

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.

Case IPR2015-01970¹
Patent 6,701,344 B1

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

PETTIGREW, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

¹ Bungie, Inc., who filed a Petition in IPR2016-00933, has been joined as a petitioner in this proceeding.

I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 314, Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., Rockstar Games, Inc., and Bungie, Inc. (collectively, “Petitioner”) challenge claims 1–12 and 16–19 (“the challenged claims”) of U.S. Patent No. 6,701,344 B1 (Ex. 1001, “the ’344 patent”), owned by Acceleration Bay, LLC (“Patent Owner”). We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, Petitioner has not shown by a preponderance of the evidence that the challenged claims are unpatentable.

A. Procedural History

Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc., filed a Petition for *inter partes* review of claims 1–19 of the ’344 patent. Paper 2 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). On March 24, 2016, we instituted an *inter partes* review of claims 1–12 and 16–19 of the ’344 patent on the following grounds: (1) claims 1–11 and 16–19 as obvious under 35 U.S.C. § 103(a)² over Lin,³ and (2) claims 1–12 and 16–

² The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. §§ 102 and 103. Because the ’344 patent has an effective filing date before the effective date of the applicable AIA amendments, we refer to the pre-AIA versions of 35 U.S.C. §§ 102 and 103.

³ Meng-Jang Lin, et al., *Gossip versus Deterministic Flooding: Low Message Overhead and High Reliability for Broadcasting on Small Networks*, Technical Report No. CS1999-0637 (Univ. of Cal. San Diego, 1999) (Ex. 1004 (Ex. B)) (“Lin”).

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19 as obvious under 35 U.S.C. § 103(a) over DirectPlay⁴ and Lin. Paper 9, 26 (“Dec.”).

Subsequent to institution, Bungie, Inc. filed a Petition and Motion for Joinder with the instant proceeding. *Bungie, Inc. v. Acceleration Bay, LLC*, IPR2016-00933, Papers 2, 3. On June 23, 2016, we instituted an *inter partes* review and granted the Motion, joining Bungie, Inc. as a petitioner in this *inter partes* review. Paper 23.

Thereafter, Patent Owner filed a Patent Owner Response (“PO Resp.”). Paper 30 (confidential), Paper 100 (redacted). Petitioner filed a Reply to the Patent Owner Response (“Pet. Reply”). Paper 53 (confidential), Paper 105 (redacted). Patent Owner also filed a Contingent Motion to Amend requesting substitution of various claims in the event certain claims in the ’344 patent were found to be unpatentable. Paper 31 (“Mot. Am.”). Petitioner filed an Opposition to Patent Owner’s Contingent Motion to Amend. Paper 52. Patent Owner then filed a Reply in support of its Contingent Motion to Amend. Paper 66.

Petitioner filed a Motion to Exclude, Paper 71 (“Pet. Mot. Exc.”), Patent Owner filed an Opposition, Paper 82 (confidential), Paper 101 (redacted), and Petitioner filed a Reply, Paper 93. Patent Owner also filed a Motion to Exclude, Paper 75 (“PO Mot. Exc.”), Petitioner filed an Opposition, Paper 85 (“Pet. Opp. Mot. Exc.”), and Patent Owner filed a Reply, Paper 95.

⁴ Bradley Bargaen & Peter Donnelly, *Inside DirectX®: In-Depth Techniques for Developing High-Performance Multimedia Applications* (1998) (Ex. 1003) (“DirectPlay”).

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An oral hearing was held on December 7, 2016.⁵ A transcript of the hearing has been entered into the record. Paper 99 (“Tr.”).

B. 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. v. Acceleration Bay LLC*, Case No. 3:16-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); and *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, Case No. 1:16-cv-00455 (D. Del., filed June 17, 2016). Paper 21, 2–3.

Petitioner and Patent Owner also identify five other petitions for *inter partes* review filed by Petitioner challenging the '344 patent and similar patents: IPR2015-01972 (the '344 patent); IPR2015-01951 and IPR2015-01953 (U.S. Patent No. 6,714,966 B1); and IPR2015-01964 and IPR2015-01996 (U.S. Patent No. 6,829,634 B1). Pet. 4; Paper 5, 1. Trials were instituted in those proceedings as well.

⁵ A consolidated hearing was held for this proceeding and IPR2015-01951, IPR2015-01953, IPR2015-01964, IPR2015-01972, and IPR2015-01996. See Paper 81 (hearing order).

C. The '344 Patent

The '344 patent relates to a “broadcast technique in which a broadcast channel overlays a point-to-point communications network.” Ex. 1001, 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:

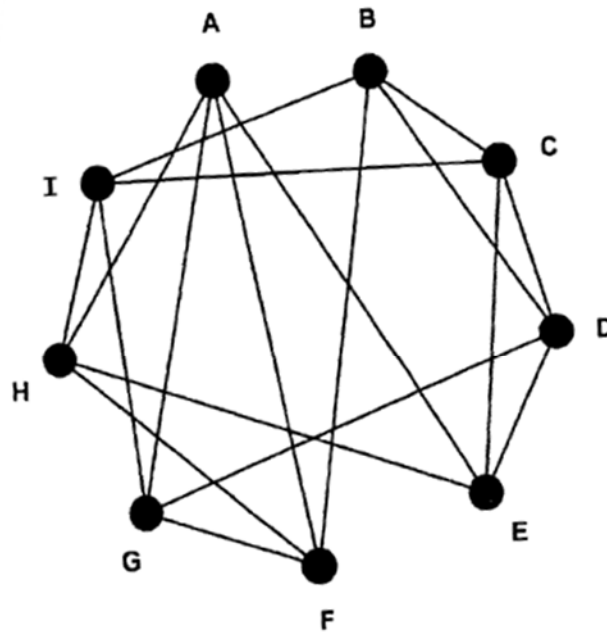


Fig. 1

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

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