

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BUNGIE, INC.,  
Petitioner,

v.

ACCELERATION BAY, LLC,  
Patent Owner.

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Case IPR2017-01600 (Patent 6,910,069 B1)  
Case IPR2017-01601 (Patent 6,829,634 B1)<sup>1</sup>

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Before SALLY C. MEDLEY, MARC S. HOFF, and  
LYNNE E. PETTIGREW, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

ORDER  
Authorizing Reply to Preliminary Response  
*37 C.F.R. §§ 42.5, 42.108(c)*

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<sup>1</sup> This Order addresses issues that are the same in all identified cases. We exercise our discretion to issue one Order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

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## INTRODUCTION

The Board held a conference call on November 17, 2017, in response to Petitioner's e-mail request for authorization to file a reply to Patent Owner's Preliminary Response in each of these proceedings. Counsel for Bungie, Inc. (Petitioner), counsel for Acceleration Bay, LCC (Patent Owner), and Judges Medley, Hoff, and Pettigrew participated in the call.

## DISCUSSION

Pursuant to 37 C.F.R. § 42.108(c), a "petitioner may seek leave to file a reply to the preliminary response," and "[a]ny such request must make a showing of good cause."

Petitioner requests authorization to file a reply to Patent Owner's Preliminary Response to address two issues: (1) Patent Owner's argument relating to 35 U.S.C. § 315(b), and more specifically to the effect of a district court complaint filed in 2015 and Patent Owner's reliance on the Decision Denying Institution of *Inter Partes* Review in *Apple Inc. v. Rensselaer Polytechnic Institute*, Case IPR2014-00319 (PTAB June 12, 2014) (Paper 12); and (2) Patent Owner's attempt to antedate a reference. Patent Owner opposes Petitioner's request, primarily on the ground that Patent Owner's arguments in the Preliminary Response were foreseeable.

After considering the positions of the parties, we find that Petitioner has established good cause for further briefing with respect to the first issue identified above. Because the issue of a one-year bar under § 315(b) is potentially dispositive, we believe that additional briefing will assist the panel at this stage of the proceedings. Accordingly, Petitioner is authorized to file a reply to the Preliminary Response to address only the issue relating

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to the 2015 district court complaint and Patent Owner's reliance on the *Apple* case.

With respect to Patent Owner's attempt to antedate a reference, Petitioner's request to file a reply is denied. We are mindful of Petitioner's position that it has not yet had an opportunity to address the evidence supplied by Patent Owner, and we will take that into account when rendering a decision whether to institute trial.

### ORDER

Accordingly, it is:

ORDERED that Petitioner is authorized to file a reply to Patent Owner's Preliminary Response in each of these proceedings, addressing only Patent Owner's arguments regarding the 2015 district court complaint and Patent Owner's reliance on the *Apple* case; and

FURTHER ORDERED that the reply is limited to five pages and is due no later than November 27, 2017.

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