

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Collective Minds Gaming Co. Ltd.
Petitioner

v.

Ironburg Inventions Ltd.
Patent Owner

Case IPR2018-00354

Patent 8,641,525

**PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

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I. INTRODUCTION

Patent Owner Ironburg Inventions Ltd. (“Ironburg”) would have this Board, under 35 U.S.C. § 314(a) (“Section 314”), exercise its discretion to preclude Petitioner Collective Minds’ unique validity challenge simply because an unrelated petitioner who was targeted with a lawsuit more than a year earlier also filed IPR petitions. As detailed below, Ironburg seeks to extend Section 314 and the related *General Plastic* factors far beyond any prior exercise of the Board’s discretion—an extension entirely unsupported by the circumstances of this case.

Ironburg separately misapplies the Board’s claim construction analysis in the earlier Valve IPR relating to the term “inherently resilient and flexible.” Although the Board correctly excluded Valve’s prior art, Ironburg extends the Board’s analysis in a way that excludes even the ‘525 patent’s own embodiment. The Board has not considered elongate members like those identified in the instant Petition, and its prior analysis certainly does not exclude them.

The following completes the factual record otherwise not provided by Ironburg’s Patent Owner Preliminary Response (“POPR”):

A. Applicable Timeline

Ironburg filed suit against Valve on December 3, 2015.¹ Valve filed separate ‘525 Patent IPR petitions on April 22, 2016² and October 25, 2016.³ Valve’s IPRs were partially instituted on September 27, 2016⁴ and May 4, 2017,⁵ respectively.

Ironburg filed suit against Petitioner Collective Minds on November 2, 2016,⁶ and waited until January 4, 2017 to serve Collective Minds.⁷ Ironburg did not identify asserted claims until June 8, 2017—after both Valve IPRs had already reached institution decisions.⁸ Following the receipt of Ironburg’s infringement contentions, which identified seventy-two (72) asserted claims from five (5) separate patents,⁹ Collective Minds diligently investigated the validity of the asserted claims, developed its own invalidity theories, and filed a unique IPR petition within its own statutory window.

B. Relationship Between Collective Minds and Valve

Ironburg argues Collective Minds and Valve are parties working in conjunction, even suggesting their relationship is sufficiently close to deem Collective Minds responsible for Valve’s prior petitions. POPR at 20-22. In

¹ EX1014, Valve Complaint.

² IPR2016-00948, Paper 1.

³ IPR2017-00136, Paper 1.

⁴ IPR2016-00948, Paper 10.

⁵ IPR2017-00136, Paper 12.

⁶ EX1015, Complaint.

⁷ EX1016, Pleading at 2 (indicating Jan. 4 service).

⁸ EX1017, Infringement Contentions.

⁹ *Id.* at 1-2.

support, Ironburg argues that Collective Minds “has entered into a Joint Defense Agreement with Valve” and has withheld communications on the basis of a “joint defense privilege.” *Id.* at 21. Collective Minds has done no such thing. In fact, as expressly communicated to Ironburg, Collective Minds “is not currently withholding any documents,” but is instead “preserv[ing] the privilege for **potential future** communications.” EX2016 at 1 (emphasis added). Collective Minds has not communicated at all with Valve’s PTAB counsel, the parties have not contributed to each other’s IPRs, and Ironburg’s suggestions to the contrary are absolutely without merit or even a shred of support.

II. THE BOARD SHOULD NOT EXERCISE ITS DISCRETION UNDER 35 U.S.C. § 314(A)

Ironburg argues that the seven-factor test set forth in *General Plastic* (IPR2016-01357) supports denying institution under Section 314. POPR at 18-27. Typically applied to follow-on petitions from the same petitioner, Ironburg cites only one case in which this analysis was applied to a different petitioner—*NetApp v. Realtime*. POPR at 21. *NetApp* involved extraordinary facts, and its conclusions do not apply here.

In *NetApp*, three IPRs filed by *NetApp*’s co-defendants were joined into a single proceeding. 2016-01195, Paper 9 at 2-3, 6. *NetApp* did not file an IPR, but instead moved to stay the district court proceeding based on the pending IPRs. *Id.* at 7. The district court denied *NetApp*’s motion to stay. *Id.* at 8. *NetApp* then filed

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