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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.

Patent No. 6,701,344

MOTION FOR JOINDER WITH IPR2015-01972

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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 pending *inter partes* review IPR2015-01972.

On September 25, 2015, Activision Blizzard, Inc., Electronic Arts Inc., TakeTwo Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc. (collectively, "the 2015 Petitioners"), initiated *inter partes* review of the '344 patent. *Activision Blizzard, Inc. et al. v. Acceleration Bay LLC*,IPR2015-01972 (hereafter, "Activision *et al.* IPR"). The Board instituted review in the Activision *et al.* IPR on March 24, 2016 relying on the teachings of the Shoubridge reference.[1]

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

[1] Peter J. Shoubridge & Arek Dadej, *Hybrid Routing in Dynamic Networks*, 3 IEEE Int'l Conf. on Comms. Conf. Rec. 1381–86 (1997) ("Shoubridge").

ground of unpatentability that was instituted in the Activision *et al.* IPR—with a nominal addition of a single dependent claim in view of the same Shoubridge prior art reference on which the Board instituted trial in IPR2015-01972. Bungie's petition, in fact, is practically a copy of the Activision *et al.* IPR petition with respect to its instituted ground, including the same 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 causing undue burden or prejudice to 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 the Activision *et al.* IPR because that IPR is still in its early stages.

Bungie has notified counsel for the 2015 Petitioners regarding the subject of this motion. Counsel have 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. (collectively "Defendants") 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. 2:16-MC-27.

On September 25, 2015, the 2015 Petitioners filed a petition for *inter partes* review— Activision *et al.* IPR—challenging claims 1-19 of the '344 patent, which included two grounds: **Ground 1**: claims 1-19 are obvious over DirectPlay[2] and Shoubridge; and **Ground 2**: claims 1-11 and 16-19 are obvious over Shoubridge in view of the knowledge of a person having ordinary skill in the art ("POSITA"). On March 24, 2016, the Board instituted review of Ground 2 for all claims challenged thereunder (*i.e.*, claims 1-11 and 16-19), but denied institution for Ground 1.[3]

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[2] Bradley Bargen & Peter Donnelly, *Inside DirectX®: In-Depth Techniques for Developing High-Performance Multimedia Applications* (1998) ("DirectPlay").

[3] Also on September 25, 2015, the same 2015 Petitioners, filed a petition for *inter partes* review—which was assigned Case No. IPR2015-01970 ("the '1970

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