

United States Court of Appeals for the Federal Circuit

ACCELERATION BAY, LLC,
Appellant

v.

ACTIVISION BLIZZARD INC., ELECTRONIC ARTS
INC., TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K SPORTS, INC., ROCKSTAR GAMES, INC.,
Cross-Appellants

BUNGIE, INC.,
Appellee

2017-2084, 2017-2085, 2017-2095, 2017-2096, 2017-2097,
2017-2098, 2017-2099, 2017-2117, 2017-2118

Appeals from the United States Patent and Trade-
mark Office, Patent Trial and Appeal Board in Nos.
IPR2015-01951, IPR2015-01953, IPR2015-01964,
IPR2015-01970, IPR2015-01972, IPR2015-01996,
IPR2016-00933, IPR2016-00934, IPR2016-00935,
IPR2016-00936, IPR2016-00963, IPR2016-00964.

Decided: November 6, 2018

PAUL J. ANDRE, Kramer Levin Naftalis & Frankel
LLP, Menlo Park, CA, argued for appellant. Also repre-
sented by JAMES R. HANNAH.

JAMES LAWRENCE DAVIS, JR., Ropes & Gray LLP, East Palo Alto, CA, argued for cross-appellants. Also represented by ANDREW N. THOMASES; DOUGLAS HALLWARD-DRIEMEIER, Washington, DC.

MICHAEL T. ROSATO, Wilson, Sonsini, Goodrich & Rosati, PC, Seattle, WA, for appellee. Also represented by JOSE CARLOS VILLARREAL, Austin, TX; RICHARD TORCZON, Washington, DC.

Before PROST, *Chief Judge*, MOORE and REYNA, *Circuit Judges*.

MOORE, *Circuit Judge*.

Patent owner Acceleration Bay, LLC (“Acceleration”) appeals the final written decisions of the Patent Trial and Appeal Board holding unpatentable claims 1–9 of U.S. Patent No. 6,829,634, claims 1–11 and 16–19 of U.S. Patent No. 6,701,344, and claims 1–11 and 16–17 of U.S. Patent No. 6,714,966. Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2k Sports, Inc., and Rockstar Games, Inc. (collectively, “Blizzard”) cross-appeal portions of the Board’s decisions holding patentable claims 10–18 of the ’634 patent, as well as substitute claims 19 of the ’966 patent, 21 of the ’344 patent, and 25 of the ’634 patent. Blizzard also cross-appeals the Board’s decisions holding that the Lin article is not a printed publication under 35 U.S.C. § 102(a). For the following reasons, we affirm.

BACKGROUND

The patents at issue are directed to a broadcast technique in which a broadcast channel overlays a point-to-point communications network. *See, e.g.*, '966 patent at 4:3–5.¹ The communications network consists of a graph of point-to-point connections between host computers or “nodes,” through which the broadcast channel is implemented, represented in Figure 1. *Id.* at 4:23–26, 48–49.

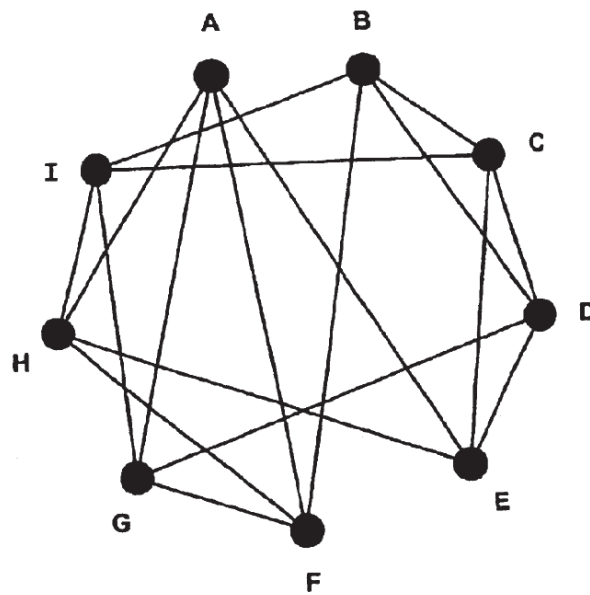


Fig. 1

Figure 1 illustrates a broadcast channel that is “4-regular, 4-connected.” *Id.* at 4:48–49. It is “4-regular” because

¹ The specifications are similar but contain sections unique to each patent, such as: '966 patent at 16:24–17:26 (discussing “an information delivery service”); '344 patent at 16:29–17:11 (discussing “a distributed game environment”); '634 patent at 2:45–67 (providing a “summary of the invention”).

each node is connected to exactly four other nodes, referred to as “neighbors.” *Id.* at 4:26–30, 38–42, 49–53. It is “4-connected” because it would take the failure of four nodes to divide the graph into two separate sub-graphs. *Id.* at 4:42–47. One node sends a message to each of its three neighbors, and they send the message to their neighbors, thus broadcasting the message to each node. *Id.* at 4:30–38.

Blizzard filed six *inter partes* review (“IPR”) petitions—two for each of the ’344, ’966, and ’634 patents—based principally on two different prior art references: one set of IPRs challenged claims based on the Shoubridge article² alone or combined with a prior art book *DirectPlay*³ (“Shoubridge IPRs”), and another set of IPRs challenged claims based on the Lin article⁴ alone or combined with *DirectPlay* (“Lin IPRs”). The Board instituted IPR on each petition, on many of the grounds and claims raised,⁵ and rendered six final decisions. In the

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

³ Bradley Bargaen & Peter Donnelly, *Inside DirectX®: In-Depth Techniques for Developing High-Performance Multimedia Applications* (Microsoft Press, 1998).

⁴ 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).

⁵ The Board did not institute IPR on all challenged claims and grounds. In *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1353 (2018), the Court held that 35 U.S.C. § 318(a) prohibits the Board from instituting IPR on fewer than all challenged claims. No party, however, has asked us to reopen or remand any portion of a non-instituted

Shoubridge IPRs, the Board determined the following claims are unpatentable: '966 patent claims 1–11 and 16–17; '344 patent claims 1–11 and 16–19; and '634 patent claims 1–9. In the Lin IPRs, the Board concluded that Lin is not a printed publication under 35 U.S.C. § 102(a) and thus determined Blizzard failed to show the challenged claims are unpatentable over Lin.

Acceleration appeals portions of the Board's decisions in the Shoubridge IPRs, and Blizzard cross-appeals portions of the Board's decisions in the Shoubridge IPRs and the Lin IPRs. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

DISCUSSION

We review the Board's legal determinations de novo and its fact findings for substantial evidence. *PPC Broadband, Inc. v. Corning Optical Commc'ns RF, LLC*, 815 F.3d 747, 751 (Fed. Cir. 2016). In IPR, the Board gives claims their broadest reasonable interpretation consistent with the specification. *Id.* We review claim construction de novo except for subsidiary fact findings, which we review for substantial evidence. *Id.*

I.

Acceleration challenges three aspects of the Board's decisions. Claim 1 of the '966 patent is representative of the claim construction disputes in Acceleration's appeal (emphases added):

1. A computer network for providing an *information delivery service* for a plurality of *participants*, each participant having connections to

petition, and we see no reason to independently do so. *See, e.g., PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1359–62 (Fed. Cir. 2018); *Jazz Pharm., Inc. v. Amneal Pharm., LLC*, 895 F.3d 1347, 1354–55 (Fed. Cir. 2018).

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