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Filing date: **05/27/2015**

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	05/27/2015
Attachments	PetitionersResponseToRegistrantsBriefInOppositionFinal4.pdf(3312913 bytes)

and (5) Registrant's suggestion that the claims in these proceedings be limited to just certain of the original claims made in the original Petition.

1. EDGE's Motion To Withdraw Default Admissions Should Be Granted

A. EDGE Has Established Excusable Neglect

First, Registrant has bundled its response on the question of whether EDGE had established excusable neglect into its response on EDGE's Motion to Withdraw Default Admissions. EDGE wishes to point out that excusable neglect is alternate grounds; namely, EDGE believes there was excusable neglect and thus rather than the Board granting EDGE the right to withdraw the default admissions and serve the actual admissions (exhibited to EDGE's Motion), instead the Board would extend EDGE's time to file its admissions until March 31, 2015 and thus deem the admissions served that day to be the ones accepted into these proceedings.

Second, EDGE believes it has established excusable neglect. EDGE is in *pro per* and does not have the in-depth knowledge of TTAB proceedings that Registrant's attorneys do. While EDGE does not suggest that a lack of knowledge of Board procedure on its own would constitute a fair basis for excusable neglect, the specific circumstances of these proceedings does suggest there was excusable neglect in this instance. EDGE had learned in these proceedings that if extra time is needed to complete and serve a document, that (as the Board instructed the parties in the January telephonic meeting), the parties should be lenient one to the other in granting such additional time and as the Board stated in January, neither party should resort to immediately filing motions just because the other party is a little late in filing or because a party has not responded as fully as the party had hoped for.

Further, it was EDGE's reasonable understanding from being exposed to these proceedings that should Registrant be concerned about EDGE being a few days later with a filing then its recourse would be for Registrant to file a Motion to Compel -- EDGE had no idea at all that being a few days later with its Admissions responses could possibly mean EDGE would be deemed to have agreed to all Registrant's admission requests by default. In addition, despite what Registrant now says, EDGE did write to Registrant pointing out that because Registrant's Request for Admissions contained so many requests for EDGE to respond on behalf of its licensees, that EDGE would need additional time to respond and would be responding on March 31, 2015 (which EDGE did). That communication is attached hereto to Dr. Langdell's affidavit as **Exhibit A**.

Thus EDGE's Response to Admissions served March 31, 2015 was served on the date EDGE warned Registrant it would do so, and was served just some days beyond the technical due date of March 12 -- not many weeks or months later, just some days later. It must now be clear to both the Board and to Registrant that EDGE did indeed need those extra days to consult with its licensees in order to fully respond to Registrant's Admission Requests. Indeed, even with that additional time, clearly EDGE was unable to get its main licensee to respond and thus had to serve the licensee with subpoenas to compel response both so that EDGE can fully respond to Registrant's Discovery Requests, and so that EDGE can put on a complete case for trial, such that all the pertinent evidence is before the Board and the Board can thus make a decision based on all the merits of the case, not just partial merits.

Given EDGE was only a few days late, and given that EDGE being in *pro per* believed that being a little late could only result (if anything) in Registrant filing a motion

to compel response, and since the events have shown that EDGE did indeed need that extra time (and, now, yet more extra time) to respond properly and fully to Registrant's requests, and given that EDGE's actual admissions are completely at odds with the default admissions Registrant is hoping to be able to rely on, all this EDGE believes *does* constitute excusable neglect.

And to be clear, contrary to what Registrant states on page 3 of its brief, both subpoenas were required (and are still required) in order for EDGE to properly and fully respond to Registrant's Request for Admissions -- for this reason, as is also pointed out by Registrant in its brief, EDGE was forced to state in its actual Discovery Responses served March 31(exhibited to our motion) that it could not answer fully until EDGE has concluded research with its licensees.

Further, as to Registrant's suggestion that Petitioner is out of time to gather this subpoena evidence, Petitioner responds that on the one hand the subpoenas were issued while Discovery was undisputedly still ongoing (which will be moot when discovery is extended, as it should be). Second, Petitioner could not have predicted until April or so of this year that its licensee, Velocity, would not be fully and swiftly compliant in helping provide evidence and support for this matter, and hence the need for a deposition was not known or knowable prior to the point Petitioner issued the subpoenas. For this reason, it is fair to permit all this discovery to go forward to completion so that when the Board considers this Petition it will be on the merits in full, with all evidence, facts and relevant testimony before the Board.

As to Registrant's point that it has been timely with all of its Discovery Responses in these proceedings, this is at best disingenuous even if it has some technical truth to it. As

is a matter of record, the "responses" that Registrant served on EDGE last year were in fact almost entirely non-responsive. It was not until the Board assisted the parties in the telephone call in January 2015 that Registrant finally agreed to serve amended responses that this time were at least nominally responsive to EDGE's Discovery requests. Since when Registrant filed its amended responses this year it provided no reasonable excuse as to why it had not filed those same responses last year when first asked to do so, the reality is that Registrant 'used the system' (one might say, abused the system), to delay giving its actual responses by over 7 months by initially serving what it knowingly understood to be non-responsive answers. In very real terms, then, it is a fact on the record that Registrant delayed giving its even remotely acceptable Discovery Responses for over 7 months past the deadline to do so, and yet feels that it should be able to heavily sanction and jeopardize EDGE's case (by insisting on default admissions being accepted) because EDGE was just a few days late giving its actual Admissions. This is neither equitable or fair, and is a prime example of Registrant being disingenuous when it suggests it has been compliant and responsive in this Discovery process.

EDGE is not suggesting, though, that simply because Registrant delayed giving proper Discovery Responses for over 7 months that therefore EDGE should be permitted to be late in its responses. Rather, EDGE hopes that the Board will see that there is fairness in dealing with the parties on equal terms -- and that it would thus be inequitable for EDGE to be punished (and its case destroyed) because it was a few days late on one response, when Registrant was over 7 months late on giving its actual ('real') responses.

B. In Fairness and Equity, Petitioner EDGE Is Entitled To Withdraw Default Admissions In Accord With TTAB Precedent.

Should the Board not accept EDGE's argument that there was excusable neglect, then in fairness and equity EDGE should be permitted to withdraw the Default Admissions and its actual admissions served on Registrant on March 31, 2015 should be accepted into these proceedings in place of the Default ones.

As Petitioner EDGE stated in its prior filing, *Giersch and Giersch v. Scripps Networks* (Cancellation No. 92045576; 2007) is a decision that is precedent of the TTAB. The basic facts in this precedential case are essentially identical to the facts here: As here, the party in the cited case served its actual admissions along with its other Discovery Responses, somewhat late of the date for serving its admissions. As a result, the other party argued -- as Registrant does here -- that the party should be stuck with the default ("effective") admissions. The cited case is almost identical to this case in all key respects that would influence the Board's decision to rely on the precedential decision to permit the default ("effective") admissions to be withdrawn. Insofar as there are any differences between that cited case and this case, the differences go in Petitioner EDGE's favor to make an even stronger argument for permitting withdrawal of the default admissions.

There are perhaps just two differences between the cited case and this case: in the cited case the party that was late serving its admissions was due to serve them on September 22, 2006 but failed to serve them until they filed their cross-motions on November 21, 2006 (see pages 1 and 2 of the Decision; Exhibit F to EDGE's *prior* filing). In that case, then, the party serving its admissions late served them an entire two months late, whereas in this case Petitioner EDGE was a mere 19 days late. In coming to its conclusion in 2007, the Board considered that how late the party was in serving the

admissions was a factor and in this precedential decision the Board determined that two months late was not "too late" for the Board to decided to permit withdrawal of the default (effective) admissions. If the Board accepted two months late as acceptable in this precedential opinion, then it would be unfair and inequitable to not accept EDGE's 19 days late in this case.

The second difference is perhaps a minor one, but worth mentioning since it also goes in Petitioner EDGE's favour, Namely, in the cited 2007 case the part that was late serving its admissions was represented by a firm of attorneys. Arguably, if the Board were to show leniency (either on the issue of granting withdrawal of default admissions or on the question of excusable neglect), leniency should perhaps be shown somewhat more to a party in pro per/se than on represented by supposedly experienced counsel.

In determining how to decide on Petitioner EDGE's motion for permission to withdraw the default admissions, the Board is obliged to consider the 2007 Opinion since it is Precedent of the TTAB. While perhaps the Board is not compelled to rule as it did in the 2007 case, arguably in fairness and equity, the Board should rule the same way -- should grant permission for withdrawal -- unless there are extremely compelling reasons not to decide in accord with the precedential decision. Respectfully, there are no such compelling reasons here that could cause the Board to not rule in line with the precedential 2007 decision.

All the conditions that the Board deemed should be met for withdrawal to be granted in 2007 are also met here -- if anything they are met even more clearly here than in the 2007 case. As mentioned above, the first consideration is how much delay was there in serving the late admissions. And here the delay was substantially less than in the

2007 case where the Board deemed the delay not to be too long. Further, in the 2007 case it was decided that the other party would not be harmed by the delay or by the moving party being permitted to withdraw the effective admissions and serve the actual admissions. Here we have the same condition met equally well, since Registrant here, too, will not be impacted (in the sense referenced in the 2007 decision, that, for instance, the delay caused them to miss an opportunity to depose a party, or some other such extreme negative impact).

The key factor that the Board deemed critical in the 2007 case was that the Board has an obligation to rule on the side of a fair hearing taking place, with all the merits and all the evidence being considered. What tipped the 2007 decision is the same facts and factors that exist here: namely, that given EDGE's actual admissions are exactly opposite from the effective admissions, it would be a travesty of justice if the default admissions were to remain in effect. That is, no fair consideration of the facts and evidence on the merit could be heard and considered if the default, effective, admissions were not permitted to be withdrawn.

And this bears repeating: in the default admissions Petitioner EDGE is being forced to admit allegations whereas in its actual admissions it consistently denies them. The facts in evidence before the Board would thus be entirely opposite to the truth if the default admissions were not permitted to be withdrawn.

2. Petitioner EDGE's Motion for 56(d) Discovery Should Be Granted

A. Petitioner Has Not Admitted That It Does Not Need 56(d) Discovery

Contrary to the false picture portrayed by Registrant, Petitioner EDGE requires the time for additional Discovery for at least *three* reasons. First, EDGE requires the

evidence it will obtain as a result of the pending Federal Court subpoenas in order to be able to file its full response to Registrant's Motion for Summary Judgment since evidence critical to EDGE proving its argument cannot be obtained other than via these subpoenas. Second, Petitioner EDGE requires the evidence that will be obtained through these subpoenas to fully support its 36(b) Motion to Withdrawn Default Admissions, since evidence that can only be obtained through these subpoenas is necessary to demonstrate clearly to the Board that Petitioner's chances of prevailing on the Petition are extremely high. Proof of this assertion is critical both to Petitioner EDGE's more complete response to Registrant's Motion for Summary Judgment as well as Petitioner's motion to withdraw default admissions and serve actual ones.

Third, the evidence that can only be obtained from these subpoenas is also required to fully respond to Registrant's Discovery Requests. Registrant tries to make much of the point that the key grounds it claims to be relying on by way of default admissions in order to argue for summary judgment are admissions that in the "actual" admissions Petitioner does not indicate it needs further evidence from Licensees to respond to. This is in error for at least two reasons: (a) if the Board grants Petitioner EDGE the right to withdraw the effective admissions and serve actual ones, then Petitioner will serve amended admissions that make clear that on these points, too, Petitioner will need further evidence from the subpoenas to fully respond to the admission requests; (b) Petitioner EDGE is not only asking in its 56(d) Motion for time to pursue the subpoenas in order to counter those particular grounds named by Registrant in its brief, but also to provide other critical evidence that is crucial to Petitioner being able to file its complete response to Registrant's motion. And again the response that EDGE has filed thus far is only a

place-holder temporary one, with its full proper response only being able to be filed when the subpoena evidence is received.

Registrant quotes from *Dyneer Corp v. Automotive plc*, 37 USPQ2d 1251, 1253 (TTAB 1995), stating that discovery under Rule 56(d) should "*only be filed when a party's ability to respond to its adversary's summary judgment motion is so constrained, because of inability to take needed discovery, that the ... movant cannot present, by affidavit, facts essential to justify the party's opposition to its adversary's motion for summary judgment.*" With respect, those are precisely the conditions that exist here in this case. In order to be fully able to respond to Registrant's Motion for Summary Judgment, Petitioner EDGE must be able to effectively present its case that demonstrates that on trial of all the facts and evidence on the merits Petitioner EDGE will prevail in this case because its use of the exact same mark in U.S. commerce via its licensee Velocity Micro is *so* extensive, and precedes any use by Registrant for *so* long, that there can be no doubt in the Board's mind that decision on this Petition must go in favor of Petitioner EDGE. In order to present that crucial evidence, without which the Board cannot make a fair decision on the true merits of this case, EDGE must be permitted to conclude collection of that evidence via the subpoenas, and for that EDGE requires the 56(d) motion be granted.

And to be clear, Petitioner requires the 56(d) discovery since the precedential 2007 Opinion indicates that in deciding to permit withdrawal of default admissions the Board should consider as a factor Petitioner's chances of prevailing at trial if such permission is granted. And here, in order for the Board to be presented with all the facts and evidence germane to the Board making a determination of Petitioner's likelihood of prevailing,

then the further facts and evidence that Petitioner will obtain through the 56(d) discovery is essential since without it the Board will be missing key evidence and facts currently not available.

B. Petitioner's Motion Does Satisfy Requirements of FRCP 56(d)

First, Petitioner EDGE did meet the requirements by averring in the statement under oath by Dr Langdell that the subpoenas were being served on Velocity Micro and its key personnel at the time of filing the Motion. On the day Petitioner EDGE had to file its motion due to the deadline, Petitioner did not have to hand that that moment signed copies of the subpoenas or proof of service on Velocity Micro -- this despite best efforts by Petitioner EDGE to obtain them in time to exhibit to the Motion.

However, attached hereto as **Exhibit B** to Dr Langdell's further affidavit are true copies of the signed subpoenas along with proof that they were served on Velocity Micro and its CEO Randy Copeland on May ⁴/₅, 2015. Petitioner through its process servers sought to effect service earlier, but were only successful on this date. This, Petitioner understands, is not unusual and will be a common occurrence familiar to the Board. Petitioner believes that it did provide adequate argument as to why further discovery is necessary in both its brief and its affidavit, but for avoidance of doubt, the grounds for needing the discovery are affirmed again in Dr Langdell's further affidavit attached hereto. The attached makes clear in the form of an affidavit that the additional discovery is necessary.

D. Petitioner EDGE's Arguments in Opposition to Razer's Summary Judgment Motion Do Not Render Need For 56(d) Discovery Moot.

Petitioner EDGE made clear that its opposition to Registrant's Summary Judgment Motion was a temporary, incomplete response pending acquisition of the

necessary further evidence being obtained through the subpoenas. The only way that Registrant's argument in part 2(D) of its brief can make sense is if Registrant is admitting that the argument and evidence presented by Petitioner in its Response to the Summary Judgment Motion are sufficient to dispose of the Motion on their own without further evidence. If that is what Registrant is arguing then that would be a reason not to grant further 56(d) discovery as such new discovery would be moot after a decision had already been rendered in Petitioner's favor. However, given Registrant's apparent continuing contention that it is entitled to summary judgment, then it is essential that the entire argument and all evidence be before the Board when it considers and makes its decision on the Summary Judgment Motion, and that cannot happen unless the 56(d) discovery is granted and the further evidence is gathered via the subpoenas.

3. Petitioner's Request To Extend Discovery Period

Petitioner EDGE did not request formal permission to file a motion to extend the discovery deadlines since Petitioner understands that extension of Discovery is inherent in both its 56(d) motion and its 36(b) motion. Clearly, if, as would be just and equitable, Petitioner is granted the right to withdraw the effective (default) admissions and serve actual admissions, then Petitioner should have the right to ask that either its admissions served March 31, 2015 be accepted in as the actual admissions, or Petitioner should be permitted to serve such amended actual admissions following the Board's ruling that it may do the withdrawal. Clearly, the period for Discovery will need to be extended for this purpose, and indeed Petitioner notes that Registrant also seems to anticipate the Board resetting the all dates in this matter, including the deadline for Discovery.

Second, if, as should be the case in fairness and equity, Petitioner is granted its 56(d) discovery motion, then once again it will be reasonable for the Discovery period to be amended so that the deadline to close Discovery is at least after the subpoena evidence has been collected and incorporated into documents served and filed in this case.

Third, it is now clear that in any event Petitioner will need to serve follow up discovery requests on Registrant since it is obvious that Registrant has been hiding key facts from both Petitioner and the Board that are highly pertinent to this case. Indeed, Petitioner attaches hereto as **Exhibit C** to Dr. Langdell's affidavit a new set of Discovery Requests served on Registrant at this time that clearly need to be responded to for the Board to be able to consider this case on its full merits. As can be seen from these new discovery requests, Petitioner has become aware that Registrant has expressly abandoned its use of the mark EDGE and removed its "EDGE" branded product from the U.S. market. It is thus vital that Petitioner be permitted to know why Registrant took this course of action. At the very least this goes to the bad intentions of Registrant in ever using this mark or seeking to register it in their name, which is a key ground of the Petition.

As can also be seen, Petitioner believes that Registrant has been deliberately seeking to interfere with Petitioner's contractual relations with its licensees. While Petitioner's licensees are expressly forbidden from any communication with Registrant, Petitioner has reason to believe that at least one licensee has been colluding with Registrant against Petitioner in this case, which evidence Petitioner has a right to since it would go to the same grounds of bad faith that is a core ground to this Petition.

4. Petitioner Has Not Waived Its Right To Object To Razer's Discovery Requests.

In response to Registrant's argument in its brief (Section 4), first, it is Petitioner EDGE's contention that it has proven excusable neglect, in which case there can be no dispute that Petitioner has not waived its right to object to Razer's Discovery Requests. In the alternate, if (as would be fair and equitable) the Board were to grant Petitioner EDGE's 36(c) motion to withdraw the effective (default) admissions and serve actual admissions, then as in the precedential 2007 Opinion cited herein, Petitioner should not be limited in any way as to what it serves as its actual admissions. That is, just as the party in 2007 was not restricted in what they could serve as their "actual" admissions, neither should Petitioner be restricted here. Thus, in serving its actual admissions in accord with the precedential opinion, Petitioner must be free to object as it sees fit to do so to any of Razer's Discovery requests for admission. Indeed, permitting Petitioner to withdraw the default admissions and serve actual admissions while limiting Petitioner to not being able to object to any admission requests would make a mockery of permitting Petitioner to serve its actual admissions (since what would be served under such limitations would not be Petitioner's "actual" admissions).

Insofar as Registrant is seeking to suggest in its section 4 of its brief that Petitioner EDGE should be considered to have waived its right to object to any of Registrant's discovery requests -- not just those for admission -- that is surely pure nonsense and baseless. Petitioner EDGE is not tardy in serving its discovery responses for production of documents or interrogatories, thus it would make no sense that the objections made by Petitioner in those responses should not be accepted. Nor would it

make sense that Petitioner would be barred from objecting to any future discovery requests that Registrant might be permitted by the Board to make in these proceedings.

Registrant suggests in its section 4 of its brief that Petitioner was tardy in serving all its discovery responses, yet it provided no evidence or argument that either Petitioner's responses to document production or interrogatories were tardy. The only argument Registrant offered, with any detail such as alleged dates responses were due, was in regard to their Request for Admissions, that had the earlier response date of March 12, 2015 which was not the response date for any other of Registrant's discovery requests.

Petitioner also notes how hypocritical it is for Registrant to state that all its discovery responses have been timely and that it should be solely Petitioner that is considered to have waived the right to object to discovery requests. As can be seen in the attached email from Mr. Barritt (attached hereto as **Exhibit E** to Dr Langdell's new affidavit), Registrant clearly confirmed in the January 29, 2015 telephone call with the Board, as well as in this January 30, 2015 email, that there was substantial outstanding discovery from the prior August/September timeframe that Registrant had still not responded to. Indeed, Registrant insisted that it would not be rushed into responding even after being required to do so in the telephone call, insisting on taking a full further 30-days in addition to the already 6-7 months it had taken to provide proper and full responses to discovery requests. Thus Petitioner should not have its right to object waived, but should Petitioner have its right waived, then in equity and fairness since Registrant was by its own admission 6-7 months late in responding to "outstanding discovery requests" Registrant too should have its right to object to any of Petitioner's discovery requests waived, too.

Accordingly, clearly, Registrant's request that the Board rule that Petitioner has waived its right to object to Registrant's discovery requests should be denied.¹

5. The Board Should Not Limit The Scope Of Permissible Claims In The Petition As Registrant Requests

As the Board is well aware, the United States is not a "first to file" country where a party can claim rights in a trademark simply by beating a competitor to registration of the mark first. Rather, a registration in the United States should reflect the *true* ownership of the mark based on common law rights; that is based on use, reputation, dilution and so forth. More important, priority of claim of rights is based on proof of first use, and proof of continuity of use where that use has been non token and where there is no proof of intent to abandon use or proof of actual abandonment with no intent to recommence use. Thus the first grounds mentioned in Petitioner's Petitioner speaks to these fundamental grounds for arguing that Petitioner, not Registrant, is the true legal and rightful owner of

¹ In the footnote to page 13 of its brief, Registrant makes false and misleading statements about Petitioner's objections, that are at the *very least* hypocritical. Petitioner's objection that Registrant's request in question called for a legal conclusion was valid since in TBMP 444(21)(note 29) it is clarified that objection based on legal conclusion may not always be a valid objection, but it can be depending on circumstances. The example given in the note is that a party may not object on the basis of calling for a legal conclusion when the question is whether the party believes marks to be confusingly similar. In this instance, the question Registrant asked was, in Petitioner's reasonable opinion, one that called for a legal conclusion that Petitioner not being an attorney was no equipped to answer. Worse, it is hypocritical for Registrant to criticize Petitioner for giving the objection that a legal conclusion is called for when Registrant itself gave the same basis for objection in its responses to Petitioner's Requests for Admission (see Exhibit D to Dr Langdell's affidavit hereto).

Despite the TBMP rules clearly saying that it is a reasonable objection to say that what is called for is attorney-client work product, Registrant seeks to argue that Petitioner was wrong to make this objection. That is not true, rather it was Registrant that showed a lack of knowledge of the TBMP when it asked questions that clearly sought to pierce the veil of attorney client privilege. Petitioner did not insist on privilege logs being produced, the record will we believe show that it was Registrant that tried to insist them and Registrant argued Petitioner had not argued for them. As to Petitioner's objections to producing any search results, it was comments and opinions of attorneys that were objected to (which is permitted per TBMP 444(6). Petitioner clearly stated in its responding objection that it was being objected to on the basis of being overly broad given the sizable number of EDGE marks that Petitioner owns, most of which may or may not have relevance to this petition and hence are beyond the scope of proceedings. Beyond that Petitioner objected to the request potentially calling for privileged information such as attorney comments and advice, which TBMP 444(6) specifically states is a valid basis of objection.

the trademark "EDGE" for the goods in question in this case, and for the consumers in question, channels of trade in question, and so forth. Hence it goes to the heart of this petition to cancel that Petitioner made use of the mark first, and has used the mark extensively and continuously for well over a decade prior to Registrant ever first contemplating use of the mark, let alone making any actual use of it in US commerce.

Insofar, as Registrant argues, these points go to dilution as a grounds for cancellation, then grounds 1 of the Petition may be considered merged with grounds 2, but should in any event not be deleted from the petition since that would be unfair to deny Petitioner this valid argument as to whom the true legal owner of the mark EDGE for the goods and services in question is. Further, since Registrant's trademark registration is causing Petitioner harm because it is preventing Petitioner from registering its own mark EDGE on the US Register for the same goods, then evidence of first use, non token use and continuity of use are all valid grounds to petition to cancel. Thus none of these grounds should be deleted from the Petition.

And for the record, Petitioner did not cite as grounds for the petition that Petitioner owns current registrations for the mark EDGE that pre-date Registrant's registration. That said, Petitioner does have the likelihood that it will gain a registration of the mark EDGE that will predate Registrant's registration, that will be obtained during these proceedings either via the mechanism of the USPTO correcting a historical error in one of Petitioner's earlier filings, or by Petitioner becoming owner of an earlier registration currently on record as seeming to be owned by a third party. Thus Petitioner anticipates asking for permission to amend its Grounds when such prior registrations are concluded. That said, the existence in the petition of reference to Petitioner's earlier

registrations which were abandoned or otherwise are no longer live registrations, Petitioner lists those as further evidence going to the argument of dilution and confusion, showing the strong registered rights Petitioner owed for several decades, and the strength of Petitioner's historic policing of the use of the mark EDGE in the US market.

As to the grounds of bad faith, this goes in part to fraud on the part of Registrant in applying to register the mark EDGE in their name when they knew well when they applied for the registration that the mark EDGE is in fact legally owned by Petitioner. Contrary to what Registrant states in its brief, bad faith in relation to filing to register a mark fraudulently is a permitted ground of cancellation under US Code §1064 (3); both where there is argued to be evidence of fraud on the USPTO and where a registration was obtained contrary to the provisions of §1054, which Petitioner also argues here. It is well established in trade mark cancellation that bad faith/fraud are absolute grounds for cancellation, and that bad faith is also an acceptable relative ground for cancellation. None of these grounds for cancellation should thus be stricken from the Petition, but rather all should be given equal and full consideration by the Board.

If the Board does not feel that Petitioner was clear in its grounds of fraud and bad faith on the part of Registrant, then Petitioner hereby requests permission to file a motion to amend its Petition to make these grounds clear to the Board. Thus the valid claims in the Petition go beyond just confusion and dilution to include fraud and bad faith associated thereto, and the established ownership rights of Petitioner that Registrant was fully aware of when it sought to register Petitioner's long-standing, well known trademark in its own name.

Last, it is now clear that Registrant has expressly abandoned its use of the mark EDGE in US Commerce, and thus Petitioner hereby requests permission to file a Motion to Amend its Petition to now include new grounds of express abandonment of the mark. Proof of which express abandonment by Registrant will be obtained through the further discovery that Petitioner has requested the right to pursue as part of its request to extend the discovery deadlines in this case.

PETITIONER REQUIRES BOARD CERTIFICATION FOR THIRD PARTY DEPOSITION BEFORE IT CAN BE FILED WITH THE DISTRICT COURT

Turning now to the deposition of Petitioner's Licensee's President (Randall "Randy") Copeland of Velocity Micro. As mentioned before, attached in Exhibit B is a signed copy of this deposition subpoena. However, on researching the question, Petitioner believes that it requires the Board to certify this subpoena before it can be filed with the District Court local to Mr. Copeland, and then issued by the court. Ideally, Petitioner would have preferred to bring this need for certification to the Board's attention earlier, but due to the strict guidelines placed on Petitioner as to when and what it may file, this filing is the next opportunity available to Petitioner to request the Board's certification.

Petitioner takes its legal guidelines on the issue from Gilson on Trademarks (3-9 Gilson on Trademarks §9.02 fn. 389):

*Fn 389 Fed. R. Civ. P. 30(a); TBMP §4040.03(a)(2). See Electro-Coatings, Inc. v. Precision National Corp., 204 U.S.P.Q. 410 (T.T.A.B. 1979). Once the nonparty deposition notice has been served, **the T.T.A.B. will certify it so that it may then be filed in the District Court in the district where the nonparty resides. The District Court then issues a subpoena, which is enforceable in the District Court and not before the T.T.A.B.** (our emphasis)*

Thus while Petitioner had hoped to have had the District Court serve the deposition subpoena on Mr Copeland before now, it has not been possible to do so since we first need the Board to certify the deposition. And, as we have said, this is the very next filing Petitioner has been permitted to file in this matter in which it could raise this issue with the Board. If the Board could thus please certify this deposition, then Petitioner can file it with the District Court and have the Court serve Mr Copeland with the subpoena for his deposition forthwith. Again, Mr. Copeland's deposition is crucial and necessary to Petitioner being able to make its actual, full, Opposition to Registrant's Motion for Summary Judgment, and thus this request is an integral part of Petitioner's 56(d) motion.

CONCLUSION

In conclusion, Petitioner should be permitted to either be granted excusable neglect and have its March 31, 2015 admissions accepted in, or should in fairness and equity be granted the right to withdraw the default admissions and serve actual admissions. Secondly, since Petitioner cannot give its full response and objection to Registrant's Summary Judgment Motion until Petitioner has concluded the subpoena process to gain new evidence needed for a full reply, accordingly the Board should in fairness grant Petitioner's 56(d) discovery motion. For the reasons stated, the Board should also extend discovery to enable the outstanding discovery to be completed (including newly filed discovery requests). In addition, the Board should deny Registrant's request that Petitioner be denied the right to object to any of its requests, and should also deny Registrant's request to limit the grounds for cancellation at all.

Respectfully submitted,

Edge Games, Inc.

By: 

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May 25, 2015
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S RESPONSE TO REGISTRANT'S BRIEF IN OPPOSITION TO PETITIONER'S MOTIONS AND ATTACHED AFFIDAVIT OF DR TIM LANGDELL in regard to Petition to Cancel No. 92058543 has been served on Respondent by mailing said copy on May 26, 2015, via U.S. certified mail to:

Keith A Barritt
Fish & Richardson PC
PO Box 1022
Minneapolis
MN 55440-1022

A handwritten signature in black ink, appearing to read 'Tim Langdell', written over a horizontal line.

Dr Tim Langdell, CEO
For Petitioner in *Pro Per*

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

EDGE GAMES, INC.	}	
(California Corporation)	}	
	}	
Petitioner	}	Cancellation No. 9205843
	}	
v.	}	Mark: EDGE
	}	
RAZER (ASIA-PACIFIC PTE LTD	}	Registration No. 4,394,393
(Singapore Corporation)	}	
	}	Registered: September 3, 2013
Registrant	}	
	}	
	}	
_____	}	

AFFIDAVIT OF DR. TIM LANGDELL

I, Tim Langdell, declare as follows:

1. I am the CEO of the Petitioner company, Edge Games, Inc., in *Pro Per* in this matter, and I am over 18 years of age. I make this affidavit in support of Petitioner's opposition to Registrant's Motion for Summary Judgment and in support of Petitioner's Motion to Withdraw Default Admissions and Serve Actual Admissions, and Petitioner's 56(d) Motion to complete certain discovery before Petitioner files its fully and complete response to Registrant's Summary Judgment Motion.
2. Attached as Exhibit A is a true copy of email exchanges with Mr. Barritt.
3. Attached as Exhibit B is a true copy of signed copies of the two subpoenas and proof of service of same.
4. Attached as Exhibit C is a true copy of three new discovery requests.
5. Attached as Exhibit D is a true copy of email proving Registrant used the same objection grounds that it accused Petitioner of wrongfully using.
6. I note that the legal arguments why Registrant's Summary Judgment Motion should be denied, and why Petitioner's two motions should be granted, are

detailed in Petitioner's prior responses and those of this date. All those legal arguments made in the initial opposition to the Summary Judgment Motion, as well as those arguments made in the attached further Reply, are to be considered incorporated herein for the purposes of all arguments being made under affidavit.

7. Registrant's Motion for Summary Judgment is premised on Petitioner being late in serving its admissions in reply to Registrant's First Admission Requests, and thus Registrant arguing that Petitioner should be deemed to have admitted everything by default. Registrant then relies on those default admissions to then argue that these admissions mean Petitioner has no case and hence summary judgment should be granted in Registrant's favor. All prior and accompanying submissions by Petitioner, along with this affidavit and my prior declaration, combine to strongly oppose the Summary Judgment Motion.
8. There are numerous valid reasons why Registrant's Summary Judgment Motion should be denied.
9. As the record shows, Petitioner did all in its power to encourage Registrant to participate fully in Discovery in the summer of 2014, but Registrant refused to do so. While Petitioner served its first sets of discovery requests on Registrant in August 2014, Registrant failed to even attempt to serve its first requests on Petitioner until February of 2015, and then only after being compelled to attend a telephone conference with the Board present to hear Petitioner's complaints that Registrant was not complying fully with Discovery.

10. While Registrant served some documents on Petitioner in or about September 2014 that were supposed to be responsive to Petitioner's first sets of discovery requests, in fact Registrant's "responses" were almost entirely non-responsive: objecting to nearly all of Petitioner's requests for admissions, requests for document production and interrogatories. In all, Registrant produced no documents at all and refused to fully respond to virtually any request on very disingenuous and unacceptable grounds for objection. It was not until after the telephone call that the Board took part in early in 2015 that Registrant finally agreed to at least be partially responsive to Petitioner's discovery requests. Even now, even today, Registrant has still not been fully responsive to all of Petitioner's requests, and thus when the current matters are dealt with Petitioner will be seeking permission to file a Motion to Compel Response to Discovery Requests on Registrant.
11. When Registrant finally served its first ever discovery requests on Petitioner in February 2015, the requests contained demands for admissions, interrogatories and document production that was not only far outside the scope of these proceedings, but also insofar as it was within the scope, called for Petitioner to provide responses based on numerous facts regarding Petitioner's various trademark licensees. Since in order to fully respond to Registrant's very late served discovery requests required Petitioner to contact its various licensees and research various issues with those licensees, and since at least one key licensee (Velocity Micro) had not been responsive, I, on behalf of Petitioner, indicated to Registrant that we would not be in a position to serve our responses within the

usual timeframe. Instead, I stated that Registrant would receive Petitioner's responses on March 31, 2015 (see Exhibit A attached hereto).

12. I did not receive a reply from Registrant to this communication, but I assumed safe receipt since prior emails had been safely received by Registrant's attorney. Since Registrant agreed in the telephone call that the Board took part in to be more compliant regarding discovery going forward, including being compliant with any discovery extension request Petitioner might have, I did not believe it was necessary to specifically wait on Registrant's written reply. Rather, based on the assurances Registrant gave in the telephone call with the Board that it would agree reasonable extensions, I assumed that naturally Registrant would not object to these relatively few days extension. Indeed, I am shocked that Registrant is not only objecting to the slight delay, but is seeking to use the small delay as a basis to gain an unfair advantage in this case, namely a default judgment in its favor based not on the true merits of this case, but on a technicality.
13. As can be seen from the actual admissions that Petitioner served on Registrant on March 31, 2015, in all instances where Registrant is relying on a default admission, Petitioner has denied that request for admission. In other words, Petitioner's true, actual, admissions are diametrically opposite from the default (effective) admissions that Registrant is relying upon as the foundation of its Summary Judgment Motion. Since I believe the Board's key concern is that each case be heard fairly and fully on its merits, to grant Registrant its motion and rule this case in their favor in these circumstances would be a travesty of justice since the case would not have been heard either fairly or fully on the actual merits.

14. In particular, the default (effective) admissions have Petitioner admitting facts that are not only not true, they are the very definition of opposite of the truth. Default admissions that state Petitioner EDGE has no claim to the EDGE mark, has not used the EDGE mark, or has abandoned it, or has failed to maintain proper licensee arrangements, etc, are all exactly opposite to the truth. I include here the argument made in the motion regarding the difference between what the default admissions would have Petitioner allegedly admitting to, and Petitioner's list of the true state of affairs regarding each such issue, question or fact.
15. I believe that excusable neglect was shown in this instance: I sincerely did not know that if Petitioner was even one day late serving its admission responses it would be deemed to have admitted everything requested by Registrant. Since to that point Registrant had seemed to do all in its power to avoid fully or properly responding to all of Petitioner's discovery requests, and since Petitioner had been told that its only recourse would be to first try to work things out amicably with Registrant and only if that was tried and did not work could Petitioner then file a Motion to Compel response. I thus naturally assumed the same applies to admission requests.
16. Taking together all the facts and factors in this instance -- my understanding of what remedies Registrant had if Petitioner was slightly late, the assurances given by Registrant in the phone call that it would be amicable and lenient about discovery extensions, etc, and the fact I had written to Registrant stating the date Petitioner's responses would be served -- I believe in this instance there was excusable neglect. Accordingly, I believe that it would be fair for the board to

retroactively extend Petitioner's deadline to serve its admissions to at least March 31, 2015 and thus rule those served as timely. Ideally, though, Petitioner would like the extension to include the right to amend those admissions to make clear that Petitioner does require the 56(d) discovery before it can fully respond to all Admission Requests (and other discovery requests) not just the limited sub-list of such requests indicated as relied on by Registrant.

17. In the alternate, and especially since there is clear precedential TTAB Opinion supporting it, Petitioner asks that it be permitted to withdraw the default ("effective") admissions and have the right to serve actual admissions. I incorporate here the legal argument made in Petitioner's motion, noting that the facts in this case are essentially the same as in the precedent case where the Board did grant permission to withdraw default admissions. As in the precedential case, here the Board would be prevented from hearing the full case on its merits, with all the true facts and evidence before it, if the motion to withdraw default admissions were rejected and Registrant were granted its Summary Judgment. Secondly, as with the precedential decision of 2007, here Petitioner was only a few days late serving its true admissions -- in fact in the precedential case the party was a full two months late, and thus far later than Petitioner, and yet the Board deemed that not "too" late for permission to be granted to withdraw.
18. The other factor the precedential opinion calls for the Board to consider is the likelihood of Petitioner prevailing in this case should the motion to withdraw default admissions be granted. In this case, Petitioner's chances of prevailing is very high if all the true facts and evidence (including the actual admissions) are

before the Board. However, in order to get all the key facts and evidence before the Board, Petitioner needs to obtain the facts and evidence from the subpoenas it has served on Velocity Micro and its CEO, Randy Copeland. For this reason, it is essential that the Board please also grant Petitioner's 56(d) motion for further discovery before Petitioner files its final revised, complete response to Registrant's Summary Judgment Motion. And, to be clear, the initial response(s) Petitioner has filed to the Motion for Summary Judgment is not Petitioner's final complete response and objection, since that cannot be filed until Petitioner has obtained the facts and evidence that it can only obtain via the two subpoenas (document production and deposition).

19. In support of Petitioner's 56(d) Discovery motion, I add that the facts and evidence that Petitioner will be obtaining from its licensee Velocity Micro includes all the sales and marketing data from 1998 to the current day in relation to game computers and computing devices sold with the brand name "EDGE." Once the Board is able to inspect this evidence of many years of continuous, substantial sales and marketing, for essentially the same goods as Registrant and essentially the same channels of US trade, and that all this use was in the many years prior to Registrant applying for the instant registration, the Board will be able to see the very high likelihood of Petitioner prevailing in this petition.
20. What Petitioner also anticipates obtaining through the subpoenas is proof that Registrant has been attempting to collude with Petitioner's licensee, in a bad faith attempt to steal Petitioner's long time trademark from it. This evidence will go to the fraud and bad faith grounds for cancellation, whereas the other anticipated

subpoenaed evidence will go to prove the likelihood of prevailing on all the other grounds for cancellation.

21. Contrary to what Registrant alleges, Petitioner does need this additional evidence via subpoena and the 56(d) motion before it can file its complete and full opposition to the Motion for Summary Judgment. Not only does Petitioner need to respond to the points that Registrant draws attention to in its brief, but as mentioned above, Petitioner also needs to prove all the other conditions on which the basis of granting the 36(c) motion rest, which cannot be proven fully to the Board until the subpoena discovery process is completed.
22. As to Registrant's suggestion that the subpoenas are not real, or have not been served, I can assure the Board that is not true. Attached in Exhibit B are signed copies of the subpoenas (which were not available to Petitioner at the time it filed its Motion), and copies of proof of service. The Board will note that service was not effected until May 5⁴, 2015. I am informed that such delays in effecting service are not unusual for a variety of reasons, and that the Board will not be surprised, I trust, that service was in the timeframe it was. However, accordingly, as at the time of writing this affidavit the subpoenas are not due to be responded to yet, however it is my understanding that Petitioner's licensee may require extra time to respond and that Petitioner is awaiting contact with the licensee or its representative to clarify how much additional time they require to produce the documents and attend the deposition.¹
23. For these reasons, the 56(d) discovery is required, and the 36(c) motion should be granted, too.

1. For full service of deposition subpoena via the court, Petitioner needs Board to certify the deposition (see main response)

24. As to Registrant's suggestion that the response Petitioner has already given in opposition to the Motion for Summary Judgment is sufficient and thus the 56(d) motion should be denied, I can only comment that this would be true only if Registrant is confirming that it believes Petitioner's current responses should be sufficient to overcome the Motion for Summary Judgment and to either grant a ruling in Petitioner's favor on excusable neglect, or to grant the 36(c) motion in Petitioner's favor. However, I doubt that is the meaning Registrant intends in its 2(D) portion of its brief. Thus my response is to say again that at this time Petitioner has not been able to give its full objection to the Motion for Summary Judgment and will not be in a position to do so until the 56(d) discovery is granted and concluded.
25. For the record, Petitioner has served copies of the subpoenas on Registrant.
26. Petitioner clearly needs Discovery extended. While Petitioner did not specifically request permission to also file a motion for extension, Petitioner believes that the Board should be setting new discovery deadlines anyway as part of granting the 36(c) and particularly the 56(d) discovery motion. Regardless, Petitioner also needs a further extension to Discovery anyway for a number of cogent reasons: first, Petitioner has just recently discovered that Registrant has abandoned its use of the mark "EDGE" in US commerce, and urgently needs to serve Registrant with new discovery requests about this turn of events. Petitioner also needs permission, please, to amend its petition accordingly, too, so as to now incorporate express abandonment as new grounds for cancellation. Second, petitioner has learned that it seems Registrant has been seeking to interfere with the

contractual relations Petitioner has with its Licensee Velocity Micro, seeking to gain that Licensee's help to prevail in this matter. Petitioner has a right to further discovery regarding this development, too, and thus needs and extension of discovery to complete said new requests (attached hereto as **Exhibit C**).

27. Further, since Registrant has still not fully complied with Petitioner's discovery requests served August 2014, once these instant matters have been ruled on, Petitioner will need to file a motion to compel discovery and Petitioner further anticipates that when full discovery has been compelled, then Petitioner will need to file follow-up discovery requests on Registrant. For this reason, too, discovery will need to be extended.
28. As to Registrant's attack on Petitioner alleging Petitioner does not know the rules of discovery, I can only say that this is not only untrue but also highly hypocritical of Registrant. As can be seen from Registrant's discovery requests on Petitioner, Registrant repeatedly makes requests that are substantially outside the scope of these proceedings or are requests that are calling for a legal conclusion or for attorney client privileged information or documents. For instance, although Registrant knows Petitioner is active in trade in many countries around the world, it repeatedly failed to limit its requests to the US market, thus indicating that it expected Petitioner to respond based on all territories, all products, all channels of trade, all licensees, etc, worldwide, most of which has nothing whatsoever to do with these proceedings. Petitioner also requested information and documents that it is fully aware is part of attorney client privilege and yet it still made those

- requests while at the same time accusing Petitioner of lacking knowledge of the rules by asking similar requests.
29. In fact, Petitioner's requests were within the rules: for instance while the rules state that calling for a legal conclusion is not always an acceptable response, it can be acceptable in certain circumstances. And the circumstances in which it is acceptable to object based on "calls for a legal conclusion" were met in the situation Petitioner was responding to. Why I say Registrant is being so hypocritical on this point, is because while criticizing Petitioner for giving such objections, Registrant itself gave precisely the same "calls for a legal conclusion" (or similar) objection when replying to Petitioner's Request for Admissions on Registrant. Please see attached hereto as Exhibit D a true copy of Registrant's responses to Petitioner's Request for Admissions, showing that Registrant repeatedly used this objection that it is criticizing Petitioner for using.
30. I do not believe that Petitioner has waived its right to object to Registrant's discovery requests. Certainly, if that were true, then that would result in an extremely unfair and inequitable situation. As mentioned above, Registrant has made requests far outside the scope of these proceedings, has asked for privileged documents and facts to be revealed, has made requests that would call for a legal conclusion by the pro per Petitioner, and so on. Were Petitioner not permitted to fairly object to all this then Petitioner would be placed in an exceptionally unfair and unjust position, and would be put to literally months of seeking documents and facts responsive to discover which would excessively burden the Board with facts and evidence not pertinent to these proceedings as well as adding perhaps 6-

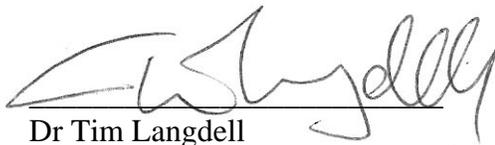
9 months to the length of these proceedings as Petitioner seeks to respond to requests that it is denied the right to object to.

31. Certainly, if Petitioner's grounds of excusable neglect are granted then with the permitted extension of time to serve admissions, there would be no question of Petitioner waiving its right to object to these requests. Yet, even if those grounds do not prevail and instead Petitioner is permitted to withdraw the default admissions, then Petitioner's full true actual admissions should be accepted into these proceedings, including all of Petitioner's valid objections to the requests. It would be unfair and inequitable if that were not so.
32. I also note how hypocritical it is for Registrant to state that all its discovery responses have been timely and that it should be solely Petitioner that is considered to have waived the right to object to discovery requests. As can be seen in the attached email from Mr. Barritt (attached hereto as Exhibit E), Registrant clearly confirmed in the January 29, 2015 telephone call with the Board, as well as in this January 30, 2015 email, that there was substantial outstanding discovery from the prior August/September timeframe that Registrant had still not responded to. Indeed, Registrant insisted that it would not be rushed into responding even after being required to do so in the telephone call, insisting on taking a full further 30-days in addition to the already 6-7 months it had taken to provide proper and full responses to discovery requests. Thus Petitioner should not have its right to object waived, but should Petitioner have its right waived, then in equity and fairness since Registrant was by its own admission 6-7 months

late in responding to "outstanding discovery requests" Registrant too should have its right to object to any of Petitioner's discovery requests waived, too.

32. In conclusion, I believe the only fair and equitable decision for the Board to make would be to ultimately deny the Motion for Summary Judgment and permit this case to move forward to being heard fully on its merits, with all argument and evidence (and no default evidence) being before the Board when it makes its final decision on the Petition. I believe that Petitioner should be granted the 56(d) discovery to enable it to complete the subpoena process before Petitioner gives its full objection response to the Summary Judgment Motion, and before the Board makes its final ruling on that MSJ. I also believe that since there is Board precedent for a party to be permitted to withdraw default admissions and serve actual admissions in circumstances nearly identical to those present here, that Petitioner should have its 36(c) motion granted, too.

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

May 25, 2015

EXHIBIT A

From: Tim [mailto:tim@edgegames.com]
Sent: Tuesday, March 10, 2015 11:33 AM
To: Keith Barritt
Subject: Re: Extension of time to serve discovery responses

Mr Barritt,

As you are aware, a number of your discovery requests call on us to respond with knowledge of facts, admissions and/or documents for production from or regarding our trademark licensees. This aspect of your discovery requests makes our response within the usual 30-days impractical. This is to inform you, then, that we shall be serving our discovery responses on you by March 31, 2015 to give us additional time to research the various requests you make. In our telephone call with the Board at the end of January you indicated you would be agreeable to any reasonable requests for extension, and this is reasonable.

Sincerely,
Dr Tim Langdell
CEO Petitioner in pro per

From: Tim [mailto:tim@edgegames.com]
Sent: Tuesday, March 31, 2015 10:47 AM
To: Keith Barritt
Cc: English, Christen; uspto@edgegames.com; tmdoctc; Mel Erickson
Subject: Re: Trademark Cancellation No. 92058543 (F&R File 39771-0019PP1)

Mr Barritt,

Respectfully, this is an abuse of process. We informed you prior to March 12 that we required an extension of time until today, March 31, to serve our Discovery responses. You did not object to that request, and we are on schedule to serve our responses on you today as agreed. As you also know, we served our Discovery requests on you in August 2014 and yet you delayed serving any response on us until February 2015. Thus to suggest you have grounds to file a Motion to Dismiss when we are within the period we informed you we would respond, when you yourselves took over five months to respond to what you should have responded to last September, is outrageous.

Under the circumstances, particularly given the Board's request that the parties seek to work matters out amicably between themselves prior to filing any motion, we request that you withdraw your motion, or in the alternate, we request that the Board deny you the right to file this motion at this time and refuse to consider it until the parties have first made a good faith attempt to resolve any Discovery disputes between themselves first.

We note for the record you did not contact us at all about our Discovery responses since the January telephone call, and have certainly not indicated that you did not agree to our

serving responses on you today as we proposed. Accordingly, our responses are not due until today, and you have thus done precisely what you claimed we did last Fall, namely filed a motion early, for which we were sanctioned. We believe you should thus in fairness and equity receive the same sanction now - namely, you should not be permitted to file any unconsented motions without first obtaining oral permission of the Board, including the instant motion.

We repeat our request for a telephone call to resolve this and other issues, and note that our request for suspension of proceedings was made before your motion. Our request to suspend proceedings should thus take priority over your motion and the suspension we are requesting should in fairness run from the day we asked for the telephone call to discuss it.

Sincerely,
Dr Tim Langdell
CEO Petitioner in pro per

EXHIBIT B

The Marston Agency, Inc.
 11535 Norkola Road, Suite A
 Glen Allen, VA 23059
 (800) 308-7790 - (804) 967-8300 (Richmond)

04/30/15

RETURN ON SERVICE

Plaintiff: Edge Games, Inc.
Defendant: Razor (Asia-Pacific) PTE, Ltd.
Serve: Velocity Micro, Inc.
 ATTN: Randy P. Copeland
 835 Grove Road
 Middleham, VA 23114
Contact: Lisa M. Krizan
 1520 W. Main Street
 Richmond, VA 23220

Court: United States District Court
Case: TTAB Cancellation Proceeding
Return Date: 05/08/15
Time: 05:00PM
Phone: 8043592959

Type(s) of Writ(s)

paper:1815710

Subpoena Duces Tecum

Witness/Defendant Velocity Micro, Inc. was served according to law, as indicated below:

- () PERSONAL By delivering a copy of the above described process in writing to him/her in person.
- () SUBSTITUTE Being unable to make personal service and not finding the above mentioned person at his/her usual place of abode by delivering a copy of the said process and giving information of it's purport at his usual place of abode to _____ who is a member of his/her family and is the _____ of the above mentioned person, other than a temporary sojourner or guest, and who is the age of 16 years or older.
- () POSTED Being unable to make a personal service and not finding the above mentioned person at his/her usual place of abode nor any member of his/her family the age of 16 years or older at said abode by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode.
- BUSINESS At usual place of business or employment during business hours, by delivering the above specified paper(s) and giving information of it's purport to the person found there in charge of such business or place of employment.
- () Copy mailed to judgment debtor on the date below after serving the garnishee unless a different date is shown below.
- () Certified Mail
- () Not Found
- () Served on Secretary of the Commonwealth

I, JJ RIANI hereby certify under penalty of perjury that I am over the age of 18 and not a party or otherwise interested in the subject matter in controversy.

Served Date: 5-4-15 Served Time: 1453

Signature of Process Server

Notary

State of Virginia County/City of: Henrico, VA Beach, Prince William, Rockingham

I, the undersigned, a Notary Public in and for the above-mentioned jurisdiction, hereby certify that before me appeared the Process Server, who, under oath, stated that service was made as stated above. Sworn before me this 5 day of April 2015
 Notary Public: [Signature]

Type of Service: A Auth Attempts: 1 Order: 376844 Same Day Rush: No 1 Day Rush: No 2 Day Rush: Yes
 Attempts -1- -2- -3- -4- -5- -6-

Date:						
Time:						
Server:						

REMARKS -

Nick Smith - Sales Exec.





LISA M. KRIZAN

LMK ASSOCIATES
1520 WEST MAIN STREET
SUITE 202
RICHMOND, VIRGINIA 23220
USA
TEL: 804.359.2964
FAX: 804.359.4156
LKRIZAN@LMKASSOCIATES.COM

April 17, 2015

Mr. Randall P. Copeland
President & CEO
Velocity Holdings, LLC
835 Grove Road
Midlothian, VA 23114

RE: **EDGE GAMES, INC. v. RAZER (ASIA-PACIFIC) PTE LTD**
TTAB Cancellation Proceeding #92058543

Subpoena Duces Tecum issued to VELOCITY MICRO, INC. pursuant to 35 U.S.C. 24

Dear Mr. Copeland,

As of today, our client Edge Games Inc. has filed the enclosed Subpoena Duces Tecum with the U.S. District Court in the Eastern District of Virginia. 35 U.S.C. 24 allows us to serve same Subpoena on third parties in all Trademark Trial and Appeal Board (TTAB) matters to enforce compliance with my client's right to seek discovery of documents held or controlled by third parties in matters before the TTAB.

If Velocity Micro, Inc. does not comply with such Subpoena by May 8, 2015, Edge Games, Inc. will move to enforce this subpoena in U.S. District Court in the Eastern District of Virginia. If Velocity Micro, Inc. needs assistance with the costs of the document production, please let us know and we will discuss the same.

Sincerely,



Lisa M. Krizan

UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

EDGE GAMES, INC. (Petitioner), A California Corp.

Plaintiff

v.

RAZER (ASIA-PACIFIC) PTE LTD (Registrant) a Singapore Corporation

Defendant

Civil Action No. TTAB Cancellation Proceeding # 92058543 Subpoena Duces Tecum Issued pursuant to 35 U.S.C.24

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Velocity Micro, Inc. Attn: Randy P. Copeland 835 Grove Road, Midlothian, VA 23114

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: described on Exhibit A attached hereto.

Place: LMK Associates, 1520 West Main Street Suite 202, Richmond, VA 23225 Date and Time: 05/08/2015 5:00 pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/17/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of Lisa M. Krizan

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Edge Games, Inc.

Lisa M. Krizan, Esq., who issues or requests this subpoena, are:

LMK Associates, 1520 W. Main Street, Richmond, VA 23220, (804) 359 2964

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT A

Petitioner (“Edge Games, Inc.”), by and through its attorneys, hereby requests that Velocity Micro, Inc., (“Velocity”) produce for inspection and copying each of the documents and things identified below within twenty-one (21) days after service hereof.

I. **Definitions.**

1. “Edge Games” or “Petitioner” means Edge Games, Inc. and/or its officers, directors, employees, counsel, agents, representatives, or other persons under its control, any predecessor or successor whether incorporated or not, any division, subsidiary, affiliate, holding company or parent company thereof, and those persons in active concert or participation with it or them.

2. “Velocity”, “you” or “your” means Velocity Micro, Inc. and/or its officers, directors, employees, counsel, agents, representatives, or other persons under its control, any predecessor or successor whether incorporated or not, any division, subsidiary, affiliate, holding company or parent company thereof, and those persons in active concert or participation with it or them.

3. “Document” means all items within the scope of Rule 34, Fed. Rules of Civil Procedure.

4. “Person” means any individual, corporation, proprietorship, partnership, association, joint venture, government agency or other entity.

5. “Relating to”, “related to”, “relate to” or “refer to” mean reflecting, describing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in full or in part.

6. “EDGE” includes all variations thereof, including, but not limited to, variations in which not all of the mark’s letters are capitalized, variations in which the mark is combined with

a design, logo or device, or with a superscript such as “TM”, “Tm”, “tm” or “®”, or any other variation intended to convey that it is a trademark.

7. “GAMER’S EDGE” includes all variations thereof, including, but not limited to, variations in which not all of the mark’s letters are capitalized, variations in which the mark is combined with a design, logo or device, or with a superscript such as “TM”, “Tm”, “tm” or “®”, or any other variation intended to convey that it is a trademark.

8. “Trademark” or “mark” means any trademark, service mark, collective mark, or certification mark, as defined by 15 USC Sec. 1127.

II. Instructions

The following instructions apply to this Subpoena to Produce Documents Information, Or Objects to or to Permit Inspection of the Premises in a Civil Action, (hereafter “Subpoena to Produce Documents”):

1. In construing each of these document requests, the singular form of a word shall be interpreted in the plural and vice versa, the words “and” and “or” shall be construed conjunctively or disjunctively, and verb tenses shall be interpreted to include past, present and future tenses, whichever meaning makes the document request more inclusive.

2. Any pronoun shall be construed to refer to the masculine, feminine, or neutral gender, in singular or plural, as in each case is most appropriate.

3. Respond to these document requests by drawing upon all resources to which you have access, or the right of access. The documents requested specifically include, but are not limited to, those documents in your possession, custody or control, or the possession, custody or control of your agents, attorneys and representatives.

4. Where any document is withheld under a claim of privilege, immunity, confidentiality or protection of any kind, state the following for each document: (a) the type of document; (b) the name, occupation and title of all persons who are the source of the document; (c) the name, occupation and title of all persons to whom the document has been disclosed; (d) the date of the document; (e) a description of the subject matter of the document; (f) the number of pages of the document; and (g) the specific type of privilege or protection claimed as a basis for withholding the document and the grounds on which the claim of privilege rests.

III. Documents and Things to be Produced

1. All documents identified, referred to or depended upon in your responses to Petitioner's Subpoena to Produce Documents served on Velocity herewith.

2. Documents sufficient to describe in detail all products or services sold under the EDGE mark and the GAMER'S EDGE mark and the year(s) in which each of these products or services was sold from 1998 through the present.

3. All documents relating to any applications for the registration of the EDGE mark and the GAMER'S EDGE mark with any governmental agency in the United States.

4. All documents relating to any registrations for the EDGE mark and GAMER'S EDGE mark with any governmental agency in the United States.

5. All documents relating to any application for registration of the EDGE mark and GAMER'S EDGE mark or of any permutation of the EDGE mark and GAMER'S EDGE mark with any computer network domain name registering body.

6. All documents which relate to marketing surveys, product reviews by independent entities or persons, marketing tests, marketing studies or marketing reports concerning the EDGE mark and GAMER'S EDGE mark within the last five (5) years.

7. All documents which relate to consumer surveys concerning the EDGE mark and the GAMER'S EDGE mark, including, but not limited to, individual questionnaires, pilot studies, and focus groups, within the last five (5) years.

8. Documents sufficient to describe the consumer market to which you sell or distribute and have sold or distributed your EDGE and GAMER'S EDGE products or services.

9. Documents sufficient to show all geographic territories in which you offer, have offered and/or intend to offer goods or services under the EDGE mark and GAMER'S EDGE mark.

10. Documents sufficient to describe the channels of trade in which you sell or distribute or have sold and distributed your EDGE and GAMER'S EDGE products or services.

11. Documents sufficient to describe the stores, retail outlets, offices or other locations at which Velocity markets, promotes or sells or has marketed, promoted or sold your goods or services offered under the EDGE mark and GAMER'S EDGE mark since 1998 through the present, broken down by mark, year, list of retail outlets in which sales, marketing or promotion occurred by year, list specific products sold under each mark per year.

12. All documents relating to any surveys, studies, communications or memoranda concerning the quality or standard of quality of Velocity's goods or services offered under EDGE and GAMER'S EDGE and the like concerning quality.

13. Documents sufficient to describe Velocity's advertising or promotional expenditures for any goods or services offered under the EDGE mark or GAMER'S EDGE mark since 1998 through the present, broken down by mark, year, expenditure per year, specific products sold under each mark per year and total number of ads or promotions advertised to the public during each year.

14. No less than two (2) specimens of advertisements and promotional materials per year, showing. The marks EDGE or GAMER'S EDGE used as advertising by Velocity during each year since 1998 through the present,

15. Documents sufficient to describe the total volume by year, in units, and by mark, of goods and/or services sold by Velocity under the EDGE mark or GAMER'S EDGE mark since 1998 through the present.

16. A compilation of all documents which relate to the total volume, in dollars, of goods and/or services sold by Velocity under the EDGE mark and GAMER'S EDGE mark since 1998 through the present, broken down by year.

17. No less than five (5) specimens of any of the following: point of sale materials, commercials, videos, signage, and business forms, including, but not limited to, catalogs, sales sheets, logos, logo designs, brochures, mailings, price lists, and stationery in which the marks EDGE and GAMER'S EDGE are used by you during each year since 1998 through the present.

18. Documents sufficient to describe the media in which you have advertised or promoted your products or services in connection with the EDGE mark, or showing the extent of such advertising or promotion on a quarterly or annual basis since 1998 through the present.

19. Documents sufficient to show the approximate price(s) at retail charged, for products

or services offered in connection with the EDGE mark or GAMER'S EDGE mark in the U.S.

Dated this 17th day of April, 2015.

LMK Associates

A handwritten signature in black ink, appearing to read "Lisa M. Krizan", written over a horizontal line.

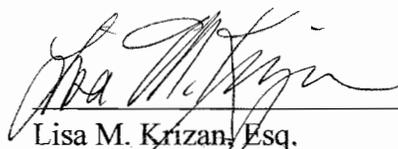
Lisa M. Krizan
1520 West Main Street, Suite 202
Richmond, VA 23220
(804) 359-2964 telephone
(804) 359-4156 facsimile
lkrizan@lmkassociates.com

CERTIFICATE OF SERVICE

I, Lisa M. Krizan, hereby certify that the above Subpoena to Produce Documents was served on Velocity's registered agent and on Velocity's President, Mr. Randall P. Copeland by depositing same with the U.S. Postal Service, first-class postage prepaid, on April 17, 2015, addressed as follows:

Randall P. Copeland
President & CEO
Velocity Holdings, LLC
835 Grove Road
Midlothian, VA 23114 and

Freed & Shepherd, P. C.
9030 Stony Point Pkwy,
Suite 400
Richmond, VA 23235-0000



Lisa M. Krizan, Esq.
Virginia State Bar #32565

LMK Associates
1520 West Main Street, Suite 202
Richmond, VA 23220
(804) 359-2964 telephone
(804) 359-4156 facsimile
lkrizan@lmbassociates.com

UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

EDGE GAMES, INC. (Petitioner), A California Corp.

Plaintiff

v.

RAZER (ASIA-PACIFIC) PTE LTD (Registrant) a
Singapore Corporation

Defendant

Civil Action No. TTAB Cancellation Proceeding
92058543 issued pursuant to
35 U.S.C.24

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Mr. Randall P. Copeland
President and CEO of Velocity Holdings LLC and Velocity Micro, Inc.

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:
See attached Exhibit A

Place: LMK Associates, 1520 West Main Street, Suite 202,
Richmond, Virginia, 23220

Date and Time:

06/16/2015 10:00 am

The deposition will be recorded by this method: court reporter

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date:

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

[Handwritten Signature]
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Edge Games, Inc.
Lisa M. Krizan, Esq.

, who issues or requests this subpoena, are:

LMK Associates, 1520 W. Main Street, Richmond, VA 23220, (804) 359 2964

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT C

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

EDGE GAMES, INC.)	
)	
Petitioner,)	
)	
vs.)	Cancellation No.: 92058543
)	
)	Reg. No.: 4,394,393
RAZER (Asia-Pacific) Pte Ltd.)	
)	
Registrant.)	

SECOND SET OF DOCUMENT REQUESTS

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120). Trademark Trial and Appeal Board Manual of Procedure § 408, and Federal Rule of Civil Procedure 34, Petitioner EDGE requests that Registrant RAZER produce the following documents and things forthwith.

For the purpose of this Request, the following definitions and instructions shall apply.

DEFINITIONS

1. The terms “RAZER,” “you,” and “your” refer to Registrant and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.
2. The term “EDGE” refers to Petitioner and includes any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.
3. The term EDGE means any word, name, symbol or device or other designation of origin incorporating the letter string EDGE or its phonetic equivalent, in which you claim rights, including any trademark, service mark, or Internet domain name, or any trademark or service mark application or registration.
4. The term “Razer’s Mark” means, specifically, trademark Registration Number 4,394,393 for the mark EDGE with an effective filing date in the United States of April 17, 2012.

5. The term “Edge’s Marks” means any and all trademark registrations or common law rights in the mark EDGE, or EDGE formative marks, owned by EDGE either as a result of its own use of the mark EDGE in U.S. commerce, or use by any of EDGE’s licensees.

6. The term “person” means any natural person or any business, legal or governmental entity, or association.

7. The term “document” as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any “writings and recordings” and “photographs” as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes or desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

8. The term “identify,” when referring to:

a. a natural person, means to give his or her full name, present or last known address and telephone number, last known place of employment and job title;

b. a public or private corporation, partnership, association, agency or other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;

c. a document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody or control of the document;

d. a product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product;

e. a service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service.

9. The term “communication” is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.

10. The terms “relating to” and “related to” mean concerning, containing,

evidencing, describing, constituting, referring to, explaining, discussing or reflecting.

11. The connectives “and” and “or” and the term “and/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

12. The use of a present tense shall include past tenses.

13. The use of the singular form of any word also includes the plural and vice versa.

14. The terms “all” and “each” shall each be construed to include the other.

INSTRUCTIONS

1. You are requested to produce for inspection and copying all responsive documents and things in your possession, custody or control, including all documents and things in the custody of your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

2. You are to produce the documents and things as they are kept in the ordinary course of business, with appropriate markings or designations so that it may be determined to which request they are responsive.

3. You are to produce the original and all non-identical copies of each requested document or thing, including all copies which bear any additional file stamps, marginal notes or other additional markings or writings that do not appear on the original. The production shall include the file, envelope, folder, binder, or other container in which the responsive documents and things are kept. If, for any reason, the container cannot be produced, you are to produce copies of all labels or other identifying markings.

4. Documents that exist in digital format and constitute or comprise databases or other tabulations or collections of data or information should be produced in a machine-readable format to be mutually agreed upon by the parties. Documents that exist in digital format and constitute or comprise written communications between natural persons (e.g., e-mail messages, internal memos, letters, etc.) should be produced both in a machine-readable format to be mutually agreed upon by the parties and in hard-copy form.

5. If you cannot fully respond to any request after a diligent attempt, respond to the request to the extent possible and specify the portion of the request to which you are unable to respond.

6. If you claim that any request, definition or instruction is ambiguous, state the language you claim is ambiguous and the interpretation you have used to respond to the request.

7. If you contend that any document or thing has been lost or destroyed, set forth the contents of the document or thing, the location of any copies, the date of loss or destruction, the name of the person who ordered or authorized the destruction, if any, and the authority and reasons for such destruction.

8. If you decline to produce any information, document, or thing on this basis of the attorney-client, work product, or other privilege, respond to so much of the discovery request as is not subject to the claimed objection, and for each document or thing, provide the following information:

- a. the type and title of the document or thing;
- b. the general subject matter of the document or description of the thing;
- c. the date of its creation;
- d. the identity of the document's author(s), addressee(s) and recipient(s);
- e. the nature of the privilege being claimed; and
- f. in detail, all facts upon which you base your claim of privilege.

9. With respect to any document stored on a machine-readable medium, please make available both a hard copy printout of the document and a copy of the computer or electronic tape, disc or other electronic medium on which the document is stored.

10. Complete production is to be made on the date and at the time indicated above.

11. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Procedure 26(e).

DOCUMENTS AND THINGS REQUESTED

DOCUMENT REQUEST NO. 1:

All documents relating in any way to your decision to remove the brand name "EDGE" from your website intended for viewing by United States consumers

DOCUMENT REQUEST NO. 2:

All documents relating in any way to the removal of your gaming computer tablet branded "EDGE" from sale on your website intended for viewing by United States consumers

DOCUMENT REQUEST NO. 3:

All documents relating in any way to ceasing manufacture of your gaming computer tablet branded "EDGE" intended for sale to United States consumers.

DOCUMENT REQUEST NO. 4:

All documents relating in any way to your accepting back stock of your gaming computer tablet branded as "EDGE" from United States resellers.

DOCUMENT REQUEST NO. 5:

All documents relating in any way to your accepting back stock of your gaming computer tablet branded as "EDGE" from United States resellers as part of a discontinuance of the "EDGE" branded products.

DOCUMENT REQUEST NO. 6:

All documents relating in any way to the cessation of sale of your gaming computer tablet branded "EDGE" in the United States market.

DOCUMENT REQUEST NO. 7:

All documents relating to any plans Registrant has for reintroducing its gaming computer tablet branded "EDGE" into the United States market.

DOCUMENT REQUEST NO. 8:

All documents relating to any plans Registrant has for introducing any new product branded "EDGE" into the United States market.

DOCUMENT REQUEST NO. 9:

All documents that prove that any alleged plans Registrant has for reintroducing its gaming computer tablet branded "EDGE" into the United States market are not merely nominal in order to persuade the United States Trademark Office that the mark has not been abandoned.

DOCUMENT REQUEST NO. 10:

All documents that prove that any alleged plans Registrant has for introducing and new product branded "EDGE" into the United States market are not merely nominal in order to persuade the United States Trademark Office that the mark has not been abandoned.

DOCUMENT REQUEST NO. 11:

All documents relating in any way to any communications between you and Velocity Micro.

DOCUMENT REQUEST NO. 12:

All documents relating in any way to any communications between you and Randall ("Randy") Copeland.

Dated: May 25, 2015

Respectfully submitted,

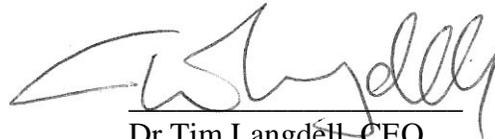


For Petitioner in Pro Per

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S SECOND SET OF DOCUMENT REQUESTS in regard to Petition to Cancel No. 92058543 has been served on Respondent by mailing said copy on May 26, 2015, via U.S. certified mail to:

Keith A Barritt
Fish & Richardson PC
PO Box 1022
Minneapolis
MN 55440-1022



Dr Tim Langdell, CEO
For Petitioner in *Pro Per*

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

EDGE GAMES, INC.)	
)	
Petitioner,)	
)	
vs.)	Cancellation No.: 92058543
)	
)	Reg. No.: 4,394,393
RAZER (Asia-Pacific) Pte Ltd.)	
)	
Registrant.)	

**PETITIONER'S SECOND SET OF
INTERROGATORIES TO REGISTRANT**

In accordance with Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Petitioner Edge Games, Inc. ("EDGE") requests that Razer (Asia-Pacific) Pte Ltd ("RAZER") answer the following interrogatories under oath, subject to the following definitions.

DEFINITIONS

As used herein, the term "Petitioner" includes EDGE, its predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

As used herein, the term "Registrant" includes RAZER, its predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

As used herein, the term "Documents" includes, but is not limited to, all writings, notes, notations, correspondence, invoices, contracts, purchase orders, memoranda, books, pamphlets, publications, studies, reports, labels, packaging, artwork, tear sheets, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process.

The following interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Registrant acquires or which becomes known to Registrant up to and including the time of trial shall be furnished to Petitioner immediately after such information is first acquired or becomes known.

As used herein, the terms "identify" and "state the identity of" shall mean a complete

identification to the full extent known or ascertainable by Registrant, whether or not in the possession of Registrant and whether or not alleged to be privileged, including the following information:

1. The present depository or depositories and the name(s) and address(es) of the person(s) having custody of any item to be identified, unless the item is a public document or person;
2. Where the item to be identified is a person, his/her full name, address, job title and present employer;
3. Where the item to be identified is a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender; and
4. Where the item to be identified is printed material, its title, author, publication date, volume and the relevant page numbers. The term "person" shall mean and include any natural person, business organization or entity such as corporation, partnership or the like.

In the following interrogatories, if a privilege is alleged as to information or materials or if an interrogatory is otherwise not answered in full, state the specific grounds for not answering in full and answer said interrogatory to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege.

If an objection is raised that the request is overly burdensome or overly broad, then per Section 414(2) Registrant is to comply by providing a representative sampling of the information sought, or other reduced amount of information which is nevertheless sufficient to meet Petitioner's discovery needs.

As used herein, "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

As used herein, the singular shall include the plural, and the present tense shall include the past tense.

As used herein, the EDGE mark includes any and all marks comprising EDGE alone or in combination, or any similar mark.

INTERROGATORIES

1. Identify whose decision it was to remove all mention of the "EDGE" brand from Registrant's website intended for United States consumers.
2. State the date that Registrant cease using the trademark "EDGE" on its website intended for viewing by United States consumers.

3. State the date on which Registrant stopped offering a gaming computer tablet marketed with the brand name "EDGE" for sale on its website in its online "Store" or otherwise.
4. Identify whose decision it was to cease sale of the "EDGE" brand gaming computer tablet on Registrant's website intended for viewing by United States consumers.
5. State the date on which Registrant ceased manufacture of their gaming computer tablet branded "EDGE" for the United States market.
6. State the date on which Registrant sold the last unit of its gaming computer tablet branded "EDGE" that it was storing in its warehouses or in the warehouses of entities associated with Registrant.
7. State the date on which Registrant sold the last newly produced unit of its gaming computer tablet branded "EDGE" to Frys.
8. State the date on which Registrant sold the last newly produced unit of its gaming computer tablet branded "EDGE" to Newegg.
9. State the date on which Registrant sold the last newly produced unit of its gaming computer tablet branded "EDGE" to BestBuy.
10. State the date on which Registrant sold the last newly produced unit of its gaming computer tablet branded "EDGE" to Amazon.
11. State the date on which Registrant sold the last newly produced unit of its gaming computer tablet branded "EDGE" to any other reseller in the United States not named in 7 through 10 above,.
12. Identify who made the decision on behalf of Registrant to abandon use of the trademark EDGE in United States commerce.
13. Identify all documents pertaining to Registrant's decision to cease sale of Registrant's gaming computer tablet branded as "EDGE" in the United States.
14. If Registrant denies that it has abandoned use of the mark "EDGE" in the United States, then identify the person whose decision it is to plan future use of the mark.
15. If Registrant denies that it has abandoned use of the mark "EDGE" in the United States, then identify all documents that relate to Registrant's plans to re-introduce a product into the United States market that uses the mark "EDGE."
16. If Registrant denies that it has abandoned use of the mark "EDGE" in the United States, then identify the timeframe within which Registrant believes it will recommence use of the mark "EDGE" in United States commerce.

17. Identify the person who communicated with Velocity Micro on behalf of Registrant (please name all such persons if more than one).
18. Identify the person who communicated with Randall ("Randy") Copeland on behalf of Registrant (please name all such persons if more than one).
19. Identify all documents relating to any communications between Registrant or its representative and Velocity Micro, or its President Randall ("Randy") Copeland, or any representative of Velocity.

DATE: May 25, 2015

A handwritten signature in black ink, appearing to read 'Tim Langdell', written in a cursive style.

By: Dr. Tim Langdell, CEO.
For Petitioner in *Pro Se*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S SECOND SET OF INTERROGTORIES in regard to Petition to Cancel No. 92058543 has been served on Respondent by mailing said copy on May 26, 2015, via U.S. certified mail to:

Keith A Barritt
Fish & Richardson PC
PO Box 1022
Minneapolis
MN 55440-1022



Dr Tim Langdell, CEO
For Petitioner in *Pro Per*

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

EDGE GAMES, INC.)	
)	
Petitioner,)	
)	
vs.)	Cancellation No.: 92058543
)	
)	Reg. No.: 4,394,393
RAZER (Asia-Pacific) Pte Ltd.)	
)	
Registrant.)	

PETITIONER’S SECOND REQUESTS FOR ADMISSION

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120). Trademark Trial and Appeal Board Manual of Procedure § 410, and Federal Rule of Civil Procedure 36, Petitioner EDGE requests that Registrant RAZER admit the truth of the Requests for Admissions set forth below within thirty (30) days after service of this Request.

For the purpose of this Request, the following definitions and instructions shall apply.

DEFINITIONS

1. The terms “RAZER,” “you,” and “your” refer to Registrant and include any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.
2. The term “EDGE” refers to Petitioner and includes any persons controlled by or acting on behalf of that entity, including but not limited to all officers, directors, behalf of that entity, including but not limited to all officers, directors, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.
3. The term “Razer Mark” means the US trademark application 79,117,898 for the mark EDGE with an effective filing date of April 17, 2012;
4. The term Razer Singapore Mark means trademark EDGE registered in Singapore upon which RAZER’s U.S. application relies.
5. The use of the singular form of any word also includes the plural and vice versa.
6. The use of a present tense shall include past tenses.

7. The terms “all” and “each” shall each be construed to include the other.

INSTRUCTIONS

1. Your written response to this request must comply with Rule 36 of the Federal Rule of Civil Procedure, in that if you do not admit each matter, you must separately respond under oath to each request within thirty (30) days of the service of this request by:

- (a) Admitting so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by you;
- (b) By denying so much of the matter involved in the request as is untrue; and
- (c) Specifying so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.

2. If your response to a particular request is that you lack information or knowledge as a reason for failure to admit all or part of a request for admission, then you shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable you to admit that matter.

3. If your response is that only part of a request for admission is objectionable, the remainder of the request shall be answered.

4. If an objection is made to a request or to a part of a request, the specific ground for the objection shall be set forth clearly in the response.

5. These requests for admission are continuing and require further answer and supplementation, as provided by Federal Rule of Civil Procedure 26(e).

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that while on September 14, 2014 Registrant’s website still used the mark “EDGE” (and “EDGE PRO”) for its gaming tablet computer (see **Exhibit 1** attached), that by at least January 31, 2015 Registrant’s website still featured the game tablet computer’s image but no longer used the mark “EDGE” (see **Exhibit 2** attached).

REQUEST FOR ADMISSION NO. 2:

Admit that on by January 31, 2015 Registrant’s website had ceased all use of the mark “EDGE” in respect to any product that it offers for sale in the United States (again, see **Exhibit 2** attached).

REQUEST FOR ADMISSION NO. 3:

Admit that by January 31, 2015 Registrant’s website still displayed an image of their game tablet computer but that there was no link to a product of that description anywhere on the website.

REQUEST FOR ADMISSION NO. 4:

Admit that by March 16, 2015 Registrant's website intended for United States consumers (www.razerzone.com) no longer included any link to an image of its gaming computer tablet or any link to a page where the mark "EDGE" is used for any product sold by Registrant in the United States market (see **Exhibit 3** attached).

REQUEST FOR ADMISSION NO. 5:

Admit that by March 16, 2015 Registrant's website intended for United States consumers (www.razerzone.com) no longer included any link to a page where the mark "EDGE" is used for any product sold by Registrant in the United States market (see **Exhibit 3** attached).

REQUEST FOR ADMISSION NO. 6:

Admit that by January 31, 2015, and certainly by March 16, 2015, it was not longer possible to purchase a product through Registrant's website that was sold using the brand name "EDGE."

REQUEST FOR ADMISSION NO. 7:

Admit that Registrant's "EDGE" brand gaming computer tablet is no longer available for sale as a new "currently in stock" item from any United States store or reseller that Registrant was selling the product through in the United States at any time prior to December 31, 2014

REQUEST FOR ADMISSION NO. 5:

Admit that when Registrant's "EDGE" brand gaming computer tablet was still featured on its website intended for United States consumers, Registrant indicated that the product was available from its own Razer online store, Amazon, Newegg, and BestBuy.

REQUEST FOR ADMISSION NO. 6:

Admit that Registrant's gaming computer tablet sold in association with the mark "EDGE" is no longer for sale through Registrant's online store section of its website intended for United States consumers.

REQUEST FOR ADMISSION NO. 7:

Admit that Registrant's gaming computer tablet sold in association with the mark "EDGE" is no longer for sale through Amazon as a new "in stock" product (see **Exhibit 4** attached).

REQUEST FOR ADMISSION NO. 8:

Admit that Registrant's gaming computer tablet sold in association with the mark "EDGE" is no longer for sale through Newegg as a new "in stock" product. (see **Exhibit 5** attached)

REQUEST FOR ADMISSION NO. 9:

Admit that Registrant's gaming computer tablet sold in association with the mark "EDGE" is no longer for sale through BestBuy as a new "in stock" product (see **Exhibit 6** attached).

REQUEST FOR ADMISSION NO. 10:

Admit that Registrant has abandoned use of the mark "EDGE" in relation to a game tablet computer for sale in the United States market.

REQUEST FOR ADMISSION NO. 11:

Admit that Registrant has no intention of re-introducing a game tablet computer product using the brand name "EDGE" for sale in the United States market.

REQUEST FOR ADMISSION NO. 12:

Admit that Registrant has no intention of introducing any new product using the brand name "EDGE."

REQUEST FOR ADMISSION NO. 13:

Admit that ZDNET's review dated April 28, 2015 of a new Acer gaming tablet, stated: "*Whether the calcifying tablet market can handle another gaming device remains to be seen -- Razer's Edge Windows-based tablet family, for instance, is essentially on the scrap heap.*" (see Exhibit 7 attached)

REQUEST FOR ADMISSION NO. 14:

Admit that Registrant has communicated with Velocity Micro regarding these cancellation proceedings.

REQUEST FOR ADMISSION NO. 15:

Admit that Registrant has communicated with Velocity's President Randall ("Randy") Copeland regarding these cancellation proceedings.

REQUEST FOR ADMISSION NO. 16:

Admit that Registrant has sought to entice Petitioner's licensee Velocity Micro into supporting Registrant's position in this matter by encouraging Velocity Micro to breach its contractual obligation to assist Petitioner with discovery evidence, or otherwise.

Dated: May 25, 2015

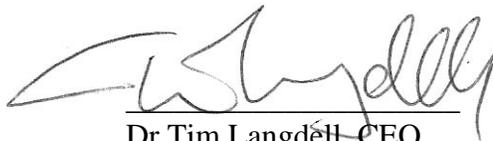
Respectfully submitted,



CERTIFICATE OF SERVICE

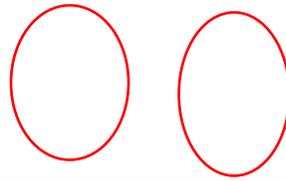
I hereby certify that a true and complete copy of the foregoing PETITIONER'S SECOND REQUESTS FOR ADMISSION in regard to Petition to Cancel No. 92058543 has been served on Respondent by mailing said copy on May 26, 2015, via U.S. certified mail to:

Keith A Barritt
Fish & Richardson PC
PO Box 1022
Minneapolis
MN 55440-1022

A handwritten signature in black ink, appearing to read 'Tim Langdell', written over a horizontal line.

Dr Tim Langdell, CEO
For Petitioner in *Pro Per*

EXHIBIT 1



THE WORLD'S FIRST TABLET DESIGNED FOR PC GAMERS

EXHIBIT 2



THE WORLD'S FIRST TABLET DESIGNED FOR PC GAMERS

EXHIBIT 3



EXHIBIT 4

Electronics

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View

Electronics > Computers & Accessories > Tablets



Roll over image to zoom in

Razer Edge Pro 256GB Tablet

by Razer

98 customer reviews | 45 answered questions

Note: This item is only available from third-party sellers (see all offers).

Available from these sellers.

Size: 256 GB

- Windows 8, 10.1 inches Display
- Intel Core i7-3517U 1.9 GHz (4 MB Cache)
- 256 GB Flash Memory, 8 GB RAM Memory
- 3.20 pounds

See more product details

1 used from \$1,099.99



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Customers Who Bought This Item Also Bought

Page 1 of 6



Bluetooth 3.0 Keyboard Folio Case Cover for Razer Edge / Razer Edge Pro 10.1" Gaming Tablet, (Keyboard Included...)

9



FlexARMOR X Protection Padded Neoprene Sleeve Carrying Case Cover for Razer Edge Pro (RZ09)...

\$14.99

8



Skinomi@ TechSkin - Razer Edge Pro Tablet Screen Protector + Carbon Fiber Full Body Skin...

\$18.95

3



Skinomi@ TechSkin - Razer Edge Pro Tablet Screen Protector + Brushed Aluminum Full...

\$18.95

1



BIRUGEAR 3-Pack Premium HD Crystal Clear LCD Screen Protector for Razer Edge Pro RZ09 - 10.1" Gaming Tablet...

\$1.95

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\$1,099.00 **\$579.99** > [Shop now](#)

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New offers for

Razer Edge Pro 256GB Tablet

by Razer

[95 customer reviews](#)

Compare: Offers for this product Offers for this product and similar products

Size: **256 GB**

256 GB

Lowest offer for each

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Every purchase on Amazon.com is protected by an [A-to-z guarantee](#).

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All

New

Used from \$1,099.99 (Save 24%)

Show only:

Free shipping

Sorted by: **Price + Shipping**

We're Sorry

There are currently no New listings for **Razer Edge Pro 256GB Tablet**. However, you can choose a different condition.

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EXHIBIT 5

TRY

Log in or Register 0 Items Wish List Feedback Help

Shop All Stores

Keywords, Model # or Item #

Search all

SEARCH

Marketplace

Home > Computers & Tablets > Tablets > All Tablets > RAZER > Item#: N82E16834326007



Razer Edge Pro 10.1" Touchscreen Gaming Tablet, Intel Core i7 8GB RAM 256GB SSD, Windows 8 (RZ09-00930101-R3U1)

3 / 5 (2) | Write a Review

OUT OF STOCK.

- Intel Core i7-3517U (1.90GHz, Max Turbo Frequency 3.0Ghz)
- 8GB DDR3 RAM, 256GB SSD
- 10.1" Multi-Touch HD Display (1366x768)
- NVIDIA GeForce GT 640M LE 2GB VRAM
- Windows 8 64-bit

Ask Or Answer A Question

See 2 questions | 1 answer

Loading...

OUT OF STOCK

This item is currently out of stock and it may or may not be restocked.

Sold and Shipped by:
Newegg

OUT OF STOCK

ARE YOU AN E-BLAST INSIDER?

Enter Email Address

SUBSCRIBE



Shop without retyping payment details. Secure shopping made faster. Check out with PayPal.

Newegg Preferred Account

No Payments + No Interest if paid in full in up to 12 Months. Minimum purchase required. Subject to credit approval. See Terms



No Payments + No Interest if paid in full in 6 Months on order over \$250. Subject to credit approval. See Terms

Ads by Google (?)

Razer Edge Gaming Tablet

www.razerzone.com/Razer-Edge-Tablet

Full-fledged mobile gaming Tablet. Ready to play all your Fav PC Games

Gamepad Controller Power Adapter
Razerstore Deals

Ad feedback [+]



Razer Edge Pro 10.1in. Touchscreen Ta

EXHIBIT 6

This item is no longer available.



Razer - EDGE PRO - 128GB - Black

Model: RZ09-00930100-R3U1 SKU: 8653088

Out of Stock

Customers Who Viewed This Item Also Viewed



Asus - 2-in-1 15.6" Touch-Screen Laptop - Intel Core i7 - 8GB Memory - 1TB Hard Drive - Black

(30)

\$999.99



Microsoft - Surface 3 - 10.8" - Intel Atom - 128GB - Silver

(69)

\$599.99



Dell - 45W AC Power Adapter - Black

Not Yet Reviewed

\$49.99



Allsop - 30645 DeskTek Monitor Stand with Universal Tablet or Phone Mount - Gray

Not Yet Reviewed

\$52.62



South Shore - Gascony Collection Computer Desk Hutch - Sumptuous Cherry

Not Yet Reviewed

\$184.99

Product images, including color, may differ from actual product appearance.

EXHIBIT 7

Topic: [Mobility](#)

Acer readying Predator Android gaming tablet

Summary: *The company looks to extend its gaming brand with a competitor to the Nvidia Shield that may launch in Q3 2015.*



By Sean Portnoy for [Laptops & Desktops](#) | April 28, 2015 -- 05:12 GMT (22:12 PDT)

Follow [@teklust](#) 542 followers



Source: [Pocket-lint](#)

Acer unveiled a long list of new PC products last week (such as a 15-inch Chromebook for just \$199), including additions to its Predator line of gaming computers. The Predator family launched with striking -- and orange -- desktops [a few years ago](http://www.zdnet.com/article/acer-updates-predator-desktop-with-core-i7-cpu-geforce-gtx-470-graphics-slightly-less-orange/) and has since stayed that course. Now the computer giant is extending the lineup to new form factors, including its first laptop and another mobile device.

During the presentation to introduce its 2015 Predator products, the company revealed a forthcoming gaming tablet, which was then shown off in prototype form to the press (as pictured above). As the non-working version shown suggests, specs are very much a mystery at this point, though Acer has provided a few nuggets. The Predator tablet will run Android and sport an 8-inch screen. It will also apparently feature four front-facing speakers clad in red that seem to signify the "gaming" aesthetic.

What's Hot on ZDNet

[Why SSDs don't perform](#)

[\(http://www.zdnet.com/article/why-ssds-dont-perform/\)](http://www.zdnet.com/article/why-ssds-dont-perform/)

[With build 10122, Windows 10 finally](#)

The Predator slate won't face a large number of competitors as a gaming tablet, but it will encounter one major rival: [the Nvidia Shield](http://www.zdnet.com/article/nvidia-debuts-shield-tablet-for-gamers/) (<http://www.zdnet.com/article/nvidia-debuts-shield-tablet-for-gamers/>). Like the forthcoming Predator tablet, the Shield is an 8-inch Android gaming device, but Nvidia offers a wireless controller as an option, whereas Acer hasn't mentioned a discrete controller for its tablet. Instead, it hinted that the Predator tablet will feature built-in haptic feedback technology that allows gamers to "feel" the action of the game while they are controlling it.

Other than those tidbits, we know little else about Acer's gaming tablet, other than a vague release date of the third quarter of 2015. Whether the ~~califying~~ tablet market can handle another gaming device remains to be seen -- [Razer's Edge Windows-based tablet family](http://www.zdnet.com/article/ces-2013-razer-unleashes-edge-windows-8-gaming-tablet/) (<http://www.zdnet.com/article/ces-2013-razer-unleashes-edge-windows-8-gaming-tablet/>), for instance, ~~is essentially on the scrap heap~~. Do you think the Predator gaming tablet could be a success? Let us know in the [discussion section](#) below.

[starts coming together](#)

(<http://www.zdnet.com/article/with-build-10122-windows-10-finally-starts-coming-together/>)

[Supercharging your gaming PC](#)

(<http://www.zdnet.com/article/supercharging-your-gaming-pc/>)

[WordPress malware: Don't let too-good-to-be-true deals infest your site](#)

(<http://www.zdnet.com/article/dont-let-too-good-to-be-true-deals-infest-your-site-with-malware/>)

[Via [Pocket-lint](http://www.pocket-lint.com/news/133664-acer-predator-tablet-on-the-prowl-for-nvidia-shield-s-gaming-territory-hands-on/) (<http://www.pocket-lint.com/news/133664-acer-predator-tablet-on-the-prowl-for-nvidia-shield-s-gaming-territory-hands-on/>)]

Topics: [Mobility](#), [Tablets](#)



About Sean Portnoy

Sean Portnoy started his tech writing career at ZDNet nearly a decade ago. He then spent several years as an editor at Computer Shopper magazine, most recently serving as online executive editor. He received a B.A. from Brown University and an M.A. from the University of Southern California.

[Contact](#) [Disclosure](#)

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EXHIBIT D

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

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,
Registrant.

Cancellation No.: 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

**REGISTRANT'S RESPONSES TO
PETITIONER'S FIRST REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure 36 and Trademark Rules of Practice § 2.120, Registrant Razer (Asia-Pacific) Pte Ltd ("Registrant" or "Razer") by its undersigned attorneys hereby responds to Petitioner's First Requests for Admission.

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

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

10. Registrant 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 Petitioner.

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

12. Registrant 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. Registrant 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 overbreadth, undue burden, and expense.

14. Registrant objects to Petitioner's requests that Registrant 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 Registrant's possession, custody, or control.

15. A statement by Registrant 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.

ANSWER: Following a reasonable inquiry Razer is unsure what is meant by "game computers and other related products" or through what channels Velocity Micro Inc. sells its products, and the information known or readily obtainable is insufficient to enable Razer to admit the matter, and based on the lack of information or knowledge denies the request.

REQUEST FOR ADMISSION NO. 33:

Admit that The Lanham Act gives a court discretionary power to increase damages up to treble damages were RAZER to be found to have knowingly used, or continued to use, the Razer Mark after gaining knowledge of the earlier acquired rights in the same mark, for the same or closely related goods and services, owned by EDGE.

OBJECTION: Razer objects to this request on the basis that it calls for a legal conclusion and is beyond the scope of permissible discovery. Razer also objects on the basis that the U.S. Trademark Office does not have the authority to issue any damages and therefore this request is irrelevant.

EXHIBIT E

From: "Keith Barritt" <barritt@fr.com>
To: "Tim" <tim@edgegames.com>
Sent: 1/30/2015 12:31:04 PM
Subject: timing of Razer discovery responses in EDGE trademark cancellation no. 92058543 (F&R File 39771-0019PP1)

Dear Mr. Langdell:

This is to follow-up our conference call yesterday with Christen English of the U.S. Trademark Trial and Appeal Board.

To avoid any misunderstanding, I stated during the conference that Razer's intent is to respond to your pending discovery requests within 30 (not 20) days of the date of the Board's order on the motion for sanctions, consistent with my letter to you of October 22, 2014 (see attached) which you had provided to the Board in prior correspondence. There was no objection from you or Ms. English to this timing. Accordingly, now that the Board has issued its order today, I am calendaring March 1 as Razer's deadline for responding to your pending discovery requests.

Sincerely,

Keith Barritt :: Principal :: Fish & Richardson P.C.
1425 K Street, N.W., Suite 1100 Washington DC 20005
+1-202-626-6433 direct :: barritt@fr.com
fr.com :: FishTMCopyrightblog.com :: [Bio](#)

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