Paper No. ____
Filed: April 22, 2016

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

ACCELERATION BAY LLC.,
Patent Owner.

Case No. IPR2016-00933
Patent No. 6,701,344

MOTION FOR JOINDER WITH IPR2015-01970

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I. Statement of the Precise Relief Requested

Bungie, Inc. ("Bungie" or "Petitioner") submits, concurrently with this motion, a petition for *inter partes* review ("Petition") of claims 1-12 and 16-19 of U.S. Patent No. 6,701,344 ("the '344 patent"), which is purportedly assigned to Acceleration Bay LLC ("Patent Owner"). Bungie respectfully requests joinder pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b) of the concurrently filed Petition with a pending *inter partes* review initiated by Activision Blizzard, Inc., Electronic Arts Inc., TakeTwo Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc. (collectively, "the 2015 Petitioners"), *Activision Blizzard, Inc. et al. v. Acceleration Bay LLC*, IPR2015-01970 ("Activision *et al*. IPR").

Bungie's request for joinder is timely because it has been less than one month since the Board has issued an institution decision in the Activision *et al*. IPR. *See* 37 C.F.R. § 42.122(b). The Petition is also narrowly tailored to the grounds of unpatentability that were instituted in the Activision *et al*. IPR, and in fact is a practical copy of the Activision *et al*. IPR's petition with respect to the instituted grounds, including the same claims, analysis of the prior art, and expert testimony. In addition, joinder is appropriate because it will efficiently resolve the validity of the challenged claims of the '344 patent over the same prior art in a single proceeding, without prejudicing the parties to the Activision *et al*. IPR.

Absent termination of at least one of the 2015 Petitioners as a party to the proceeding, Bungie anticipates participating in the proceeding in a limited capacity. Moreover, joinder will have no impact on the trial schedule of IPR2015-01970 because that IPR is still in its early stages.

Bungie has notified counsel for the 2015 Petitioners regarding the subject of this motion. Counsel indicated they do not oppose joinder.

II. Background

Patent Owner has asserted the '344 patent against Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2k Sports, Inc., and Rockstar Games, Inc. in *Acceleration Bay LLC v. Activision Blizzard, Inc.*, Case No. 1:15-cv-00228-RGA (D. Del., filed Mar. 11, 2015); *Acceleration Bay LLC v. Electronic Arts Inc.*, Case No. 1:15-cv-00282-RGA (D. Del., filed Mar. 30, 2015); and *Acceleration Bay LLC v. Take-Two Interactive Software, Inc. et al.*, Case No. 1:15-cv-00311-RGA (D. Del., filed Apr. 13, 2015) (collectively, the "underlying litigations"). Bungie is not a party to the underlying litigations. Bungie received a subpoena in connection with the underlying litigations, in response to which it has filed a motion to quash and for entry of a protective order, which is currently pending in the Western District of Washington as Case No. 2:15-MC-27.

On September 25, 2015, the 2015 Petitioners filed a petition for *inter partes* review challenging claims 1-19 of the '344 patent, which was assigned Case No.

IPR2015-01970. On March 24, 2016 the Board instituted review on claims 1-12 and 16-19. The Petition raises only the grounds of unpatentability that were instituted in the Activision *et al*. IPR, and in fact is a practical copy of the Activision *et al*. IPR petition with respect to the instituted grounds, including the same prior art analysis and expert testimony. *See* Pet.

III. Argument

A. Legal Standard

The Board has authority to join as a party any person who properly files a petition for *inter partes* review to an instituted *inter partes* review. 35 U.S.C. §315(c). A motion for joinder must be filed within one month of institution of any *inter partes* review for which joinder is requested. 37 C.F.R. § 42.122(b). In deciding whether to grant a motion for joinder, the Board considers several factors including: (1) the reasons why joinder is appropriate; (2) whether the party to be joined has presented any new grounds of unpatentability; (3) what impact, if any, joinder would have on the trial schedule for the existing review; and (4) how briefing and discovery may be simplified. *See, e.g.*, *Hyundai Motor Co. v. Am. Vehicular Sciences LLC*, IPR2014-01543, Paper No. 11 at 3 (Oct. 24, 2014); *Macronix Int'l Co. v. Spansion*, IPR2014-00898, Paper 15 at 4 (Aug. 13, 2014) (quoting *Kyocera Corporation v. Softview LLC*, IPR2013-00004, Paper 15 at 4 (April 24, 2013)).

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