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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	04/11/2013
Attachments	AddendumMotionToDismiss.pdf (4 pages)(61364 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,	)	**MOTION TO DISMISS PROCEEDINGS AND/OR REQUEST FOR RECONSIDERATION OF BOARD'S EARLIER RELATED DECISION(S)**
Petitioners,	)	
v.	)	**(ADDENDUM)**
EDGE GAMES, INC., a California corporation and FUTURE PUBLISHING LTD a UK corporation	)	**Cancellation No. 92051465**
Co-Registrants/Co-Defendants.	)	

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

1. In Co-Defendant Edge Games Inc's ("EDGE") second *Motion to Dismiss* the instant proceedings (Docket #93) two grounds were identified as to why these proceedings should have been dismissed in EDGE's favor in 2009 or in the worse case in October 2010: (a) that inspection of the record shows that Petitioners never had an interest that was necessary for them to have standing to file this petition[1] and (b) the 2008 District Court Final Order confirmed the two grounds on which the petition was filed had been already fully litigated and ruled upon in EDGE's favor, meaning the Board was obliged to dismiss the instant proceedings on the basis of Non-Mutual Defensive Collateral Estoppel.

2. In filing its *Amended Motion to Vacate* the Board's Decision of April 9, 2013, EDGE was reminded that on November 15, 2010 Petitioners formally withdrew they prior Request For Entry Of Judgment based on the 2010 District Court Final Order (Docket #33). In reviewing this EDGE was further reminded that the reason Petitioners had to withdraw their October 2010 Request (Docket #28) was because it is Petitioners' position that by settlement between the parties it was contractually agreed that EDGE would be deemed not to have committed fraud on the USPTO, and that EDGE would be deemed not to have abandoned any of its five registered marks referenced herein.

3. Since Petitioners are on record as withdrawing their Request for Entry of Judgment Based on the District Court Order for the reason that Petitioners contractually agreed that EDGE had not committed fraud or abandoned its marks, then for this reason, too, the Board should have terminated these proceedings in EDGE's favor (on a *with prejudice* basis) at least on November 15, 2010 at the point when by Petitioners' own version of events Petitioners had contractually agreed that both (sole) grounds for filing the instant petition had gone away.

4. For this reason, too, then the Board should have dismissed these proceedings by no later than November 15, 2010 having received effective confirmation from Petitioners that the parties had contractually agreed that EDGE was not guilty of either of the allegations made against it by Petitioners in the instant petition.

[1] Or in the alternate that interest either went away entirely in June 2010 when they were granted registration of their mark MIRROR'S EDGE or in October 2010 when Petitioners received an unequivocal statement from EDGE that EDGE did not object to Petitioners' use of the mark MIRROR'S EDGE nor would EDGE ever invoke its "Edge" registrations against Petitioners in regard to the mark MIRROR'S EDGE.

5. While Petitioners might argue that they only agreed to withdraw their Request For Judgment (Docket #28) because they believed that EDGE was filing Section 7 Surrenders, that argument is without merit since the fact remains that EDGE's Section 7 Surrenders were not valid for the exact same reason that the 2010 District Court Final Order is not valid – namely, because Future had to be a party to both the Court action and the Section 7 Surrenders for either to be valid[2]. Thus the fact that EDGE's Section 7 surrenders were not valid, and hence the Board rightly should not cancel any marks co-owned by EDGE and Future, does not reverse Petitioners' withdrawal of their Request for Judgment, or the fact that it had already been determined by at the latest November 15, 2010 that the sole two grounds Petitioners alleged in the petition had gone away as a result of the contractual settlement that Petitioners have attested to the Board was entered into in October 2010.

6. Consequently, this is a third reason that the Board should have terminated these proceedings in EDGE's favor on a *with prejudice* basis either in 2009 when EDGE first correctly invoked Defensive Collateral Estoppel, or in June 2010 (or worse case October 2010) when Petitioners' "interest" to claim standing to petition went away (if it ever existed). Or in worse case in November 2010 when Petitioners withdrew their Request for Judgment and the Board thus had confirmation in real terms that the sole two grounds of this petition had been decided in EDGE's favor as a result of the settlement that Petitioners claim was reached in October 2010.

Date: April 11, 2013

Respectfully submitted,

By: _____

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[2] Indeed, EDGE reminds the Board again that this is the reason that upon EDGE trying to file its invalid Section 7 Surrenders, the Board compelled Future into these proceedings as a co-defendant acknowledging that these proceedings would not be valid unless Future was a named party to them.

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 Addendum to Motion to Dismiss was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 11th day of April, 2013:

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