UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RIOT GAMES, INC.,
Petitioner,

v.

PALTALK HOLDINGS, INC.,
Patent Owner.

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Case IPR2018-00131
Patent 6,226,686

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REQUEST FOR REHEARING

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I.   INTRODUCTION

Patent Owner, Paltalk Holdings, Inc. ("Patent Owner") respectfully requests rehearing and modification of the Board's May 15, 2018, Decision (Paper 11), granting institution of *inter partes* review on the challenged claims.

II.   LEGAL STANDARD

A rehearing request "must specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d). The Board reviews a decision for an abuse of discretion. 37 C.F.R. § 42.71(c).

III.   STATEMENT OF FACTS

Petitioner, Riot Games, Inc. ("Petitioner") requested *inter partes* review of various claims of United States Patent No. 6,226,686 ("the '686 Patent") in a Petition filed November 2, 2017 (Paper No. 1). Petitioner provided RFC 1692 (Ex. 1010), titled "Transport Multiplexing Protocol (TMux)," and RFC 1459 (Ex. 1025), titled "Internet Relay Chat Protocol," as 35 U.S.C. § 103 references. In the Petition, Petitioner relies on the Declaration of David H. Crocker (Ex. 1026) ("the Crocker Declaration") as evidence that RFC 1692, and other RFC documents, namely, RFC 791, RFC 1001, and RFC 1459, are prior publications under 35 U.S.C. §§ 102(a)-(b). Pet. at 15-18. The Crocker Declaration explains Mr. Crocker's role with the Internet Engineering Task Force, his status as an author of RFC 1692, and the general standard practices for RFC submissions and

publications. See Ex. 1026.

In Patent Owner's Preliminary Response, Patent Owner asserted that the Petition did not provide sufficient evidence that, on or before the critical date, RFC 1692 was actually available to the public online, that the RFC was actually accessed or downloaded by any member of the public, or whether and how any alleged source such as the anonymous FTP hosts or the RFC Editor's Website was indexed or cataloged. Prelim. Response at 13-19. The Board disagreed, concluding that Petitioner established, for purposes of institution, that RFC 791, RFC 1692, and RFC 1459, "were available to persons of ordinary skill in computer networking and security sufficiently to be deemed 'publicly accessible' at the relevant time." Institution Decision at 30 (citing *SRI Int'l, Inc. v. Internet Security Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008)).

IV.   ARGUMENT

Patent Owner respectfully submits that the Board abused its discretion in accepting Petitioner's evidence that RFC 1692 and RFC 1459 are prior art publications to the '686 Patent. "Public accessibility" has been called the touchstone in determining whether a reference constitutes a "printed publication." *See Int'l Bus. Mach. Corp. v. EnvisionIt, LLC*, IPR2017-01246, Paper 7, page 14 (October 16, 2017)(citing *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (quoting *In Re Hall*, 781 F.2d 897, 899 (Fed. Cir.

1986)). In *EnvisionIt*, the Board notes that evidentiary matters concerning Internet publications used as references are similar in nature to that of references stored in libraries, where "competent evidence of the general library practice" coupled with evidence that the reference "was sufficiently indexed or cataloged" is generally sought. IPR2017-01246, Paper 7, at 14 (citing *In Re Hall*, 781 F.2d at 899); (also citing *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016)). The Board in *EnvisionIt*, indicates that, "just as indexing plays a significant role in evaluating whether a reference in a library is publicly accessible," indexing, such as via search engines, is an important consideration when determining whether a reference on a given webpage is "publicly accessible." IPR2017-01246, Paper 7, at 14-15 (quoting *Blue Calypso*, 815 F.3d at 1349).

The Crocker Declaration states that RFC 791, RFC 1001, RFC 1459, and RFC 1692 are *currently* available at www.rfc-editor.org ("the RFC Editor's Website"), and states that Mr. Crocker recently downloaded these RFCs from the RFC Editor's Website. Ex. 1026 at ¶¶ 32, 36, 41, 45. The Crocker Declaration states that the *current* RFC Editor's Website has a search function, but provides no evidence that the RFC Editor's Website included a search function on or before the critical date. *Id.* at ¶¶ 26-27. The Board believes this is not an issue, since the Crocker Declaration states that the RFCs were available via FTP sites and because Mr. Crocker states that "[a]nyone involved with the Internet technical community

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