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

Proceeding	92058543
Party	Plaintiff Edge Games Inc
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Date	04/18/2015
Attachments	PetitionersReplyToRegistrantsMotionToDismiss.pdf(4382220 bytes )

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

<b>EDGE GAMES, INC.,</b> <b>Petitioner</b>	}	<b>Cancellation No 92058543</b>
<b>v.</b>	}	<b>Registration No. 4394393</b> <b>Mark “EDGE”</b>
<b>RAZER (ASIA-PACIFIC) PTE LTD</b> <b>Registrant.</b>	}	

**PETITIONER’S REPLY TO REGISTRANT’S MOTION  
TO DISMISS; PETITIONER’S MOTION TO WITHDRAW  
ADMISSIONS AND FILE AMENDED RESPONSES PER FRCP 36(b)**

Comes Petitioner Edge Games, Inc. (“Petitioner”) responding to Registrant’s Motion for Summary Judgment. Petitioner is not able to provide a full response at this time since evidence or testimony crucial to Petitioner’s full response is still being obtained. For this reason, having gained the Board’s permission, Petitioner has filed concurrently a Motion under FRCP 56(d) requesting that if the Board is unable to render a decision at this time in favor of Petitioner on Registrant’s motion on the basis of excusable neglect, then the Board grant a deferment of any decision on Registrant’s motion until such time as the evidence and testimony referenced in the 56(d) motion has been obtained and filed for the Board to consider along with any amended version of this Reply occasioned by that evidence.

**I. INTRODUCTION**

**A. Factual History and Background**

In essence, this case is very simple and the facts clearly indicate that there these proceedings must ultimately conclude with the Board ruling in Petitioner’s favor on the

Petition to Cancel. Quite simply, Registrant has already admitted in these proceedings that it made first use in United States commerce of the mark in question on March 29, 2013 (see **Exhibit 1A** which is Registrant's response to Petitioner's Interrogatory No. 3), some 1-2 years after Registrant applied to register the mark in the USPTO. Petitioner, by contrast, is the true historic owner of the mark in question (EDGE) for the goods in question (games computers and the directly related goods of game computer tablets), and for all directly related goods, having extensive and continuous use of the same mark for the same goods and services in United States inter-state commerce since at least 1998 through Petitioner's licensee Velocity Micro, and since 1984 through its own use. While Petitioner also has its own direct use of the mark EDGE in United States commerce for computer game related goods, the use Petitioner has through its licensee Velocity conclusively proves Petitioner's case and will be primarily relied upon to prove Petitioner's case.

Registrant has responded to Petitioner's First Sets of Request for Production of Documents, Request for Admissions and First Set of Interrogatories. What Registrant's responses, along with the documents that Registrant has produced, make clear that Registrant never used the mark EDGE in United States commerce prior to October 4, 2012. Registrant's US trademark application was based on a foreign (Singapore) registration for the same mark, which was registered on April 17, 2012.

By contrast (see Declaration by Dr Tim Langdell attached hereto as **Exhibit A**), Petitioner's use of the mark through its licensee Velocity in United States commerce has been continuous since at least 1998 and extensive, with well in excess of \$10 million of game computers sold in inter-state commerce. Moreover, as the declaration also confirms, Petitioner's use of the mark directly and through its licensee Velocity has been through the

same or essentially the same channels of trade as any use by Registrant, to the same demographic of U.S. consumers as Registrant.

**(i) Petitioner not only has priority of use over Registrant, but Petitioner also has priority filing date over Registrant with the USPTO for the EDGE mark**

The history of Registrant's application for the mark and Petitioner's applications for the same mark go to proving that Petitioner has been vigilant in policing its mark EDGE for such goods as game computers and game computer tablets. Registrant applied to register the mark EDGE for game tablets on April 17, 2012, almost exactly two years after Petitioner applied to register its mark EDGE GAMES on October 10, 2010 (Serial No. 85147499). Despite Petitioner having clear priority of filing, being even earlier than Registrant's claimed foreign registration date, unfortunately the USPTO mistakenly permitted Registrant's 2012 application to go forward to publication ahead of Petitioner's 2010 application, and failed to properly cite Petitioner's application against Registrant's application. Now, unfairly, Registrant's registration of the mark EDGE is preventing Petitioner from gaining registration of its own mark, EDGE GAMES, which will not be permitted to move forward to publication until Registrant's mark is cancelled.

When Petitioner became aware that the examiner handling Registrant's application had approved it for publication without citing Petitioner's earlier filed EDGE application against it, Petitioner immediately filed a timely Letter of Protest with the Commissioner's Office. This Letter of Protest is one that would normally be granted, and would have placed Registrant's application back in a pre-publication, pending, status with Petitioner's earlier filed application for EDGE cited against it. However, the Commissioner's Office made a

clerical error and did not process the Letter of Protest until late 2013, after the mark had already been wrongly permitted to mature to registration.

When the Commissioner's Office failed to timely act on the Letter of Protest, Petitioner filed what it understood to be a timely Notice of Opposition, which was filed on paper well within the 30-day time period permitted from the date of publication. However, what Petitioner was not aware of is that apparently where a US trademark application is filed based on an overseas registration then all notices of opposition must be filed electronically. Accordingly, Petitioner's opposition to Registrant's application was not considered by the USPTO even though it was signed for as received at the USPTO well within the 30-days from date of publication.

Once Registrant's mark registered, Petitioner was left with no option other than to petition to cancel the mark, even though it would certainly have been granted its Letter of Protest had it been properly processed, and would have prevailed in its Opposition had that been considered. At the least, then, the Board can appreciate that Petitioner has been very vigilant and it is only through a combination of USPTO clerical error and Petitioner clerical error that we come to have these proceedings. Most important, the fact that Registrant has been enjoying the benefits of registration of the mark since September 2013, and the fact Registrant currently enjoys the registration status, should not be taken as any *prima face* indication of Registrant having priority of rights over Petitioner, indeed the very opposite is true.

In fact, Petitioner's chances of prevailing in these proceedings if they are fully heard on the merits should be certain. This assertion will be proven by the evidence Petitioner is collecting through subpoena: hence the concurrent application for the 56(d) motion.

**(ii) Clearly, Petitioner did not intend to admit any of Registrant's Requests for Admission And Such Effective Admissions Do Not Reflect The Truth.**

While Petitioner received Registrant's Request for Admissions in February, it was Petitioner's understanding that the 30-day period within which to serve responses was a guideline, not a firm deadline that, if missed, could lead to a basis for arguing the requests had been admitted to by default. As the Board is aware, the parties had been through over 5 months of discussions in which Petitioner had been trying to persuade Registrant to serve its proper responses to Petitioner's initial Requests (including Request for Admissions) since last September when Registrant's responses were due. At all times, the Board had indicated that the proper course of action to take should a party not have fully responded to Discovery Requests is to patiently persist, and only after number of reasonable attempts should the other party file a motion to compel.

Petitioner thus understood that should it miss the 30-day deadline by some days, Registrant would be required by the Board to reasonably seek to be served with the responses by making further requests on Petitioner substantially before any motion would be filed. Further, Petitioner was unaware that it was possible for Registrant to argue Petitioner had admitted the requests by default just for being a few days later in serving them, and believed that what Registrant would do if Petitioner had still not responded after some lengthy period of time would be to file a motion to compel response. Since Petitioner was on schedule to serve its responses well before such a motion would be filed, Petitioner did not appreciate that would be any problem with the timing.

In addition, since Registrant's Request for Admissions pertained in large part to facts that are only known by Petitioner's licensee, Velocity, Petitioner understood that it was entirely reasonable that Petitioner request of Registrant additional time to serve its responses to

Admission Requests, given that Petitioner would need time to contact the licensee and gain the answers Registrant was asking for. For this reason, Petitioner informed Registrant that it would be serving its Responses to the Request for Admissions on March 31, 2015 – which is precisely what Petitioner did do (see **Exhibit 1B** hereto).

Petitioner’s responses to Registrant’s Requests for Admission were thus served on Registrant (March 31<sup>st</sup>) a matter of days after Registrant alleges they were due (March 12<sup>th</sup>). In considering an excusable neglect basis the Board will wish to take into account the delay in question, and here it is clearly small. By contrast, while Registrant provided Petitioner with its initial responses on Discovery in September 2014, those responses were woefully incomplete and unacceptable. As is a matter of record, Registrant finally served at least someone more acceptable responses on Petitioner – including Registrant’s response to Petitioner’s Request for Admissions -- on or about February 27, 2015 – some five months after they were due. By comparison, then, the delay in Petitioner serving its admission responses was very minor indeed.

### **FIRST GROUNDS FOR DISMISSING REGISTRANT’S MOTION – EXCUSABLE NEGLIGENCE**

There was then excusable neglect on Petitioner’s part which should deny Registrant the right to deem the requests to have been admitted by default, and should extend the time Petitioner had to respond until at least the day it did respond, namely March 31, 2015. When considering excusable neglect the Board relies on the Supreme Court’s decision in *Pioneer Investment Services Co v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993). There the Supreme Court defined the inquiry into excusable neglect as:

*“...at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include ...[1] the danger of prejudice to the [party claiming service was late], [2] the length of the delay and its*

*potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable controls of the [party who was late], and [4] whether the [party that was late] acted in good faith.”*

Id. At 395.

Here, Registrant is in no danger of being prejudiced by the fact Petitioner served its responses to Registrant’s Request for Admissions a few days late. It does not impact discovery since discover has yet to close, and any impact of the delay can be compensated for by extending the discovery deadlines. As to the length of delay, this was nominal. As to the reason for the delay, as mentioned above, it was in part brought about by Registrant asking extensive questions about Petitioner’s licensees which required Petitioner to contact its licensees in order to properly answer the Requests. This naturally added some time, quite reasonably, to the period it took to compile and serve responses. The delay was thus entirely reasonable and – since it was caused by the nature of the Requests Registrant decided to make – was outside the control of Petitioner who was unable to avoid the delay or shorten it.

Indeed, as can be seen by the fact Petitioner subsequently found it necessary to issue subpoenas in order to gain the information Registrant requested, some delay was entirely to be expected. As to whether Petitioner acted in good faith, it is clear that Petitioner did act in good faith. These four considerations thus go in Petitioner’s favor, and thus as the Supreme Court indicated, excusable neglect should be ruled in Petitioner’s favor.

Accordingly, the time for Petitioner to serve its admissions should be extended in equity and fairness to March 31, 2015, being the date they were served on Registrant. And these responses, not the effective responses claimed by Registrant, should be deemed to be those in these proceedings.

## **SECOND GROUNDS FOR DISMISSING REGISTRANT’S MOTION – MOTION TO WITHDRAWN EFFECTIVE ADMISSIONS AND SUBMIT ACTUAL ADMISSIONS**

In the alternative, if the Board denies Petitioner’s request based on excusable neglect, then Petitioner moves herein to withdraw the automatically admitted (‘effective’) responses, and submit amended (‘actual’) responses (see **Exhibit 1B** to the attached declaration by Dr Langdell). The law relating to this, clarification of Petitioner’s grounds, and the motion necessitated, are as follows.

### **B. Summary Judgment Standard**

Summary judgment is only appropriate, as Registrant concedes in its moving paper, “*where the moving party establishes that there is no genuine issues of material fact which require resolution at trial*” and then, and only then, movant is entitled to judgment as a matter of law. Here that standard is not met and Registrant’s motion should thus be denied: there can be no doubt that Petitioner did not intend to admit to any of the requests for admission. Further, there is a sizable amount of evidence yet to be considered by the Board which will prove beyond all doubt Petitioner’s extensive and historic rights in EDGE and several variants thereof, and that Petitioner’s mark may well be famous for the purposes of federal dilution law (see the concurrently filed 56(d) motion requesting permission to collect this evidence before providing the full response to Registrant’s motion). Summary judgment should rarely, if ever, be granted under circumstances such as those present here.

The criteria the Board should consider include: how late did the non-moving party serve its response to the Request for Admissions? Is there evidence that if the proceedings were to go forward to trial on the merits, would the non-moving party have some likelihood of prevailing such that it would be inequitable and unjust to grant the summary judgment request by the movant? If these criteria are met, and here they are met *in Petitioner’s favor*, then there are

prior Board decisions of precedence that indicate the Board should either accept Petitioner's served responses as the sole recognized responses on the grounds of excusable neglect (and thus accept the responses served on March 31, 2015 as timely), or the Board should grant Petitioner's motion herein to withdraw the defaulted admissions and permit Petitioner's amended responses.

## **II. ARGUMENT**

Registrant's Motion to Dismiss should be denied. Petitioner's claims are not as Registrant summarized them in its motion. Petitioner's first claim based on rights arises from Petitioner's extensive use in United States inter-state commerce since 1984, and in particular since 1998, for the mark EDGE and for the goods in question (game computers), and that such use has been continuous. The prior registrations are referenced only to buttress and support Petitioner's assertion that its rights in the mark EDGE arising from extensive use are well established and have from time to time been affirmed by Petitioner's various EDGE US trademark registrations. This claim also relies on the demonstrable fact that while Petitioner does not have all of its previously registered EDGE marks at this time, this fact does not reflect Petitioner ever having abandoned or lost its rights in the mark EDGE. On the contrary, the voluntary cancellation of the prior registrations was on condition that none be deemed canceled as a result of abandonment through non-use on Petitioner's part, or through fraud on the USPTO (of which there has been none).

Petitioner's second claim is indeed on the basis of dilution which is clearly a robust claim given the identical nature of the mark EDGE and the identical nature of the goods; and the third claim of likelihood of confusion is equally robust for similar reasons. Petitioner's fourth claim for "bad faith" is, as the Board will see if this matter goes to trial, also very strong since

it will be shown that Registrant deliberately and knowingly selected the mark EDGE being fully aware that it was the mark well known in the games industry to be owned by Petitioner since the 1980s, and that Registrant ignored all warnings from Petitioner not to use the mark sent to it prior to its first use, and still went ahead to use it in clear breach of the Lanham Act.

If Petitioner's true and correct admissions are allowed in to these proceedings, as would be fair and equitable, it is clear that Petitioner will likely prevail on all four of its claims in its Petition.

**A. Edge Games Does Not Admit, And Certainly Did Not Intend to Admit, That Edge Games Has No Rights In The Mark EDGE: Indeed Edge Games Does Have Extensive Rights In The Mark EDGE**

Petitioner does not admit and clearly did not intend to admit to any of the requests for admission that Registrant now seeks to rely on in its motion. Petitioner does not admit, and certainly did not intend to admit, that it has no enforceable rights in the mark EDGE, nor that there is no likelihood of confusion, nor that Petitioner's mark is not famous. Indeed, it is clearly Petitioner's contention that its true responses to these requests for admission are that Petitioner has extensive rights in the mark EDGE (whereas Registrant has admitted in these proceedings it had no rights in the mark EDGE at the time of applying for the mark); Petitioner clearly asserts that there is a likelihood of confusion, and will assert in these proceedings that Petitioner's mark may be deemed famous for the purposes of federal dilution law. Attached in **Exhibit 1B** is a copy of Petitioner's true responses to Registrant's Request for Admissions, and as can be seen, Petitioner did not admit to any of the requests that Registrant seeks to rely on as admitted to support its motion for summary judgment.

However, Petitioner appreciates that in order to answer this point fully it first needs to collect the subpoena evidence and testimony, hence the concurrent 56(d) motion.

**B. Edge Games Does Not Admit, And Certainly Did Not Intend to Admit, That There Is No Likelihood Of Confusion: Indeed There Could Hardly Be More Clearcut Evidence Of Likelihood of Confusion Than In This Case**

There is clearly a likelihood of confusion in this case; indeed it could hardly be clearer. The mark used by Registrant and Petitioner is *identical* – “EDGE” – and the goods are essentially identical: Registrant alleges use in respect to the promotion and sale of so-called game computer tablets, whereas Petitioner through its licensee has used the mark EDGE in respect to the sale of games computers since at least 1998 in US Inter-State commerce. Further, the parties use the same, or essentially the same, channels of trade (Internet sales direct to consumers, sales through major stores, and so forth) and promotion their goods through essentially the same channels. In short, all of the conditions are comfortably met for at least a likelihood of confusion to be confirmed. Once again Petitioner notes that Petitioner is only required to show a likelihood of confusion, not actual instances of confusion. This requirement is thus comfortably met and it is obvious that Petitioner does not admit there is no likelihood of confusion, and certainly did not intend to admit to this clearly false fact. However, Petitioner appreciates that in order to answer this point fully it first needs to collect the subpoena evidence and testimony, hence the concurrent 56(d) motion.

**C. Edge Games Does Have Enforceable Rights, Does Not Deny This And Never Intended To Deny This.**

Petitioner does not admit for the purposes of its dispute with Registrant, and certainly did not intend to admit, the list of admission provided in Registrant’s motion in its Section II(A).

Namely:

Petitioner has used the mark EDGE and variants thereof in the United States for a sizable number of products and services, and continuously done so since at least 1984.

All of Petitioner's various licensees have used the mark EDGE and variants thereof in the United States for products and services, and have done so for several decades prior to Registrant applying for the instant mark.

Petitioner does have in place quality control standards and/or procedures for all its licensees, and in particular for its licensee Velocity which sells the EDGE game computers.

Petitioner has enforced its quality control standards and/or procedures with its licensees who use its mark EDGE to the extent required by law to meet the applicable standards for quality control of licensed trademark use.

Petitioner has most certainly not abandoned any of its rights in the mark EDGE or any variant thereof due to uncontrolled licensing (or otherwise).

There is a likelihood of between Petitioner's EDGE mark or any variant thereof and Registrant's EDGE mark.

However, Petitioner appreciates that in order to justify this opposition fully it first needs to collect the subpoena evidence and testimony, hence the concurrent 56(d) motion.

**D. Edge Games Does Not Admit Its EDGE Mark Is Not Famous And Certainly Did Not Intend To Admit This.**

Petitioner does not admit that its EDGE mark is not famous for the purposes of federal dilution law, and certainly did not intend to admit this. Further, Petitioner denies that whether a mark meets the conditions to be considered famous under Federal Law is not the only factor in consideration when determining dilution. Other factors also play into such a determination, such as the similarity of the marks (here they are identical), the similarity of the goods and services in question (here they are essentially identical), and the extent to which Petitioner's mark has been used in United States trade, whether there is an actual association between the mark and Petitioner (or Petitioner's licensee), and so forth. The additional evidence and testimony currently being gathered by Petitioner (which is the basis of the concurrent 56(d) motion) will prove this to the Board and is required for Petitioner to provide a full response to this issue.

### **E. Evidence Will Be Admissible That Indicates Edge Games Has Enforceable Rights**

Petitioner has served Registrant with responses to Registrant's discovery requests for document production (see **Exhibit 1C**) and its First Set of Interrogatories (see **Exhibit 1D**). It is thus quite simply not true, as Registrant falsely alleges in its motion, that Petitioner has failed to provide any discovery responses. Petitioner is thus not bared from producing any documentary or testimonial evidence it wishes to file and rely on at trial in these proceedings, and indeed Petitioner has extensive such evidence (which will be completed after the conclusion of the subpoena process referenced in the concurrent 56(d) motion), which evidence will conclusively prove Petitioner's superior and priority of rights in the mark EDGE. Petitioner is thus not precluded from entering any evidence it wishes to rely on in these proceedings.

### **III. Motion Under FRCP 36(b) For Permission To Withdraw Petitioner's Effective Admissions And Permission To Submit Amended (Actual) Responses**

In *Giersch and Giersch v. Scripps Networks* (Cancellation No. 92045576; 2007), an Opinion which is precedent of the TTAB, a party that had failed to serve its responses to Request for Admission in a timely manner had its motion under FRCP 36(b) granted. The circumstances are sufficiently similar here that it is appropriate to grant Petitioner's 36(b) motion, too, particularly once it has been able to complete its response after the subpoena evidence and testimony can be produced following the conclusion of the concurrently filed 56(d) motion. As in this case, in this precedential case the movant's case for summary judgment was also based solely on the non-movant's effective admissions (that is, the default admissions movant in that other case, too, argued should be seen as admitted. See **Exhibit 1E** for a copy of this precedential Opinion).

In the cited case, too, as here, what was being considered was the party in Petitioner's position request to reopen time to respond to the admission requests (here to permit our March 31, 2015 responses to be considered timely), or alternatively, to withdraw its effective admissions, and provide actual responses. In short, the decision in this cited case went against the party which was late filing its admission responses and its request under Rule 6(b)(2) was essentially rejected because the party did not show excusable neglect.

However, here, Petitioner has shown excusable neglect given the specific circumstances in this case and taking into account the fact Petitioner is a party in pro se and the delay was short. It would be appropriate, then, for the Board in this case to grant this request on the basis of excusable neglect and deny Registrant's motion and instead grant an extension of time to file Petitioner's responses to March 31, 2015 such that the responses it served that day will be deemed timely.

Alternatively, if the Board does not believe it can rule in Petitioner's favor on excusable neglect, then this cited precedent case suggests the Board should grant Petitioner's instant motion to withdraw its effective admissions and provide actual responses, subject to Petitioner completing its filing of a full response following the collection of the further evidence Petitioner wishes to rely on, which is the subject of a the concurrent 56(d) motion.

This motion is filed under Rule 36(b) which permits the Board withdrawal or amendment of admissions where "*the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.*" The Opinion cited continues by citing *In re Fisherman's Wharf Fillet, Inc.*, 83 F. Supp. 2d 651 (E.D.Va. 1999):

*“[T]he decision to allow a party to withdraw its admission is quintessentially an equitable one, balancing the rights to a full trial on the merits, including the presentation of all relevant evidence, with the necessity of justified reliance by parties on pre-trial procedures and finality as to issues deemed no longer in dispute.”* *McClanahan v. Aetna Life Ins. Co.*, 144 F.R.D. 316, 320 (W.D.Va. 1992) (citing *Branch Banking & Trust Co. v. Deutz-Allis Corp.*, 120 F.R.D. 655, 658 (E.D.N.C. 1988)).

Thus the decision held that what must be considered are two prongs: the first is a test of whether the following is satisfied: “*when upholding the admissions would practically eliminate any presentation of the merits of the case.*” (*Hadley v. United States*, 45 F.3d 1345, 1348 (9<sup>th</sup> Cir. 1995)). In other words, would Petitioner’s proposed withdrawal of the effective admissions “*facilitate the development of the case in reaching the truth*”? (*Farr Man & Co., Inc. v. M/V Rosita*, 903 F.2d 871, 876 (1<sup>st</sup> Cir. 1990)). See *Banos v. City of Chicago*, 398 F.3d 889 (7<sup>th</sup> Cir. 2005) (holding that a court may permit a party to rescind admissions when doing so better serves the presentation of the merits of the case); *Atakpa v. Perimeter OB-GYN Associates; P.C.*, 912 F.Supp. 1566 (N.D.Ga. 1994)) (finding that prohibiting the proposed amendments would impede the trier of fact from reaching the truth).

Under the second prong, the Board would need to check whether Registrant would be prejudiced by granting Petitioner permission to withdraw the effective admissions and submit actual admissions. What was concluded was that the test of this prong by the Board needs to be whether Registrant would be faced with “*special difficulties ... caused by the sudden need to obtain evidence upon withdrawal or amendment of admission.*” (*Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d 147 (6<sup>th</sup> Cir. 1997)). See also *Davis v. Noufal*, 142 F.R.D. 258 (D.D.C. 1992) (holding that the burden of addressing the merits does not establish “prejudice”). For clarification, the cited Opinion goes on to state that the kind of “special difficulties” Registrant would need to irreversibly face would include “*unavailability of key*

*witnesses in the light of the delay*” and clarify that “mere inconvenience” does not constitute prejudice. In short, the test on this prong for the Board to determine is whether Registrant would be less able to obtain evidence to prove its case than it would have been at the time the admission was made.

Regarding the first prong of the test, clearly the Board’s decision ought to fall in favor of Petitioner. If the Board does not permit Petitioner to withdraw the effective admissions and replace them with actual admissions, then the Board would be prevented from being able to determine the truth, and consideration of this matter on its merits would take place. Since the test is whether upholding the admissions would “*practically eliminate any presentation of the merits of the case*” then here, that test is fully met. If the effective admissions were upheld then there would be no full trial and no full presentation of the merits of this case.

The decision in Petitioner’s favor on this prong of the test is particularly strong in this instance since while the parties are still in the middle of Discovery, and the Board has yet to hear submissions from either side on the merits. What has happened so far is that the Registrant has admitted that it has no rights in the mark EDGE (that is, it has no use whatsoever of the mark EDGE in United States commerce in the period prior to the date it applied for the instant EDGE mark). By contrast, Petitioner has affirmed repeatedly that it has extensive use of the mark EDGE in United States commerce, and thus extensive rights in EDGE, which the subpoenaed evidence and testimony will confirm. In addition, when heard on the merits, the Board will also see easily that there is a likelihood of confusion between Registrant’s use of the mark EDGE for game computer tablets and Petitioner’s use of the mark EDGE for game computers. The issue of dilution will also clearly be proved in

Petitioner's favor when this matter is heard on its merits, as will all the other grounds Petitioner claimed in its petition as grounds for cancellation of Registrant's mark.

Last but not least, Petitioner notes that Registrant has actually abandoned use of the mark EDGE in the United States, and did so when these proceedings entered the Discovery Phase. As can be seen in **Exhibit 1F** hereto, in September/October 2014 Registrant was still using the mark EDGE for its games tablet. Then in the period leading to January 2015 Registrant continues to sell the product but no longer uses the mark EDGE to do so. And then finally in early March 2015, Registrant entirely removed their "EDGE" branded product from its website, along with any and all reference to its use of the mark EDGE. The Board could hardly ask for a more clear indication that Registrant is fully aware that its use of the mark EDGE from early 2013 until late 2014 was in breach of Petitioner's rights in the mark, and consequently Registrant abandoned such use so as to reduce its exposure on damages and costs to Petitioner.

#### **IV. CONCLUSION**

There are clear grounds for ruling in Petitioner's favor on the grounds of excusable neglect and thus ruling that its time to serve admissions was extended to the day it did serve them, namely March 31, 2015. Should the board so rule in Petitioner's favor, then Petitioner requests that its concurrently filed document be taken as a request to extend discovery deadlines since the subpoena evidence will still be required before this matter can be fully heard on its merits.

In the alternate, if the Board rejects Petitioner's opposition to Registrant's motion on the grounds of excusable neglect, then Petitioner has firm ground to prevail on Registrant's motion by the filing its own Motion under Rule 36(b) requesting permission to withdraw the

effective admissions and submit actual admissions. This though, cannot be determined until Petitioner has completed the further discovery necessary to justify its opposition to Registrant's motion. Accordingly, Petitioner's concurrently filed Rule 56(d) motion should be ruled on first, Petitioner should be granted time to complete the discovery through subpoena, and then with that new discovery filed the Board should be able at that point to rule on Petitioner's Rule 36(b) motion herein. Since Petitioner is confident the further discovery will easily prove Petitioner's argument in opposition, the Board should then at that time rule in Petitioner's favor on the Motion for Summary Judgment.

]

Respectfully submitted this day April 17, 2015

  
Dr Tim Langdell, CEO  
Petitioner in *pro se*  
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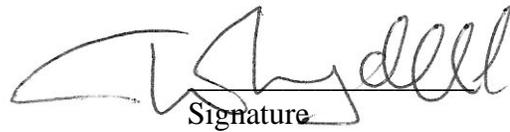
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RAZER (ASIA-PACIFIC) PTE LTD	}	Mark "EDGE"
Registrant.	}	

**CERTIFICATE OF SERVICE**

In accordance with 37 CFR 2.111(b), the undersigned hereby certifies that on April 18, 2015, a true copy of the foregoing PETITIONER'S REPLY TO REGISTRANT'S MOTION TO DISMISS; PETITIONER'S MOTION TO WITHDRAW ADMISSIONS AND FILE AMENDED RESPONSES PER FRCP 36(b) was sent via U.S. certified mail addressed to the following correspondent of record for Razer (Asian Pacific) Pte Ltd:

Keith A. Barritt, Esq  
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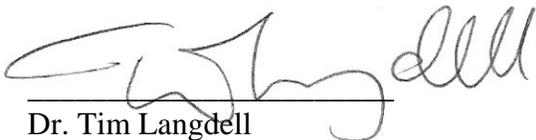
  
Signature

# EXHIBIT 1



out of such use by Velocity Micro vested in Edge Games Inc according to the license between the parties.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing statements are true and correct to the best of my knowledge, information and belief.



Dr. Tim Langdell

April 17, 2015

# **EXHIBIT A**

Batteries and power supplies for computer tablets/keyboard/keypads	March 29, 2013 to the present	nationwide
Computer and video game controllers adapted for use with computer tablets	March 29, 2013 to the present	nationwide

**INTERROGATORY NO. 3:**

State the exact date(s) on which Registrant will rely as to when its use of the mark EDGE commenced in connection with the sale or distribution in the United States in respect to each of the goods and services referenced in Classes 9 and 28 of Reg. No. 4,394,393 sold or marketed by Registrant. This is discoverable per Section 414(5).

ANSWER: The dates the use of the EDGE mark commenced in U.S. commerce in connection with the sale or distribution of each of the goods and services in Classes 9 and 28 of Reg. No. 4,394,393 are as follows:

<b>Product/Service</b>	<b>Date of first use of EDGE in U.S.</b>
Computer tablets	March 29, 2013
Computer keyboards and keypads adapted for use with computer tablets	March 29, 2013
Batteries and power supplies for computer tablets/keyboard/keypads	March 29, 2013
Computer and video game controllers adapted for use with computer tablets	March 29, 2013

# **EXHIBIT B**



waive any objection on the grounds of privilege, competency, relevance, materiality, authenticity, or admissibility of the information contained in these responses.

### **GENERAL OBJECTIONS**

1. Petitioner objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege or by the work product doctrine, prepared in connection with settlement discussions, prepared in anticipation of litigation or for trial, or subject to any other applicable privilege, protection, immunity or restriction from discovery. Inadvertent disclosure of any privileged or protected information or documents in response to these requests shall not be deemed a waiver of the applicable privilege or protection, or any other basis for objecting to discovery, or of the right of Petitioner to object to the use, and see the return, of any such inadvertently disclosed information.

2. Petitioner objects to the requests to the extent that they are not within the scope of permissive discovery under the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

3. Petitioner objects to the requests, including the definitions and instructions incorporated therein, to the extent that they seek to impose an improper or undue burden or burden that exceeds what is contemplated by the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

4. Petitioner objects to the definitions, instructions and requests to the extent that they seek disclosure of information or documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of

admissible evidence, or are in any other way inconsistent with the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice. Petitioner will respond to the requests only to the extent required by the Rules.

5. Petitioner objects to Registrant's definition of "Petitioner," "EDGE," "you" and "your" as overly broad and to the extent that it includes persons or entities that are separate and distinct from Petitioner and over which Petitioner exercises no controls.

6. Petitioner objects to the requests to the extent that they use the terms that are not defined or understood, or are vaguely or ambiguously defined, and therefore fail to identify with reasonable particularity the information sought. Petitioner will not speculate as to the meaning to ascribe to such terms.

7. Petitioner objects to the requests to the extent that they seek to impose an obligation on Petitioner to disclose information that is publicly available and/or easily obtained by other parties than Petitioner, or that is more appropriately obtained through sources other than requests, such as through expert witnesses, on the grounds that such discovery is overly board and unduly burdensome. Petitioner also objects to the requests to the extent that they seek information or documents that are already known to or in the possession of Registrant.

8. Petitioner objects to the requests to the extent that they call for lay opinion, expert opinion, legal conclusions, or any other non-factual response.

9. Petitioner objects to the requests to the extent that they seek information subject to confidentiality restrictions of a third party.

10. Petitioner objects to the requests to the extent that they incorporate, and seek responses based on, erroneous statements of law, and any response is not to be construed as an agreement with such erroneous statements of pertinent law by Registrant.

11. Petitioner objects to the requests to the extent that they are duplicative.

12. Petitioner objects to the requests to the extent that they seek to impose an obligation to identify or search for documents or information at any location other than that at which they would be expected to be stored in the ordinary course of business.

13. Petitioner objects to the requests to the extent that they seek identification of "any" and "all" information that refers or relates to a particular subject on the grounds of over breadth, undue burden and expense.

14. Petitioner objects to Registrant's requests that Petitioner provide the "identity" of a person or document as overly broad and unduly burdensome, particularly with respect to information regarding the whereabouts of third parties or entities not within Petitioner's possession, custody, or control.

15. A statement by Petitioner of its willingness to produce responsive documents that are not protected from discovery does not mean that such documents exist or that such documents, if they exist, are admissible, relevant, or reasonably calculated to lead to discovery of admissible evidence.

16. Petitioner incorporates by reference the General Objections set forth above into each of its responses, whether or not repeated therein, as well as any specific stated objections. Petitioner may repeat a general objection for emphasis or some other reason, but the failure to repeat any general objection does not waive any general objection to the requests. Petitioner does not waive its right to amend its objections. Petitioner's

willingness to provide the requested responses or information is not an admission that such responses or information are relevant or admissible.

17. Petitioner reserves the right to include additional objections to any future discovery requests.

### **SPECIFIC OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSION**

Subject to the foregoing General Objections and reservation of rights, as well as the specific objections set forth below, Petitioner responds as follows:

#### **PETITIONER'S RESPONSES TO REGISTRANT'S FIRST REQUEST FOR ADMISSION**

##### **Request for Admission No. 1:**

Admit that Petitioner (defined above as including its predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof) has not used the EDGE mark or any variant thereof in the United States for any products or services.

ANSWER: Denied.

##### **Request for Admission No. 2:**

Admit that Petitioner has not used the EDGE mark or any variant thereof in the United States for any products or services prior to October 18, 2011.

ANSWER: Denied.

##### **Request for Admission No. 3:**

Admit that Petitioner has not used the EDGE mark or any variant thereof in the United States for any products or services since September 2011.

ANSWER: Denied.

**Request for Admission No. 4:**

Admit that Petitioner has not used the EDGE mark or any variant thereof in the United States for:

(a) computers;

ANSWER: Denied (in responding Petitioner includes use by its licensees)

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets (in responding Petitioner includes use by its licensees)

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards (in responding Petitioner includes use by its licensees)

(d) computer keypads adapted for use with computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Petitioner is still researching this question as to use by its licensees.

(e) batteries for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied. (in responding Petitioner includes use by its licensees)

(f) power supplies for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied. (in responding Petitioner includes use by its licensees)

(g) computer game controllers; or

ANSWER: Petitioner is still researching this question as to use by its licensees.

(h) video game controllers.

ANSWER: Petitioner is still researching this question as to use by its licensees.

**Request for Admission No. 5:**

Admit that prior to October 18, 2011, Petitioner has not used the mark EDGE or any variant thereof in the United States for:

OBJECTION: This is duplicative of Request No 4 since that asked the same question(s) for all dates.

(a) computers;

ANSWER: Denied (in responding Petitioner includes use by its licensees)

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets (in responding Petitioner includes use by its licensees)

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards (in responding Petitioner includes use by its licensees)

(d) computer keypads adapted for use with computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Petitioner is still researching this question as to use by its licensees.

(e) batteries for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied. (in responding Petitioner includes use by its licensees)

(f) power supplies for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied. (in responding Petitioner includes use by its licensees)

(g) computer game controllers; or

ANSWER: Petitioner is still researching this question as to use by its licensees.

(h) video game controllers.

ANSWER: Petitioner is still researching this question as to use by its licensees.

**Request for Admission No. 6:**

Admit that since September 2011, Petitioner has not used the EDGE mark or any variant thereof in the United States for:

OBJECTION: This is duplicative of Request No 4 since that asked the same question(s) for all dates.

(a) computers;

ANSWER: Denied (in responding Petitioner includes use by its licensees)

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets (in responding Petitioner includes use by its licensees)

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards (in responding Petitioner includes use by its licensees)

(d) computer keypads adapted for use with computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Petitioner is still researching this question as to use by its licensees.

(e) batteries for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied. (in responding Petitioner includes use by its licensees)

(f) power supplies for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied. (in responding Petitioner includes use by its licensees)

(g) computer game controllers; or

ANSWER: Petitioner is still researching this question as to use by its licensees.

(h) video game controllers.

ANSWER: Petitioner is still researching this question as to use by its licensees.

**Request for Admission No. 7:**

Admit that none of Petitioner's licensees has used the EDGE mark or any variant thereof in the United States for any products or services.

OBJECTION: Compound; overly board.

ANSWER: Denied.

**Request for Admission No. 8:**

Admit that none of Petitioner's licensees used the EDGE mark or any variant thereof in the United States for any products or services prior to October 18, 2011.

OBJECTION: Compound; overly board; duplicative of Request No. 7.

ANSWER: Denied.

**Request for Admission No. 9:**

Admit that none of Petitioner's licensees used the EDGE mark or any variant thereof in the United States for any products or services prior to September, 2011.

OBJECTION: Compound; overly board; duplicative of Request No. 7.

ANSWER: Denied.

**Request for Admission No. 10:**

Admit that none of Petitioner's licensees has used the EDGE mark or any variant thereof in the United States for:

(a) computers;

ANSWER: Denied

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards

(d) computer keypads adapted for use with computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Petitioner is still researching this question as to use by its licensees.

(e) batteries for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied.

(f) power supplies for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied.

(g) computer game controllers; or

ANSWER: Petitioner is still researching this question as to use by its licensees.

(h) video game controllers.

ANSWER: Petitioner is still researching this question as to use by its licensees.

**Request for Admission No. 11:**

Admit that prior to October 18, 2011 none of Petitioner's licensees has used the EDGE mark or any variant thereof in the United States for:

(a) computers;

ANSWER: Denied

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards

(d) computer keypads adapted for use with computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Petitioner is still researching this question as to use by its licensees.

(e) batteries for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied.

(f) power supplies for computers, computer tablets, computer keyboards, or computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied.

(g) computer game controllers; or

ANSWER: Petitioner is still researching this question as to use by its licensees.

(h) video game controllers.

ANSWER: Petitioner is still researching this question as to use by its licensees.

**Request for Admission No. 12:**

Admit that since September 2011 none of Petitioner's licensees has used the EDGE mark or any variant thereof in the United States for:

(a) computers;

ANSWER: Denied

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards

(d) computer keypads adapted for use with computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Petitioner is still researching this question as to use by its licensees.

(e) batteries for computers, computer tablets, computer keyboards, or  
computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied.

(f) power supplies for computers, computer tablets, computer keyboards, or  
computer keypads;

OBJECTION: Vague as to meaning of the term; compound; overly broad.

ANSWER: Denied.

(g) computer game controllers; or

ANSWER: Petitioner is still researching this question as to use by its licensees.

(h) video game controllers.

ANSWER: Petitioner is still researching this question as to use by its licensees.

**Request for Admission No. 13:**

Admit that Petitioner does not have in place quality control standards or  
procedures for all licensees controlling the quality of its goods or services under the  
EDGE mark or any variant thereof.

ANSWER: Denied.

**Request for Admission No. 14:**

Admit that Petitioner has not enforced any quality control standards or procedures against any licensee involving goods or services offered under the EDGE mark or any variant thereof.

ANSWER: Denied.

**Request for Admission No. 15:**

Admit that Petitioner does not have in place quality control standards or procedures for its alleged licensee Velocity Micro Inc. controlling the quality of goods or services offered under the EDGE mark or any variant thereof.

ANSWER: Denied.

**Request for Admission No. 16:**

Admit that Petitioner has no enforced any quality control standards or procedures against its alleged licensee Velocity Micro Inc. involving goods or services offered under the EDGE mark or any variant thereof.

ANSWER: Denied.

**Request for Admission No. 17:**

Admit that Petitioner has abandoned any rights in the mark EDGE or any variant thereof due to uncontrolled licensing.

OBJECTION: Vague; overly broad; may refer to issues not pertinent to these proceedings (if for instance the question is in regard to overseas territories)

ANSWER: Denied.

**Request for Admission No. 18:**

Admit that Petitioner did not notify all licensees that Petitioner's U.S. trademark registration nos. 2,219,837; 2,251,584, 3,105,816; 3,559,342 and 3,381,826 had been ordered cancelled, as ordered by the court in Exhibit 1 hereto.

OBJECTION: Vague; overly broad; may refer to issues not pertinent to these proceedings (if for instance the question is in regard to overseas territories)

ANSWER: Denied.

**Request for Admission No. 19:**

Admit that for any EDGE mark or variant thereof that was assigned to Petitioner, assignor did not assign the accompanying goodwill of the mark.

ANSWER: Denied.

**Request for Admission No. 20:**

Admit that Exhibit 2 is a true and correct authentic copy of the "Memorandum Opinion" from the U.S. District Court for the Eastern District of Virginia, Richmond Division, in Civil Action No. 3:08CV135 dated November 7, 2008.

ANSWER: Denied; calls for legal conclusion.

**Request for Admission No. 21:**

Admit that Exhibit 3 is a true and correct authentic copy of the "Order Denying Motion for Preliminary Injunction" from the U.S. District Court for the Northern District of California in Case No. C 10-02614 WHA dated October 1, 2010.

ANSWER: Denied; calls for legal conclusion.

**Request for Admission No. 22:**

Admit that Exhibit 4 is a true and correct authentic copy of an order from the U.S. Trademark Trial and Appeal Board in Cancellation No. 92051546 dated May 1, 2013.

ANSWER: Denied; calls for legal conclusion.

**Request for Admission No. 23:**

Admit that Exhibit 5 is a true and correct authentic copy of the "HTML Version of Judgment" from the U.K. Court of Justice, Chancery Division in Case No. HC09CO2265 dated June 13, 2011.

OBJECTION: Calls for legal conclusion; Out of scope of these proceedings; refers to matters in an overseas territory and not to the U.S. territory, and thus is not a proper request under the Rules. Such document(s) are inadmissible in these proceedings.

ANSWER: Denied; calls for legal conclusion.

**Request for Admission No. 24:**

Admit that Exhibit 6 is a true and correct authentic copy of the "First Witness Statement of Randall Copeland" (without accompanying exhibits) in Claim No. HC09CO2265 before the U.K. High Court of Justice, Chancery Division, dated December 3, 2010.

OBJECTION: Calls for legal conclusion; Out of scope of these proceedings; refers to matters in an overseas territory and not to the U.S. territory, and thus is not a proper request under the Rules. Such document(s) are inadmissible in these proceedings.

ANSWER: Denied; calls for legal conclusion.

**Request for Admission No. 25:**

Admit that U.S. Registration No. 2,219,837 has been cancelled and cannot be relied upon as evidence of rights in this cancellation proceeding.

ANSWER: Admit that the registration has been cancelled but denied that it may not still be relied upon in some legitimate way in this proceeding.

**Request for Admission No. 26:**

Admit that U.S. Registration No. 2,251,816 has been cancelled and cannot be relied upon as evidence of rights in this cancellation proceeding.

ANSWER: Admit that the registration has been cancelled but denied that it may not still be relied upon in some legitimate way in this proceeding.

**Request for Admission No. 27:**

Admit that U.S. Registration No. 3,105,816 has been cancelled and cannot be relied upon as evidence of rights in this cancellation proceeding.

ANSWER: Admit that the registration has been cancelled but denied that it may not still be relied upon in some legitimate way in this proceeding.

**Request for Admission No. 28:**

Admit that U.S. Registration No. 3,559,342 has been cancelled and cannot be relied upon as evidence of rights in this cancellation proceeding.

ANSWER: Admit that the registration has been cancelled but denied that it may not still be relied upon in some legitimate way in this proceeding.

**Request for Admission No. 29:**

Admit that U.S. Registration No. 3,381,826 has been cancelled and cannot be relied upon as evidence of rights in this cancellation proceeding.

ANSWER: Admit that the registration has been cancelled but denied that it may not still be relied upon in some legitimate way in this proceeding.

**Request for Admission No. 30:**

Admit that Petitioner's EDGE mark or any variant thereof is not famous for the purposes of federal dilution law.

OBJECTION: Calls for legal conclusion

ANSWER: Denied.

**Request for Admission No. 31:**

Admit that Petitioner has not received any notice of actual confusion by any non-party to this cancellation action between Petitioner's EDGE mark or any variant thereof and Registrant's EDGE mark.

OBJECTION: Vague; calls for legal conclusion.

ANSWER: Denied; Petitioner is still researching what such notice may have been received by its licensees.

**Request for Admission No. 32:**

Admit that Petitioner is not aware of any instances in which a person has been confused as to the source of Petitioner's or Registrant's products or services bearing any mark incorporating the term EDGE, or as to any affiliation or connection between Petitioner and Registrant.

OBJECTION: Vague; calls for legal conclusion.

ANSWER: Denied; Petitioner is still researching what such notice may have been received by its licensees.

**Request for Admission No. 33:**

Admit that Petitioner is not aware of any instances in which a person has been confused as to the source of Petitioner's alleged licensees' products or Registrant's products or services bearing any mark incorporating the term EDGE, or as to any affiliation or connection between any of Petitioner's alleged licensees and Registrant.

OBJECTION: Vague; calls for legal conclusion.

ANSWER: Denied; Petitioner is still researching what such notice may have been received by its licensees.

**Request for Admission No. 34:**

Admit that there is no likelihood of confusion between Petitioner's EDGE mark or any variant thereof and Registrant's EDGE mark.

ANSWER: Denied.

**Request for Admission No. 35:**

Admit that consumers typically do not buy computers as an impulse purchase.

OBJECTION: Vague; calls for legal conclusion; question is better aimed at an expert witness.

ANSWER: Denied.

**Request for Admission No. 36:**

Admit that consumers typically take care when purchasing computers to understand from whom they are buying.

OBJECTION: Vague; calls for legal conclusion; question is better aimed at an expert witness.

ANSWER: Denied.

**Request for Admission No. 37:**

Admit that Exhibit 7 contains true and correct copies of information from the U.S. Trademark Office regarding registrations and applications for marks incorporating the term EDGE for computer-related goods in Class 9. If you deny any of Request 37, indicate which registration or application you deny is a true and correct copy.

OBJECTION: Vague; Calls for legal conclusion; Overly burdensome; Outside of scope of Rules.

ANSWER: Denied

**Request for Admission No. 38:**

Admit that Exhibit 8 contains true and correct copies of examples of use of marks incorporating EDGE for various computers and computer hardware goods. If you deny any of Request 38, indicate which uses you deny.

OBJECTION: Vague; Calls for legal conclusion; Overly burdensome; Outside of scope of Rules.

ANSWER: Denied

**Request for Admission No. 39:**

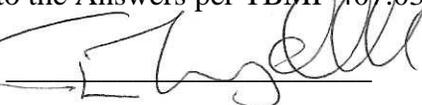
Admit that Razer's EDGE mark generally appears in actual use in juxtaposition with the RAZER mark, as shown, for example, in Exhibit 9.

OBJECTION: Vague; Calls for legal conclusion

ANSWER: Denied

Respectfully submitted,

As to the Answers per TBMP 407.03(c)

By: 

CEO, Petitioner Edge Games Inc  
530 South Lake Avenue, 171  
Pasadena, CA 91101  
Phone: 626 449 4334  
Fax: 626 844 4334  
Email: tim@edgegames.com

Date: March 31, 2015



# EXHIBIT C



waive any objection on the grounds of privilege, competency, relevance, materiality, authenticity, or admissibility of the information contained in these responses.

### **GENERAL OBJECTIONS**

1. Petitioner objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege or by the work product doctrine, prepared in connection with settlement discussions, prepared in anticipation of litigation or for trial, or subject to any other applicable privilege, protection, immunity or restriction from discovery. Inadvertent disclosure of any privileged or protected information or documents in response to these requests shall not be deemed a waiver of the applicable privilege or protection, or any other basis for objecting to discovery, or of the right of Petitioner to object to the use, and see the return, of any such inadvertently disclosed information.

2. Petitioner objects to the requests to the extent that they are not within the scope of permissive discovery under the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

3. Petitioner objects to the requests, including the definitions and instructions incorporated therein, to the extent that they seek to impose an improper or undue burden or burden that exceeds what is contemplated by the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

4. Petitioner objects to the definitions, instructions and requests to the extent that they seek disclosure of information or documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of

admissible evidence, or are in any other way inconsistent with the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice. Petitioner will respond to the requests only to the extent required by the Rules.

5. Petitioner objects to Registrant's definition of "Petitioner," "EDGE," "you" and "your" as overly broad and to the extent that it includes persons or entities that are separate and distinct from Petitioner and over which Petitioner exercises no controls.

6. Petitioner objects to the requests to the extent that they use the terms that are not defined or understood, or are vaguely or ambiguously defined, and therefore fail to identify with reasonable particularity the information sought. Petitioner will not speculate as to the meaning to ascribe to such terms.

7. Petitioner objects to the requests to the extent that they seek to impose an obligation on Petitioner to disclose information that is publicly available and/or easily obtained by other parties than Petitioner, or that is more appropriately obtained through sources other than requests, such as through expert witnesses, on the grounds that such discovery is overly board and unduly burdensome. Petitioner also objects to the requests to the extent that they seek information or documents that are already known to or in the possession of Registrant.

8. Petitioner objects to the requests to the extent that they call for lay opinion, expert opinion, legal conclusions, or any other non-factual response.

9. Petitioner objects to the requests to the extent that they seek information subject to confidentiality restrictions of a third party.

10. Petitioner objects to the requests to the extent that they incorporate, and seek responses based on, erroneous statements of law, and any response is not to be construed as an agreement with such erroneous statements of pertinent law by Registrant.

11. Petitioner objects to the requests to the extent that they are duplicative.

12. Petitioner objects to the requests to the extent that they seek to impose an obligation to identify or search for documents or information at any location other than that at which they would be expected to be stored in the ordinary course of business.

13. Petitioner objects to the requests to the extent that they seek identification of "any" and "all" information that refers or relates to a particular subject on the grounds of over breadth, undue burden and expense.

14. Petitioner objects to Registrant's requests that Petitioner provide the "identity" of a person or document as overly broad and unduly burdensome, particularly with respect to information regarding the whereabouts of third parties or entities not within Petitioner's possession, custody, or control.

15. A statement by Petitioner of its willingness to produce responsive documents that are not protected from discovery does not mean that such documents exist or that such documents, if they exist, are admissible, relevant, or reasonably calculated to lead to discovery of admissible evidence.

16. Petitioner incorporates by reference the General Objections set forth above into each of its responses, whether or not repeated therein, as well as any specific stated objections. Petitioner may repeat a general objection for emphasis or some other reason, but the failure to repeat any general objection does not waive any general objection to the requests. Petitioner does not waive its right to amend its objections. Petitioner's

willingness to provide the requested responses or information is not an admission that such responses or information are relevant or admissible.

17. Petitioner reserves the right to include additional objections to any future discovery requests.

### **SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**

Subject to the foregoing General Objections and reservation of rights, as well as the specific objections set forth below, Petitioner responds as follows:

#### **PETITIONER'S RESPONSES TO REGISTRANT'S FIRST REQUEST FOR DOCUMENTS AND ELECTRONICALLY STORED INFORMATION**

##### **Request No. 1**

For each product or service offered by Petitioner (defined above as including its predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof) or any of Petitioner's alleged trademark licensees bearing Petitioner's alleged EDGE mark or any variant thereof, produce documents sufficient to substantiate *for each product or service*:

- (a) The mark used;
- (b) The date of first use of the mark in each state of the United States;
- (c) Whether use of each mark for each product or service in each state identified above has continued every year thereafter;
- (d) The classes of consumers to whom each product or service is or was sold or distributed;

- (e) The retail establishments and other channels of trade where each product or service is or was sold or distributed'
- (f) The amount spent each year for advertising;
- (g) The amount of sales each year in volume and dollar amount; and
- (h) The manner in which the mark EDGE or any variant has been used for every month since use of the mark began, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

OBJECTION: Petitioner objects on the grounds that this is overly broad, burdensome, vague, and ambiguous. As Registrant is aware, Petitioner has over 30-years of use of the mark EDGE in U.S. commerce (although Registrant does not limit its interrogatory to the U.S. market), and has had numerous licensees over the 30-plus years each of which has had products and/or services that use/used the mark EDGE. Insofar as the interrogatory requests information known to Petitioner's licensees, Petitioner objects further that its research of such information is still ongoing. Petitioner also objects insofar as this asks confidential trade secret information or other privileged information.

## **Request No. 2**

For each product or service identified in answer to interrogatory No. 1, identify:

- (a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;
- (b) The name and address of the actual producer of the product or provider of the service;
- (c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

OBJECTION: Petitioner repeats its objection for No. 1 above.

ANSWER: Noting that item (c) is the only part of the interrogatory that limits the scope to the United States, Petitioner responds, Dr Tim Langdell, CEO of Petitioner.

**Request No. 3**

For each product or service offered by Petitioner or any of Petitioner's alleged trademark licensees bearing Petitioner's alleged EDGE mark or any variant thereof, identified in answer to Interrogatory No. 1 above, produce documents sufficient to:

- (a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.
- (b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service; and
- (c) State the dates such advertising occurred.

OBJECTION: See objection to No 1 and No 2 above

**Request No. 4**

For each licensee identified in response to Interrogatory No. 2 or Document Request No. 2 above, produce:

- (a) All documents regarding the license, including documents sufficient to identify the name and address of the licensee, the marks involved, the products and services involved, and the date such license began and ended;

- (b) All documents regarding the quality control procedures for each product or service sold under each mark covered by each license that are or have ever been in place;
- (c) All documents regarding the enforcement of any quality control procedures in place under any license;
- (d) Documents sufficient to substantiate the annual expenses incurred by Petitioner for enforcing the quality control requirements in the license; and
- (e) Documents sufficient to substantiate the royalty fee or other licensing payment received by Petitioner each year pursuant to any license or any other benefit received by Petitioner under the license.

OBJECTION: See objections to No.1 and No.2 above.

**Request No. 5**

For each licensee identified in response to Interrogatory No. 2 or Document Request No, 2 above, produce:

- (a) All documents regarding Petitioner's creation, maintenance, and enforcement of the license; and
- (b) All documents regarding any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

OBJECTION: See objections to No. 1 and No. 2 above.

**Request No. 6**

For each licensee identified in response to Interrogatory No. 2 or Document Request No. 2 above, produce documents sufficient to indentify by name and address the

primary person of the licensee with whom Petitioner communicated for the purpose of enforcing the quality control provisions in the license, the position(s) such individual has held with the licensee, and the dates such individual held the position(s) with the licensee.

OBJECTION: See objections to No. 1 and No. 2 above.

**Request No. 7**

Produce all any (sic) correspondence with any licensee regarding the notice that Petitioner's U.S. trademark registration nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and 3,381,826 had been ordered cancelled, as ordered by the court in Exhibit 1 hereto, including all subsequent correspondence with each licensee regarding the status of the license.

OBJECTION: See Petitioner's General Objections above. In addition, Registrant misstates the facts and the record such that Petitioner is not clear what is being asked.

**Request No. 8**

For all marks that were assigned to Petitioner, produce:

- (a) All documents regarding the assignment, including documents sufficient to identify the name and address of the assignor, the marks involved, the products and services involved, and the date such assignment became effective;
- (d) (sic - there is no b or c) Documents sufficient to identify the name and address of Petitioner's primary contact person at the assignor regarding the assignment;
- (e) All documents regarding the purchase price or other consideration given to the assignor for the assignment of the mark;

- (f) All documents regarding the circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of the mark; and
- (g) All documents substantiating the steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

OBJECTION: See objections to No. 1 and No. 2 above.

**Request No. 9**

If Petitioner has requested, received or has knowledge of any legal opinions regarding the right of anyone (including Petitioner) to use the mark EDGE or any variant thereof, produce each such opinion.

OBJECTION: Vague, overly broad, burdensome, calls for legal conclusion, calls for information covered by attorney client privilege or work product.

**Request No. 10**

Produce all documents regarding all past and current users known by Petitioner other than Petitioner and Registrant, of any marks incorporating the term EDGE in the United States.

OBJECTION: Vague, overly broad, burdensome, calls for legal conclusion

**Request No. 11**

Produce all documents regarding all instances Petitioner is aware of in which a person has been confused as to the source of Petitioner's or Registrant's products or services bearing any mark incorporating the term EDGE, or as to any affiliation or connection between Petitioner and Registrant.

OBJECTION: Vague, overly broad, burdensome, calls for legal conclusion

## **Request No. 12**

Produce all documents regarding any lawsuit, trademark opposition or cancellation proceeding, or other dispute with a third party involving Petitioner (defined above to include its predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof) involving a claim or action relating to the use of, application for, or registration of the mark EDGE or any variant, including but not limited to:

- (a) All documents pertaining to any such claim or action;
- (b) Documents sufficient to identify the name and address of each such third party, the case docket number and the filing date and tribunal, if any, and the nature of the claim or action, including the trademarks and products/services involved;
- (c) All documents regarding the outcome any such claim or action, including any negotiations, settlement agreements, licenses, and assignments
- (d) All documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal; and
- (e) Documents sufficient to identify the name(s), address(es), and telephone number(s) of all counsel representing any adverse party in such claim or action.

**OBJECTION:** Petitioner refers Registrant to its general objections and its objections to No. 1 and No. 11 above.

**Request No. 13**

For each of Petitioner's marks incorporating EDGE, produce all documents regarding any trademark search or investigation with respect to the selection, adoption, or the filing of an application for registration for such mark.

OBJECTION: See objection to No. 1 above and General Objections; this is overly broad and burdensome since it does not limit the question to the scope of proceedings (and is thus contrary to Rules); it also calls for details of privileged information, and attorney client work product.

**Request No. 14**

For each such search or investigation identified in response to Interrogatory 13 and Document Request No. 13 above, produce all correspondence concerning such search or investigation.

OBJECTION: See objection to No. 13 above.

**Request No. 15**

All documents that substantiate Petitioner's claim in paragraph 30 of the Petition to Cancel that Registrant's EDGE mark has caused dilution.

OBJECTION: vague; calls for a legal conclusion

**Request No. 16.**

All documents that substantiate Petitioner's claim in paragraph 31 of the Petition to Cancel that Petitioner's alleged EDGE mark is famous.

OBJECTION: Vague; calls for a legal conclusion

**Request No. 17**

All documents on which Petitioner will rely to support the contention in the Petition to Cancel that there is a likelihood of confusion between Registrant's EDGE mark and any of Petitioner's alleged EDGE marks or dilution of any of Petitioner's alleged EDGE marks.

OBJECTION: Vague, overly broad, burdensome, calls for a legal conclusion.

**Request No. 18**

Documents sufficient to identify the officers of Petitioner and dates such offices were held.

ANSWER: If Petitioner has such documents they will be produced.

**Request No. 19**

Documents sufficient to identify Petitioner's predecessors-in-interest and the dates when there was an associated change of ownership of each of Petitioner's marks incorporating the term EDGE.

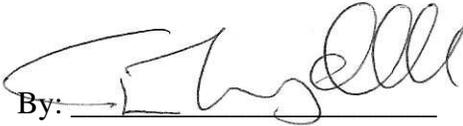
OBJECTION: vague, overly broad, burdensome, calls for legal conclusion.

**Request No. 20**

Documents sufficient to identify Petitioner's subsidiaries and affiliated companies, and the officers thereof.

OBJECTION: vague, overly broad, burdensome, calls for legal conclusion.

Respectfully submitted,

By:  \_\_\_\_\_

CEO, Petitioner Edge Games Inc  
530 South Lake Avenue, 171  
Pasadena, CA 91101  
Phone: 626 449 4334  
Fax: 626 844 4334  
Email: [tim@edgegames.com](mailto:tim@edgegames.com)

Date: March 31, 2015

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

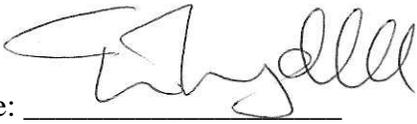
<b>EDGE GAMES, INC.</b>	}	
	}	
<b>Petitioner,</b>	}	<b>Cancellation No. 92058543</b>
	}	
<b>v.</b>	}	<b>Mark: EDGE</b>
	}	
<b>RAZER (ASIA-PACIFIC) PTE LTD</b>	}	<b>Registration No. 4,394,393</b>
	}	
<b>Registrant</b>	}	
	}	
	}	
	}	
	}	

---

**CERTIFICATE OF SERVICE**

It is hereby certified that on March 31, 2015 a true copy of the foregoing PETITIONER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS AND ELECTRONICALLY STORED INFORMATION was deposited in the U.S. mail, certified, postage prepaid, addressed to:

Keith A. Barritt Esq  
Fish & Richardson P.C.  
P.O. Box 1022  
Minneapolis, MN 55440-1022

Signature: 

# EXHIBIT D



waive any objection on the grounds of privilege, competency, relevance, materiality, authenticity, or admissibility of the information contained in these responses.

### **GENERAL OBJECTIONS**

1. Petitioner objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege or by the work product doctrine, prepared in connection with settlement discussions, prepared in anticipation of litigation or for trial, or subject to any other applicable privilege, protection, immunity or restriction from discovery. Inadvertent disclosure of any privileged or protected information or documents in response to these requests shall not be deemed a waiver of the applicable privilege or protection, or any other basis for objecting to discovery, or of the right of Petitioner to object to the use, and see the return, of any such inadvertently disclosed information.

2. Petitioner objects to the requests to the extent that they are not within the scope of permissive discovery under the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

3. Petitioner objects to the requests, including the definitions and instructions incorporated therein, to the extent that they seek to impose an improper or undue burden or burden that exceeds what is contemplated by the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.

4. Petitioner objects to the definitions, instructions and requests to the extent that they seek disclosure of information or documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of

admissible evidence, or are in any other way inconsistent with the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice. Petitioner will respond to the requests only to the extent required by the Rules.

5. Petitioner objects to Registrant's definition of "Petitioner," "EDGE," "you" and "your" as overly broad and to the extent that it includes persons or entities that are separate and distinct from Petitioner and over which Petitioner exercises no controls.

6. Petitioner objects to the requests to the extent that they use the terms that are not defined or understood, or are vaguely or ambiguously defined, and therefore fail to identify with reasonable particularity the information sought. Petitioner will not speculate as to the meaning to ascribe to such terms.

7. Petitioner objects to the requests to the extent that they seek to impose an obligation on Petitioner to disclose information that is publicly available and/or easily obtained by other parties than Petitioner, or that is more appropriately obtained through sources other than requests, such as through expert witnesses, on the grounds that such discovery is overly board and unduly burdensome. Petitioner also objects to the requests to the extent that they seek information or documents that are already known to or in the possession of Registrant.

8. Petitioner objects to the requests to the extent that they call for lay opinion, expert opinion, legal conclusions, or any other non-factual response.

9. Petitioner objects to the requests to the extent that they seek information subject to confidentiality restrictions of a third party.

10. Petitioner objects to the requests to the extent that they incorporate, and seek responses based on, erroneous statements of law, and any response is not to be construed as an agreement with such erroneous statements of pertinent law by Registrant.

11. Petitioner objects to the requests to the extent that they are duplicative.

12. Petitioner objects to the requests to the extent that they seek to impose an obligation to identify or search for documents or information at any location other than that at which they would be expected to be stored in the ordinary course of business.

13. Petitioner objects to the requests to the extent that they seek identification of "any" and "all" information that refers or relates to a particular subject on the grounds of over breadth, undue burden and expense.

14. Petitioner objects to Registrant's requests that Petitioner provide the "identity" of a person or document as overly broad and unduly burdensome, particularly with respect to information regarding the whereabouts of third parties or entities not within Petitioner's possession, custody, or control.

15. A statement by Petitioner of its willingness to produce responsive documents that are not protected from discovery does not mean that such documents exist or that such documents, if they exist, are admissible, relevant, or reasonably calculated to lead to discovery of admissible evidence.

16. Petitioner incorporates by reference the General Objections set forth above into each of its responses, whether or not repeated therein, as well as any specific stated objections. Petitioner may repeat a general objection for emphasis or some other reason, but the failure to repeat any general objection does not waive any general objection to the requests. Petitioner does not waive its right to amend its objections. Petitioner's

willingness to provide the requested responses or information is not an admission that such responses or information are relevant or admissible.

17. Petitioner reserves the right to include additional objections to any future discovery requests.

### **SPECIFIC OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSION**

Subject to the foregoing General Objections and reservation of rights, as well as the specific objections set forth below, Petitioner responds as follows:

#### **PETITIONER'S RESPONSES TO REGISTRANT'S FIRST REQUEST FOR ADMISSION**

##### **Interrogatory No. 1**

State each product or service offered by Petitioner (defined above as including its predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof) or any of Petitioner's alleged trademark licensees bearing Petitioner's alleged EDGE mark or any variant thereof, and *for each product or service* state:

- (a) The mark used;
- (b) The date of first use of the mark in each state of the United States;
- (c) Whether use of each mark for each product or service in each state identified above has continued every year thereafter, and if not state the periods of time during which the mark was not used in connection with each product or service;

- (d) The classes of consumers to whom each product or service is or was sold or distributed;
- (e) The retail establishments and other channels of trade where each product or service is or was sold or distributed;
- (f) The amount spent each year on advertising;
- (g) The amount of sales each year in volume and dollar amount; and
- (h) The manner in which the mark EDGE or any variant has been used, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

**OBJECTION:** Petitioner objects on the grounds that this is overly broad, burdensome, vague, and ambiguous. As Registrant is aware, Petitioner has over 30-years of use of the mark EDGE in U.S. commerce (although Registrant does not limit its interrogatory to the U.S. market), and has had numerous licensees over the 30-plus years each of which has had products and/or services that use/used the mark EDGE. Insofar as the interrogatory requests information known to Petitioner's licensees, Petitioner objects further that its research of such information is still ongoing. Petitioner also objects insofar as this asks confidential trade secret information or other privileged information.

### **Interrogatory No. 2**

For each product or service identified in answer to interrogatory No. 1, identify:

- (a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;
- (b) The name and address of the actual producer of the product or provider of the service;
- (c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

OBJECTION: Petitioner repeats its objection for No. 1 above.

ANSWER: Noting that item (c) is the only part of the interrogatory that limits the scope to the United States, Petitioner responds, Dr Tim Langdell, CEO of Petitioner.

**Interrogatory No. 3**

For each product or service identified in answer to Interrogatory No. 1:

- (a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.
- (b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service; and
- (c) State the dates such advertising occurred.

OBJECTION: See objection to No.1 above

**Interrogatory No. 4**

For each licensee identified in response to Interrogatory No. 2 above, state:

- (a) The name and address of the licensee;
- (b) The effective date such license began and ended;
- (c) The marks covered by the license;
- (d) The products and services covered by the license.
- (e) The quality control procedures, in detail, for each product or service sold under each mark covered by the license that are or have ever been in place and the dates such controls were in place;

- (f) The annual expenses incurred by Petitioner for enforcing the quality control requirements in the license; and
- (g) The royalty fee or other licensing payment received by Petitioner each year pursuant to the license or any other benefit received by Petitioner under the license.

OBJECTION: See objections to No.1 and No.2 above.

**Interrogatory No. 5**

For each licensee identified in response to Interrogatory No. 2 above, describe in detail:

- (a) How Petitioner creates, maintains, and enforces the quality control provisions for each product or service covered by the license; and
- (b) Any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

OBJECTION: See objections to No. 1 and No. 2 above.

**Interrogatory No. 6**

For each licensee identified in response to Interrogatory No. 2 above, identify by name and address the primary person of the licensee with whom Petitioner communicated for the purpose of enforcing the quality control provisions in the license, providing the position(s) such individual has held with the licensee and the dates such individual held the position(s) with the licensee.

OBJECTION: See objections to No. 1 and No. 2 above.

**Interrogatory No. 7**

Describe any correspondence with any licensee regarding the notice that Petitioner's U.S. trademark registration nos. 2,219,837; 2,251,584; 3,105,816; 3,559,342; and 3,381,826 had been ordered cancelled, as ordered by the court in Exhibit 1 hereto, including all subsequent correspondence with each licensee regarding the status of the license.

**OBJECTION:** See Petitioner's General Objections above. In addition, Registrant misstates the facts and the record such that Petitioner is not clear what is being asked.

### **Interrogatory No. 8**

List all of Petitioner's marks incorporating the term EDGE that were assigned at any time to Petitioner or any of its predecessor, affiliates, or subsidiaries, and state for each mark:

- (a) The effective date of the assignment;
- (b) The products or services associated with the assigned mark;
- (c) The name and address of the assignor;
- (d) The name and address of Petitioner's primary contact person at the assignor regarding the assignment;
- (e) The purchase price or other consideration given to the assignor for the assignment of each mark;
- (f) The circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of the mark; and
- (g) The steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

**OBJECTION:** See objection to No. 1 above.

**Interrogatory No. 9**

If Petitioner has requested, received or has knowledge of any legal opinions regarding the right of anyone (including Petitioner) to use the mark EDGE or any variant thereof, identify:

- (a) Each such opinion;
- (b) The person or persons requesting each such opinion; and
- (c) The person rendering each such opinion.

OBJECTION: Vague, overly broad, burdensome, calls for legal conclusion, calls for information covered by attorney client privilege or work product.

**Interrogatory No. 10**

List all past and current users known by Petitioner, other than Petitioner and Registrant, of any marks incorporating the term EDGE in the United States, including the owner of such mark and the goods and/or services associated with such use.

OBJECTION: Vague, overly broad, burdensome, calls for legal conclusion.

**Interrogatory No. 11**

Describe all instances Petitioner is aware of in which a person has been confused as to the source of Petitioner's or Registrant's products or services bearing any mark incorporating the term EDGE, or as to any affiliation or connection between Petitioner and Registrant. In your description:

- (a) State with particularity the nature of the confusion involved in each such instance;
- (b) Identify each person with knowledge of each instance of such confusion; and

- (c) Identify each document and/or oral communication concerning such confusion.

OBJECTION: Vague, overly broad, burdensome, calls for legal conclusion. Registrant does not confine its question to the United States, making this question extremely burdensome, overly broad, and outside of the Rules.

**Interrogatory No. 12**

If Petitioner or any of its predecessors, affiliates, subsidiaries, or directors, or officers, or shareholders, representatives, or agents thereof, has ever been a party to a lawsuit or trademark opposition or cancellation proceeding, or sent or received a cease and desist letter or otherwise communicated with a third party, involving a claim or action relating to the use of, application for, or registration of the mark EDGE or any variant thereof:

- (a) State the name and address of each such third party;
- (b) State the case docket number and filing date and identify the tribunal, if any;
- (c) Describe the nature of the claim or action, including the trademarks and products/services involved;
- (d) Describe the outcome of any such claim or action, including the details of any settlement agreement;
- (e) Identify all documents referring or relating to such litigation, proceeding, or dispute and ensuing negotiations, if any;
- (f) Identify all documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to

the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal; and

- (g) The name(s), address(es), and telephone number(s) of all counsel representing any adverse party in such claim or action.

OBJECTION: Petitioner refers Registrant to its general objections and its objections to No. 1 and No. 11 above.

**Interrogatory No. 13,**

For each of Petitioner's marks incorporating EDGE, state whether Petitioner conducted or caused anyone else to conduct any trademark search or investigation with respect to selection, adoption, or the filing of any application for registration of such mark.

OBJECTION: See objection to No. 1 above and General Objections; this is overly broad and burdensome since it does not limit the question to the scope of proceedings (and is thus contrary to Rules); it also calls for details of privileged information, and attorney client work product.

**Interrogatory No. 14**

For each such search or investigation identified in response to Interrogatory No. 13, state:

- (a) The date on which it was made;
- (b) The name and address of the person who requested it; and
- (c) Whether any report or other communication or document was made concerning such search or investigation, and if so, set out verbatim the contents thereof or attach to the answer to this interrogatory a copy of each such report, communication or document.

OBJECTION: See objection to No. 13 above.

**Interrogatory No. 15.**

State the factual basis for Petitioner's claim in paragraph 30 of the Petition to Cancel that Registrant's EDGE mark has caused dilution.

OBJECTION: vague; calls for a legal conclusion

**Interrogatory No. 16**

State the factual basis for Petitioner's claim in paragraph 31 of the Petition to Cancel that Petitioner's alleged EDGE mark is famous.

OBJECTION: Vague; calls for a legal conclusion

**Interrogatory No. 17**

State all facts and identify all documents on which Petitioner will rely to support the contention in the Petition to Cancel that there is a likelihood of confusion between Registrant's EDGE mark and any of Petitioner's alleged EDGE marks or dilution of any of Petitioner's alleged EDGE marks.

OBJECTION: Vague, overly broad, burdensome, calls for a legal conclusion.

**Interrogatory No. 18**

Identify the officers of Petitioner, specifying the dates such offices were held.

ANSWER: Dr Tim Langdell, held since formation of the corporation.

**Interrogatory No. 19**

Identify Petitioner's predecessors-in-interest, specifying the dates when there was an associated change of ownership of each of Petitioner's marks incorporating the term EDGE.

OBJECTION: vague, overly broad, burdensome, calls for legal conclusion.

**Interrogatory No. 20**

Identify all of Petitioner's subsidiaries and affiliated companies, and the officers thereof.

OBJECTION: vague, overly broad, burdensome, calls for legal conclusion.

**Interrogatory No. 21**

As to each of the above interrogatories, identify:

- (a) The person within Petitioner who has the greatest knowledge as to the information requested; and
- (b) All persons who participated in preparing each response.

OBJECTION: vague, overly broad, burdensome, calls for legal conclusion.

Respectfully submitted,

By: 

CEO, Petitioner Edge Games Inc  
530 South Lake Avenue, 171  
Pasadena, CA 91101  
Phone: 626 449 4334  
Fax: 626 844 4334  
Email: tim@edgegames.com

Date: March 31, 2015



# **EXHIBIT E**

**THIS OPINION  
IS PRECEDENT  
OF THE TTAB**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Lykos

Mailed: June 6, 2007

Cancellation No. 92045576

Gerald David Giersch, Jr.  
and Benjamin J. Giersch

v.

Scripps Networks, Inc.

Before Quinn, Bucher and Zervas, Administrative Trademark  
Judges.

By the Board:

This case now comes up for consideration of (1) petitioners' motion (filed October 7, 2006) for summary judgment based on respondent's admissions; (2) respondent's cross-motions (filed November 21, 2006) to reopen its time to respond to petitioners' admission requests under Fed. R. Civ. P. 6(b)(2), or alternatively, to withdraw such admissions under Fed. R. Civ. P. 36(b) and submit amended responses; (3) petitioners' motion (filed December 7, 2006) to amend the petition for cancellation to add a claim of fraud; and (4) petitioners' motion (filed January 6, 2007)

to file a second amended pleading to add an amended claim of fraud. The parties have fully briefed the motions.<sup>1</sup>

I. *Respondent's Motion to Withdraw its Admissions*

Because petitioners' motion for summary judgment is based solely on respondent's effective admissions, we first consider respondent's motions to reopen its time to respond to the admission requests, or alternatively, to withdraw its effective admissions, and provide actual responses.

As background, petitioners served their first requests for admissions on respondent on June 22, 2006. Thereafter, the parties mutually agreed to two extensions of time for respondent to file responses. Pursuant to the parties' most recent written agreement, respondent's responses were due September 22, 2006. Respondent did not respond to the requests for admissions by the September 22, 2006 extended due date, but rather has submitted proposed responses contemporaneously with its cross-motions.

Under Fed. R. Civ. P. 36, a requested admission is deemed admitted unless a written answer or objection is provided to the requesting party within thirty days after service of the request, or within such time as the parties agree to in writing. In order to avoid admissions resulting from a failure to respond, a responding party may pursue two

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<sup>1</sup> The Board has exercised its discretion to consider the parties' reply briefs. See Trademark Rule 2.127(a).

separate avenues for relief: a party may either (1) move to reopen its time to respond to the admission requests because its failure to timely respond was the result of excusable neglect under Fed. R. Civ. P. 6(b)(2), or (2) move to withdraw and amend its admissions pursuant to Fed. R. Civ. P. 36(b). The crucial distinction is that under Rule 6(b)(2), the moving party is seeking to be relieved of the untimeliness of its response, so that the admissions would not be deemed admitted as put. *See Hobie Designs, Inc. v. Fred Hayman Beverly Hills, Inc.*, 14 USPQ2d 2064 at fn. 1 (TTAB 1990). Simply stated, a motion under Rule 6(b)(2) constitutes a motion to reopen the time to serve responses to the outstanding admission requests. By contrast, under Rule 36(b), the moving party implicitly acknowledges that its responses are late and the requested admissions are therefore deemed admitted, but now seeks to withdraw the effective admissions and provide responses. In this particular case, respondent seeks both to show excusable neglect to be relieved of the untimeliness of its responses under Rule 6(b)(2) and, alternatively, to withdraw the effective admissions pursuant to the standards set forth in Rule 36(b) and have responses accepted.

Considering first respondent's motion to reopen, we find that respondent has failed to show excusable neglect. Respondent contends that its failure to timely respond to

petitioners' admission requests was due to its mistaken assumption that counsel for petitioners would agree to a third extension request upon his return from an overseas business trip. We find this reason insufficient to establish excusable neglect for respondent's failure to timely respond to petitioners' admission requests. Clearly, counsel for respondent was aware of the upcoming deadline, and knowing that counsel for petitioners was unavailable, should have, at a minimum, filed a formal motion to extend respondent's time to serve responses to the admission requests prior to the expiration of the time therefor. Counsel for respondent's mistaken belief that counsel for petitioners would simply agree to another extension request does not absolve respondent from its duty to adhere to the appropriate deadlines in this case. See *PolyJohn Enterprises Corp. v. 1-800-Toilets Inc.*, 61 USPQ2d 1860 (TTAB 2002) (petitioner's mistaken belief that the parties' agreement to extend petitioner's time to respond to discovery requests also extended the testimony periods does not constitute excusable neglect). Thus, by operation of Rule 36, the requested matters are deemed admitted.

We now turn to respondent's motion to withdraw its effective admissions and to substitute responses. Under Rule 36(b), the Board may permit withdrawal or amendment of admissions where "the presentation of the merits of the

action will be subverted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." The notes of the Advisory Committee state that Rule 36(b) emphasizes the importance of having the action resolved on the merits, while at the same time assuring each party that justified reliance on the admission in preparation for trial will not operate to his prejudice. Consistent with the language contained in the rule, "withdrawal is at the discretion of the court." *In re Fisherman's Wharf Fillet, Inc.*, 83 F. Supp.2d 651 (E.D.Va. 1999). "[T]he decision to allow a party to withdraw its admission is quintessentially an equitable one, balancing the rights to a full trial on the merits, including the presentation of all relevant evidence, with the necessity of justified reliance by parties on pre-trial procedures and finality as to issues deemed no longer in dispute." *McClanahan v. Aetna Life Ins. Co.*, 144 F.R.D. 316, 320 (W.D.Va. 1992) (citing *Branch Banking & Trust Co. v. Deutz-Allis Corp.*, 120 F.R.D. 655, 658 (E.D.N.C. 1988)).

Thus, the test for withdrawal or amendment of admissions is based on two prongs. The first prong of the test is satisfied "when upholding the admissions would practically eliminate any presentation of the merits of the case." *Hadley v. United States*, 45 F.3d 1345, 1348 (9th

Cir. 1995). In other words, the proposed withdrawal or amendments must "facilitate the development of the case in reaching the truth." *Farr Man & Co., Inc. v. M/V Rozita*, 903 F.2d 871, 876 (1st Cir. 1990). See *Banos v. City of Chicago*, 398 F.3d 889 (7th Cir. 2005) (holding that a court may permit a party to rescind admissions when doing so better serves the presentation of the merits of the case); *Atakpa v. Perimeter OB-GYN Associates, P.C.*, 912 F.Supp. 1566 (N.D.Ga. 1994) (finding that prohibiting the proposed amendments would impede the trier of fact from reaching the truth).

Under the second prong, the court must examine "whether withdrawal [or amendment] will prejudice the party that has obtained the admissions." *McClanahan*, 144 F.R.D. at 320. As contemplated under Rule 36(b), "'prejudice' is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth, but rather, relates to the special difficulties a party may face caused by the sudden need to obtain evidence upon withdrawal or amendment of admission." *Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d 147 (6th Cir. 1997). See also *Davis v. Noufal*, 142 F.R.D. 258 (D.D.C. 1992) (holding that the burden of addressing the merits does not establish "prejudice"). The "special difficulties" include the "unavailability of key witnesses in light of the delay."

*Sonoda v. Cabrera*, 255 F.3d 1035 (9th Cir. 2001). "Mere inconvenience" does not constitute "prejudice." *Hadley v. U.S.*, 45 F.3d 1345 (9th Cir. 1995). The test is whether that party is now any less able to obtain the evidence required to prove the matter which was admitted than it would have been at the time the admission was made. *Rabil v. Swafford*, 128 F.R.D. 1, 2 (D.D.C. 1989).

With respect to the first prong of the test, the Board finds that the merits of the action will be subserved by allowing withdrawal of the admissions which resulted from respondent's failure to timely respond. Respondent has submitted a response to petitioners' requests in which many of the previously admitted facts are denied, thereby demonstrating that the supposedly admitted matters are actually disputed. If withdrawal thereof were not permitted, respondent would be held to have admitted critical elements of petitioners' asserted claims.

As to the second prong of the test set forth in Rule 36(b), we find that petitioners will not be prejudiced by allowing the withdrawal of respondent's effective admissions and the replacement thereof with the later-served responses. Petitioners filed their motion for summary judgment prior to the close of discovery. The case is therefore in the pre-trial stage, and any potential prejudice can be mitigated by extending the discovery

period as necessary to permit petitioners to take any additional follow-up discovery based on respondent's amended admissions. See *Johnston Pump/General Valve, Inc. v. Chromalloy American Corporation*, 13 USPQ2d 1719 (TTAB 1989); see also *Hadley, supra*, at 1348 (courts are more likely to find prejudice when the motion for withdrawal is made in the middle of trial). Our determination in this particular case, however, is not meant to imply that the filing a Rule 36(b) motion prior to the close of discovery *per se* satisfies the second prong. Timing is merely one factor to consider in analyzing prejudice to the non-moving party.

In addition, petitioners have pointed to no particular prejudice in the form of special difficulties it could potentially face caused by the need to obtain evidence. While the Board recognizes that petitioners relied on the admissions in filing their motion for summary judgment, such reliance does not rise to the level of "prejudice" as contemplated under Rule 36(b). See *FDIC v. Prusia*, 18 F.3d 637 (8th Cir. 1994) (holding that the "mere fact that a party may have prepared a summary judgment motion in reliance on an opposing party's erroneous admission does not constitute 'prejudice' such as will preclude grant of a motion to withdraw admissions).

Thus, based on our two-prong analysis and taking into account all the circumstances presented before us, the Board finds that it is appropriate to exercise our discretion pursuant to Rule 36(b) to grant respondent's motion to withdraw its effective admissions and accept its later-served responses. Accordingly, respondent's admissions stand withdrawn and its responses are accepted.

## II. *Petitioners' Motion for Summary Judgment*<sup>2</sup>

The Board will now consider petitioners' motion for summary judgment on their claim under Section 2(d). Inasmuch as petitioners have based their assertion that there are no genuine issues of material fact on respondent's effective admissions, and because we have allowed respondent to withdraw the admissions, petitioners' motion for summary judgment on its Section 2(d) claim is

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<sup>2</sup> The parties should note that all evidence submitted in support of and in opposition to the motion for summary judgment is of record only for consideration of said motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during the appropriate trial periods. See *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); and *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983).

denied.<sup>3</sup>

### III. *Petitioners' Motions for Leave to Amend Their Pleading*

Lastly, we consider petitioners' motions for leave to amend their petition for cancellation to assert a claim of fraud. For the reasons explained below, petitioners' motions for leave to amend are denied without prejudice.

Under Fed. R. Civ. P. 15(a), leave to amend pleadings shall be freely given when justice so requires. The Board liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties. *See, for example, Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 USPQ2d 1221 (TTAB 1993). However, where the moving party seeks to add a new claim, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board

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<sup>3</sup> In addition, petitioners' motion for summary judgment on an unpleaded claim, namely that respondent fraudulently procured its registration from the USPTO, is denied. *See* Fed. R. Civ. P. 56(a) and 56(b); *see also S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293 (TTAB 1997) (a party may not obtain summary judgment on an issue that has not been pleaded). While petitioners have moved to amend their petition for cancellation twice, petitioners did not file either of their motions for leave to amend until after the submission of their motion for summary judgment. In any event, even if we were to consider petitioners' motion for summary judgment on the claim of fraud on its merits, because the motion is based on respondent's admissions which have now been withdrawn, the motion for summary judgment would be denied.

normally will deny the motion for leave to amend. See e.g. *Leatherwood Scopes International Inc. v. Leatherwood*, 63 USPQ2d 1699 (TTAB 2002); see also TBMP § 507.02 and cases cited therein.

The fraud claims asserted in both petitioners' first and second amended pleadings are explicitly predicated on the premise that petitioners' requests for admissions are deemed admitted. Indeed, both pleadings quote specific admissions and link the allegations pertaining to fraud directly to such admissions.

Insofar as the Board has permitted withdrawal of the admissions, all allegations pertaining to fraud contained in both of petitioners' proposed pleadings have no basis. At this juncture, to make either pleading the operative pleading in this case would serve no useful purpose. As such, both motions for leave to amend are denied without prejudice. Petitioners may, however, file an amended petition if they subsequently obtain information to support any allegations of fraud and can, in good faith, make such a pleading.

#### IV. *Resumption of Proceedings and Resetting of Dates*

Proceedings are resumed. The parties are allowed until THIRTY DAYS from the mailing date of this order to serve responses to any outstanding discovery requests. Trial dates, including the close of discovery, are reset as

follows:

THE PERIOD FOR DISCOVERY TO CLOSE: <sup>4</sup>	8/15/07
30-day testimony period for party in position of plaintiff to close:	11/13/07
30-day testimony period for party in position of defendant to close:	1/12/08
15-day rebuttal testimony period for party in position of plaintiff to close:	2/26/08

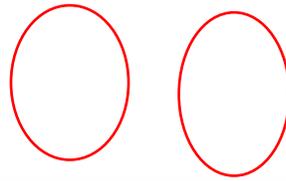
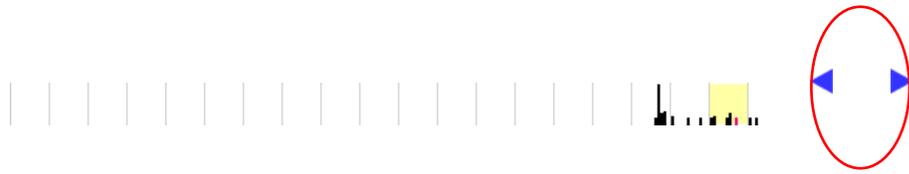
In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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<sup>4</sup> By this order, the discovery period has been extended to mitigate any potential prejudice to petitioners, and permit the taking of follow-up discovery based on respondent's responses to the requests for admissions.

# EXHIBIT F



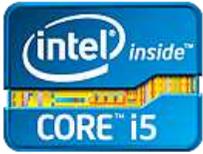
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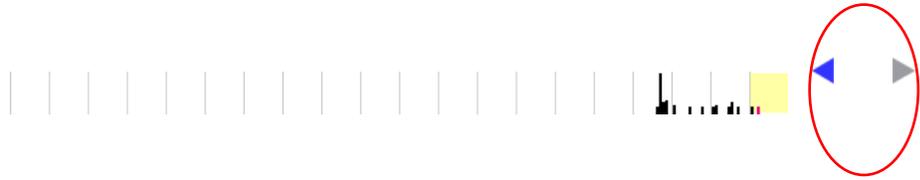








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