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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
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Date	04/10/2013
Attachments	MotionToVacate.pdf (5 pages)(59074 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

In the Matter of Registration No. 3,105,816
For the Trademark EDGE
Issued June 20, 2006

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

**EA DIGITAL ILLUSIONS CE AB, a Swedish
Corporation; ELECTRONIC
ARTS INC., a
Delaware corporation,
Petitioners,**

V.

**EDGE GAMES, INC., a California corporation
and FUTURE PUBLISHING LTD a UK
corporation**

Co-Registrants/Co-Defendants.

**MOTION TO VACATE
BOARD DECISION
DATED APRIL 9, 2013
AND/OR REQUEST FOR
RECONSIDERATION**

Cancellation No. 92051465

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

1. By April 8, 2013 the Board had two live, timely and perfectly valid new Motions before it: one Motion to Confirm the District Court Judgment and Final Order as Void, and one Motion to Dismiss the Instant Proceedings.

2. While the Board has broad discretion as an administrative body, it does not have the discretion to completely ignore two live, valid motions before it before making a final decision in this case – not least when both of the new Motions before it have direct bearing on the final decision (and if either Motion had been granted then the Board could not and would not have made the final decision it indicated in its April 9, 2013 Letter).

3. Most pertinently, the Board has accepted certified copies of a District Court Order and Judgment that the Board is fully aware from inspection of the public record are entirely invalid documents, void on their face. Thus to completely ignore the Motion before the Board calling for the Board to use a modicum of common sense and to follow basic law to confirm the Court Judgment and Order as void, seems at the very least inequitable, unfair, unlawful and lacking in due diligence and fair treatment of the parties to this action. The Motion to Confirm the Court Judgment and Orders as Void was filed well before the Board made its April 9, 2013 decision, and thus Co-Defendant/Co-Registrant Edge Games, Inc (“EDGE”) had every right to have that Motion properly considered and ruled upon by the Board before the Board made any final decision in this case.

4. EDGE also notes that both Petitioners and Co-Defendant Future Publishing Ltd filed a formal Reply to EDGE’s Motion to Confirm the Court Judgment and Orders as Void (see Docket #91 and #92), and by filing a formal response to the Motion the Petitioners and Co-Defendant confirmed the Motion valid and one that the Board was obligated to fully consider and rule upon before arriving at a final decision in these proceedings. Indeed, EDGE still has a number of days left to it in regard to the Motion to Confirm before the Board should be starting to fully consider this valid and live Motion. The Motion to Confirm was thus timely (in that it was filed before a final decision was

rendered) and the Board is obligated to consider and rule on it before making a final determination in this case.

5. The Motion to Dismiss, filed April 8, 2013, was also filed before the Board's final decision dated April 9, 2013, and thus this entirely valid and timely Motion (in that it was filed before the Board rendered its April 9th Decision) should also be fully and fairly considered and ruled on by the Board before the Board makes its final decision in this case. If the Board finds, as EDGE is certain that it will do, that this Motion to Dismiss is valid, and that the proceedings should have been dismissed in 2009 when EDGE first filed its Affirmative Defense calling for dismissal of these proceedings, then the Board will realize that as of April 9, 2013 the Board had no standing to make a final decision in a case that should have been dismissed in 2009.

6. The Board had no right or authority to consider Petitioners or Co-Defendants filing of the 2010 District Court Judgment and Orders, since the Board should not have been considering the instant Cancellation proceedings at the time Petitioners filed said Court documents, and certainly not by the time that the Petitioners first filed certified copies of said 2010 Judgment and Orders (which by the Board's own confirmation on March 8, 2013 (Docket #84) the Board stated it should never have been considering until it received in certified form, anyway). The Board was thus obligated to ignore all filings by either Petitioners or Co-Defendant Future in regard to the 2010 District Court Judgment and Orders since the instant proceedings should have been terminated shortly after their commencement in 2009, should have been terminated before Petitioners filed certified copies of the 2010 Judgment and Orders, and certainly should have been terminated before the Board made a final decision on April 9th based on entirely invalid and void Court Judgments and Orders.

7. EDGE thus asks that the Board vacate the decision that it made on April 9, 2013 and that the Board fully consider and rule on the two live and timely Motions before it – one to Confirm the 2010 Court Judgment and Orders Void, and one to Dismiss the Proceedings – before the Board makes any final decision in this case based on the invalid and void 2010 Court Judgment and Orders. Should the Board fail to take this reasonable

and correct course then EDGE will be compelled to Appeal the decision and will be assured of prevailing on appeal due to the Board's failure to follow proper procedure, failing to consider and rule on live and timely Motions before it, and the Board's failure to accept the 2010 Court Judgment and Orders as void even though it is patently obvious to anyone inspecting them that they are clearly void.

Date: April 10, 2013

Respectfully submitted,

By: 

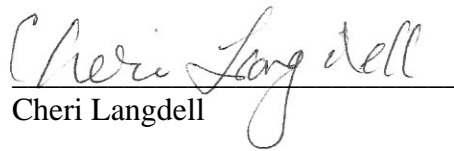
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Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of Defendant Edge Games Inc's Motion to Vacate the Board Decision / Request For Reconsideration was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 10th day of April, 2013:

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