

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
Petitioner,

v.

GAME AND TECHNOLOGY CO., LTD.,
Patent Owner.

Case IPR2018-00157
Patent 7,682,243 B2

Before STACEY G. WHITE, DANIEL J. GALLIGAN, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION

Granting Joinder; Dismissing Petition for *Inter Partes* Review
35 U.S.C. § 315(c); 37 C.F.R. §§ 42.71, 42.122

I. INTRODUCTION

Activision Blizzard, Inc. (“Activision” or “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–7 of U.S. Patent No. 7,682,243 B2 (“the ’243 patent,” Ex. 1001), on which *inter partes* review was instituted in *Wargaming Group Ltd. v. Game and Technology Co., Ltd.*, Case No. IPR2017-01082 (the “Wargaming IPR”), and a Motion for Joinder (Paper 3, “Motion”) with the Wargaming IPR. Game and Technology Co., Ltd. (“Patent Owner”) filed an Opposition (Paper 9, “Opp.”) to the Motion, and Petitioner filed a Reply (Paper 10, “Reply”) in support of the Motion. Patent Owner also filed a Preliminary Response. Paper 11 (“Prelim. Resp.”).

For the reasons that follow, we join Activision as a party to the Wargaming IPR, but we do not institute a separate *inter partes* review.

A. Real Parties-in-Interest

Petitioner identifies the following real parties-in-interest: Activision Blizzard, Inc.; Blizzard Entertainment, Inc., Activision Publishing, Inc., and Activision Entertainment Holdings, Inc. Pet. 1.

B. Related Matters

Petitioner and Patent Owner cite the following judicial matters involving the ’243 patent: *Game and Technology Co. Ltd v. Wargaming.net LLP*, 2:16-cv-06554 (C.D. Cal.) and *Game and Technology Co. Ltd v. Blizzard Entertainment, Inc.*, 2:16-cv-06499 (C.D. Cal.). Pet. 2; Paper 6. The ’243 patent is currently the subject of the Wargaming IPR. In addition, the Board previously denied another petition for *inter partes* review of the ’243 patent filed by Activision. *Activision Blizzard, Inc. v. Game and Tech. Co.*, Case IPR2016-01918, slip op. at 18 (PTAB Mar. 21, 2017) (Paper 14).

C. The '243 Patent and Illustrative Claim

The '243 patent generally relates to “providing an online game, in which ability information of a unit associated with a pilot is enabled to change as ability information of the pilot changes.” Ex. 1001, 1:23–25. Of the challenged claims, claims 1, 6, and 7 are independent. Claim 1 is illustrative and is reproduced below.

1. An online game providing method for providing a pilot and a unit associated with the pilot at an online game, the method comprising the steps of:

controlling an online game such that a player can manipulate a pilot and a unit associated with said pilot, said pilot being a game character operated by a player, said pilot representing the player, said unit being a virtual object controlled by the player;

maintaining a unit information database, the unit information database recording unit information on said unit, in which the unit information includes ability of said unit and sync point information;

maintaining a pilot information database, the pilot information database recording pilot information on said pilot, in which the pilot information includes a unit identifier indicating said unit associated with said pilot, ability of said pilot and the ability of said unit associated with said pilot;

receiving a request for update on first pilot ability information of a first pilot;

searching for unit identifier information associated with the first pilot by referring to the pilot information database;

searching for sync point information associated with the searched unit identifier information by referring to the unit information database; and

updating and recording the first pilot ability information and unit ability information associated therewith in accordance with the searched sync point information such that said ability of unit is changed proportionally to changes in ability of the pilot by referring to said sync point,

wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit, and said steps of searching for unit identifier information and of searching for sync point information are performed by a processor.

D. References

Petitioner relies upon the following references:

Levine US 2003/0177187 A1 Sept. 18, 2003 Ex. 1004

“Dungeons and Dragons: Player’s Handbook: Core Rulebook I Ex. 1005¹
v.3.5” (“D&D Handbook”), © 2003 WIZARD OF THE COAST.

E. Asserted Ground of Unpatentability

Petitioner challenges claims 1–7 of the ’243 patent as obvious over the combined teachings of Levine and D&D Handbook. Pet. 11.

II. ANALYSIS

The statutory provision governing joinder in *inter partes* reviews is 35 U.S.C. § 315(c), which provides:

JOINDER. – If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

¹ Based on the current record, Petitioner has made a threshold showing that D&D Handbook is a prior art printed publication under 35 U.S.C. §§ 102(a) and 102(b). See Pet. 10 (citing Ex. 1005, 5; Ex. 1008; Ex. 1012; Ex. 1003 ¶ 102). At this stage of the proceeding, Patent Owner does not argue substantively that D&D Handbook is not a printed publication. See *generally* Prelim. Resp.

Because a party may only be joined to an *inter partes* review if that party files a petition that “warrants the institution of an inter partes review,” we first address whether the Petition meets this standard. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition and the Preliminary Response shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we determine that the Petition satisfies the threshold for institution.

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); see *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard in an *inter partes* review). In applying a broadest reasonable construction, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. See *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). This presumption may be rebutted when a patentee, acting as a lexicographer, sets forth an alternate definition of a term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Petitioner proposes constructions for several claim terms, including the term “ability.” Pet. 12–16. In its Preliminary Response, Patent Owner focuses on the interpretation of the term “ability.” Prelim. Resp. 6. Below we address the broadest reasonable interpretation of this term, and we determine that, for purposes of this Decision, the remaining terms of the challenged claims do not require express constructions.

1. “Ability”

Petitioner contends the term “ability” as used in the ’243 patent means “a numeric representation of an attribute.” Pet. 14–15 (citing Ex. 1001, 5:22–27, 6:19–22, 11:60–12:5, Figs. 3–5, claim 5; Ex. 1003 ¶ 98). Patent Owner argues that, “at minimum, the broadest reasonable interpretation of ‘ability’ should be limited to only ‘a numeric representation of an innate attribute’—namely those original, basic attributes of a character.” Prelim. Resp. 10. According to Patent Owner, an “ability” in the ’243 patent would have been understood by a person of ordinary skill in the art to be similar to an “ability” as that term is used in D&D Handbook to refer to “[o]ne of the six basic character qualities” (Ex. 1005, 308²). Prelim. Resp. 6–10. Patent Owner argues, therefore, that “the skilled artisan would have understood the ‘ability’ of the ‘243 Patent [(Ex. 1001) at 11:20-29) to refer to foundational abilities, similar to the basic abilities of the RPG [role playing game]] genre established by *Dungeons & Dragons*.” Prelim. Resp. 10.

On this record, we do not agree with Patent Owner. Although the ’243 patent gives examples of abilities (Ex. 1001, 5:22–27, 6:1–18, Figs. 3, 4), we do not interpret these as limiting examples. The ordinary meaning of

² In this Decision, citations to D&D Handbook are to the exhibit pages assigned by Petitioner rather than to the page numbers of the reference itself.

a pilot ability or unit ability would include what a pilot or unit is able to do, and, in the case of a video game, that may vary depending on the type of “pilots” and “units” in the game. We note that, in the Wargaming IPR, Patent Owner argued that “[t]he broadest reasonable interpretation of ‘ability’ consistent with specification is a characteristic of the pilot or unit’s *performance*.” Wargaming IPR, Paper 8, 17. In our Decision on Institution in that case, we preliminarily determined that “ability” is not “limited to a characteristic of the pilot’s or unit’s performance” because, considering the ’243 patent’s example of a “faith point” as an ability, it was “unclear how ‘faith about the pilot’ describes a performance characteristic of the pilot, as opposed to simply an attribute of the pilot.” Wargaming IPR, Paper 14, 12 (quoting Ex. 1001, 6:10–12). We nevertheless determined that D&D Handbook’s “hit points,” which the petitioner cited as teaching an “ability,” “represent at least some measure of a character’s performance because they ‘represent how much damage a character can take before falling unconscious or dying.’” *Id.* at 24 (quoting Ex. 1005, 139).

For purposes of this Decision, we need not delineate the precise metes and bounds of the term “ability” to determine whether Petitioner has satisfied the threshold for institution. Rather, we determine that “hit points” as described in D&D Handbook are within the broadest reasonable interpretation of “ability,” as that term is used in the ’243 patent. In particular, D&D Handbook discloses that “[h]it points represent how much damage a character can take before falling unconscious or dying.” Ex. 1005, 139. We determine this is an ability because it reflects something the character is able to do, i.e., an “ability,” namely taking damage.

B. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) any secondary considerations, if in evidence.³ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

C. Obviousness over Levine and D&D Handbook

Petitioner contends claims 1–7 of the ’243 patent are unpatentable under 35 U.S.C. § 103(a) as having been obvious over the combined teachings of Levine and D&D Handbook. Pet. 11, 16–64. Petitioner explains how the cited prior art references allegedly teach the claimed subject matter, provides articulated reasoning as to why a person of ordinary skill in the art would have combined the teachings of the references in the manner asserted, and relies upon the Declaration of Garry Kitchen (Ex. 1003) to support its positions. Pet. 16–64.

1. Levine

Levine relates “to computer network systems that facilitate multi-person interaction within multiple immersive environments,” and it discloses

³ Patent Owner does not present arguments or evidence of such secondary considerations in the Preliminary Response.

that “Massively Multiplayer Online Games (MMOGs) provide an immersive, interactive model of imaginary realms.” Ex. 1004 ¶¶ 1, 14. Levine describes various characteristics of MMOGs and discloses that “[t]he rules of many MMOGs are based on paper and dice role-playing games popularized in the dice game Dungeons and Dragons.” Ex. 1004 ¶ 14. Levine also discloses that, “at the center of every persistent-state, massively multi-player game lies its database 104,” which “manages the persistence of object state across the game world: from login to login, session to session, Avatar to Avatar, property to property, it keeps a record of all significant state changes.” Ex. 1004 ¶ 211.

2. D&D Handbook

D&D Handbook describes the Dungeons & Dragons Roleplaying Game, which is referred to in Levine as discussed above. Ex. 1005; see Ex. 1004 ¶ 14.

3. Independent Claim 1

Independent claim 1 is directed to “[a]n online game providing method for providing a pilot and a unit associated with the pilot at an online game.” Petitioner contends the combination of Levine and D&D Handbook teaches the subject matter recited in claim 1. Pet. 17–50. Petitioner contends, and we agree, Levine teaches an online game. Pet. 26 (citing Ex. 1004 ¶ 21). For example, Levine discloses that “a system, method and computer program product for a computing grid for massively Multiplayer on-line games.” Ex. 1004 ¶ 21. Although D&D Handbook does not describe a computer game, Petitioner contends a person of ordinary skill in the art “would have found it obvious to create an online RPG by combining the game rules taught by D&D with the online gaming platform taught by

Levine.” Pet. 16 (citing Ex. 1003 ¶ 104; Ex. 1004 ¶¶ 21, 35, 163).

Petitioner contends a person of ordinary skill in the art “would have been motivated to do so because Levine expressly teaches the application of D&D rules to Massively Multiplayer Online Games.” Pet. 13 (citing Ex. 1004 ¶ 14; Ex. 1003 ¶ 105). On this record, we are persuaded that a person of ordinary skill in the art would have been motivated to combine the MMOG game platform of Levine and the rules taught in D&D Handbook based on Levine’s disclosure that “[t]he rules of many MMOGs are based on paper and dice role-playing games popularized in the dice game Dungeons and Dragons.” Ex. 1004 ¶ 14.

a. Controlling an online game

Claim 1 recites “controlling an online game such that a player can manipulate a pilot and a unit associated with said pilot, said pilot being a game character operated by a player, said pilot representing the player, said unit being a virtual object controlled by the player.”

Petitioner contends D&D Handbook teaches a player character representing a gamer and controlled by the gamer. Pet. 26, 29. For example, D&D Handbook discloses, “As a player, you use this handbook to create and run a character.” Ex. 1005, 9. Petitioner also contends Levine’s disclosure of avatars teaches a game character operated by a player. Pet. 26, 29. For example, Levine discloses that “a new character is termed an avatar within the instance of the interactive, multi-user gaming application.” Ex. 1004 ¶ 658; *see also* Ex. 1004 ¶ 393 (describing avatars as “client controlled objects”).

Petitioner also contends D&D Handbook teaches an animal unit that is associated with the player character and controlled by the gamer. Pet. 27–

28, 29–31. In particular, Petitioner cites D&D Handbook’s disclosure of animals that are associated with various characters, such as a mount associated with a paladin, an animal companion associated with a druid, and an animal familiar associated with a sorcerer. Pet. 23 (citing Ex. 1005, 39, 48, 49, and 56). With respect to control of the animals, Petitioner cites various disclosures in D&D Handbook (Pet. 29–30), including that “[a] druid can handle her animal companion as a free action” and that “[f]amiliars are magically linked to their masters.” Ex. 1005, 40, 56. D&D Handbook describes that “[a] familiar is a normal animal that gains new powers and becomes a magical beast when summoned to service by a sorcerer or wizard.” Ex. 1005, 56. As such, Petitioner asserts that a person of ordinary skill in the art “would have found it obvious that players control animal units through their characters.” Pet. 30 (citing Ex. 1003 ¶ 137; Ex. 1005, 40, 56, 57).

Petitioner further contends Levine discloses objects in a “virtual environment” and, therefore, teaches “virtual objects.” Pet. 31–32 (citing Ex. 1004 ¶ 154). In particular, Levine describes “states” in a “virtual environment” and discloses that “the term ‘object state’ does not refer to objects in the sense of object oriented programming, but refers to objects that represent entities (e.g., people, animals, castles, buildings, etc.).” Ex. 1004 ¶ 154. Petitioner additionally asserts “Levine teaches an interactive online game where players manipulate and control objects through their Avatars.” Pet. 32 (citing Ex. 1004 ¶¶ 14, 571 683, Figs. 45, 46; Ex. 1003 ¶ 141); *see, e.g.*, Ex. 1004 ¶ 571 (disclosing that a “bicycling Avatar pedals here and there”).

Petitioner argues that, “[i]n an online game implemented based on D&D, [persons of ordinary skill in the art] would have found it obvious for the player to control her character and associated animals, as taught by D&D, where the animal unit is a virtual object controlled by the player through her Avatar.” Pet. 33 (citing Ex. 1003 ¶ 142).

On this record, we are persuaded Petitioner has shown, sufficiently for purposes of institution, that the combination of Levine and D&D Handbook teaches, suggests, or renders obvious “controlling an online game such that a player can manipulate a pilot and a unit associated with said pilot, said pilot being a game character operated by a player, said pilot representing the player, said unit being a virtual object controlled by the player,” as recited in claim 1.

b. Pilot ability, unit ability, and sync point information

The remaining limitations of claim 1 involve maintaining pilot and unit information databases having certain information, including pilot “ability” information, unit “ability” information, and “sync point information,” and updating that information. The independent claims define the term “sync point information” as “a ratio of which changes in said ability of pilot are applied to said ability of unit.” In this section, we discuss Petitioner’s contentions and Patent Owner’s arguments with respect to ability and sync point information, and in the next section, we will address the database requirements of the claims, for which Petitioner relies primarily on Levine’s teachings.

Petitioner contends D&D Handbook teaches several examples of ability information for characters (i.e., pilots) and for animals (i.e., units) and sync points between these abilities. Pet. 17–25, 33, 42. One alleged ability

Petitioner identifies is “hit points.” Pet. 17–19, 33, 42. According to D&D Handbook, “[h]it points represent how much damage a character can take before falling unconscious or dying.” Ex. 1005, 139. D&D Handbook further discloses that “[t]he familiar has one-half the master’s total hit points (not including temporary hit points), rounded down, regardless of its actual Hit Dice. For example, at 2nd level, Hennes has 9 hit points, so his familiar has 4.” Ex. 1005, 56. Petitioner argues that, “[i]f Hennes reaches level 3 and his hit points increase by 2, his familiar’s hit points would increase by 1/2 that amount (i.e., 1 point), so that Hennes now has 11 hit points, and his familiar has 5.” Pet. 18–19 (citing Ex. 1005, 56; Ex. 1003 ¶ 113).

Patent Owner argues “there are six basic abilities in *Dungeons & Dragons*: Strength, Dexterity, Constitution, Intelligence, Wisdom and Charisma,” and, according to Patent Owner, D&D Handbook does not disclose a sync point relationship between any of these abilities of a pilot and an ability of a unit. Prelim. Resp. 10–11 (citing Ex. 1005, 12–14, 308). Patent Owner’s argument is based on its proposed construction of “ability,” which we do not adopt, as discussed above. Rather, for the reasons discussed above, we determine “hit points” as described in D&D Handbook are within the broadest reasonable interpretation of “ability,” as that term is used in the ’243 patent.

On this record, we are persuaded Petitioner has shown sufficiently for purposes of institution that D&D Handbook teaches pilot “ability” information and unit “ability” information and also teaches updating that unit information such that changes to unit ability are proportional to changes in pilot ability. In particular, we are persuaded on this record that an increase in a character’s hit points that results in one half of that increase in

that character's familiar's hit points teaches that "said ability of unit is changed proportionally to changes in ability of the pilot by referring to said sync point, wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit," as recited in the independent claims. *See* Pet. 18–19; Ex. 1003 ¶ 113.

c. Database limitations

As discussed in the previous section, claim 1 recites maintaining pilot and unit information databases having certain information, including pilot "ability" information, unit "ability" information, and "sync point information," and updating that information. For example, claim 1 recites:

maintaining a unit information database, the unit information database recording unit information on said unit, in which the unit information includes ability of said unit and sync point information;

maintaining a pilot information database, the pilot information database recording pilot information on said pilot, in which the pilot information includes a unit identifier indicating said unit associated with said pilot, ability of said pilot and the ability of said unit associated with said pilot.

For a teaching of a database, Petitioner cites Levine's disclosure of an "application database." Pet. 33–34. Levine discloses that "application database 104 is implemented using a relational database product" and further discloses:

[A]t the center of every persistent-state, massively multi-player game lies its database 104. The database 104 manages the persistence of object state across the game world: from login to login, session to session, Avatar to Avatar, property to property, it keeps a record of all significant state changes. When a player picks up a sword, the database 104 must record this fact and store it, otherwise the next time that player logs in they will wonder where they lost it. When the player spends a gold coin, the

database 104 must debit their virtual bank account, so that the online economy can function without embezzlement. The database 104 is the final authority on the state of the world at any given moment.

Ex. 1004 ¶¶ 207, 211, *cited in* Pet. 34, 38. Petitioner also contends Levine’s disclosure of a globally unique identifier (“GUID”) teaches an identifier and that “the combination of Levine and D&D teaches an animal unit with a unit identifier (GUID) associated with the player character.” Pet. 42–43.

Petitioner contends it would have been obvious to a person of ordinary skill in the art to store character (pilot) and animal (unit) information, including ability information, unit identifier, and sync point information, in a database as taught by Levine’s “application database.” Pet. 33, 40, 41, 42 (citing Ex. 1003 ¶¶ 144, 150–152, 156).

On the current record, we determine Petitioner’s analysis explaining that this subject matter would have been obvious based on Levine’s disclosure of an “application database” in combination with D&D Handbook’s teachings of character and unit abilities is sufficient for institution. *See* Pet. 33–45. In particular, Levine itself discloses the use of a database in MMOGs to “manage[] the persistence of object state across the game world” and to “keep[] a record of all significant state changes.” Ex. 1004 ¶ 211. Furthermore, as Petitioner points out (Pet. 43), Levine teaches that the database tracks the inventory of the Avatar such that, for example, “[w]hen a player picks up a sword, the database 104 must record this fact and store it.” Ex. 1004 ¶ 211. Indeed, Levine discloses that this database “is the final authority on the state of the world at any given moment.” Ex. 1004 ¶ 211.

We also are persuaded Petitioner has shown, sufficiently for purposes of institution, that the combination of Levine and D&D Handbook teaches “searching for unit identifier information” and “searching for sync point information” as part of the ability updating process. Pet. 45–47. In particular, we find persuasive Petitioner’s contention that “[t]he use of unique identifiers for accessing database objects has been the typical practice in the industry for decades, and querying databases using such identifiers was well known in the art.” Pet. 46 (citing Ex. 1003 ¶ 167). Levine discloses the use of unique identifiers for updating objects in a video game database: “Upon exit from the invocation of any Python function, those Game Server objects whose GUIDs are referenced explicitly in the optional packet parameters are updated in the database 104 and checkpointed. This assures that all scripted changes will be persistent within the game world.” Ex. 1004 ¶ 594.

d. Threshold Determination as to Independent Claim 1

On this record, Petitioner has demonstrated a reasonable likelihood of prevailing on its assertion that independent claim 1 is unpatentable under 35 U.S.C. § 103(a) over the combined teachings of Levine and D&D Handbook. Based on the foregoing, we determine the Petition meets the prerequisite for joinder of warranting institution, and, therefore, we turn to the merits of Petitioner’s request for joinder.

D. Petitioner’s Request for Joinder

Petitioner “moves . . . for joinder of its today-filed petition for *inter partes* review (‘Blizzard IPR’) with a previously instituted IPR filed by Wargaming Group Limited (Case No. IPR2017-01082, ‘Wargaming IPR’).” Motion 1. Petitioner contends that it

is filing this petition and joinder motion to ensure that a petitioner remains to complete the trial in the event that Wargaming reaches a settlement with the Patent Owner or is otherwise terminated from the proceeding. As long as Wargaming continues to participate in the IPR proceedings, Petitioner is willing to take a passive, “understudy” role. In fact, Petitioner does not intend to introduce any briefing, arguments, or discovery separate from Wargaming in the joined proceedings.

Motion 1–2. Petitioner contends that joinder is appropriate, among other reasons, because the Petition presents identical grounds as those instituted in the Wargaming IPR and because joinder will not impact the schedule in the Wargaming IPR. Motion 6–7.

In its Opposition, Patent Owner argues “35 U.S.C. § 315(b) bars Activision Blizzard from joinder.” Opp. 7. In particular, Patent Owner argues 35 U.S.C. §§ 315(b) and (c)

provide that, if a party properly files a petition ***within the one-year deadline*** described in subsection (b), and then files a request for joinder under subsection (c) after such deadline expires, subsection (b) would permit the Board to grant the joinder request. The statutory scheme codified at subsections (b) and (c) requires that the petition be “properly filed” for the consideration of both the petition and the joinder request, and as such a joinder request submitted with a petition that is filed after the one-year deadline, as in the present instance, should be denied.

Opp. 8.

We disagree with Patent Owner’s statutory interpretation. The joinder provision allows joinder of “any person who properly files a petition under section 311 that . . . warrants the institution of an inter partes review under section 314.” 35 U.S.C. § 315(c). The joinder provision does not state that the petition must also be one in which institution is not barred under 35 U.S.C. § 315(b). Patent Owner does not assert that Petitioner fails to

meet any of the requirements for *filing* a petition. The time bar of § 315(b) prohibits institution in certain circumstances, but it does not speak to whether the filing requirements are met. We determine that Petitioner has “properly file[d] a petition under section 311,” and, as discussed above, we determine that the Petition meets the “reasonable likelihood” threshold for institution of § 314(a) and, therefore, “warrants the institution of an *inter partes* review under section 314.” Because § 315(b) expressly states that “[t]he time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c),” Petitioner’s request for joinder is not time-barred.

Patent Owner argues joinder will complicate discovery and impact the schedule in the Wargaming IPR because Activision relies on a different declarant from Wargaming, which will require Patent Owner to depose Activision’s declarant. Opp. 3–4. Patent Owner also asserts that having a separate declarant will preclude Activision from taking an understudy role if joined. Opp. 3–4, 6–7. In Reply, Petitioner states that “it would withdraw its expert declaration at the latest by Due Date 1 (currently January 29, 2018) in the Wargaming IPR.” Reply 2 n.1.⁴ Petitioner also “agrees to assume a back-seat, understudy role in the Wargaming IPR, without any right to separate or additional briefing or discovery, unless authorized by the Board.” Reply 2 n.1.

Having considered the parties’ positions, we determine that joinder of Activision as a party to the Wargaming IPR is appropriate. Furthermore, because we are joining Activision to an instituted *inter partes* review, we

⁴ Due date 1 in the Wargaming IPR was changed to February 5, 2018. Wargaming IPR, Paper 35.

determine that separate institution of this proceeding is unnecessary. We, therefore, dismiss the Petition pursuant to 37 C.F.R. § 42.71(a), which provides that “[t]he Board may take up petitions or motions for decisions in any order, may grant, deny, or *dismiss any petition* or motion, and may enter any appropriate order” (emphasis added). Because we are dismissing the Petition, Patent Owner’s concerns regarding Activision’s separate declarant are moot. Rather, the Wargaming IPR continues on its current schedule having its own record. No evidence from this proceeding is admitted into the Wargaming IPR. Furthermore, no additional briefing is authorized in the Wargaming IPR as a result of the joinder of Activision.

III. ORDER

Accordingly, it is:

ORDERED that Activision Blizzard, Inc. is joined as a party, on the petitioner side, to Case IPR2017-01082;

FURTHER ORDERED that the case caption in IPR2017-01082 shall be changed to reflect the joinder of Activision Blizzard, Inc. as a party to IPR2017-01082 in accordance with the attached example;

FURTHER ORDERED that no additional briefing is authorized in IPR2017-01082 as a result of the joinder of Activision Blizzard, Inc.;

FURTHER ORDERED that, to the extent the Motion seeks relief other than joinder of Activision Blizzard, Inc. as a party to Case IPR2017-01082, such relief is *denied*;

FURTHER ORDERED that the Petition is *dismissed*; and

FURTHER ORDERED that a copy of this Decision shall be entered in Case IPR2017-01082.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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