

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACTIVISION BLIZZARD, INC.,  
ELECTRONIC ARTS INC.,  
TAKE-TWO INTERACTIVE SOFTWARE, INC.,  
2K SPORTS, INC., and  
ROCKSTAR GAMES, INC.,  
Petitioner

v.

ACCELERATION BAY, LLC,  
Patent Owner

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Case IPR2016-00747  
U.S. Patent No. 6,732,147

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**PATENT OWNER'S OBJECTIONS TO EVIDENCE  
UNDER 37 C.F.R. § 42.64**

Patent Owner, Acceleration Bay, LLC ("Patent Owner") objects under the Federal Rules of Evidence and 37 C.F.R. § 42.64(b)(1) to the admissibility of the following documents submitted by Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., 2K Sports, Inc., and Rockstar Games, Inc. ("Petitioner") in its Petition for *Inter Partes* Review ("Petition"). Paper No. 2.

The Board instituted *inter partes* review on September 12, 2016 based on Shoubridge, Denes, Rufino, and Todd (each defined herein). Paper No. 12. Patent Owner's objections are timely under 37 C.F.R. § 42.64(b)(1). Patent Owner serves Petitioner with these objections to provide notice that Patent Owner will move to exclude these exhibits as improper evidence.

**I. Declaration of David R. Karger (Ex. 1003)**

Patent Owner objects to the admissibility of the Declaration of Dr. David R. Karger ("Karger Declaration") for at least the following reasons:

1. Dr. Karger's opinions are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Further, Dr. Karger is unqualified as an expert to provide technical opinions of a person having skill in the art. *See* Ex. 1003, Appendix A (*curriculum vitae* of Dr. Karger). Therefore, Dr. Karger's opinions are inadmissible under **FRE 702**.

2. Patent Owner also objects to the Karger Declaration because it does not introduce evidence of Dr. Karger's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**.
3. Patent Owner also objects to the Karger Declaration because the Karger Declaration is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
4. Petitioner has failed to authenticate any of the exhibits cited in the Karger Declaration ("the Cited Exhibits") as required under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Cited Exhibits referenced in the Karger Declaration are what Petitioner or Dr. Karger claims they are, and has failed to authenticate any of the Cited Exhibits. Further, the Cited Exhibits are not self-authenticating under **FRE 902**, are not the originals under **FRE 1002**, and are not "duplicates" under **FRE 1001(e)** and **FRE 1003**. To the extent that Dr. Karger relied on the inadmissible evidence discussed herein as part of his analysis, those portions of the Karger Declaration are also inadmissible under at least **FRE 401**, **FRE 402**, and **FRE 403**.

5. Dr. Karger's opinions are not relevant under **FRE 401** and are inadmissible under **FRE 402**. Moreover, Dr. Karger's opinions are confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.

## **II. Declaration of Scott Bennett, Ph.D. (Ex. 1004)**

Patent Owner objects to the admissibility of the Declaration of Scott Bennett, Ph.D. ("Bennett Declaration") for at least the following reasons:

1. Dr. Bennett's opinions are conclusory, do not disclose underlying facts or data in support of his opinions, and are unreliable. Further, Dr. Bennett is unqualified as an expert. *See* Ex. 1004, Exhibit A (Resume of Dr. Bennett). For example, Dr. Bennett declares that Document 21 is a copy of an alleged English translation of Document 7. However, Dr. Bennett lacks qualifications to understand and determine that a document is properly translated from Hungarian to English. Therefore, Dr. Bennett's opinions are inadmissible under **FRE 702**.
2. Patent Owner also objects to the Bennett Declaration because it does not indicate Dr. Bennett's personal knowledge of the subject matter of the testimony contained therein, rendering such testimony inadmissible under **FRE 602**. For example, Dr. Bennett does not

indicate that he personally attended the conference at which he alleges that Shoubridge was disseminated. *See* Ex. 1004 at ¶ 23–24.

3. Furthermore, Petitioner has failed to authenticate any of the attachments or documents discussed in the Bennett Declaration as required under **FRE 901** and **FRE 602**. The attachments or documents are not self-authenticating under **FRE 902**, are not the originals under **FRE 1002**, and are not a “duplicate” under **FRE 1001(e)** and **FRE 1003**.
4. Patent Owner also objects to the Bennett Declaration because the Bennett Declaration and the Attachments are hearsay under **FRE 801** and do not fall within a hearsay exception under **FRE 802** or **FRE 803**.
5. Dr. Bennett's opinions are not relevant under **FRE 401** and are inadmissible under **FRE 402**. Moreover, Dr. Bennett's opinions are confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.
6. To the extent that the Bennett Declaration references at least Document 3, Document 9, Document 10, Document 11, Document 12, Document 13, Document 14, Document 15, Document 16, Document 17, Document 19, and Document 20, and the

corresponding attachments relating to these Documents, these Documents and Attachments have no relevance to the Institution of the Petition because Petitioner does not cite them in the Petition. Therefore, these documents, and the opinions relating to these documents, are not relevant under **FRE 401** and are inadmissible under **FRE 402**. Patent Owner also objects under **FRE 403** because any reliance on these documents would be highly prejudicial to Patent Owner.

### **III. Shoubridge (Ex. 1005)**

Patent Owner objects to the admissibility of the Peter J. Shoubridge & Arek Dadej, "Hybrid Routing in Dynamic Networks," IEEE International Conference on Communications, Montreal, 1997 ("Shoubridge") for at least the following reasons:

1. The document introduces portions of writings, the whole of which were not submitted as evidence. The remainder of the writings must be submitted under **FRE 106**.
2. Petitioner has failed to authenticate Shoubridge under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Shoubridge is what Petitioner claims it is, and has failed to authenticate Shoubridge. Further, Shoubridge is not self-

authenticating under **FRE 902**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**.

3. Additionally, Patent Owner objects to Shoubridge as improper prior art because it is not an enabling disclosure.
4. Patent Owner also objects to Shoubridge because Shoubridge is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
5. To the extent that Petitioner attempts to rely on any date that appears on Shoubridge to establish public accessibility of Shoubridge as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**. Further, any date on Shoubridge has not been authenticated and is therefore inadmissible under **FRE 901**, and is not self-authenticating under **FRE 902**.
6. Accordingly, for the foregoing reasons, Shoubridge is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Shoubridge is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.

#### **IV. Rufino (Ex. 1011)**

Patent Owner objects to Jose Rufino, et al., “A Study On The Inaccessibility Characteristics Of ISO 8802/4 Token-Bus LANs,” IEEE INFOCOM '92 (1992) (Ex. 1011) (“Rufino”) for at least the following reasons:

1. The document introduces portions of writings, the whole of which were not submitted as evidence. The remainder of the writings must be submitted under **FRE 106**.
2. Petitioner has failed to authenticate Rufino under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Rufino is what Petitioner claims it is, and has failed to authenticate Rufino. Further, Rufino is not self-authenticating under **FRE 902**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**.
3. Patent Owner objects to Rufino as improper prior art because it is not an enabling disclosure.
4. Patent Owner also objects to Rufino because Rufino is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
5. To the extent that Petitioner attempts to rely on any date that appears on Rufino to establish public accessibility of Rufino as a printed

publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**. Further, any date on Rufino has not been authenticated and is therefore inadmissible under **FRE 901**, and is not self-authenticating under **FRE 902**.

6. Accordingly, for the foregoing reasons, Rufino is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Rufino is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.

#### **V. Todd (Ex. 1019)**

Patent Owner objects to T. Todd, “The Token Grid Network,” IEEE/ACM Transactions On Networking, 2.3 (June 1994): 279–287 (Ex. 1019) (“Todd”) for at least the following reasons:

1. The document introduces portions of writings, the whole of which were not submitted as evidence. The remainder of the writings must be submitted under **FRE 106**.
2. Petitioner has failed to authenticate Todd under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Todd is what Petitioner claims it is, and has failed to authenticate Todd. Further,

Todd is not self-authenticating under **FRE 902**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**.

3. Patent Owner objects to Todd as improper prior art because it is not an enabling disclosure.
4. Patent Owner also objects to Todd because Todd is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
5. To the extent that Petitioner attempts to rely on any date that appears on Todd to establish public accessibility of Todd as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**. Further, any date on Todd has not been authenticated and is inadmissible under **FRE 901** and is not self-authenticating under **FRE 902**.
6. Accordingly, for the foregoing reasons, Todd is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Todd is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.

#### **VI. Grimes Certification (Ex. 1016)**

Patent Owner objects to the admissibility of Stephen M. Grimes certification of English translation attaching English translation and original text of Tamas

Denes, "The 'Evolution' of Regular Graphs of Even Order by their Vertices,"

Matematikai Lapok, 27, 3–4 (1976/1979): 365–377 ("Denes") (Ex. 1016) ("Grimes Certification") for at least the following reasons:

1. The Grimes Certification is not a proper translation as required under **37 C.F.R. § 42.63(b)**.
2. Patent Owner also objects to the Grimes Certification because the Grimes Certification does not meet the requirements set forth under **37 C.F.R. § 1.68**.
3. The Grimes Certification is hearsay under **FRE 801** and inadmissible under **FRE 802** or **FRE 803**.
4. Patent Owner objects to the attachments to the Grimes Certification as not properly authenticated under **FRE 901**, not self-authenticating under **FRE 902**, and not the original under **FRE 1002**. Further, the attachments are not self-authenticating under **FRE 902**, are not the original under **FRE 1002**, and are not "duplicates" under **FRE 1001(e)** and **FRE 1003**.
5. Further, the attachments to the Grimes Certification introduce portions of writings, the whole of which were not submitted as evidence. The remainder of the writings must be submitted under **FRE 106**.

6. Accordingly, for the foregoing reasons, the Grimes Certification is not relevant under **FRE 401** and is inadmissible under **FRE 402**.

Moreover, the Grimes Certification is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.

## **VII. Denes (Ex. 1017)**

Patent Owner objects to the admissibility of Tamas Denes, “The ‘Evolution’ of Regular Graphs of Even Order by their Verticies,” *Matematikai Lapok*, 27, 3–4 (1976/1979): 365–377 (Ex. 1017) (“Denes”) for at least the following reasons:

1. Patent Owner incorporates the objections stated in the preceding objections (“VI. Grimes Certification”).
2. The document introduces portions of writings, the whole of which were not submitted as evidence. The remainder of the writings must be submitted under **FRE 106**.
3. Petitioner has failed to authenticate Denes under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that Denes is what Petitioner claims it is, and has failed to authenticate Denes. Further, Denes is not self-authenticating under **FRE 902**, not the original under **FRE 1002**, and not a “duplicate” under **FRE 1001(e)** and **FRE 1003**.

4. Patent Owner objects to Denes as improper prior art because it is not an enabling disclosure.
5. Patent Owner also objects to Denes because Denes is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**.
6. To the extent that Petitioner attempts to rely on any date that appears on Denes to establish public accessibility of Denes as a printed publication, the date is hearsay under **FRE 801** and does not fall within a hearsay exception under **FRE 802** or **FRE 803**. Further, the date has not been authenticated and is inadmissible under **FRE 901** and is not self-authenticating under **FRE 902**.
7. Accordingly, for the foregoing reasons, Denes is not relevant under **FRE 401** and is inadmissible under **FRE 402**. Moreover, Denes is confusing, of minimal probative value, outweighed by prejudice, and/or a waste of time and therefore inadmissible under **FRE 403**.

#### **VIII. Declaration of Steven Silvio Pietrobon (Ex. 1006)**

Patent Owner objects to the admissibility of the Declaration of Steven Silvio Pietrobon (Ex. 1006) ("Pietrobon Declaration") for at least the following reasons:

1. Mr. Steven Pietrobon's opinions are inadmissible because they are conclusory, do not disclose underlying facts or data in support of his

opinions, and are unreliable. Additionally, Mr. Steven Pietrobon is unqualified as an expert. As such, his opinions are inadmissible under **FRE 702**.

2. Moreover, Petitioner has failed to authenticate the Shoubridge Thesis through the Pietrobon Declaration or through his supporting exhibits A–F under **FRE 901** and **FRE 602**. Specifically, Petitioner has failed to establish that the Shoubridge Thesis referenced in the Pietrobon Declaration is what Petitioner and Mr. Pietrobon claim it is, and has therefore failed to authenticate the Shoubridge Thesis.
3. Additionally, Patent Owner objects to the Shoubridge Thesis as improper prior art because it is not an enabling disclosure.
4. Patent Owner also objects to the Pietrobon Declaration because the Pietrobon Declaration, along with the exhibits cited therein, are hearsay under **FRE 801** and inadmissible under **FRE 802** or **FRE 803**.
5. Accordingly, the Pietrobon Declaration is not relevant under **FRE 401** and is inadmissible under **FRE 402** and **FRE 403**.

## **IX. Objections to Exhibits Not Cited in Petition**

Patent Owner objects to the admissibility of Exs. 1007, 1009, 1012, 1027, 1031, 1101–1103, which Petitioner did not rely on in its Petition, for at least the following reasons:

1. Patent Owner objects to Exs. 1007, 1009, 1012, 1027, 1031, 1101–1103 as irrelevant under **FRE 401** and **FRE 402** because Petitioner did not rely on these exhibits in its Petitioner. Accordingly, any reliance on these exhibits would be unfairly prejudicial to Patent Owner under **FRE 403**.
2. Further, Patent Owner objects to Exs. 1007, 1009, 1012, 1027, 1031, 1101–1103 under **FRE 901** and **FRE 602** because Petitioner has failed to establish that Exs. 1007, 1009, 1012, 1027, 1031, 1101–1103 are what Petitioner claims they are, and has failed to authenticate these Exhibits.
3. Patent Owner also objects to Exs. 1007, 1009, 1012, 1027, 1031, 1101–1103 because they are hearsay under **FRE 801** and do not fall within a hearsay exception under **FRE 802** and/or **FRE 803**.

**X. Objections to Exhibits Not Instituted by the Board**

Patent Owner objects to the admissibility of U.S. Patent No. 5,802,285 (“Hirviniemi”) (Ex. 1021) and U.S. Patent No. 4,700,185 (“Balph”) (Ex. 1022) for at least the following reasons:

1. Patent Owner objects to Hirviniemi and Balph as irrelevant under **FRE 401–403** because the Board did not institute IPR based on these Exhibits.
2. Further, Patent Owner objects to Hirviniemi and Balph as improper prior art because neither are enabling disclosures.

Further, Patent Owner objects to the admissibility of Exhibits 1006, 1008, 1010, 1013–1015, 1018, 1020, 1023, 1028–1030 for at least the following reasons:

1. Patent Owner objects to Exhibits 1006, 1008, 1010, 1013–1015, 1018, 1020, 1023, and 1028–1030 as irrelevant under **FRE 401** and **FRE 402**. Patent Owner also objects under **FRE 403** because any reliance on these Exhibits would be unfairly prejudicial to Patent Owner because the Board did not institute IPR based on these Exhibits.
2. Patent Owner objects to Exhibits 1006, 1008, 1010, 1013 – 1015, 1018, 1020, 1023, and 1028–1030 because Petitioner has failed to authenticate these exhibits under **FRE 901** and **FRE 602**.

Specifically, Petitioner has failed to establish that Exhibits 1006,

1008, 1010, 1013–1015, 1018, 1020, 1023, and 1028–1030 are what  
Petitioner claims they are, and has failed to authenticate Exhibits  
1006, 1008, 1010, 1013–1015, 1018, 1020, 1023, and 1028–1030.

3. Patent Owner also objects to Exhibits 1006, 1008, 1010, 1013 – 1015,  
1018, 1020, 1023, and 1028–1030 because they are hearsay under  
**FRE 801** and do not fall within a hearsay exception under **FRE 802**  
and/or **FRE 803**.

## **XI. Conclusion**

Therefore, Patent Owner reserves its right to file motions to exclude these  
exhibit and evidence under 37 C.F.R. § 42.64(c).

Respectfully submitted,

Dated: September 26, 2016

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Patent Owner's Objections to Evidence  
IPR2016-00747 (U.S. Patent No. 6,732,147)

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(Case No IPR2016-00747)

*Attorneys for Patent Owner*

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that a true and correct copy of the foregoing Patent Owner's Objections to Evidence Under 37 C.F.R. § 42.64 was served on September 26, 2016, by filing this document through the Patent Review Processing System as well as delivering via electronic mail upon the following counsel of record for Petitioner:

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