
From: Sommer, Andrew R.
Sent: Sunday, March 05, 2017 2:18 PM
To: 'Hannah, James'
Cc: Lee, Michael H.; SV Docketing; Hedvat, Shannon H.; Price, Jeffrey H.; Winston Video Game DE Team
Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials

Jim:

I don't think this will work. Our replies are in flux, and I don't think we will be able to give you adequate time to review the citations and then draft the motion to seal once you have had the chance to review them.

We'll proceed with the motion to seal and ask that the Board order the patent owner to be more specific about what needs to be redacted after the fact as Patent Owner originally requested.

Drew

Andrew R. Sommer
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-----Original Message-----

From: Sommer, Andrew R.
Sent: Friday, March 03, 2017 12:31 PM
To: 'Hannah, James' <JHannah@KRAMERLEVIN.com>
Cc: Lee, Michael H. <MHLee@KRAMERLEVIN.com>; SV Docketing <svdocketing@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Price, Jeffrey H. <JPrice@KRAMERLEVIN.com>; Winston Video Game DE Team <WinstonVideoGameDETeam@winston.com>
Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials

That may work. I need to circle up with our team to see when that might be feasible.

Drew

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-----Original Message-----

From: Hannah, James [mailto:JHannah@KRAMERLEVIN.com]

Sent: Friday, March 03, 2017 12:25 PM

To: Sommer, Andrew R. <ASommer@winston.com>

Cc: Lee, Michael H. <MHLee@KRAMERLEVIN.com>; SV Docketing <svdocketing@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Price, Jeffrey H. <JPrice@KRAMERLEVIN.com>; Winston Video Game DE Team <WinstonVideoGameDETeam@winston.com>

Subject: Re: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials

Andrew, sorry I missed you. If you want to send over the citations that you plan on using, we can let you know on an expedited basis whether those contain confidential information or not, assuming of course the citations are not voluminous. Please let me know if that works. Thanks.

James

James Hannah

Partner

Kramer Levin

Naftalis & Frankel LLP

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Menlo Park, California 94025

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> On Mar 3, 2017, at 3:12 AM, Sommer, Andrew R. <ASommer@winston.com> wrote:

>

> This Message originated outside the firm.

>

> James:

>

> I received your voicemail last night. Unfortunately, you called after I indicated I was unavailable. I will be leaving the country for business today. We will just need to deal with these issues in our motions to seal.

>

> Regards,

>

> Drew

>

> Andrew R. Sommer

> Partner

> Winston & Strawn LLP

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>
> -----Original Message-----
> From: Sommer, Andrew R.
> Sent: Wednesday, March 01, 2017 10:08 AM
> To: 'Hannah, James' <JHannah@KRAMERLEVIN.com>
> Cc: Lee, Michael H. <MHLee@KRAMERLEVIN.com>; SV Docketing <svdocketing@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Price, Jeffrey H. <JPrice@KRAMERLEVIN.com>; Winston Video Game DE Team <WinstonVideoGameDETeam@winston.com>
> Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>
> Apologies, I misread your availability. I am unavailable between 11 and 2 and after 5 eastern tomorrow. I can otherwise be available.
>
> Drew
>
> Andrew R. Sommer
> Partner
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> -----Original Message-----
> From: Hannah, James [mailto:JHannah@KRAMERLEVIN.com]
> Sent: Wednesday, March 01, 2017 10:04 AM
> To: Sommer, Andrew R. <ASommer@winston.com>
> Cc: Lee, Michael H. <MHLee@KRAMERLEVIN.com>; SV Docketing <svdocketing@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Price, Jeffrey H. <JPrice@KRAMERLEVIN.com>; Winston Video Game DE Team <WinstonVideoGameDETeam@winston.com>
> Subject: Re: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>
> Yes, I would like to discuss but am traveling today. What time works tomorrow?
>
>
>
> James Hannah
> Partner
>
> Kramer Levin
> Naftalis & Frankel LLP
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>> On Mar 1, 2017, at 9:35 AM, Sommer, Andrew R. <ASommer@winston.com> wrote:

>>

>> This Message originated outside the firm.

>>

>> James:

>>

>> As you may or may not know, I attempted to meet and confer regarding this issue on the record after Dr. Goodrich's testimony was concluded. I, therefore, can say that I have made a good faith effort to resolve the dispute during a conference with Mr. Lee. He outright refused to discuss the matter on the record. I believe my proposed email does identify with adequate specificity the issues to be discussed--namely whether Patent Owner should be required to identify specific transcript portions that are confidential rather than saying that the entirety of the testimony is confidential. Indeed, with respect to Dr. Goodrich's 2/22 deposition, the only thing Mr. Lee would point to as being confidential was Exhibit 2004. It was not part of the transcript, and had already been filed with the Board under seal. The fact that the witness saw that exhibit during his deposition is no basis for placing the entirety of Dr. Goodrich's testimony under the protective order. That is inappropriate. Moreover, Mr. Lee refused to say that even a single word of Dr. Goodrich's testimony was confidential.

>>

>> We are seeking guidance from the Board on the proper procedure for designating materials confidential at depositions and attempting to get an order requiring patent owner to provide an indication of what is, and what is not, confidential in these transcripts. The goal is the goal of all of the rules: to minimize the burden on the parties and Board in having to address unnecessary motions to seal and later re-file numerous papers.

>>

>> I have already made no less than four requests for patent owner's availability to have a conference call with the Board. Patent Owner cannot hide behind this procedure to avoid having an issue raised with the Board by continuing to refuse to provide its availability. If it does, I will simply send my email and you can explain why Mr. Lee refused to fully confer on the record to work this out, why Mr. Lee would not provide his availability for a call with the Board when asked on the record following Dr. Goodrich's deposition, and why, in response to three emails, Patent Owner has failed to provide its availability for a conference with the Board.

>>

>> I am available at 6 PM eastern and will be at my desk if you believe that a call will move the ball forward. That said, if you are simply going to take the position that was taken during your proceedings with Ropes and Gray (i.e., the procedure outlined by Mr. Lee in his email), I disagree that this is appropriate. If that will be your position, I think we have conferred (nothing in the Board's order requires a telephonic meet and confer, and I have already attempted to confer in person, so I have no problem making the required certification). If you have some other proposal, I am willing to discuss it with you. That proposal would need to make an attempt to avoid the unnecessary burden and expense to my client of having to seal information that has no business being filed under seal. If I don't hear from you by 3:00 eastern that you would like to discuss some other proposal than the one we have seen already, I will send my email to the Board.

>>

>> Regards,

>>

>> Drew

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>>
>>
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>> -----Original Message-----
>> From: Hannah, James [mailto:JHannah@KRAMERLEVIN.com]
>> Sent: Wednesday, March 01, 2017 7:56 AM
>> To: Sommer, Andrew R. <ASommer@winston.com>; Lee, Michael H. <MHLee@KRAMERLEVIN.com>; SV Docketing <svdocketing@KRAMERLEVIN.com>; Hedvat, Shannon H. <SHedvat@KRAMERLEVIN.com>; Price, Jeffrey H. <JPrice@KRAMERLEVIN.com>
>> Cc: Winston Video Game DE Team <WinstonVideoGameDETeam@winston.com>
>> Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>>
>> Andrew,
>>
>> As you should know, the Board has ordered a specific procedure for the parties to follow before contacting the Board due to Petitioner's repeated, unilateral communications without a proper meet and confer. This process includes an identification of the issues with all relevant authority, a response to the identified issues, a telephonic meet and confer, and if the parties cannot agree to a solution, then a joint email to the Board from the parties. We believe that we should be able to resolve the issues with a telephonic meet and confer. I'm traveling today, but am available anytime after 3pm PT tomorrow for the meet and confer. To the extent we cannot come up with a solution tomorrow, we will provide edits to the joint email tomorrow evening. Please let me know when you are available tomorrow to discuss.
>>
>> James
>>
>>
>> James Hannah
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>> _____
>> From: Sommer, Andrew R. [ASommer@winston.com]

>> Sent: Tuesday, February 28, 2017 5:23 PM
>> To: Lee, Michael H.; Hannah, James; SV Docketing; Hedvat, Shannon H.; Price, Jeffrey H.
>> Cc: Winston Video Game DE Team
>> Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>>
>> Michael:
>>
>> Please provide your availability for the proposed call with the board as proposed. This approach is not consistent with the rules and it needlessly increases the costs of this proceeding contrary to rule 42.1. If you refuse to provide a time, we will notify the board accordingly.
>>
>> Andrew R. Sommer
>>
>> Winston & Strawn LLP
>>
>> 202.834.1577
>>
>> ----- Original Message -----
>>
>> Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>>
>> From: "Lee, Michael H." <MHLee@KRAMERLEVIN.com>
>>
>> Date: Feb 28, 2017, 7:20 PM
>>
>> To: "Sommer, Andrew R." <ASommer@winston.com>, "Hannah, James" <JHannah@KRAMERLEVIN.com>, SV Docketing <svdocketing@KRAMERLEVIN.com>, "Hedvat, Shannon H." <SHedvat@KRAMERLEVIN.com>, "Price, Jeffrey H." <JPrice@KRAMERLEVIN.com>
>> Counsel:
>>
>> In light of the upcoming deadlines, the entirety of each of the deposition transcripts should be filed under seal. To the extent necessary, we will file redacted versions at the appropriate time and after we have had an adequate opportunity to review the various transcripts in full.
>>
>> Thanks,
>> Michael
>>
>>
>> Michael H. Lee
>> Associate
>>
>> KRAMER LEVIN
>> NAFTALIS & FRANKEL LLP
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>> From: Sommer, Andrew R. [mailto:ASommer@winston.com]

>> Sent: Tuesday, February 28, 2017 4:53 PM

>> To: Hannah, James; Lee, Michael H.; SV Docketing; Hedvat, Shannon H.; Price, Jeffrey H.

>> Cc: Winston Video Game DE Team

>> Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials

>>

>> Counsel:

>>

>> We have not heard back from you on this request. Our replies are due one week from today. If we do not hear back from you by noon eastern tomorrow, we will send the message below to the Board requesting a conference call. We would appreciate hearing from you regarding your availability before then.

>>

>> ***DRAFT EMAIL TO BOARD***

>>

>> Your Honors,

>>

>> We write to request a conference call regarding what Petitioner views as over-designation of non-confidential deposition testimony under the protective orders entered into these proceedings. Petitioner would like to avoid the added burden and expense of having to file motions to seal deposition testimony that it does not believe is confidential. Petitioner's reply in these proceedings is due March 7th.

>>

>> Petitioner has attempted to confer with Patent Owner during a deposition and via email on three occasions and has not received a response. Petitioner is available to discuss this matter with the Board on the afternoon of March 1, on March 2nd between 9AM and 11 AM, and again between 2:30 PM and 5 PM, and Friday between 9AM and 2PM. Patent Owner is available during those times [or Patent Owner has not provided its availability in response to our several requests].

>>

>> Best regards,

>>

>> Andrew R. Sommer

>> Reg. No. 53,932

>> Counsel for Petitioner

>>

>> *****

>>

>> Regards,

>>

>> Andrew Sommer

>> Counsel for Petitioner

>>

>>

>> Andrew R. Sommer

>>

>> Partner

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>> Winston & Strawn LLP

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>>
>> [Winston & Strawn LLP]
>>
>> From: Sommer, Andrew R.
>> Sent: Monday, February 27, 2017 3:09 PM
>> To: 'jhannah@kramerlevin.com' <jhannah@kramerlevin.com>>;
'mhlee@kramerlevin.com' <mhlee@kramerlevin.com>>;
'svdocketing@kramerlevin.com' <svdocketing@kramerlevin.com>>;
'shedvat@kramerlevin.com' <shedvat@kramerlevin.com>>;
'jprice@kramerlevin.com' <jprice@kramerlevin.com>>
>> Cc: Winston Video Game DE Team
<WinstonVideoGameDETeam@winston.com>>
>> Subject: RE: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>>
>> Counsel:
>>
>> Would you please let us know Patent Owner's position on this matter by the end of the day tomorrow so that we may
plan accordingly?
>>
>> Thank you.
>>
>> Best regards,
>>
>> Andrew R. Sommer
>> Counsel for Petitioner
>>
>> Andrew R. Sommer
>>
>> Partner
>>
>> Winston & Strawn LLP
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>>
>> [Winston & Strawn LLP]
>>

>> From: Sommer, Andrew R.
>> Sent: Friday, February 24, 2017 2:19 PM
>> To: 'jhannah@kramerlevin.com' <jhannah@kramerlevin.com<mailto:jhannah@kramerlevin.com>>;
'mhlee@kramerlevin.com' <mhlee@kramerlevin.com<mailto:mhlee@kramerlevin.com>>;
'svdocketing@kramerlevin.com' <svdocketing@kramerlevin.com<mailto:svdocketing@kramerlevin.com>>;
'shedvat@kramerlevin.com' <shedvat@kramerlevin.com<mailto:shedvat@kramerlevin.com>>;
'jprice@kramerlevin.com' <jprice@kramerlevin.com<mailto:jprice@kramerlevin.com>>
>> Cc: Winston Video Game DE Team
<WinstonVideoGameDETeam@winston.com<mailto:WinstonVideoGameDETeam@winston.com>>
>> Subject: IPR Nos. 2016-00724, -00747: Request Regarding Alleged Protective Order Materials
>>
>> Counsel:
>>
>> Acceleration Bay has designated a number of entire deposition transcripts as including information that Acceleration Bay claims needs to be sealed. As was noted during Dr. Goodrich's deposition on Wednesday, Acceleration Bay has over-designated the testimony. So that we can prepare any necessary motions to seal when we file our replies on March 7th, we ask that Acceleration Bay review the following transcripts and indicate which of the pages and lines have information that must be sealed. Please also provide a brief statement about why the information needs to be sealed so that we may include it in any necessary motions to seal.
>>
>> These are the transcripts:
>>
>> IPR2016-00724-747 02-13-2017 Deposition Transcript of Evan Bourassa [Under PO]
>> IPR2016-00724 02-08-2017 Deposition Transcript of Harry Bims [Under PO]
>> IPR2016-00747 02-07-2017 Deposition Transcript of Harry Bims [Under PO]
>> IPR2016-00724 02-22-2017 Deposition Transcript of Michael Goodrich [Under PO]
>>
>> If Acceleration Bay is unwilling or unable to do this by next Friday, March 3rd, please let us know your availability for a call to discuss the matter with the Board either on the afternoon of March 1st or sometime on March 2nd.
>>
>> Regards,
>>
>> Andrew Sommer
>> Counsel for Petitioner
>>
>>
>> Andrew R. Sommer
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>> [Winston & Strawn LLP]

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