesting an *inter partes* review of claim 12 of U.S. Patent No. 6,701,344 B1 (Ex. 1201, "the '344 patent"). Paper 2 ("Pet."). On the same day, Petitioner filed a Motion for Joinder pursuant to 35 U.S.C. § 315(c), seeking to join this proceeding with *Activision Blizzard, Inc., et al. v. Acceleration Bay, LLC*, Case IPR2015-01972 ("the 1972 IPR"). Paper 3 ("Mot."). In the 1972 IPR, we instituted *inter partes* review of claims 1–11 and 16–19 of the '344 patent, but we did not institute *inter partes* review of claims 12–15 of the '344 patent. *See 1972 IPR*, slip op. at 1 (PTAB Mar. 24, 2016) (Paper 8).

Acceleration Bay, LLC ("Patent Owner") filed a Preliminary Response. Paper 9 ("Prelim. Resp."). Patent Owner also filed an Opposition to the Motion for Joinder. Paper 8 ("Opp.").

Upon consideration of the Petition and Preliminary Response, we exercise our discretion, under 35 U.S.C. § 325(d), to deny institution of *inter partes* review as to claim 12.

B. The '344 Patent

The '344 patent relates to a "broadcast technique in which a broadcast channel overlays a point-to-point communications network." Ex. 1201, 4:3–5. The broadcast technique overlays the underlying network system with a graph of point-to-point connections between host computers or nodes through which the broadcast channel is implemented. *Id.* at 4:23–26. Figure 1 of the '344 patent is reproduced below:

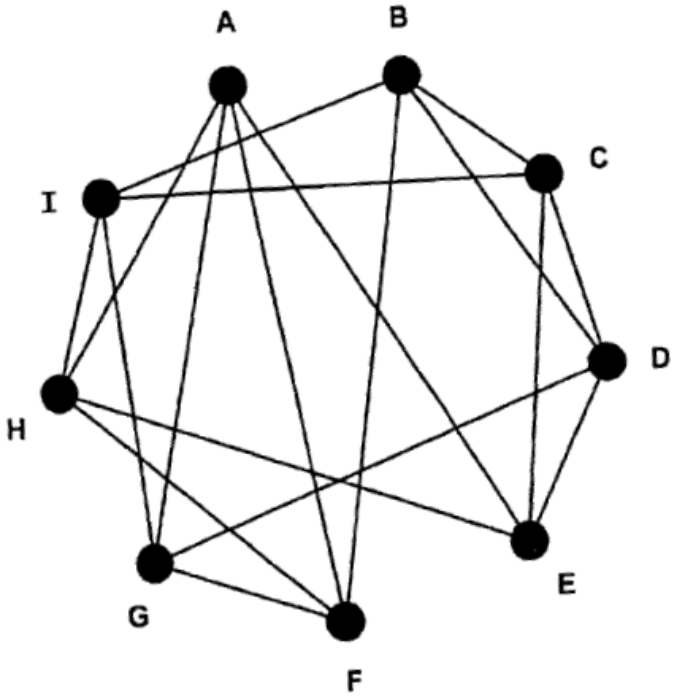

Fig. 1

Figure 1 illustrates a broadcast channel represented by a "4-regular, 4-connected" graph. *Id.* at 4:48–49. The graph of Figure 1 is "4-regular" because each node is connected to exactly four other nodes (e.g., node A is connected to nodes E, F, G, and H). *Id.* at 4:38–39, 4:49–53. A node in a 4-regular graph can only be disconnected if all four of the connections to its neighbors fail. *Id.* at 4:39–42. Moreover, the graph of Figure 1 is "4-connected" because it would take the failure of four nodes to divide the graph into two separate sub-graphs (i.e., two broadcast channels). *Id.* at 4:42–47.

To broadcast a message over the network, an originating computer sends the message to each of its four neighbors using the point-to-point connections. *Id.* at 4:30–32. Each computer that receives the message sends

it to its other neighbors, such that the message is propagated to each computer in the network. *Id.* at 4:32–38. The minimum number of connections needed to traverse any two computers in the network is known as the "distance" between them, while the maximum of the distances in the network is called the "diameter" of the broadcast channel. *Id.* at 4:57–5:3. In Figure 1, the diameter is 2 because a message originating at any node (e.g., A) traverses no more than 2 connections to reach every other node. *Id.* at 5:3–6.

In one embodiment described in the '344 patent, a distributed game environment is implemented using broadcast channels. *Id.* at 16:30–31. Each player's computer executes a game application program, and a player joins a game by connecting to the broadcast channel on which the game is played. *Id.* at 16:31–36. Each time a player takes an action in the game, a message representing that action is broadcast on the game's broadcast channel. *Id.* at 16:36–38.

C. Illustrative Claim

Claim 12, the only claim challenged in the Petition, depends from claim 1. Both claims are reproduced below.

> 1. A computer network for providing a game environment for a plurality of participants, each participant having connections to at least three neighbor participants, wherein an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and wherein each participant sends data that it receives from a neighbor participant to its other neighbor participants, further wherein the network is m-regular, where m is the exact number of neighbor participants of each participant

> and further wherein the number of participants is at least two greater than m thus resulting in a non-complete graph.
>
> 12. The computer network of claim 1 wherein the interconnections of participants form a broadcast channel for a game of interest.

Id. at 19:26–37; 30:3–6.

D. Related Matters

Petitioner identifies the following pending judicial matters as relating to the '344 patent: *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case No. 3:16-cv-03375 (N.D. Cal., filed June 16, 2016); *Electronic Arts Inc. v. Acceleration Bay LLC*, Case No. 3:16-cv-03378 (N.D. Cal., filed June 16. 2016); *Take-Two Interactive Software, Inc. et al. v. Acceleration Bay LLC*, Case No. 4:16-cv-03377 (N.D. Cal., filed June 16, 2016); *Acceleration Bay LLC v. Activision Blizzard, Inc.*, Case No. 1:16-cv-00453 (D. Del., filed June 17, 2016); *Acceleration Bay LLC v. Electronic Arts Inc.*, Case No. 1:16-cv-00454 (D. Del., filed June 17, 2016); *Acceleration Bay LLC v. Take-Two Interactive Software, Inc. et al.*, Case No. 1:16-cv-00455 (D. Del., filed June 17, 2016). Paper 12, 2–3.

In addition to the 1972 IPR, the '344 patent is the subject of *inter partes* review in *Activision Blizzard, Inc., et al. v. Acceleration Bay, LLC*, Case IPR2015-01970 ("the 1970 IPR"). The '344 patent is also the subject of *Bungie, Inc. v. Acceleration Bay, LLC*, Case IPR2016-00933 and *Bungie, Inc. v. Acceleration Bay, LLC*, Case IPR2016-00934, for which institution decisions have not yet been made.

1. The 1972 IPR

As noted above, in the 1972 IPR, we instituted *inter partes* review as to claims 1–11 and 16–19 of the '344 patent, but we did not institute *inter*

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