

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.,

Petitioners

v.

ACCELERATION BAY, LLC,  
Patent Owner

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Case IPR2016-00747  
Patent 6,732,147

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**PATENT OWNER'S MOTION FOR ENTRY OF THE DEFAULT  
PROTECTIVE ORDER AND TO SEAL CERTAIN EXHIBITS UNDER 37  
C.F.R. §§ 42.14 AND 42.54**

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner, Acceleration Bay, LLC, (“Acceleration Bay”) hereby moves for entry of the Default Protective Order and to seal portions of its Patent Owner Response and certain Exhibits (collectively referred to herein as the “Subject Exhibits”) to Acceleration Bay’s Patent Owner Response which are identified below:

<b>Filing/Exhibit<sup>1</sup></b>	<b>Content</b>	<b>Section</b>	<b>Confidential Information<sup>2</sup></b>
<b>Paper 24</b>	Patent Owner Response	Redacted portions on Page 6	Contains highly confidential information regarding internal research and development efforts of a third party, including internal project codenames which the third party has deemed confidential information.

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<sup>1</sup> Pursuant to the Board’s instructions, confidential and non-confidential versions of Patent Owner’s Response and the Subject Exhibits are concurrently filed herewith. With respect to Patent Owner’s Response, the confidential version is filed as Paper 24 and the non-confidential version is filed as Paper 25.

<sup>2</sup> Further details regarding the confidential information regarding each of the filings and exhibits identified in this chart are explained *infra* at § I.

<b>Filing/Exhibit<sup>1</sup></b>	<b>Content</b>	<b>Section</b>	<b>Confidential Information<sup>2</sup></b>
<b>Exhibit 2004</b>	Declaration of Dr. Harry Bims in Support of Patent Owner's Response with Appendix A ( <i>Curriculum Vitae</i> of Dr. Harry Bims)	¶ 27	Contains highly confidential information regarding licensing practices of a third party, including names and licensing terms which the third party has deemed confidential information.
		¶ 41	Contains highly confidential information regarding internal research and development efforts of a third party, including internal project codenames and project details which the third party has deemed confidential information .
<b>Exhibit 2006</b>	Declaration of Virgil Bourassa in Support of Patent Owner's Response	¶¶ 3-4, 7-8, 15, 35-36, 39-40	Contains highly confidential information regarding internal research and development efforts of a third party, including internal project codenames and project details which the third party has deemed confidential information.

<b>Filing/Exhibit<sup>1</sup></b>	<b>Content</b>	<b>Section</b>	<b>Confidential Information<sup>2</sup></b>
<b>Exhibit 2008</b>	Boeing Invention Disclosure Form (19 pages)	Pages 1-2, 5, 7-19	Contains highly confidential information regarding internal research and development efforts of a third party, including internal project codenames and project details which the third party has deemed confidential information.
		Pages 1-19	Contains highly confidential information regarding personal information of a third party.
		Page 1	Contains highly confidential information regarding business information of a third party, including identification of the third party's potential and existing business relationships which the third party has deemed confidential information.

<b>Filing/Exhibit<sup>1</sup></b>	<b>Content</b>	<b>Section</b>	<b>Confidential Information<sup>2</sup></b>
<b>Exhibit 2009</b>	Patent License Agreement between Boeing Management Company and Sony Computer Entertainment America Inc.	Pages 1, 4, 5	Contains highly confidential information regarding licensing practices of a third party, including names and licensing terms which the third party has deemed confidential information.

**I. GOOD CAUSE EXISTS FOR SEALING CERTAIN CONFIDENTIAL INFORMATION**

The Board’s standards for granting motions to seal are discussed in *Garmin International v. Cuozzo Speed Technologies, LLC*, IPR2012-00001 (Paper 34 at 4-5, Mar. 14, 2013). The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54(a). The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). In particular:

The rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.

\* \* \*

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.

35 U.S.C. § 316(a)(7); 37 C.F.R. § 42.54; Office Trial and Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012).

Acceleration Bay's Patent Owner Response and the Subject Exhibits contain confidential information requiring that they be designated as "PROTECTIVE ORDER MATERIAL" under Default Protective Order (attached hereto as Exhibit A). The Patent Owner Response and Subject Exhibits each contain highly confidential information of a third party. Specifically, each discuss and reveal confidential information regarding either or both (1) The Boeing Company's ("Boeing") licensing practices including highly sensitive information relating to the terms of certain licenses and (2) highly confidential internal information relating to the conception and development of the subject patent including an Invention Disclosure Form by the inventors and first assignee, Boeing. The confidential information disclosed in the Patent Owner Response and each of the Subject Exhibits is outlined in the chart above.

The sealing of the foregoing is of particular importance because the public disclosure of such "truly sensitive information" would impact Boeing's competitive position in the market. In particular, information regarding certain Boeing licenses, and the internal research and development efforts and strategies at Boeing, would allow competitors to access information that would significantly harm Boeing's competitive position in the marketplace.

Furthermore, and notwithstanding the foregoing, granting this Motion would not prejudice nor impact this underlying proceeding. The public's interest in accessing the information requiring that the limited identified portions of the Patent Owner Response and Subject Exhibits be sealed for the purposes of the patentability of the challenged claims is unquestionably outweighed by the prejudicial effect and competitive harm of disclosing the above described confidential business information of third party, Boeing.

## **II. CERTIFICATION OF NON-PUBLICATION**

To the best of Acceleration Bay's knowledge, the confidential information contained in the Patent Owner Response and the Subject Exhibits has not been made publically available.

## **III. CERTIFICATION OF CONFERENCE WITH OPPOSING PARTY PURSUANT TO 37 C.F.R. § 42.54**

Acceleration Bay, in good faith, met and conferred with Petitioner regarding the scope of the Default Protective Order. Petitioner does not object to the entry of the Default Protective Order.

## **IV. PROPOSED PROTECTIVE ORDER**

Acceleration Bay proposes that the Default Protective Order found in Appendix B of the Trial Practice Guide be entered. A copy of the Default Protective Order is concurrently filed herewith and attached hereto as Exhibit A. Petitioner does not object to the entry of the Default Protective Order.

**V. CONCLUSION AND RELIEF REQUESTED**

Accordingly, good cause exists to warrant entry of the Default Protective Order and to seal Acceleration Bay's Patent Owner Response and the Subject Exhibits from public disclosure.

Respectfully submitted,

Dated: December 12, 2016

/James Hannah/

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(Case No. IPR2016-00747)

*Attorneys for Patent Owner*



# **EXHIBIT A**

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACTIVISION BLIZZARD, INC.,  
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**PROPOSED STIPULATED PROTECTIVE ORDER**

This standing Protective Order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) *Parties*. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) *Party Representatives*. Representatives of record for a party in the proceeding.

(C) *Experts*. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by such a competitor with respect to the subject matter of the proceeding.

(D) *In-house counsel*. In-house counsel of a party.

(E) *Other Employees of a Party*. Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel’s support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential

information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

(F) *The Office*. Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

(G) *Support Personnel*. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

3. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

4. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) *Documents and Information Filed With the Board.*

(i) A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) *Documents and Information Exchanged Among the Parties.* Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

(j). *Standard Acknowledgement of Protective Order.* The following form may be used to acknowledge the Protective Order and gain access to information covered by this Protective Order:

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**Standard Acknowledgment for Access to Protective Order Material**

I, \_\_\_\_\_, affirm that I have read the Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Signed \_\_\_\_\_



**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 Motion for Entry of the Default Protective Order and to Seal Certain Exhibits under 37 C.F.R. §§ 42.14 and 42.54 was served on December 12, 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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