

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

505 GAMES, INC., ACTIVISION BLIZZARD, INC., BLIZZARD ENTERTAINMENT, INC., CAPCOM U.S.A. INC., THE WALT DISNEY CO., DISNEY INTERACTIVE STUDIOS, INC., LUCASARTS, ELECTRONIC ARTS INC., BANDAI NAMCO GAMES AMERICA, INC., BANDAI NAMCO HOLDINGS USA INC., RIOT GAMES, INC., SONY COMPUTER ENTERTAINMENT AMERICA LLC, SQUARE ENIX, INC., SQUARE ENIX OF AMERICA HOLDINGS, INC., TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., 2KSPORTS, INC., 2K GAMES, INC., UBISOFT, INC., NINTENDO OF AMERICA, INC., and NINTENDO CO., LTD.,
Petitioner,

v.

BABBAGE HOLDINGS, LLC,
Patent Owner.

Case IPR2014-00954¹
Patent 5,561,811

Before MEREDITH C. PETRAVICK, KALYAN K. DESHPANDE, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION
Motion to Terminate
37 C.F.R. § 42.72

¹ Case IPR2015-00568 has been joined with this proceeding.

On March 24, 2015, the Board terminated the participation of 505 Games, Inc., Activision Blizzard, Inc., Blizzard Entertainment, Inc., Capcom U.S.A. Inc., The Walt Disney Co., Disney Interactive Studios, Inc., LucasArts, Electronic Arts, Inc., Bandai Namco Games America, Inc., Bandai Namco Holdings USA Inc., Riot Games, Inc., Sony Computer Entertainment America LLC, Square Enix, Inc., Square Enix of America Holdings, Inc., Take-Two Interactive Software, Inc., Rockstar Games, Inc., 2KSports, Inc., 2K Games, Inc., and Ubisoft, Inc. in this proceeding. Paper 41.

On April 13, 2015, the Board authorized the sole remaining entities—Nintendo of America, Inc., and Nintendo Co., Ltd. (collectively, “Petitioner”) and Babbage Holdings, LLC (“Patent Owner”)—to file a joint motion to terminate. On April 14, 2015, Petitioner and Patent Owner filed a joint motion to terminate the trial proceedings and to treat the submitted settlement agreement (Ex. 2013) as business confidential information 35 U.S.C. § 317. Paper 43.

Under 35 U.S.C. § 317(a), “[a]n inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed.” In their joint motion, the parties request termination of the instant proceeding because they have settled their respective disputes and have reached an agreement to terminate this *inter partes* review, and because the Office has not yet decided the merits of the proceeding. *See, e.g.*, Paper 43, 2–3.

The parties also indicate that all but one district court actions in which the ’811 patent has been asserted have been settled and, in those cases, joint

stipulations for dismissal have been granted. *Id.* at 3–5. The parties indicate that the sole district court action that remains pending involves Konami Digital Entertainment, Inc. *Id.* at 4. We note that Konami Digital Entertainment, Inc. is not party to this proceeding.

The parties are reminded that the Board is not a party to the settlement and that, even if the parties agree to settle any issue in a proceeding, the Board may independently determine any question of patentability. 37 C.F.R. § 42.74(a). Generally, however, the Board expects that a proceeding will terminate after the filing of a settlement agreement. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). We have not yet decided the merits of this proceeding. For example, the oral argument has not been held. The Board is persuaded that, under these circumstances, it is appropriate to terminate this proceeding as to both Petitioner and Patent Owner without rendering a final written decision. 37 C.F.R. § 42.72.

ORDER

Accordingly, it is:

ORDERED that the the joint motion to terminate this proceeding is GRANTED and this proceeding is hereby terminated as to both Petitioner and Patent Owner; and

FURTHER ORDERED that the joint request that the settlement agreement (Ex. 2013) be treated as business confidential information, kept separate from the file of the involved patent, and made available only to Federal Government agencies on written request, or to any person on a

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showing of good cause, under the provisions of 35 U.S.C. § 317(b) and
37 C.F.R. § 42.74(c), is GRANTED.

PETITIONER:

Eric A. Buresh
Paul R. Hart
ERISE IP, P.A.
eric.buresh@eriseip.com
paul.hart@eriseip.com

Patrick D. McPherson
Phillip D. Mancini
DUANE MORRIS LLP
PDMcPherson@duanemorris.com
PD Mancini@duanemorris.com

PATENT OWNER:

David H. Judson
LAW OFFICE OF DAVID H. JUDSON
mail@davidjudson.com

Anthony M. Garza
CHARHON CALLAHAN ROBSON & GARZA, PLLC
agarza@ccrglaw.com