

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUNGIE, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case No. IPR2016-00934
Patent 6,701,344

**PATENT OWNER'S OPPOSITION TO
MOTION FOR JOINDER**

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I. INTRODUCTION

Patent Owner, Acceleration Bay, LLC (“Acceleration Bay” or “Patent Owner”), respectfully requests that the Board deny, in part, Petitioner Bungie, Inc.’s Motion for Joinder. Petitioner’s petition for *inter partes* review of U.S. Patent No. 6,701,344 (the “’344 Patent”) – Case No. IPR2016-00934 – filed concurrently with this Motion, relies on (1) one ground of unpatentability which was instituted by the Board in Case No. IPR2015-01972 (the “Instituted Petition”) to which Petitioner seeks joinder and (2) one ground of unpatentability which has not been instituted. Because Petitioner seeks to join an instituted proceeding while raising a new ground for which institution has not been granted and which relies on the deficiencies in the Instituted Petition, its Motion must be denied in part.

II. STATEMENT OF MATERIAL FACTS.

1. Over a year ago, Patent Owner filed patent infringement litigations against the Original Petitioner¹ in the Instituted Petition asserting the ’344 Patent and other related patents. *See 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,

¹ “Original Petitioner” refers collectively to Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc.

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).

2. On September 25, 2015, Original Petitioner filed two petitions for *inter partes* review of the '344 Patent – specifically, IPR2015-01970 and IPR2015-01972. The Board instituted trial in both proceedings on limited grounds. *See generally*, IPR2015-01970, Paper 9; IPR2015-01972, Paper 8.

3. Petitioner here seeks joinder to IPR2015-01972 (the “Instituted Petition”) where the Board instituted proceedings against claims 1-11 and 16-19 based on an obviousness ground under the non-patent reference, Shoubridge.² IPR2015-01972, Paper 8.

4. In the institution decision for the Instituted Petition, the Board rejected the ground challenging claims 1-12 and 16-19 as obvious over the combination of DirectPlay³ and Shoubridge. IPR2015-01972, Paper 8.

5. Petitioner acknowledges that, just one day before this Motion, Original Petitioner filed a new petition for *inter partes* review, seeking joinder to the Instituted Petition. Motion at 4. In the new petition – Case No. IPR2016-

² Peter J. Shoubridge & Arek Dadej, *Hybrid Routing in Dynamic Networks*, in 3 IEEE INT'L CONF. ON COMMC'NS CONF. REC. 1381-86 (Montreal, 1997).

³ Bradley Bargaen & Peter Donnelly, *INSIDE DIRECTX*, (Microsoft Press, 1998).

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