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

Proceeding	92058543
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Attorney Docket 39771-0019PP1

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 RAZER (ASIA-PACIFIC) PTE LTD'S MOTION FOR JUDGMENT, OR IN THE ALTERNATIVE TO COMPEL DISCOVERY RESPONSES TO INTERROGATORIES AND DOCUMENT REQUESTS, AND TO SUSPEND PROCEEDINGS

On September 25, 2015, the Trademark Trial and Appeal Board issued an order compelling Petitioner Edge Games, Inc. ("Petitioner" or "Edge Games") to serve amended responses without objections on the merits to the interrogatories and document requests of Respondent Razer (Asia-Pacific) Pte Ltd ("Registrant" or "Razer"), failing which Petitioner "may be subject to sanctions, including entry of judgment against it."

Although Edge Games has served responses, which it subsequently amended in response to comments from Razer, they are still woefully inadequate and clearly demonstrate Edge Games' determination to not cooperate in discovery and to deny Razer the information to which it is entitled. Edge Games' lack of cooperation is not an inadvertent or isolated incident – rather, it is fully consistent with Edge Games' repeated pattern of obfuscation, fabrication, and misrepresentation in both this and other proceedings before the Board. In short, Edge Games has exhausted any goodwill it may have had with the Board, and its actions warrant the strongest sanction possible.

Accordingly, Razer hereby moves for the Board to dismiss the petition to cancel with prejudice and enter judgment against Edge Games in this matter. If the Board denies this request, Razer requests that the Board issue yet another order compelling Edge Games to cooperate in discovery, and estop Edge Games from introducing as evidence any information or documents covered by Razer's discovery requests that Edge Games has thus far failed to produce, and draw all appropriate evidentiary inferences.

Razer also requests that the Board immediately suspend these proceedings, including any obligation of Razer to respond to Edge Games' pending discovery requests and the taking of any further discovery of any party or non-party, and confirm it will if necessary extend the close of discovery for Razer and reset all other dates as appropriate.

I. Motion for Judgment

A. Edge Games Has Deliberately Failed To Produce Critical Information To Which Razer Is Entitled

Razer's discovery requests are designed to elicit specific information regarding various key issues of the case, and in particular (1) the relationship between Edge Games and its alleged licensees and assignors, and (2) what quality control provisions exist in any licenses and how they are enforced, and (3) how the goodwill was assigned to Edge Games for those marks assigned to it.

Edge Games promised in its October 5, 2015 cover letter to Razer accompanying its discovery responses that it would "shortly" produce documents, but it has not provided any documentation or other information on these crucial issues (see Exhibit 1). Furthermore, in response to numerous interrogatories regarding its relationship with its licensees and assignors, Edge Games objected that such information was "trade secret." Likewise, in response to document requests for copies of licenses and quality control provisions and enforcement, Edge Games has made a similar blanket objection. In addition, some interrogatory responses were originally qualified by "to the best of Petitioner's recollection," implying that no review of company documents or knowledge was undertaken to provide full responses apart from one individual's memory (see, for example, responses to Interrogatory Nos. 12(a) and 12(f)).

In a good faith effort to give Edge Games an opportunity to correct these numerous deficiencies, Razer, by counsel, contacted Edge Games by letter dated October 13, 2015 (see Exhibit 2). In that letter, Razer informed Edge Games of numerous issues, including its general duty to cooperate in discovery, that the Petitioner in the case was Edge Games and

not Tim Langdell as an individual and thus his personal lack of recollection is not a valid response, and more importantly that Edge Games failed to provide key information and documents regarding settlement agreements, assignment agreements and the assignment of goodwill, details of license agreements, or provide a privilege log of communications allegedly protected as attorney-client privilege as Razer had properly done in its discovery responses. Moreover, Razer specifically put Edge Games on notice that its objection that certain information and documents were allegedly protected as a trade secret was not a valid reason not to produce such information and documents, since the Board's protective order provides a clear mechanism to produce any such material.

In response, on October 19, 2015 Edge Games made a few clarifications to its responses to the requests for documents and admissions in two separate emails, and a few edits to its actual interrogatory responses (see Exhibit 3).[1] However, ***Edge Games completely ignored the fact raised by Razer that its failure to produce any information or documents that were allegedly protected as trade secret was improper***. It is undeniable that Edge Games may not withhold properly discoverable information and documents on the basis of confidentiality, since the terms of the Board's standard protective order apply in this case. *See Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1706 n.6 (TTAB 2009). Thus, it is clear that Edge Games is determined to do all it can to deny Razer information and documents regarding numerous key issues, including its settlement agreements,

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[1] Unfortunately Edge Games did not change the caption or the date on the signature page of the second amended interrogatory responses, and so they also bear the October 5, 2015 date.

assignment agreements and the assignment of goodwill, and its license agreements and the existence and enforcement of quality control provisions.

In particular, and not necessarily exclusively, despite being specifically advised by Razer of the rules and procedures for producing information and documents allegedly protected as trade secret, Edge Games has still failed to provide any substantive answers (or privilege logs) in response to:

Interrogatory Nos. 4(e) – (g) regarding quality control
Interrogatory No. 5(a) regarding quality control
Interrogatory No. 6 regarding quality control
Interrogatory Nos. 8(e) – (g) regarding assignments
Interrogatory No. 9 regarding legal opinions of rights of third parties
Interrogatory No. 13 regarding trademark searches and investigations
Interrogatory No. 14 regarding trademark searches and investigations

In addition, in response to Interrogatory Nos. 12(d) – (f), Edge Games indicated it would produce documents regarding the key issues of prior settlement agreements, litigation, and sanctions or finding of fact against Edge Games. However, no such documents have been produced – despite the promise in Edge Games' letter of October 5, 2015 that such documents would be produced "shortly."[2]

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[2] Edge Games tries to have it both ways by stating both that it would "shortly" produce documents but that the number of documents is "potentially exceedingly voluminous" and will be time consuming to gather and copy. In response, Razer acknowledged in its letter of October 13, 2015 that no information regarding foreign use needed to be produced, and that a reasonable delay for information and documents from licensees was understandable.

Razer also notes that in response to Interrogatory No. 12(f), Edge Games now claims that "to the best of [its] belief"[3] there are no findings of fact against Edge Games or related parties related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal – this despite the fact that the record in this very proceeding contains extensive evidence of such malfeasance, as discussed below. Further information of similar malfeasance is directly related to Razer's affirmative defense of unclean hands, and Edge Games' feigned ignorance of the existence of any such findings is further evidence of its conscious decision not to comply with the Board's rules.

Edge Games' response to Razer's request for documents -- which thus far is just an unfulfilled promise to "shortly" produce that as of the filing of this motion is six weeks old and counting -- is similarly infected with a blanket vague objection to producing documents that are covered by valid merit-based objections. As noted to Edge Games in Razer's letter of October 13, 2015, the Board's protective order provides a mechanism for producing such documents. Thus, any refusal to produce documents allegedly containing trade secret information is without merit and a deliberate effort to deny such documents to Razer.

Edge Games' failure to fully comply with its discovery obligations as mandated by the Board's order of September 25, 2015 is all the more egregious because, at the time of its October 19, 2015 response, a deposition of its alleged licensee Velocity Micro was

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[3] This language replaces the original language in Edge Games' response that "to the best of Petitioner's recollection," which Razer objected to as implying no review of corporate records had taken place. Razer has no confidence that the amended language reflects a proper review of corporate records for the response.

scheduled for October 26 (see Exhibit 4).[4] As noted in Razer's letter of October 13, 2015, information and documents regarding Edge Games' relationship with Velocity Micro was crucial to the deposition, and Razer specifically requested that documents be produced at its counsel's office. Despite the impending deposition, Edge Games failed to provide any relevant information or documents regarding its relationship with Velocity Micro, putting Razer at a serious disadvantage. This obstructionist and non-cooperative attitude demonstrates that Edge Games will do all it can to deprive Razer of the information and documents to which it is entitled, and will continue to abuse the Office's proceedings for its own ends.

Indeed, the failure to produce documents at Razer's office as requested is itself a de facto objection on the merits, directly contrary to the Board's order of September 25, 2015. *See M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1048 (TTAB 2008) (finding that a responding party's offer to merely make the requested documents available at an unspecified time and place "effectively constituted an objection on the merits"). Edge Games' de facto objection on the merits, in violation of the Board's September 25 order, is a further reason to grant judgment in this case.

Finally, Razer notes that despite Edge Games' promise that it would "shortly" produce documents, it is now over six weeks since Edge Games' response of October 5, 2015. Moreover, as the Board found on page 12 of its September 25, 2015 Order that "[t]he record is clear that [Razer] served its first set of interrogatories and document requests on

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[4] This deposition has since been postponed, though it is Edge Games' refusal to provide any of the requested information or documents with its October 19, 2015 responses when the deposition was scheduled that is still telling of its lack of cooperation and flouting of its obligations.

February 5, 2015," it is now over ***nine months*** since Razer served its document production requests -- and to date no documents have been produced.[5] While Razer understands that some documents regarding sales and advertising ***by licensees*** may need more time than usual to be collected, clearly nine months is more than adequate time for a party to gather documents for production, particularly for documents that, if they exist, should be fully within Edge Games' own files, such as those pertaining, for example, to the assignment of goodwill, copies of licenses, and enforcement of quality control. Thus, the failure of Edge Games to produce any documents is further evidence of its deliberate decision not to cooperate in discovery, to deny Razer the information and documents to which it knows Razer is entitled, and to flaunt the TTAB's rules and procedures.

B. Edge Games' Lack Of Cooperation Is Consistent With Its Repeated Pattern Of Behavior

Edge Games' behavior in this and other matters before the Board related to its efforts to bully others regarding its alleged EDGE mark has been egregious. As noted in Razer's First Amended Answer To Petition To Cancel filed on October 14, 2015, Edge Games has engaged in an extensive pattern of intimidation and repeated misrepresentations to the U.S. Trademark Office, courts, and others related to its alleged EDGE mark including but not necessarily limited to:

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[5] Edge Games' original response to Razer's request for production of documents, served on March 31, 2015, contains nothing more than improper boilerplate objections without producing a single document, providing further evidence of Edge Games' determination to avoid producing documents to which Razer is entitled (see Exhibit 5).

(A) As documented in Registrant's September 18, 2014 Reply Brief In Opposition To Petitioner's Motion For Summary Judgment and Registrant's Request For Sanctions, Petitioner made false allegations that Registrant:

(1) "made no attempt itself to enter into any . . . Discovery Conference"

(2) "failed/refused" to respond to Petitioner's letter of March 28, 2014

(3) "refused to respond" to Petitioner's proposal to enter into mediation or arbitration, and

(4) refused to participate in the discovery process despite Petitioner's alleged "numerous efforts to encourage" such participation

(B) As documented in Registrant's September 18, 2014 Reply Brief In Opposition To Petitioner's Motion For Summary Judgment and Registrant's Request For Sanctions, Petitioner has a history of attempting to mislead the Board, noting that the Board found in its ruling of May 1, 2013 in Cancellation Action No. 92051465 that Petitioner twisted and modified legal citations in an effort to meet its own ends and stated "[t]o say the least, Edge Games' conduct is unacceptable. Edge Games is admonished against any further attempts to mislead the Board."

(C) As documented in Registrant's September 18, 2014 Reply Brief In Opposition To Petitioner's Motion For Summary Judgment and Registrant's Request For Sanctions, the U.S. District Court for the Northern District of California, in denying Petitioner's motion for a preliminary injunction against Electronic Arts regarding the MIRROR'S EDGE mark based on Petitioner's claim of ownership of EDGE, made numerous

findings regarding Petitioner and its CEO (and current pro se representative) Tim Langdell, which raise questions of fraud on the PTO in obtaining various trademark registrations, including:

(1) EA raised "serious questions regarding the veracity of Dr. Langdell's entire declaration."

(2) EA presented "compelling evidence that there was no bona fide use of the 'EDGE' mark in commerce by [Edge Games, Inc.]"

(3) "Even more egregious, according to Marvel Vice President and Deputy General Counsel Walter Bard, neither Marvel nor Mailbu Comics are or were ever licensees of Dr. Langdell's companies for any of these marks."

(4) "Compelling evidence of fraud on the USPTO has also been submitted by EA with respect to [Edge Games, Inc.'s] 'THE EDGE' mark."

(5) "Even more evidence of fraud is seen in the comic-book specimen submitted to the USPTO by Dr. Langdell in November 2005."

(6) "Based upon this apparently doctored specimen submitted by Dr. Langdell, the 'GAMER'S EDGE' mark was issued to [Edge Games, Inc.]"

(7) "EA has submitted evidence demonstrating that Dr. Langdell's claimed sales of video games supposedly bearing the 'GAMER'S EDGE' mark are highly suspect."

(8) "EA has put forth substantial evidence calling into severe question many of the representations made by Dr. Langdell in his declaration submitted to the Court. Indeed, the declarations provided by EA from two of plaintiff's supposed 'licensees' – Marvel Entertainment and Future Publishing – revealed that many of

Dr. Langdell's assertions in his declaration were materially misleading or downright false. These falsehoods infect all of Dr. Langdell's assertions regarding the bona fide and continuous use of the asserted marks in commerce and the purported 'sales' of his company's video-game products. In other words, all of his representations have become highly suspect in light of the evidence presented by EA."

(9) [T]he majority of [Edge Games, Inc.'s] arguments on this issue [the likelihood of confusion] are tainted by the suspect evidence set forth in Dr. Langdell's declaration."

(10) "All of [Edge Games, Inc.'s] representations regarding the validity and use of the asserted marks are infected by evidence of deceit."

(D) As documented in Registrant's September 18, 2014 Reply Brief In Opposition To Petitioner's Motion For Summary Judgment and Registrant's Request For Sanctions, Petitioner has also been found to be mendacious by a court in the United Kingdom in a case against Future Publishing Limited, the High Court of Justice, Chancery Division finding as follows:

(1) Dr. Langdell's story regarding computer disk evidence of use was "absurd."

(2) Dr. Langdell produced a "long and tortuous explanation" of email correspondence he allegedly had with Future Publishing's computer disk expert, the court finding "I have no doubt not merely that [the email] was not received but that it was never in fact sent. The overwhelming inference is that the suspect . . . email was concocted as support for Dr. Langdell's story that he had created a cloned disk. . .

Dr. Langdell's story is incredible. The truth is a prosaic one, namely that Dr. Langdell concocted disk 1 in support of his claim that he had invented the EDGE logo in 1991. When this was exposed by the claimant's expert he constructed an elaborate explanation and created disk 3, having learned from the [expert's] Report how to avoid the mistakes he made the first time."

(3) "It is hard to escape the inference that crucial emails, said to have been sent by Dr. Langdell but not received . . . were never in fact sent at all."

(4) "[V]arious statements made by Dr. Langdell, combined with his use of the EDGE logo, are designed to confuse visitors to his website."

(E) As documented in Registrant's October 20, 2014 Reply Brief In Support Of Its Request For Sanctions, Petitioner:

(1) Made highly suspect and likely false claims of service of its initial disclosures, which Registrant never received as allegedly served on May 15.

(2) Made entirely unsupported and likely false factual allegations that the fictional legal cites identified by the Board in its ruling of May 1, 2013 in Cancellation Action No. 92051465 "were later found to be entirely valid."

(3) Mischaracterized the final order in its litigation with Electronic Arts, claiming Petitioner was "found not to be guilty" of any misbehavior, when in fact the final order did not make any such finding, and the court did not rescind its prior findings with respect to Petitioner's specific misbehavior identified above.

(4) Claims that it never served on Razer its premature Motion for Summary Judgment filed on August 15, 2014, when that motion includes a certificate of service page

on which Tim Langdell certifies on behalf of Petitioner that the motion "was served" on that same date.

(F) As documented in Registrant's October 20, 2014 Reply Brief In Support Of Its Request For Sanctions, the U.S. district court for the Eastern District of Virginia found as follows:

(1) Where the defendant The Edge Interactive Media, Inc. referred to itself as Edge Interactive a/k/a Edge Games, Inc., "conflicting statements were misrepresentations made on behalf of Edge Interactive as part of their concerted effort to mislead this Court and gain an unfair advantage in litigation," and denying Edge Games' ability to file a valid answer and counterclaim.

(2) Misrepresentations regarding the relationship between Edge Interactive and Edge Games were part of a "deliberate strategy to obfuscate and mislead this Court in order to delay the Court's determination of default."

(3) Edge Interactive engaged in a "conscious strategy to mislead the Court and delay these proceedings" resulting in sanctions.

(4) Representations that Mr. Langdell resigned from the company as an employee and agent for service of process and that he had not received any communications related to the case were "proven to be false."

(G) As documented in Registrant's October 20, 2014 Reply Brief In Support Of Its Request For Sanctions, the U.K. High Court of Justice, Chancery Division, the sworn testimony of Randall Copeland, the CEO of Velocity Micro, Inc. is that alleged

emails between Mr. Copeland and Mr. Langdell that were submitted as evidence in court "are not the actual emails" that were exchanged and included numerous falsifications, which Mr. Copeland believes were amended "to misrepresent my reply."

(H) As documented in Registrant's May 8, 2015 Brief In Opposition To Petitioner's Motions To Withdraw Default Admissions And Take Discovery Under FRCP 56(d), Petitioner:

(1) Falsely stated to the Board that it informed Registrant it would be serving its Responses to Registrant's Request for Admissions on March 31, 2015, when in fact at no time prior to the filing of Registrant's summary judgment motion did Petitioner promise to provide by a certain date its discovery responses, and in particular responses to the Requests for Admission.

(2) Stated to the Board that Razer "falsely alleged in its motion that Petitioner has failed to provide any discovery responses," when in fact, as Petitioner knew, Registrant had not received any discovery responses at the time its summary judgment motion was filed, making Registrant's statement entirely true when made.

(I) As documented in Registrant's June 1, 2015 Correction Of Factual Misrepresentation By Petitioner In Reply Brief Re Motions To Withdraw Default Admissions And Take Discovery Under FRCP 56(d), Petitioner falsely claimed to the Board to have sent an

email to Registrant's counsel on March 10, 2015 requesting until March 31, 2015 to reply to Registrant's discovery request.

In addition to these numerous examples, in another pending TTAB proceeding Edge Games has evidently continued the same pattern of egregious behavior. Namely, in Opposition No. 91214673, the applicant recently filed with the Board under seal documents characterized as demonstrating that Edge Games "intended to mislead the Board by making . . . grossly false statements." (See Exhibit 6). The Board can readily access the confidential emails submitted with this filing to verify such claims. Furthermore, in the same proceeding Edge Games refused to cooperate in discovery, alleging lack of receipt of applicant's discovery requests despite clear evidence such requests had been properly served (see Exhibit 7, with discovery requests omitted). Clearly Edge Games' refusal to cooperate in discovery in the present case is not unique.

C. Edge Games Cannot Claim Ignorance Of The Rules As An Excuse

As required by the Board's order of January 30, 2015, Tim Langdell, on behalf of Edge Games, submitted a declaration on February 2, 2015 affirming that he had read Sections 402 (Scope of Discovery) and 414 (Selected Discovery Guidelines) of the Trademark Trial and Appeal Board Manual of Procedure (see Exhibit 8). Thus, Edge Games should be deemed fully aware of its discovery response obligations.

Furthermore, Edge Games has been advised many times over numerous proceedings before the U.S. Trademark Office to seek trademark counsel, including on page 3 of the Board's order of January 30, 2015 in this proceeding, on page 6 of the

Board's order of December 30, 2014 in Opposition No. 91214673 (see Exhibit 9), and on page 5 of the Board's order of July 31, 2015 in Opposition No. 91212834 (see Exhibit 10). Moreover, Razer's letter of October 13, 2015 specifically noted that the Board's protective order provided a clear mechanism for producing information and documents allegedly protected as trade secret, and that mere repetition of this objection does not justify non-production.

D. Request For Final Judgment

For the reasons set forth above, and pursuant to Section 527.01(a) of the Trademark Trial and Appeal Board Manual of Procedure, Razer respectfully submits that Edge Games' deliberate continued refusal to produce key information and documents to Razer in compliance with its discovery obligations as required by the Board's order of September 25, 2015, combined with all of Edge Games' other misbehavior before the Board and other judicial bodies, warrant dismissal of Edge Games' petition to cancel with prejudice and entry of judgment against it. *See Benedict v. Superbakery, Inc.*, 101 USPQ2d 1089 (Fed. Cir. 2011) (affirming Board's entry of judgment as a discovery sanction for failure to comply with Board's reasonable orders); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (pattern of dilatory conduct indicated willful disregard of Board order and resulted in entry of judgment); *Unicut Corp. v. Unicut, Inc.* 222 USPQ 341, 344 (TTAB 1984) continued refusal to obey Board's orders warranted entry of judgment).

Granting Razer's alternative request below, namely for yet another order compelling Edge Games to cooperate in discovery and applying certain other sanctions, will further drain the Board's and Razer's resources, will not affect Edge Games' resources as it is appearing pro se, and will only invite more devious mischief from a litigant who has a long track record of fabrication of evidence and noncompliance with the rules. The Board, in the orderly administration of justice, is entitled to expect all parties to fulfill their discovery obligations in good faith. When a litigant continually flouts the rules and disregards an order of the Board compelling compliance with discovery requests -- and particularly where the responding party had certified to the Board it had reviewed the relevant sections of the TBMP and was also specifically advised by opposing counsel why its discovery responses were not compliant with specific provisions of the Board's rules – the sanction of dismissal is appropriate.

II. In The Alternative, Edge Games Should Be Compelled Again To Respond To Razer's Discovery Requests And Estopped From Entering Into Evidence Information Not Yet Produced, And Corresponding Adverse Inferences Drawn

Although Razer believes for the reasons discussed above that final judgment against Edge Games is warranted in this case, if the Board should deny the request for judgment it should issue another order compelling Edge Games to produce all information and documents requested in Razer's discovery requests, estop Edge Games from introducing as evidence information and documents that should have already been produced, and make all adverse evidentiary inferences as warranted.

A. Razer's Good Faith Effort To Resolve The Dispute

As discussed above, by letter dated October 13, 2015, Razer made a good faith effort, in the particular circumstances of the Board's prior order or September 25, 2015 and Edge Games' past behavior, to resolve the infirmities of Edge Games' discovery responses. In that letter, Razer informed Edge Games of numerous issues, including its general duty to cooperate in discovery and that Edge Games failed to provide key information and documents regarding settlement agreements, assignment agreements and the assignment of goodwill, details of license agreements, or provide a privilege log of communications allegedly protected as attorney-client privilege as Razer had properly done. Razer also specifically put Edge Games on notice that its objection that certain information and documents were allegedly protected as a trade secret was not a valid reason not to produce, as the TTAB's protective order provides a mechanism to produce any such information and documents.

Edge Games' response indicates that it plans to continue to ignore its obligations to produce information and documents to which Razer is entitled, including ignoring the mechanism in the Board's protective order for producing information and documents allegedly protected as trade secret. In addition, it has been six weeks since Edge Games promised it would "shortly" produce numerous documents -- and nine months since the document requests were served -- and to date no documents have been produced. This failure is especially telling considering that at the time of Edge Games' October 19, 2015 responses Razer needed such information and documents to prepare for the deposition of Edge Games' alleged licensee Velocity Micro then scheduled for October 26.

While Razer understands that some documents from alleged licensees regarding sales figures and advertising may take longer to assemble, clearly the time has long passed since, at a minimum, for documents in Edge Games' direct custody, possession, or control to be produced. Edge Games' continuing decision to merely make an empty promise to produce without actually producing documents is another example of its egregious behavior in litigation before the Board.

B. <u>Relief Requested</u>

If the Board does not enter final judgment against Edge Games as requested above but instead determines to issue another order compelling Edge Games to cooperate in discovery, Razer respectfully requests that the Board order Edge Games, in addition to producing all information and documents that are responsive to Razer's requests, to produce the documents to Razer's counsel at the address of record in this proceeding at Edge Games' expense, as Razer did for its document production to Edge Games. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000) (party ordered to copy and forward documents at its expense to opposing party); *Unicut Corp. v. Unicut, Inc.*, 220 USPQ 1013, 104-15 (TTAB 1983) (party order to produce documents by mailing them at its expense to opposing party).

Razer also respectfully requests that in any order to compel that the Board require Edge Games to specifically answer the first sentence of Interrogatory No. 1, and amend all corresponding answers accordingly. As noted in Razer's letter of October 13, 2015, Edge Games has not set forth "each product or service" in its responses as requested, and that failure affects numerous other responses. For example, in the response to

Interrogatory No. 2 it is impossible to clearly match which goods and services are sold or distributed by which alleged licensees and which goods and services are allegedly sold or distributed by Edge Games. Likewise, Edge Games should be instructed to clearly set forth responses per licensee where requested, as in Interrogatory No. 4, so that Razer can corroborate with individual licensees the information provided.

Razer also submits that Edge Games' failure to provide full discovery responses following the Board's order of September 25, 2015 compelling such responses, and particularly its failure to produce information and documents allegedly protected as trade secret despite being specifically advised by Razer that such an objection is not an appropriate reason not to produce, estops Edge Games as a matter of law from entering such information or documents as evidence. *See, e.g., Shoe Factory Supplies Co. v. Thermal Engineering Co.*, 207 USPQ 517, 519 n.1 (TTAB 1980) ("a party may not properly introduce a document in evidence in its behalf after having refused to make it available to an adverse party seeking discovery thereof"); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1677 (TTAB 1989) ("if proper discoverable matter is withheld from the requesting party, the responding party will be precluded from relying on such information and from adducing testimony with regard thereto during its testimony period"); *Visual Info. Inst. v. Vicon Indus. Inc.*, 209 USPQ2d 179, 182 (TTAB 1980) ("party that refused to furnish information on the ground of confidentiality cannot rely on such evidence during its testimony period); *Super Valu Stores Inc. v. Exxon Corp.*, 11 USPQ2d 1539, 1543 (TTAB 1989) (a party may not refuse to answer discovery by claiming confidentiality and then introduce responsive information during its trial period).

Furthermore, Razer, but not Edge Games, should be permitted to introduce as evidence information and documents produced following the filing of this motion. *See M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1048 (TTAB 2008) (allowing requesting but not producing party to enter produced documents, if filed during trial by the requesting party only, as authentic and admissible; *HighBeam Marketing LLC v. HighBeam Research LLC*, 85 USPQ2d 1902, 1905 (TTAB 2008) (allowing producing party to introduce at trial only the information and documents that were provided to the requesting party prior to the filing of the motion for discovery sanctions). Allowing Edge Games to rely during its testimony period on information and documents it has been hiding following the Board's order of September 25, 2015 compelling discovery responses and prior to the filing of this motion would allow Edge Games to benefit from its lack of cooperation and only encourage further gamesmanship.

Accordingly, because Razer specifically requested information and documents regarding Edge Games' alleged legitimate acquisition of rights via assignment and alleged legitimate license arrangements but has been denied any such information or documents based on alleged "trade secret" protection, Edge Games should now be precluded from offering any evidence on these issues, and indeed the Board should draw the adverse inference that Edge Games' alleged acquisitions by assignment did not include the necessary transfer of goodwill and that its alleged licensing arrangements do not have the necessary level of quality control.

Further, the Board should rule that Edge Games must prove by clear and convincing evidence that it always acquired the goodwill of the mark in each alleged acquisition and never engaged in uncontrolled licensing. The Board should also be

mindful of Edge Games' history of fabricating evidence, including doctoring emails from licensees as detailed above, and take appropriate steps to prevent such gamesmanship, perhaps by requiring notarized statements from each alleged assignor or licensee confirming the authenticity of any documents it produces regarding communications with that assignor or licensee.

Finally, Razer requests the Board to issue any other additional sanctions it deems appropriate.

III. Request For Suspension

While the Board contemplates Razer's Motion for Judgment, Razer respectfully requests that the Board suspend the case for all matters not germane to the motion pursuant to 37 CFR § 2.127(d) and Board precedent in *Elec. Indus. Ass'n v. Potega*, 50 USPQ2d 1775, 1776 n.4 (TTAB 1999) (suspending case pending disposition of motion for discovery sanctions that include request for entry of judgment). Razer requests that the suspension order:

- specifically relieve Razer from responding to Edge Games' pending discovery requests, served on October 26, 2015, as they are not related in any way to the grounds for the Motion for Judgment and no information requested is necessary to allow Edge Games to respond to the motion, consistent with the Board's ruling in *Leeds Technologies Ltd v. Topaz Communications Ltd*, 65 USPQ2d 1303, 1306 (TTAB 2002) (noting that "the filing of [a dispositive] motion generally will provide parties with good cause to cease or defer activities unrelated to the briefing of such motion");

- preclude either party from serving any new discovery requests or taking the deposition of any party or non-party, as any such discovery may be moot if the Motion for Judgment is granted;
- state that if the Motion for Judgment is denied, the Board will reset the December 30, 2015 close of discovery date for Razer, and reset all other dates accordingly. Razer notes that the filing date of the Motion for Judgment is after the November 15, 2015 close of discovery for Edge Games and thus Edge Games is not entitled to any reopening of its discovery period. Moreover, as Razer will need time to evaluate any documents produced in response to an order compelling production and possibly serve a request for admission of authenticity, Razer respectfully requests that the close of its discovery period be set for 75 days after Edge Games' production deadline. This is equivalent to the time that Razer would have had prior to the December 30, 2015 close of its discovery period if Edge Games had produced documents by the October 15, 2015 deadline set forth in the Board's order of September 25, 2015.

V. Conclusion

For the reasons stated above, Razer respectfully requests that the Board dismiss the petition to cancel with prejudice and issue final judgment in this case. In the alternative, if the Board denies the Motion for Judgment, Razer requests the Board to issue another order compelling Edge Games to produce all information and documents requested by Razer, to estop Edge Games from entering testimony based on information or documents that have not been produced as of the date of filing this motion, to draw appropriate inferences from

Edge Games' failure to produce such information and documents, and issue any other appropriate sanction such as putting the burden of proof on the legitimacy of any assignment or license on Edge Games and requiring proof of authenticity of certain documents. Razer also requests the Board to suspend these proceedings upon the terms requested above.

Respectfully submitted,

Razer (Asia-Pacific) Pte Ltd

By: Keith Barritt

Keith A. Barritt
Fish & Richardson P.C.
P.O. Box 1022
Minneapolis, MN 55440-1022
phone: (202) 783-5070
fax: (202) 783-2331

November 17, 2015

Date

41102076.doc

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

CERTIFICATE OF SERVICE

In accordance with 37 CFR 2.111(b), the undersigned hereby certifies that on November 17, 2015, a true copy of the foregoing Registrant Razer (Asia-Pacific) Pte Ltd's Motion For Judgment, Or In The Alternative To Compel Discovery Responses To Interrogatories And Document Requests, And To Suspend Proceedings was sent via U.S. certified mail, postage prepaid, addressed to the following correspondent of record for Edge Games, Inc.:

Tim Langdell
Edge Games Inc.
530 South Lake Avenue, 171
Pasadena, CA 91101

Signature

41102076.doc

EXHIBIT 1

EDGE™
GAMES

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

October 5, 2015

Via Certified Mail

Re: EDGE Trademark Cancellation Action in the U.S.
Cancellation No. 92058543

Dear Mr Barritt:

In accord with the TTAB ruling of September 25, 2015, please find enclosed our revised responses to Razer's first set of interrogatories and first set of requests for document production. As you can see, per the Board's order, we have not objected on the basis of merit grounds and have done our best to be responsive under the circumstances. We note EDGE was given 20 days in which to serve the attached on you, thus our service is timely and meets the Board's conditions.

Please bear in mind that Petitioner EDGE and its predecessors in rights have been in business in the U.S. for over 30 years, and have been using the mark EDGE in United States commerce for game related products and services continuously for over 30 years, too. Consequently, while we shall commence sending documents to you shortly in accord with our Responses, this process will of necessity take time--not least since you successfully prevented us from objecting on legitimate grounds of a given request being overly burdensome or beyond scope which in turn means what you have requested is potentially exceedingly voluminous and will be time consuming to gather and copy before sending to you.

Kind regards,

Dr. Tim Langdell
CEO, Petitioner in *Pro Se*

EDGE Games, Inc.,
530 South Lake Avenue, #171, Pasadena, California, 91101
T: 626 449 4EDGE F: 626 844 4EDGE W: www.edgegames.com E:corp@edgegames.com

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

PETITIONER'S AMENDED RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rules of Practice §2.120, Petitioner Edge Games, Inc. ("Petitioner") by its undersigned pro per representative hereby responds to Registrant's First Set of Interrogatories.

RESERVATION OF RIGHTS

Petitioner's responses are based solely on information currently available to Petitioner based upon reasonable investigation. Investigation and discovery are ongoing. Petitioner reserves all rights to supplement, revise and/or amend these responses should additional information become available through the discovery process or other means. Petitioner also reserves the right to produce or use any information or documents that are discovered after service of these responses in support of or in opposition to any motion, in depositions, or in hearings. In responding to Registrant's requests, Petitioner does not waive any objection on the grounds of privilege,

competency, relevance, materiality, authenticity, or admissibility of the information contained in these responses.

GENERAL OBJECTIONS

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

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

3. Petitioner objects to the requests to the extent that they are duplicative (if this objection is viewed as non-merit based, otherwise this objection is withdrawn).

4. A statement by Petitioner of its willingness to produce responsive documents that are not protected from discovery does not mean that such documents exist.

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

responses or information is not an admission that such responses or information are relevant or admissible.

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

SPECIFIC OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSION

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

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

Interrogatory No. 1

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

(a) The mark used;

(b) The date of first use of the mark in each state of the United States;

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

(d) The classes of consumers to whom each product or service is or was sold or distributed;

~~(e) The retail establishments and other channels of trade where each product~~ or service is or was sold or distributed;

(f) The amount spent each year on advertising;

(g) The amount of sales each year in volume and dollar amount; and

(h) The manner in which the mark EDGE or any variant has been used, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

OBJECTION: **Petitioner objects on the grounds this asks confidential trade secret information or other privileged information.**

ANSWER:

(a) The mark used;

"EDGE" in the form EDGE, THE EDGE, EDGE PC, EDGE GAMING PC, EDGEGAMERS, EDGE OF EXTINCTION, CUTTING EDGE, EDGE 3D, EDGE OF TWILIGHT and GAMER'S EDGE

(b) The date of first use of the mark in each state of the United States;

on or about June 1, 1984.

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

EDGE and THE EDGE continuous; GAMER'S EDGE continuous from or about 1992 for software, and from or about 1998 for hardware. Still awaiting details from licensee(s) as to whether GAMER'S EDGE was not used for any given period since 1998 for hardware.

EDGE PC and EDGE GAMING PC believed to be from or about 2008. EDGEGAMERS believed to be since or about 2006, and continuous since that time. EDGE OF EXTINCTION believed to be from or about March 2000. CUTTING EDGE believed to be from or about April 1995 to April 2013 for printed comics; continuous to current day for ~~game software related use. EDGE 3D believed to be from or about 1995 to 1998. EDGE OF~~ TWILIGHT from or about 2009 and believed to be until the current day.

(d) The classes of consumers to whom each product or service is or was sold or distributed;

at least 28, 9 & 16, also for some other classes such as 35, 38, 41 depending on EDGE mark variant.

(e) The retail establishments and other channels of trade where each product or service is or was sold or distributed;

via Internet ("on line" direct to consumer and via resellers such as Amazon.com and NewEgg.com), and major retail outlets such as Best Buy, and Frys.

(f) The amount spent each year on advertising;

still awaiting data from licensee(s).

(g) The amount of sales each year in volume and dollar amount;

still awaiting data from licensee(s).

and

(h) The manner in which the mark EDGE or any variant has been used, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

Affixed to products, on product packaging, used on website to promote products, used on advertising materials to promote products. Awaiting on further data from licensee to be able to complete this request.

Interrogatory No. 2

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

(a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;

~~(b) The name and address of the actual producer of the product or provider of~~ the service;

(c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

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

ANSWER:

(a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;

In the United States: Velocity Micro Inc., 835 Grove Road, Midlothian, VA 23114; Future Publishing Ltd., Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 2BW, United Kingdom; Diamond Multimedia, 20740 Plummer St., Chatsworth CA 91311; Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108; FuzzyEyes Studio Pty Ltd, 3/53 Brandl St., Eight Mile Plains, Q4113, Australia; Datel Design and Development Inc, 33 North Garden Avenue, Suite 900, Clearwater FL 33755

(b) The name and address of the actual producer of the product or provider of the service;

In the United States: Edge Games Inc, 530 South Lake Avenue, 171, Pasadena, CA 91101; Velocity Micro Inc., 835 Grove Road, Midlothian, VA 23114; Future Publishing Ltd., Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 2BW, United Kingdom; Diamond Multimedia, 20740 Plummer St., Chatsworth CA 91311; Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108; FuzzyEyes Studio Pty Ltd, 3/53 Brandl St., Eight Mile Plains, Q4113, Australia; Datel Design and Development Inc, 33 North Garden Avenue, Suite 900, Clearwater FL 33755; Edgegamers, 555 E. Pacific Coast Highway, #218, Long Beach, CA 90806 (all as believed to be the case to the best of knowledge and belief).

(c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

Dr Tim Langdell, CEO of Petitioner; Randall Copeland of Velocity Micro Inc.; Wei-Yao Lu of FuzzyEyes; Ken Tarolla of Datel Design; John Coates and Mark Charles Zerbe of Edgegamers. As to others, contact was to the best of recollection the senior executive or designated officer at any given time.

Interrogatory No. 3

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

(a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.

(b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service; and

(c) State the dates such advertising occurred.

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

ANSWER:

(a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.

Still awaiting data from licensee(s) to be able to answer this.

(b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service;

Still awaiting data from licensee(s) to be able to answer this.

and

(c) State the dates such advertising occurred.

Still awaiting data from licensee(s) to be able to answer this.

Interrogatory No. 4

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

(a) The name and address of the licensee;

(b) The effective date such license began and ended;

(c) The marks covered by the license;

(d) The products and services covered by the license.

(e) The quality control procedures, in detail, for each product or service sold under each mark covered by the license that are or have ever been in place and the dates such controls were in place;

(f) The annual expenses incurred by Petitioner for enforcing the quality control requirements in the license; and

(g) The royalty fee or other licensing payment received by Petitioner each year pursuant to the license or any other benefit received by Petitioner under the license.

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

ANSWER:

(a) The name and address of the licensee;

For the United States market: (1) Velocity Micro Inc., 835 Grove Road, Midlothian, VA 23114; (1) Future Publishing Ltd., Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 2BW, United Kingdom; (3) Diamond Multimedia, 20740 Plummer St., Chatsworth CA 91311; (4) Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108; (5) FuzzyEyes Studio Pty Ltd, 3/53 Brandl St., Eight Mile Plains, Q4113, Australia; (6) Datel Design and Development Inc, 33 North Garden Avenue, Suite 900, Clearwater FL 33755

(b) The effective date such license began and ended;

(1) began 1998 and has not ended; (2) began 1993 and has not ended; (3) Believed to have began 1995 and believed to have ended circa 1998; (4) Began circa 2000 and believed to be

still on-going; (5) Began in or about 2009 and believed to be still on-going; (6) Began in or about January 29, 2009 until or about January 29, 2012.

(c) The marks covered by the license;

(1) EDGE and GAMER'S EDGE; (2) EDGE; (3) EDGE in the form EDGE 3D; (4) EDGE in the form EDGE OF EXTINCTION; (5) EDGE in the form EDGE OF TWILIGHT; (6) THE EDGE.

(d) The products and services covered by the license.

(1) Game hardware such as game computers; (2) Computer and video game publications and magazines published electronically; (3) EDGE 3D PC game hardware such as a plyg in circuit board enabling a PC to play SEGA Saturn games; (4) Computer game; (5) Computer game; (6) Game hardware such as a controller for Nintendo consoles.

(e) The quality control procedures, in detail, for each product or service sold under each mark covered by the license that are or have ever been in place and the dates such controls were in place;

See objection

(f) The annual expenses incurred by Petitioner for enforcing the quality control requirements in the license;

See objection

and

(g) The royalty fee or other licensing payment received by Petitioner each year pursuant to the license or any other benefit received by Petitioner under the license.

See objection

Interrogatory No. 5

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

(a) How Petitioner creates, maintains, and enforces the quality control provisions for each product or service covered by the license; and

~~(b) Any situation where a licensee's product or service was found not to~~ comply with Petitioner's quality control standards.

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

ANSWER:

(a) How Petitioner creates, maintains, and enforces the quality control provisions for each product or service covered by the license;

See objection

and

(b) Any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

None found.

Interrogatory No. 6

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

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

ANSWER: **See objection.**

Interrogatory No. 7

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

OBJECTION: **See Petitioner's Objections to Interrogatory No. 1.**

ANSWER: **Notices were sent to licensees in accord with the Court's Order; to the best of Petitioners recollection there was no subsequent correspondence with any licensee regarding the status of the license(s). Petitioner notes that the court order referenced was one that Petitioner itself requested the court to make, not a court order arising from a court considering the facts, evidence or merits of Petitioner's trademark registrations, right to own same, or similar.**

Interrogatory No. 8

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

(a) The effective date of the assignment;

(b) The products or services associated with the assigned mark;

(c) The name and address of the assignor;

(d) The name and address of Petitioner's primary contact person at the assignor regarding the assignment;

(e) The purchase price or other consideration given to the assignor for the assignment of each mark;

(f) The circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of the mark; and

(g) The steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

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

ANSWER:

~~(a) The effective date of the assignment;~~

(1) EDGEGAMERS on or about January 13, 2009; (2) EDGE believed to be in or about 1996 and 2014; (3) CUTTING EDGE (Marvel Comics) in or about September 1995; (4) EDGE OF EXTINCTION on or about September 29, 2009.

(b) The products or services associated with the assigned mark;

(1) online gaming services; (2) game magazines published electronically; (3) comic books; (4) game software

(c) The name and address of the assignor;

See No. 4 above.

(d) The name and address of Petitioner's primary contact person at the assignor regarding the assignment;

See response above.

(e) The purchase price or other consideration given to the assignor for the assignment of each mark;

See objection

(f) The circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of the mark;

See objection

and

(g) The steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

See objection

Interrogatory No. 9

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

(a) Each such opinion;

(b) The person or persons requesting each such opinion; and

(c) The person rendering each such opinion.

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

Interrogatory No. 10

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

OBJECTION: **See objection to No. 1. While Petitioner is not permitted to object on the basis or relevance, scope, or other merit-based grounds, Petitioner nonetheless wishes to note for the record that this request is exceptionally burdensome since as written it pertains to all uses of the EDGE mark for any products and services, not just those relating to these proceedings. Petitioner makes a reasonable effort to respond based on its knowledge or belief at the time of responding without undertaking any special research into same.**

ANSWER: **In addition to those users who assigned any EDGE mark to Petitioner (referenced above), Petitioner knows of: EDGE for shaving cream believed to be owned by Edgeware Personal Care Brands; EDGE for automobiles believed to be owned by Ford Motor Company.**

Interrogatory No. 11

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

(a) State with particularity the nature of the confusion involved in each such instance;

~~(b) Identify each person with knowledge of each instance of such confusion;~~

and

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

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

ANSWER:

(a) State with particularity the nature of the confusion involved in each such instance;

Petitioner is still gathering data on this.

(b) Identify each person with knowledge of each instance of such confusion;

Petitioner is still gathering data on this.

and

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

Petitioner is still gathering data on this.

Interrogatory No. 12

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

(a) State the name and address of each such third party;

(b) State the case docket number and filing date and identify the tribunal, if any;

(c) Describe the nature of the claim or action, including the trademarks and products/services involved;

(d) Describe the outcome of any such claim or action, including the details of any settlement agreement;

(e) Identify all documents referring or relating to such litigation, proceeding, or dispute and ensuing negations, if any;

(f) Identify all documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal; and

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

OBJECTION: **Please see general objections.**

ANSWER:

(a) State the name and address of each such third party;

Petitioner responds to the best of its recollection at time of drafting: (1) New World Computing, Inc. CORPORATION CALIFORNIA 20301 Ventura Boulevard, Suite 200 Woodland Hills CALIFORNIA 91364; (2) Marvel Entertainment Group, Inc. CORPORATION DELAWARE 387 Park Avenue South New York NEW YORK 10016; (3) ELECTRONIC ARTS INC, 209 REDWOOD SHORES PARKWAY , REDWOOD CITY, CA 94065 (4) Kabushiki Kaisha Sony Computer Entertainment (a/t/a Sony Computer Entertainment Inc.) 2-6-21, Minami-aoyama, Minato-ku Tokyo 107-0062 Japan; (5) John Coates (Edgegamers-see above for address); (6) Velocity Micro, 7510 Whitepine

Rd, North Chesterfield, VA 23237; (7) Mobigame, 85 boulevard Pasteur F-75015 PARIS FRANCE

(b) State the case docket number and filing date and identify the tribunal, if any;

(1) Opposition No. 92021684; (2) Opposition No. 91104280; (3) Opposition No. 92051465 and Federal Court Case 10-CV-2614-WHA; (4) Opposition No. 91189164; (5) Opposition No. 77352656; (6) Opposition No. 92049162 and Federal Court Case 03:08CV135-JRS; (7) Opposition No. 91212834

(c) Describe the nature of the claim or action, including the trademarks and products/services involved;

Trademark infringement and/or likelihood of confusion; see above for details of marks and products/services

(d) Describe the outcome of any such claim or action, including the details of any settlement agreement;

All settled or resolved amicably, most entirely in Petitioner's favor and one in the mutual favor of both parties; see general objection as to remainder of this request.

(e) Identify all documents referring or relating to such litigation, proceeding, or dispute and ensuing negations, if any;

See general objections

(f) Identify all documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal;

To the best of Petitioner's recollection at the time of drafting, none in any U.S. action or tribunal.

and

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

See general objections as to anything that is not in the public record easily accessed by Registrant.

Interrogatory No. 13,

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

OBJECTION: **See objection to No. 1. There is no response other than that covered by an objection on the grounds of attorney client privilege or other privilege.**

Interrogatory No. 14

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

(a) The date on which it was made;

(b) The name and address of the person who requested it; and

(c) Whether any report or other communication or document was made concerning such search or investigation, and if so, set out verbatim the contents thereof or attach to the answer to this interrogatory a copy of each such report, communication or document.

OBJECTION: **See objection to No. 13 above.**

Interrogatory No. 15.

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

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

ANSWER: **Petitioner has a history of over 30 years of use of the mark EDGE in United States commerce, both for computer game software and for computer game hardware. No other entity has registered or legitimate claim to the mark EDGE for game such game**

related goods and services except under agreement with Petitioner or except where Petitioner is formally opposing or objecting to any use by such an entity using the mark other than under agreement with Petitioner. Petitioner has used its best efforts to police the US market over the past 30 years to ensure a lack of dilution and a lack of likelihood of ~~confusion in the minds of US consumers. This is not a comprehensive list of factual bases~~ for the claim, and Petitioner reserves the right to add or amend same at any time.

Interrogatory No. 16

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

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

ANSWER: **See Petitioner's answer to No. 15 above.**

Interrogatory No. 17

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

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

ANSWER: **See answer to No. 15 above.**

Interrogatory No. 18

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

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

Interrogatory No. 19

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

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

ANSWER: **Softek International Ltd. (in or about 1990); The Edge Interactive Media, Inc. (in or about 2008).**

Interrogatory No. 20

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

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

ANSWER: **The Edge Interactive Media, Inc.; Dr Tim Langdell**

Interrogatory No. 21

As to each of the above interrogatories, identify:

(a) The person within Petitioner who has the greatest knowledge as to the information requested; and

(b) All persons who participated in preparing each response.

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

ANSWER: **(a) Dr Tim Langdell; (b) Dr Tim Langdell**

Respectfully submitted,

By: /s/ Tim Langdell

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

Date: October 5, 2015

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

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

CERTIFICATE OF SERVICE

It is hereby certified that on October 5, 2015 a true copy of the foregoing PETITIONER'S AMENDED RESPONSES TO REGISTRANT'S FIRST SET OF INTERROGATORIES was deposited in the U.S. mail, certified, postage prepaid, addressed to:

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

Signature: /s/ Cheri Langdell

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

PETITIONER'S AMENDED RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS AND ELECTRONICALLY STORED INFORMATION

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rules of Practice §2.120, Petitioner Edge Games, Inc. ("Petitioner") by its undersigned pro per representative hereby responds to Registrant's First Set of Interrogatories.

RESERVATION OF RIGHTS

Petitioner's responses are based solely on information currently available to Petitioner based upon reasonable investigation. Investigation and discovery are ongoing. Petitioner reserves all rights to supplement, revise and/or amend these responses should additional information become available through the discovery process or other means. Petitioner also reserves the right to produce or use any information or documents that are discovered after service of these responses in support of or in opposition to any motion, in depositions, or in hearings. In responding to Registrant's requests, Petitioner does not waive any objection on the grounds of privilege,

competency, relevance, materiality, authenticity, or admissibility of the information contained in these responses.

GENERAL OBJECTIONS

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

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

3. Petitioner objects to the requests to the extent that they are duplicative, so long as this objection is deemed to be not merit-based (otherwise it is withdrawn).

4. A statement by Petitioner of its willingness to produce responsive documents that are not protected from discovery does not mean that such documents exist.

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

responses or information is not an admission that such responses or information are relevant or admissible.

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

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

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

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

Request No. 1

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

(a) The mark used;

(b) The date of first use of the mark in each state of the United States;

(c) Whether use of each mark for each product or service in each state identified above has continued every year thereafter;

(d) The classes of consumers to whom each product or service is or was sold or distributed;

(e) The retail establishments and other channels of trade where each product or service is or was sold or distributed;

(f) The amount spent each year for advertising;

(g) The amount of sales each year in volume and dollar amount; and

~~(h) The manner in which the mark EDGE or any variant has been used for~~

every month since use of the mark began, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

OBJECTION: **See the general objections above. In addition, this request does not limit scope to the facts or evidence that might be considered relevant to these proceedings (Petitioner and/or its predecessors in rights have been in business in the United States since at least about 1982 but the question does not even limit scope to just the United States). However, the Board has ruled that Petitioner may not object on such grounds of merit, and thus Petitioner merely makes this observation for the record as to scope and burden, but does not object on the basis of same.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 2

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

(a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;

(b) The name and address of the actual producer of the product or provider of the service;

(c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

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

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

~~Request No. 3~~

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

(a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.

(b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service; and

(c) State the dates such advertising occurred.

OBJECTION: **See objection to No 1 and No 2 above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 4

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

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

(b) All documents regarding the quality control procedures for each product or service sold under each mark covered by each license that are or have ~~ever been in place;~~

(c) All documents regarding the enforcement of any quality control procedures in place under any license;

(d) Documents sufficient to substantiate the annual expenses incurred by Petitioner for enforcing the quality control requirements in the license; and

(e) Documents sufficient to substantiate the royalty fee or other licensing payment received by Petitioner each year pursuant to any license or any other benefit received by Petitioner under the license.

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

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 5

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

(a) All documents regarding Petitioner's creation, maintenance, and enforcement of the license; and

(b) All documents regarding any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

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

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 6

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

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

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 7

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

OBJECTION: **See Petitioner's General Objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 8

For all marks that were assigned to Petitioner, produce:

(a) All documents regarding the assignment, including documents sufficient to identify the name and address of the assignor, the marks involved, the

products and services involved, and the date such assignment became effective;

~~(d) (sic - there is no b or c) Documents sufficient to identify the name and~~ address of Petitioner's primary contact person at the assignor regarding the assignment;

(e) All documents regarding the purchase price or other consideration given to the assignor for the assignment of the mark;

(f) All documents regarding the circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of the mark; and

(g) All documents substantiating the steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

OBJECTION: **See general objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 9

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

OBJECTION: **See general objections above. This also does not appear to be a request for document production but rather perhaps an Interrogatory. But, that said, Petitioner is aware per the Board's September 25, 2015 Order that it cannot object on such merit-based grounds no matter how valid such grounds might be.**

ANSWER: **If petitioner correctly understands what the request was meant to be, then the response is no documents that is not covered by attorney-client privilege or work product doctrine, or similar valid and acceptable basis for objection.**

Request No. 10

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

OBJECTION: **See general objections above and objections to No. 1.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 11

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

OBJECTION: **See general objections above and objections to No. 1.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 12

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

(a) All documents pertaining to any such claim or action;

(b) Documents sufficient to identify the name and address of each such third party, the case docket number and the filing date and tribunal, if any, and ~~the nature of the claim or action, including the trademarks and~~ products/services involved;

(c) All documents regarding the outcome any such claim or action, including any negotiations, settlement agreements, licenses, and assignments

(d) All documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal; and

(e) Documents sufficient to identify the name(s), address(es), and telephone number(s) of all counsel representing any adverse party in such claim or action.

OBJECTION: **See general objections above and objections to No. 1. Petitioner further notes that this request is not limited to either the United States territory or to claims or actions or tribunals involving Petitioner. Thus, as stated, this request, as worded, asks Petitioner to produce documents in respect to all claims, actions or tribunals worldwide, for every country in the world, pertaining in any way to the mark EDGE. While this is clearly far outside the scope of these proceedings as worded, Petitioner will respectfully note that all such documents that are in the public domain around the world can be obtained directly by Registrant, and it is not reasonable to request Petitioner obtain and produce such public documents. Petitioner thus responds in good faith as reasonably as it can. Petitioner notes that it is not permitted to make any merit-based objections, and thus does not do so, and merely states the foregoing for the record.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 13

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

OBJECTION: **See objection to No. 1 above and General Objections.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 14

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

OBJECTION: **See objection to No. 13 above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 15

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

OBJECTION: **See general objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 16.

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

OBJECTION: See general objections above.

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

~~Request No. 17~~

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

OBJECTION: **See general objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 18

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

OBJECTION: **See general objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 19

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

OBJECTION: **See general objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Request No. 20

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

OBJECTION: **See general objections above.**

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

Respectfully submitted,

By: /s/ Tim Langdell

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

Date: October 5, 2015

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

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

CERTIFICATE OF SERVICE

It is hereby certified that on October 5, 2015 a true copy of the foregoing PETITIONER'S AMENDED RESPONSES TO REGISTRANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was deposited in the U.S. mail, certified, postage prepaid, addressed to:

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

Signature: /s/ Cheri Langdell

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

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

PETITIONER'S RESPONSES TO APPLICANT'S FIRST REQUESTS FOR ADMISSION

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rules of Practice §2.120, Petitioner Edge Games, Inc. ("Petitioner") by its undersigned pro per representative hereby responds to Registrant's First Set of Interrogatories.

RESERVATION OF RIGHTS

Petitioner's responses are based solely on information currently available to Petitioner based upon reasonable investigation. Investigation and discovery are ongoing. Petitioner reserves all rights to supplement, revise and/or amend these responses should additional information become available through the discovery process or other means. Petitioner also reserves the right to produce or use any information or documents that are discovered after service of these responses in support of or in opposition to any motion, in depositions, or in hearings. In responding to Registrant's requests, Petitioner does not

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

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFIC OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSION

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

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

Request for Admission No. 1:

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

ANSWER: Denied.

Request for Admission No. 2:

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

ANSWER: Denied.

Request for Admission No. 3:

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

ANSWER: Denied.

Request for Admission No. 4:

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

(a) computers;

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

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

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

(c) computer keyboards;

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

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

OBJECTION: Vague as to meaning of the term.

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

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

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

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

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

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

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

(g) computer game controllers; or

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

(h) video game controllers.

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

Request for Admission No. 5:

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

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

(a) computers;

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

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

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

(c) computer keyboards;

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

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

OBJECTION: Vague as to meaning of the term.

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

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

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

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

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

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

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

(g) computer game controllers; or

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

(h) video game controllers.

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

Request for Admission No. 6:

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

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

(a) computers;

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

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

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

(c) computer keyboards;

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

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

OBJECTION: Vague as to meaning of the term.

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

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

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

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

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

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

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

(g) computer game controllers; or

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

(h) video game controllers.

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

Request for Admission No. 7:

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

OBJECTION: Compound; overly board.

ANSWER: Denied.

Request for Admission No. 8:

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

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

ANSWER: Denied.

Request for Admission No. 9:

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

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

ANSWER: Denied.

Request for Admission No. 10:

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

(a) computers;

ANSWER: Denied

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards

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

OBJECTION: Vague as to meaning of the term.

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

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

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

ANSWER: Denied.

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

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

ANSWER: Denied.

(g) computer game controllers; or

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

(h) video game controllers.

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

Request for Admission No. 11:

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

(a) computers;

ANSWER: Denied

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards

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

OBJECTION: Vague as to meaning of the term.

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

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

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

ANSWER: Denied.

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

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

ANSWER: Denied.

(g) computer game controllers; or

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

(h) video game controllers.

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

Request for Admission No. 12:

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

(a) computers;

ANSWER: Denied

(b) computer tablets;

OBJECTION: Vague as to meaning of the term.

ANSWER: Denied as to commercial sale of computer tablets

(c) computer keyboards;

ANSWER: Denied as to commercial sale of computer keyboards

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

~~OBJECTION: Vague as to meaning of the term.~~

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

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

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

ANSWER: Denied.

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

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

ANSWER: Denied.

(g) computer game controllers; or

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

(h) video game controllers.

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

Request for Admission No. 13:

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

ANSWER: Denied.

Request for Admission No. 14:

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

ANSWER: Denied.

Request for Admission No. 15:

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

ANSWER: Denied.

Request for Admission No. 16:

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

ANSWER: Denied.

Request for Admission No. 17:

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

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

ANSWER: Denied.

Request for Admission No. 18:

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

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

ANSWER: Denied.

Request for Admission No. 19:

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

ANSWER: Denied.

Request for Admission No. 20:

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

ANSWER: Denied; calls for legal conclusion.

Request for Admission No. 21:

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

ANSWER: Denied; calls for legal conclusion.

Request for Admission No. 22:

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

ANSWER: Denied; calls for legal conclusion.

Request for Admission No. 23:

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

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

ANSWER: Denied; calls for legal conclusion.

Request for Admission No. 24:

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

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

ANSWER: Denied; calls for legal conclusion.

Request for Admission No. 25:

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

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

Request for Admission No. 26:

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

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

Request for Admission No. 27:

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

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

Request for Admission No. 28:

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

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

Request for Admission No. 29:

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

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

Request for Admission No. 30:

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

OBJECTION: Calls for legal conclusion

ANSWER: Denied.

~~**Request for Admission No. 31:**~~

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

OBJECTION: Vague; calls for legal conclusion.

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

Request for Admission No. 32:

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

OBJECTION: Vague; calls for legal conclusion.

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

Request for Admission No. 33:

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

OBJECTION: Vague; calls for legal conclusion.

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

Request for Admission No. 34:

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

ANSWER: Denied.

Request for Admission No. 35:

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

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

ANSWER: Denied.

Request for Admission No. 36:

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

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

ANSWER: Denied.

Request for Admission No. 37:

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

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

~~ANSWER: Denied~~

Request for Admission No. 38:

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

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

ANSWER: Denied

Request for Admission No. 39:

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

OBJECTION: Vague; Calls for legal conclusion

ANSWER: Denied

Respectfully submitted,

As to the Answers per TBMP 407.03(c)

By: _____

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

Date: March 31, 2015

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

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

CERTIFICATE OF SERVICE

It is hereby certified that on March 31, 2015 a true copy of the foregoing PETITIONER'S RESPONSES TO REGISTRANT'S FIRST REQUESTS FOR ADMISSION was deposited in the U.S. mail, certified, postage prepaid, addressed to:

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

Signature: _____

EXHIBIT 2

FISH.
FISH & RICHARDSON

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005

202 783 5070 main
202 783 2331 fax

October 13, 2015

Keith A. Barritt
Principal
barritt@fr.com
202 626 6433 direct

Via Email and U.S. Certified Mail
uspto@edgegames.com, tim@edgegames.com

Tim Langdell
Edge Games Inc.
530 South Lake Avenue, #171
Pasadena, CA 91101

Re: Responses to Razer's Discovery Requests in EDGE Cancellation Action No. 92058543
Our Ref.: 39771-0019PP1

Dear Mr. Langdell:

I am writing pursuant to Section 523.02 of the Trademark Trial and Appeal Board Manual of Procedure in a good faith effort to address the deficiencies in your discovery responses that were served on October 5, 2015 in the above-referenced proceeding.

As an initial matter, some of the original discovery requests as they appear in your answers contain minor and some not-so-minor typos. Your answers should reflect the original discovery requests as put, without changing the original wording in any material way. The original discovery requests that should be reviewed in particular for the original wording are Requests for Admission Nos. 4(c), 5(c), 6(c), 10(c), 11(c), 12(c), 22, 26 and Document Request Nos. 3 and 5.

Many of your answers refer to "the best of Petitioner's recollection." I remind you that the Petitioner in this case is Edge Games Inc. and not you as an individual. I also remind you of Edge Games' duty to cooperate in good faith in discovery, which requires Edge Games to review its records in response to a discovery request and not base its response solely on one person's personal recollection.

Razer agrees that Edge Games' and any alleged licensees' foreign ***use*** of EDGE is irrelevant to these proceedings. However, factual matters regarding Edge Games' and its affiliates' questionable activities before foreign courts is directly relevant to Razer's "unclean hands" defense. Thus, your answer to Interrogatory No. 12(f), for example, is deficient.

The specific deficiencies in your discovery responses are too numerous to identify individually. As one example, your response to Interrogatory No. 1 fails to state "each product or service offered by Petitioner" or its affiliates/licensees bearing an EDGE-related mark as requested in the very first sentence of Interrogatory No. 1, which affects subsequent answers (see, for example, Interrogatory No. 2 requesting information "for each product or service identified in answer to interrogatory No. 1"). Your response to Interrogatory No. 1(d) misunderstands the "classes of consumers," which is not a reference to the U.S. Trademark Office's classes of goods and services, but rather the types of purchasers (see Section 414(3) of the Trademark Trial and Appeal Board Manual of Procedure).

FISH.
FISH & RICHARDSON

October 13, 2015

Your response to Interrogatory No. 8(c) regarding the identity of any assignors refers to your ~~response to Interrogatory No. 4 regarding licensees, and thus it is unclear which marks have been~~ licensed and which have been assigned. Please review the interrogatories carefully and provide clear responses.

Your response to Interrogatory 12(d) fails to provide information regarding settlement agreements and licenses, which I note are specifically discoverable as set forth in the footnotes to Section 414(10)) of the Trademark Trial and Appeal Board Manual of Procedure.

More generally, where you have objected that a request asks for information or documents that fall within the attorney-client or other privilege, you have failed to provide a privilege log identifying any such information or documents. The parties have not agreed to dispense with the production of privilege logs, and I remind you that Razer provided a privilege log with its discovery responses.

Likewise, where you have objected that a request calls for information or documents that are protected as trade secrets or otherwise confidential (see, for example, answers to Interrogatory Nos. 4(e), 4(f), 5(a), and 6), I remind you of the Board's standard protective order in place in this case which provides a manner to timely produce such information or documents. As noted in the Board's scheduling order of January 21, 2014, the standard protective order is available at http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp.

In short, for the reasons noted above (which do not necessarily identify each specific deficiency), Edge Games' responses are deficient. We understand that some information is still being gathered from licensees and we are willing to consider a reasonable extension for these requests only. However, considering that your counsel has scheduled a deposition of Edge Games' alleged licensee Velocity Micro on October 26, we must insist that you deliver to me for receipt by *October 20* complete responses to all other interrogatories and document requests – and especially responses to Document Request Nos. 4 through 7 as they pertain to Velocity Micro. *Given the short time frame involved, the interrogatory responses and documents should be delivered directly to me for receipt by October 20 either via email at barritt@fr.com or by hard copy at Fish & Richardson, P.C., 1425 K Street, N.W., Suite 1100, Washington, DC 20005*.

Sincerely,

Keith A. Barritt

41093101.doc

7012 3460 0001 6853 5959

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Street, Apt. No.; or PO Box No. 530 South Lake Ave., 171
City, State, ZIP+4 Pasadena, CA 91101

PS Form 3800, August 2006 See Reverse for Instructions

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tim Langdell
Edge Games, Inc.
530 South Lake Avenue, 171
Pasadena, CA 91101

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) ALLENS
C. Date of Delivery 10/19/15

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7012 3460 0001 6853 5959

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

EXHIBIT 3

Keith Barritt

From:	Tim <tim@edgegames.com>
Sent:	Monday, October 19, 2015 3:50 PM
To:	Keith Barritt
Cc:	Tim Langdell
Subject:	Re: Edge Games' discovery responses in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

Dear Mr. barritt,

We have now reviewed your observations regarding Edge Games' Amended Responses to Razer's First Set of Requests for Document Production. You questioned what we wrote in regard to requests 4 and 5. In regard to request No. 4, we cannot see the difference between what you wrote and what we wrote in our Response, but confirm that our Response remains the same anyway. As to request No. 5 we see a slight typing error, but this too does not change our response(s) at all. Thus, with typing correction, the Response reads the same and hence the response needs no further amendment:

Request No. 5

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

(a) All documents regarding Petitioner's creation, maintenance, and enforcement of the quality control provisions for each product or service covered by the license; and

(b) All documents regarding any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

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

ANSWER: **Petitioner will produce such documents in its possession, custody or control, which are responsive to this request and as it is reasonably able to do and which are not covered by valid non-merit-based objections in the general objections above.**

We trust this satisfies your questions about our Discovery responses to the document production requests.

Kind regards,
Dr Tim Langdell
CEO, Edge Games Inc
Petitioner in pro se

------ Original Message ------

From: "Keith Barritt" <barritt@fr.com>
To: "uspto@edgegames.com" <uspto@edgegames.com>; "tim@edgegames.com" <tim@edgegames.com>
Sent: 10/13/2015 11:14:01 AM
Subject: Edge Games' discovery responses in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

FISH
FISH & RICHARDSON

Dear Mr. Langdell:

Please see the attached correspondence.

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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Keith Barritt

From:	Tim <tim@edgegames.com>
Sent:	Monday, October 19, 2015 4:03 PM
To:	Keith Barritt
Cc:	Tim Langdell
Subject:	Re: Edge Games' discovery responses in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

Mr Barritt

We have now reviewed your observations regarding Edge Games' Responses to Razer's First Set of Request for Admissions. No changes to Edge Games' responses are called for.

There is a small typing error in 4(c) which we confirm does not alter Edge Games' response. The response should be taken as responding to the wording Razer used as if the reference to computer tablets was there in the request. The same holds true for 5(c) 6(c), 10(c), 11(c) and 12(c) where the same inadvertent typing error was made by an ill-chosen use of "copy and paste" from 4(c).

As to Request No. 22, we see there is an inadvertent typing error in the Cancellation No. - it should read 92051465. This typing error does not alter Edge Games' response and you should take the response as responding as if the correct number had been used. Similarly, for Request No. 26, there is an inadvertent typing error in the US Registration which should read 2,251,584. This error, too, does not alter Edge Games' response, and the response should be taken as responding to the request as worded by Razer, with the correct registration number in it.

Respectfully, these typing errors would have been eliminated if you had supplied electronic copies of your discovery requests for us to use rather than calling for us to have to re-type them all.

Kind regards,
Dr Tim Langdell
CEO, Edge Games Inc
Petitioner in pro se

------ Original Message ------
From: "Keith Barritt" <barritt@fr.com>
To: "uspto@edgegames.com" <uspto@edgegames.com>; "tim@edgegames.com" <tim@edgegames.com>
Sent: 10/13/2015 11:14:01 AM
Subject: Edge Games' discovery responses in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

FISH.
FISH & RICHARDSON

Dear Mr. Langdell:

Please see the attached correspondence.

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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Keith Barritt

From:	Tim <tim@edgegames.com>
Sent:	Monday, October 19, 2015 4:53 PM
To:	Keith Barritt
Cc:	Tim Langdell
Subject:	Re: Edge Games' discovery responses in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)
Attachments:	PetitionersResponseToRegistrantsRogsAmended2.pdf

Mr Barritt,

I believe the attached addresses your concerns regarding the Interrogatory responses. For the most part, the responses were there in response to other requests. So ultimately, the responses did not change.

Kind regards,
Dr Tim Langdell
CEO, Edge Games Inc
Petitioner in pro se

------ Original Message ------
From: "Keith Barritt" <barritt@fr.com>
To: "uspto@edgegames.com" <uspto@edgegames.com>; "tim@edgegames.com" <tim@edgegames.com>
Sent: 10/13/2015 11:14:01 AM
Subject: Edge Games' discovery responses in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

FISH.
FISH & RICHARDSON

Dear Mr. Langdell:

Please see the attached correspondence.

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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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

PETITIONER'S AMENDED RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rules of Practice §2.120, Petitioner Edge Games, Inc. ("Petitioner") by its undersigned pro per representative hereby responds to Registrant's First Set of Interrogatories.

RESERVATION OF RIGHTS

Petitioner's responses are based solely on information currently available to Petitioner based upon reasonable investigation. Investigation and discovery are ongoing. Petitioner reserves all rights to supplement, revise and/or amend these responses should additional information become available through the discovery process or other means. Petitioner also reserves the right to produce or use any information or documents that are discovered after service of these responses in support of or in opposition to any motion, in depositions, or in hearings. In responding to Registrant's requests, Petitioner does not waive any objection on the grounds of privilege,

competency, relevance, materiality, authenticity, or admissibility of the information contained in these responses.

GENERAL OBJECTIONS

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

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

3. Petitioner objects to the requests to the extent that they are duplicative (if this objection is viewed as non-merit based, otherwise this objection is withdrawn).

4. A statement by Petitioner of its willingness to produce responsive documents that are not protected from discovery does not mean that such documents exist.

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

responses or information is not an admission that such responses or information are relevant or admissible.

~~6. Petitioner reserves the right to include additional objections to any future~~ discovery requests.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSION

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

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

Interrogatory No. 1

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

(a) The mark used;

(b) The date of first use of the mark in each state of the United States;

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

(d) The classes of consumers to whom each product or service is or was sold or distributed;

~~(e) The retail establishments and other channels of trade where each product~~ or service is or was sold or distributed;

(f) The amount spent each year on advertising;

(g) The amount of sales each year in volume and dollar amount; and

(h) The manner in which the mark EDGE or any variant has been used, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

OBJECTION: **Petitioner objects on the grounds this asks confidential trade secret information or other privileged information.**

ANSWER:

(a) The mark used;

"EDGE" in the form EDGE (game software, game hardware), THE EDGE (game software, game hardware), EDGE PC (game hardware), EDGE GAMING PC (game hardware), EDGEGAMERS (gamer software and online services for gaming), EDGE OF EXTINCTION (game software), CUTTING EDGE (game software), EDGE 3D (game software, game hardware), EDGE OF TWILIGHT (game software) and GAMER'S EDGE (game software, game hardware)

(b) The date of first use of the mark in each state of the United States;

on or about June 1, 1984 (see response for (c) below, too).

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

EDGE and THE EDGE continuous; GAMER'S EDGE continuous from or about 1992 for software, and from or about 1998 for hardware. Still awaiting details from licensee(s) as to whether GAMER'S EDGE was not used for any given period since 1998 for hardware. EDGE PC and EDGE GAMING PC believed to be from or about 2008. EDGEGAMERS ~~believed to be since or about 2006, and continuous since that time. EDGE OF~~ EXTINCTION believed to be from or about March 2000. CUTTING EDGE believed to be from or about April 1995 to April 2013 for printed comics; continuous to current day for game software related use. EDGE 3D believed to be from or about 1995 to 1998. EDGE OF TWILIGHT from or about 2009 and believed to be until the current day.

(d) The classes of consumers to whom each product or service is or was sold or distributed;

General consumers within the United States who usually buy computer or video game software and hardware via any of the channels used by EDGE or its licensees, Affiliates or Predecessors in Rights. Other consumers are probable (e.g. education, corporate purchases and other non regular US consumer purchases), but Petitioner is awaiting data from licensees to be able to answer more fully.

(e) The retail establishments and other channels of trade where each product or service is or was sold or distributed;

via Internet ("on line" direct to consumer and via resellers such as Amazon.com and NewEgg.com), and major retail outlets such as Best Buy, and Frys.

(f) The amount spent each year on advertising;

still awaiting data from licensee(s).

(g) The amount of sales each year in volume and dollar amount;

still awaiting data from licensee(s).

and

(h) The manner in which the mark EDGE or any variant has been used, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

Affixed to products, on product packaging, used on website to promote products, used on advertising materials to promote products. Awaiting on further data from licensee to be able to complete this request.

Interrogatory No. 2

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

(a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;

(b) The name and address of the actual producer of the product or provider of the service;

(c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

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

ANSWER:

(a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;

In the United States: Velocity Micro Inc., 835 Grove Road, Midlothian, VA 23114; Future Publishing Ltd., Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 2BW, United Kingdom; Diamond Multimedia, 20740 Plummer St., Chatsworth CA 91311; Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108; FuzzyEyes Studio Pty Ltd, 3/53 Brandl St., Eight Mile Plains, Q4113, Australia; Datel Design and Development Inc, 33 North Garden Avenue, Suite 900, Clearwater FL 33755

(b) The name and address of the actual producer of the product or provider of the service;

In the United States: Edge Games Inc, 530 South Lake Avenue, 171, Pasadena, CA 91101; Velocity Micro Inc., 835 Grove Road, Midlothian, VA 23114; Future Publishing Ltd., Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 2BW, United Kingdom; Diamond Multimedia, 20740 Plummer St., Chatsworth CA 91311; Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108; FuzzyEyes Studio Pty Ltd, 3/53 Brandl St., Eight Mile Plains, Q4113, Australia; Datel Design and Development Inc, 33 North Garden Avenue,

Suite 900, Clearwater FL 33755; Edgegamers, 555 E. Pacific Coast Highway, #218, Long Beach, CA 90806 (all as believed to be the case to the best of knowledge and belief).

(c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

Dr Tim Langdell, CEO of Petitioner; Randall Copeland of Velocity Micro Inc.; Wei-Yao Lu of FuzzyEyes; Ken Tarolla of Datel Design; John Coates and Mark Charles Zerbe of Edgegamers. As to others, contact believed to be the senior executive or designated officer at any given time.

Interrogatory No. 3

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

(a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.

(b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service; and

(c) State the dates such advertising occurred.

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

ANSWER:

(a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.

Still awaiting data from licensee(s) to be able to answer this.

(b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of ~~such product or service~~;

Still awaiting data from licensee(s) to be able to answer this.

and

(c) State the dates such advertising occurred.

Still awaiting data from licensee(s) to be able to answer this.

Interrogatory No. 4

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

(a) The name and address of the licensee;

(b) The effective date such license began and ended;

(c) The marks covered by the license;

(d) The products and services covered by the license.

(e) The quality control procedures, in detail, for each product or service sold under each mark covered by the license that are or have ever been in place and the dates such controls were in place;

(f) The annual expenses incurred by Petitioner for enforcing the quality control requirements in the license; and

(g) The royalty fee or other licensing payment received by Petitioner each year pursuant to the license or any other benefit received by Petitioner under the license.

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

ANSWER:

(a) The name and address of the licensee;

For the United States market: (1) Velocity Micro Inc., 835 Grove Road, Midlothian, VA 23114; (1) Future Publishing Ltd., Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 ~~2BW, United Kingdom; (3) Diamond Multimedia, 20740 Plummer St., Chatsworth CA~~ 91311; (4) Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108; (5) FuzzyEyes Studio Pty Ltd, 3/53 Brandl St., Eight Mile Plains, Q4113, Australia; (6) Datel Design and Development Inc, 33 North Garden Avenue, Suite 900, Clearwater FL 33755

(b) The effective date such license began and ended;

(1) began 1998 and has not ended; (2) began 1993 and has not ended; (3) Believed to have began 1995 and believed to have ended circa 1998; (4) Began circa 2000 and believed to be still on-going; (5) Began in or about 2009 and believed to be still on-going; (6) Began in or about January 29, 2009 until or about January 29, 2012.

(c) The marks covered by the license;

(1) EDGE and GAMER'S EDGE; (2) EDGE; (3) EDGE in the form EDGE 3D; (4) EDGE in the form EDGE OF EXTINCTION; (5) EDGE in the form EDGE OF TWILIGHT; (6) THE EDGE.

(d) The products and services covered by the license.

(1) Game hardware such as game computers; (2) Computer and video game publications and magazines published electronically; (3) EDGE 3D PC game hardware such as a plyg in circuit board enabling a PC to play SEGA Saturn games; (4) Computer game; (5) Computer game; (6) Game hardware such as a controller for Nintendo consoles.

(e) The quality control procedures, in detail, for each product or service sold under each mark covered by the license that are or have ever been in place and the dates such controls were in place;

See objection

(f) The annual expenses incurred by Petitioner for enforcing the quality control requirements in the license;

See objection

and

(g) The royalty fee or other licensing payment received by Petitioner each year pursuant to the license or any other benefit received by Petitioner under the license.

See objection

Interrogatory No. 5

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

(a) How Petitioner creates, maintains, and enforces the quality control provisions for each product or service covered by the license; and

(b) Any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

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

ANSWER:

(a) How Petitioner creates, maintains, and enforces the quality control provisions for each product or service covered by the license;

See objection

and

(b) Any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

None found.

Interrogatory No. 6

For each licensee identified in response to Interrogatory No. 2 above, identify by name and address the primary person of the licensee with whom Petitioner communicated for the

purpose of enforcing the quality control provisions in the license, providing the position(s) such individual has held with the licensee and the dates such individual held the position(s) with the licensee.

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

ANSWER: **See objection.**

Interrogatory No. 7

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

OBJECTION: **See Petitioner's Objections to Interrogatory No. 1.**

ANSWER: **Notices were sent to licensees in accord with the Court's Order; to the best of Petitioner believes there was no subsequent correspondence with any licensee regarding the status of the license(s). Petitioner notes that the court order referenced was one that Petitioner itself requested the court to make, not a court order arising from a court considering the facts, evidence or merits of Petitioner's trademark registrations, right to own same, or similar.**

Interrogatory No. 8

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

(a) The effective date of the assignment;

(b) The products or services associated with the assigned mark;

(c) The name and address of the assignor;

(d) The name and address of Petitioner's primary contact person at the assignor regarding the assignment;

(e) The purchase price or other consideration given to the assignor for the assignment of each mark;

~~(f) The circumstances of the assignment, including whether the assignment~~ was made to resolve any disputes regarding use of the mark; and

(g) The steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

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

ANSWER:

(a) The effective date of the assignment;

(1) EDGEGAMERS on or about January 13, 2009; (2) EDGE believed to be in or about 1996 and 2014; (3) CUTTING EDGE (Marvel Comics) in or about September 1995; (4) EDGE OF EXTINCTION on or about September 29, 2009.

(b) The products or services associated with the assigned mark;

(1) online gaming services; (2) game magazines published electronically; (3) comic books; (4) game software

(c) The name and address of the assignor;

(1) John Coates, Edgegamers, 555 E. Pacific Coast Highway, #218, Long Beach, CA 90806 (last known address); (2) Future Publishing Ltd Beauford Court, 30 Monmouth Street, Bath, Avon, BA1 2BW, United Kingdom; (3) Marvel Entertainment Group, Inc. CORPORATION DELAWARE 387 Park Avenue South New York NEW YORK 10016; (4) Cybernet Systems, 727 Airport Blvd, Ann Arbor Michigan, 48108.

(d) The name and address of Petitioner's primary contact person at the assignor regarding the assignment;

See response above.

(e) The purchase price or other consideration given to the assignor for the assignment of each mark;

See objection

(f) The circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of the mark;

~~See objection~~

and

(g) The steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

See objection

Interrogatory No. 9

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

(a) Each such opinion;

(b) The person or persons requesting each such opinion; and

(c) The person rendering each such opinion.

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

Interrogatory No. 10

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

OBJECTION: **See objection to No. 1. While Petitioner is not permitted to object on the basis or relevance, scope, or other merit-based grounds, Petitioner nonetheless wishes to note for the record that this request is exceptionally burdensome since as written it pertains to all uses of the EDGE mark for any products and services, not just those relating to these proceedings. Petitioner makes a reasonable effort to respond based on its knowledge or belief at the time of responding without undertaking any special research into same.**

ANSWER: **In addition to those users who assigned any EDGE mark to Petitioner (referenced above), Petitioner knows of: EDGE for shaving cream believed to be owned by Edgeware Personal Care Brands; EDGE for automobiles believed to be owned by Ford Motor Company.**

Interrogatory No. 11

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

(a) State with particularity the nature of the confusion involved in each such instance;

(b) Identify each person with knowledge of each instance of such confusion; and

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

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

ANSWER:

(a) State with particularity the nature of the confusion involved in each such instance;

Petitioner is still gathering data on this.

(b) Identify each person with knowledge of each instance of such confusion;

Petitioner is still gathering data on this.

and

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

Petitioner is still gathering data on this.

Interrogatory No. 12

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

(a) State the name and address of each such third party;

(b) State the case docket number and filing date and identify the tribunal, if any;

(c) Describe the nature of the claim or action, including the trademarks and products/services involved;

(d) Describe the outcome of any such claim or action, including the details of any settlement agreement;

(e) Identify all documents referring or relating to such litigation, proceeding, or dispute and ensuing negations, if any;

(f) Identify all documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal; and

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

OBJECTION: **Please see general objections.**

ANSWER:

(a) State the name and address of each such third party;

Petitioner believes: (1) New World Computing, Inc. CORPORATION CALIFORNIA 20301 Ventura Boulevard, Suite 200 Woodland Hills CALIFORNIA 91364; (2) Marvel Entertainment Group, Inc. CORPORATION DELAWARE 387 Park Avenue South New York NEW YORK 10016; (3) ELECTRONIC ARTS INC, 209 REDWOOD SHORES PARKWAY , REDWOOD CITY, CA 94065 (4) Kabushiki Kaisha Sony Computer Entertainment (a/t/a Sony Computer Entertainment Inc.) 2-6-21, Minami-aoyama, Minato-ku Tokyo 107-0062 Japan; (5) John Coates (Edgegamers-see above for address); (6) Velocity Micro, 7510 Whitepine Rd, North Chesterfield, VA 23237; (7) Mobigame, 85 boulevard Pasteur F-75015 PARIS FRANCE

(b) State the case docket number and filing date and identify the tribunal, if any;

(1) Opposition No. 92021684; (2) Opposition No. 91104280; (3) Opposition No. 92051465 and Federal Court Case 10-CV-2614-WHA; (4) Opposition No. 91189164; (5) Opposition No. 77352656; (6) Opposition No. 92049162 and Federal Court Case 03:08CV135-JRS; (7) Opposition No. 91212834

(c) Describe the nature of the claim or action, including the trademarks and products/services involved;

Trademark infringement and/or likelihood of confusion; see above for details of marks and products/services

(d) Describe the outcome of any such claim or action, including the details of any settlement agreement;

All settled or resolved amicably, most entirely in Petitioner's favor and one in the mutual favor of both parties; documents pertaining that are discoverable will be supplied insofar as there are no valid objections to such production; see general objections.

(e) Identify all documents referring or relating to such litigation, proceeding, or dispute and ensuing negations, if any;

See general objections; all discoverable documents will be produced that are not subject to valid objections.

(f) Identify all documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or ~~officers, directors, employees, agents and representatives thereof related to~~ the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal;

To the best of Petitioner's belief, none in any U.S. action or tribunal. Petitioner also believes none in any overseas tribunal, but will produce any documents necessary which are not covered by the general objections and which may clarify Petitioner's response.

and

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

See general objections as to anything that is not in the public record easily accessed by Registrant.

Interrogatory No. 13,

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

OBJECTION: **See objection to No. 1. There is no response other than that covered by an objection on the grounds of attorney client privilege or other privilege.**

Interrogatory No. 14

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

(a) The date on which it was made;

(b) The name and address of the person who requested it; and

(c) Whether any report or other communication or document was made concerning such search or investigation, and if so, set out verbatim the

contents thereof or attach to the answer to this interrogatory a copy of each such report, communication or document.

~~OBJECTION: **See objection to No. 13 above.**~~

Interrogatory No. 15.

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

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

ANSWER: **Petitioner has a history of over 30 years of use of the mark EDGE in United States commerce, both for computer game software and for computer game hardware. No other entity has registered or legitimate claim to the mark EDGE for game such game related goods and services except under agreement with Petitioner or except where Petitioner is formally opposing or objecting to any use by such an entity using the mark other than under agreement with Petitioner. Petitioner has used its best efforts to police the US market over the past 30 years to ensure a lack of dilution and a lack of likelihood of confusion in the minds of US consumers. This is not a comprehensive list of factual bases for the claim, and Petitioner reserves the right to add or amend same at any time.**

Interrogatory No. 16

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

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

ANSWER: **See Petitioner's answer to No. 15 above.**

Interrogatory No. 17

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

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

ANSWER: **See answer to No. 15 above.**

Interrogatory No. 18

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

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

Interrogatory No. 19

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

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

ANSWER: **Softek International Ltd. (in or about 1990); The Edge Interactive Media, Inc. (in or about 2008).**

Interrogatory No. 20

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

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

ANSWER: **The Edge Interactive Media, Inc.; Dr Tim Langdell**

Interrogatory No. 21

As to each of the above interrogatories, identify:

(a) The person within Petitioner who has the greatest knowledge as to the information requested; and

(b) All persons who participated in preparing each response.

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

ANSWER: **(a) Dr Tim Langdell; (b) Dr Tim Langdell**

Respectfully submitted,

By: __/s/ Tim Langdell_____

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

Date: October 5, 2015

EXHIBIT 4

Law offices of Dale Jensen, PLC

Tel (434) 249-3874
Fax (866) 372-0348

606 Bull Run
Staunton, VA 24401

2027 Woodbrook Court
Suite 2027
Charlottesville, VA 22901

October 12, 2015

Freed and Shepherd, PC
Registered Agent for Velocity Micro Inc.
9030 Stony Point Pkwy Suite 400
Richmond, VA 23235,

Re Deposition Subpoena - TTAB # 92058543 - canc. proc.

Dear Sir or Madame:

Due to a scheduling conflict of opposing counsel, we are by mutual agreement serving an amended deposition subpoena herewith. Please be advised that the deposition will be held on October 26, 2015 rather than the October 23, 2015 date on the subpoena originally served on you.

We apologize for any inconvenience this change causes for Velocity Micro Inc.

Should you have any questions or require any additional information regarding this matter, feel free to contact me.

Sincerely,

Dale Jensen
Attorney At Law

cc: Mr. Keith A. Barritt, Esq.
Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005

djensen@jensenjustice.com www.creativepatentlaw.com www.jensenjustice.com
www.djencrimlaw.com www.dalejensenlaw.com

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

EDGE GAMES, INC. (Petitioner), A California Corp.)	)	Cancellation Proceeding
Plaintiff	)	
v.	)	Civil Action No. TTAB # 92058543 - canc. proc.
RAZER (ASIA-PACIFIC) PTE LTD (Registrant) a Singapore Corporation	)	issued pursuant to 35 U.S.C. 24
Defendant	)	

AMENDED SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Velocity Micro, Inc.; Serve: Freed and Shepherd, PC, 9030 Stony Point Pkwy Suite 400, Richmond, VA 23235, Registered Agent; Velocity Micro Inc. to designate person(s) most knowledgeable about the subject matter of this subpoena pursuant to Fed.R.Civ. P 30(b)(*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:

Any documents produced pursuant to subpoena for this case. Velocity Micro Inc.'s sales and marketing of the EDGE and GAMER'S EDGE brand game computers since 1998 and licensed use of the "EDGE" and "GAMER'S EDGE" marks.

Place: Cook & Wiley Court Reporters - 3751 Westerre Pkwy, Richmond, VA 23233	Date and Time: 10/26/2015 9:00 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: 10/12/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Edge Games, Inc., who issues or requests this subpoena, are:

Dale Jensen, PLC, 2027 Woodbrook Ct., Charlottesville VA 22901; djensen@dalejensenlaw.com; 434-249-3874

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).

Law offices of Dale Jensen, PLC

Tel (434) 249-3874
Fax (866) 372-0348

606 Bull Run
Staunton, VA 24401

2027 Woodbrook Court
Suite 2027
~~Charlottesville, VA 22901~~

September 30, 2015

Mr Keith A. Barritt, Esq
Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005

Re: EDGE Trademark Cancellation Action – TTAB Cancellation No. 92058543

Dear Mr. Barritt:

Our office has been retained by Edge Games, Inc. ("Edge") to obtain certain discoverable information in the above styled case. Pursuant to our representation of Edge, we have enclosed copies of subpoenas to be served pursuant to Fed.R.Civ.P 45(a)(4).

In anticipation of potential objections that you might have:

1. The Clerk of the United States District Court for the Eastern District of Virginia (the "Clerk") interprets 35 U.S.C. 24 as allowing for attorney signature of such subpoenas, and indeed, will not generally sign such subpoenas. You may note that 35 U.S.C. 24 provides that:

   > The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office.

   The Clerk believes that Fed.R.Civ.P. 45(a)(3) allows for such signature by an attorney. If you wish to contest this interpretation, we can set up a matter with the Court and you can make your case, but we certainly hope that your client does not desire to increase the costs of discovery to all concerned.

2. We also believe that any contention that you might make that any deposition must be certified by the Trademark Trial and Appeals Board will not be likely to succeed in view of the Trademark Trial and Appeal Board's decision of September 25, 2015. We also note that the incorporation of the Federal Rules of Civil Procedure Fed.R.Civ.P 30 and 45 are also contrary to any such contention.

Should you have any questions or require any additional information regarding this matter, feel free to contact me.

Sincerely,

Dale Jensen
Attorney At Law

djensen@jensenjustice.com www.creativepatentlaw.com www.jensenjustice.com
www.djencrimlaw.com www.dalejensenlaw.com

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

EDGE GAMES, INC. (Petitioner), A California Corp.)	)	Cancellation Proceeding
Plaintiff	)	
v.	)	Civil Action No. TTAB # 92058543 - canc. proc.
RAZER (ASIA-PACIFIC) PTE LTD (Registrant) a Singapore Corporation	)	issued pursuant to 35 U.S.C. 24
Defendant	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Velocity Micro, Inc.; Serve: Freed and Shepherd, PC, 9030 Stony Point Pkwy Suite 400, Richmond, VA 23235, Registered Agent; Velocity Micro Inc. to designate person(s) most knowledgeable about the subject matter of this subpoena pursuant to Fed.R.Civ. P 30(b)*(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:

Any documents produced pursuant to subpoena for this case. Velocity Micro Inc.'s sales and marketing of the EDGE and GAMER'S EDGE brand game computers since 1998 and licensed use of the "EDGE" and "GAMER'S EDGE" marks.

Place: Cook & Wiley Court Reporters - 3751 Westerre Pkwy, Richmond, VA 23233	Date and Time: 10/23/2015 9:00 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: 09/30/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Edge Games, Inc. , who issues or requests this subpoena, are:

Dale Jensen, PLC, 2027 Woodbrook Ct., Charlottesville VA 22901; djensen@dalejensenlaw.com; 434-249-3874

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 5

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

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

PETITIONER'S RESPONSES TO
APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS
AND ELECTRONICALLY STORED INFORMATION

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rules of Practice §2.120, Petitioner Edge Games, Inc. ("Petitioner") by its undersigned pro per representative hereby responds to Registrant's First Set of Interrogatories.

RESERVATION OF RIGHTS

Petitioner's responses are based solely on information currently available to Petitioner based upon reasonable investigation. Investigation and discovery are ongoing. Petitioner reserves all rights to supplement, revise and/or amend these responses should additional information become available through the discovery process or other means. Petitioner also reserves the right to produce or use any information or documents that are discovered after service of these responses in support of or in opposition to any motion, in depositions, or in hearings. In responding to Registrant's requests, Petitioner does not

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

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

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

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

Request No. 1

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

(a) The mark used;

(b) The date of first use of the mark in each state of the United States;

(c) Whether use of each mark for each product or service in each state identified above has continued every year thereafter;

(d) The classes of consumers to whom each product or service is or was sold or distributed;

(e) The retail establishments and other channels of trade where each product or service is or was sold or distributed'

~~(f) The amount spent each year for advertising~~;

(g) The amount of sales each year in volume and dollar amount; and

(h) The manner in which the mark EDGE or any variant has been used for every month since use of the mark began, e.g. by affixing it to the product, packaging, advertising, or use in promotional materials, and the name and address of the person(s) or organization(s) which printed any such labels, packaging, advertising, or other materials.

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

Request No. 2

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

(a) The name and address of any of Petitioner's trademark licensees who sold or distributed the product or service;

(b) The name and address of the actual producer of the product or provider of the service;

(c) The person employed by Petitioner or any licensee who is most knowledgeable about the marketing and sales in the United States of such product or service.

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

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

Request No. 3

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

(a) Identify the name and address of each media source (including but not limited to newspapers, trade journals, electronic publications, radio or TV stations) used for advertising such product or service.

(b) Identify the primary person at each such media source who had rendered services to Petitioner or any licensee in connection with the promotion of such product or service; and

(c) State the dates such advertising occurred.

OBJECTION: See objection to No 1 and No 2 above

Request No. 4

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

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

(b) All documents regarding the quality control procedures for each product or service sold under each mark covered by each license that are or have ~~ever been in place;~~

(c) All documents regarding the enforcement of any quality control procedures in place under any license;

(d) Documents sufficient to substantiate the annual expenses incurred by Petitioner for enforcing the quality control requirements in the license; and

(e) Documents sufficient to substantiate the royalty fee or other licensing payment received by Petitioner each year pursuant to any license or any other benefit received by Petitioner under the license.

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

Request No. 5

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

(a) All documents regarding Petitioner's creation, maintenance, and enforcement of the license; and

(b) All documents regarding any situation where a licensee's product or service was found not to comply with Petitioner's quality control standards.

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

Request No. 6

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

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

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

Request No. 7

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

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

Request No. 8

For all marks that were assigned to Petitioner, produce:

(a) All documents regarding the assignment, including documents sufficient to identify the name and address of the assignor, the marks involved, the products and services involved, and the date such assignment became effective;

(d) (sic - there is no b or c) Documents sufficient to identify the name and address of Petitioner's primary contact person at the assignor regarding the assignment;

(e) All documents regarding the purchase price or other consideration given to the assignor for the assignment of the mark;

(f) All documents regarding the circumstances of the assignment, including whether the assignment was made to resolve any disputes regarding use of ~~the mark; and~~

(g) All documents substantiating the steps taken to ensure that the entire goodwill of the assignor's business as it relates to the mark was assigned.

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

Request No. 9

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

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

Request No. 10

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

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

Request No. 11

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

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

Request No. 12

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

(a) All documents pertaining to any such claim or action;

(b) Documents sufficient to identify the name and address of each such third party, the case docket number and the filing date and tribunal, if any, and the nature of the claim or action, including the trademarks and products/services involved;

(c) All documents regarding the outcome any such claim or action, including any negotiations, settlement agreements, licenses, and assignments

(d) All documents regarding any sanctions or findings of fact against Petitioner or any of its predecessors, subsidiaries, affiliates, or directors, or officers, directors, employees, agents and representatives thereof related to the falsification of any documents or submission of any false statements of fact or other falsehoods to any tribunal; and

(e) Documents sufficient to identify the name(s), address(es), and telephone number(s) of all counsel representing any adverse party in such claim or action.

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

Request No. 13

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

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

Request No. 14

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

OBJECTION: See objection to No. 13 above.

Request No. 15

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

OBJECTION: vague; calls for a legal conclusion

Request No. 16.

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

OBJECTION: Vague; calls for a legal conclusion

Request No. 17

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

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

Request No. 18

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

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

Request No. 19

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

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

Request No. 20

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

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

Respectfully submitted,

By: _____

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

Date: March 31, 2015

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

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

CERTIFICATE OF SERVICE

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

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

Signature: _____

EXHIBIT 6

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

In the Matter of Application Serial Nos. 85/153,981 and 85/153,958

Published in the Official Gazette on October 1, 2013

Marks: EDGE and EDGE (Stylized)

EDGE GAMES, INC.	:	Opposition No. 91214673
Opposer,	:	
-against-	:	
FUTURE PUBLISHING LIMITED	:	
Applicant.	:	

Box TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S OBJECTION TO OPPOSER'S "STAY OF ABANDONMENT" [PUBLIC VERSION]

Applicant Future Publishing Limited respectfully submits that Opposer Edge Games' Response filed at Docket No. 38 is filled with outright, blatant lies to the Board. Attached hereto as Exhibit A under seal is the chronology of email correspondence between the Opposer and the undersigned regarding Opposer's consent to the abandonment of the subject applications. The actual emails are attached to the Declaration of Robert N. Phillips submitted herewith under seal. These documents prove beyond any doubt whatsoever that Opposer intended to mislead the Board by making the following grossly false statements in its recent filing at Docket No. 38: that there is an "unresolved settlement proposal that would assign the '981 mark to Opposer rather than abandon it", that "the parties are still clarifying if mutual agreed terms were reached", and that "there may be inter-party disagreement as the terms of the abandonment."

Nothing could be further from the truth, as the Board will immediately see upon review of the subject correspondence. After repeated requests that Applicant assign the '981 application rather than abandon it (which were unequivocally rejected by Applicant **each time**), Opposer consented to the abandonment. Not only that, Opposer sent Applicant two follow up emails wherein Opposer acknowledged Applicant's unwillingness to assign the '981 application and reaffirmed Opposer's consent to the abandonment. There is no unresolved settlement proposal that would asssign the '981

mark. As Applicant repeatedly stated to Opposer in writing, assignment is "not an option", "rejected", and "out of the question."

Opposer's well documented, repeated perjurious behavior before this tribunal (in this and other Board proceedings) is a disgrace. It is a drain on the Board's valuable resources. It is a misuse and abuse of the system. It wastes the Board and adverse parties' time, and causes the parties to incur substantial legal fees. The Board should not tolerate this any further. This misconduct should be met with a swift, immediate and permanent reprisal. Opposer's blatantly dishonest statements warrant the ultimate sanction: that Opposer be forever barred from participating in any Board proceedings in perpetuity. In addition, Applicant requests immediate entry of an order confirming abandonment of the subject applications and terminating this proceeding.

Dated: August 19, 2015

/s/ Robert N. Phillips
Robert N. Phillips
Reed Smith LLP
10 Second Street
San Francisco, CA 94105
Attorneys for Applicant
Future Publishing Limited

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO TO APPLICANT'S OBJECTION TO OPPOSER'S "STAY OF ABANDONMENT" [PUBLIC VERSION]** was served on Opposer via first class mail on August 19, 2015.

Dr. Tim Landell
Edge Games, Inc.
530 South Lake Avenue, Suite 171
Pasadena, California 91101
Telephone: (626) 449-4334
Facsimile: (626) 844-4334
Email: tim@edgegames.com

/s/ Robert N. Phillips
Robert N. Phillips

EXHIBIT A

APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO

APPLICANT'S OBJECTION TO OPPOSER'S "STAY OF ABANDONMENT"

Chronology of Email Correspondence Between Applicant and Opposer

[Filed Under Seal – Case No. 91214673]

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA690567**

Filing date: **08/19/2015**

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

Proceeding	91214673
Party	Defendant Future Publishing Limited
Correspondence Address	ROBERT N PHILLIPS REED SMITH LLP 101 SECOND STREET, SUITE 1800 SAN FRANCISCO, CA 94105 UNITED STATES IPDocket-CHI@reedsmith.com, robphillips@reedsmith.com, nborders@reedsmith.com, dkalahele@reedsmith.com
Submission	Motion for Sanctions
Filer's Name	Robert N. Phillips
Filer's e-mail	robphillips@reedsmith.com
Signature	/Robert N. Phillips/
Date	08/19/2015
Attachments	Applicant's Reply to Opposer's Response to Applicant's Objection to Opposer's Stay of Abandonment [Public Version].pdf(147592 bytes) Phillips Decl ISO Applicant's Reply to Opposer's Response to Applicant's Objection to Opposer's Stay of Abandonment [Public Version].pdf(138073 bytes)

EXHIBIT 7

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

EDGE GAMES, INC., Opposer, v. FUTURE PUBLISHING LIMITED, Applicant.	**Opposition No. 91214673**

APPLICANT'S MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS

Future Publishing Ltd, ("Applicant") hereby moves to compel Edge Game, Inc. ("Opposer") to provide responses to Applicant's interrogatories and requests for production of documents, served via First Class Mail on January 6, 2015. Opposer's sole rationale for refusing to respond to Applicant's requests is its assertion that it never received them in the mail. But the TBMP is clear that service occurs upon *sending* the served documents – not receiving them – and in any event Opposer has been in possession of the requests since at least March 2, 2015, when Applicant sent courtesy copies via email. As such, the requests were properly served before the discovery cutoff date, and Opposer must respond to them.

I. Relevant Facts

On January 6, 2015, Applicant served its First Set of Requests for Production of Documents and First Set of Interrogatories ("Requests") on Opposer by mailing those documents via First Class Mail. Declaration of Robert N. Phillips ("Phillips Decl."), ¶ 2, Exs. A and B; Declaration of Deborah Kalahele, ¶ 2, Ex. 1 (mail log showing January 6, 2015 mailing of Requests). Both Requests attached Certificates of Service signed by Applicant's authorized representative stating the date and manner of service, as well as the name and address of Opposer. Phillips Decl., Exs. A and B.

On February 25, 2015, Applicant noted to Opposer that it had not yet received responses to the Requests. Phillips Decl., Ex. C. On March 2, Opposer responded that there was "no discovery request from [Applicant] in the file here," and asked for proof of delivery. *Id.* The same day, in response to Opposer's email, Applicant emailed Opposer copies of the Requests and noted they were served on January 6. *Id.* Opposer again responded that it did not receive the Requests in the mail, and asked for "proof of service." *Id.* Applicant pointed to the proofs of service attached to the Requests. *Id.* Despite those proofs, Opposer did not serve responses to the Requests at that time.

On April 9, 2015, Applicant notified Opposer that the Board's suspension of the proceedings did not relieve Opposer of its obligation to respond to pending discovery requests, and that its responses to the Requests were past due. Phillips Decl., Ex. D. Applicant responded that, it had "yet to be served with *any* discovery requests," despite Applicant's January 6 mail service and March 2 follow-up email attaching courtesy copies of the Requests. *Id.* (emphasis in original).

In response, on April 10, Applicant again emailed courtesy copies of the Requests to Opposer, and explained that Opposer's "continued refusal to respond" would result in a motion to compel. Phillips Decl., Ex. D. The same day, Opposer again stated that it did not receive the Requests in the mail in January, and refused to acknowledge the multiple emails attaching the Requests because "the parties have not agreed to electronic service." *Id.* Opposer also asked for "proof that [Applicant] sent the requests in January," but stated without explanation that it would not accept the certificates of service as such proof. *Id.* Finally, Opposer stated that Applicant "would thus need to serve the discovery on us if you wish responses," and invited Applicant to

therefore "reverse your position on discovery and support our motion to reopen and extend it." *Id.*

On June 19, 2015, over six months after Applicant served the Requests via First Class Mail and almost four months after Applicant emailed Opposer courtesy copies of the Requests, the parties held a meet and confer telephone call on various issues related to discovery, including the issue of Opposer's unwillingness to respond to the Requests. During this call, Opposer yet again reiterated its refusal to respond to the Requests. Phillips Decl., ¶ 6, Ex. E.

II. Argument

The TBMP is clear: a party can prove service with evidence of *sending* a document. TBMP § 113 ("A statement signed by the attorney or other authorized representative, attached to or appearing on the original paper when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service.") (emphasis added); *see also* TBMP § 113.04 (discussing proof of "date of mailing"). A proper certificate of service attached to the served document constitutes "prima facie proof" of service on the date specified in the certificate. TBMP §§ 113.03 and 113.04. Under the TBMP, a certificate of service must contain: 1) a statement signed by a representative of the serving party; 2) stating the date and manner in which service was made; and 3) specifying the name and address of each person upon whom service was made to constitute prima facie proof of service. TBMP § 113.03.

The TBMP also provides that, should that prima facie proof of service somehow be rebutted, and should the timeliness of the mailing be at issue, the Board may require an affidavit from the person who signed the certificate of service specifying the mailing date. *Id.* Critically, there is no TBMP rule requiring evidence of *receipt* of a document as proof of service. *See Central Mfg. Co. v. Paramount Parks, Inc.*, 2004 TTAB LEXIS 122, *9-*10 (T.T.A.B. March 9,

2004) (service effective upon depositing discovery response in the mail, not upon receipt of discovery response two weeks later).

Here, a certificate of service containing 1) a statement signed by Applicant's representative; 2) stating that the Requests were served on January 6, 2015 via First Class Mail; and 3) specifying Opposer's name and address as the party upon whom service was made is attached to both of the Requests. Thus, pursuant to TBMP § 113, Applicant has made a prima facie showing that the Requests were served on January 6, 2015. Additionally, even assuming that Opposer's self-serving claim that it did not receive the Requests is true, and assuming this claim is enough to rebut Applicant's prima facie evidence of service (which it is not), Applicant has submitted additional evidence in the form of a signed affidavit from the signor of the certificate of service specifying that the Requests were deposited in the mail on January 6, 2015, as well as a mail log showing the January 6, 2015 mailing of the Requests. Applicant's evidence is more than sufficient to prove service on January 6, 2015.

Moreover, even if Opposer truly did not receive the Requests in the mail, he received them via email on two occasions: first on March 2, 2015 and again on April 10 2015. Thus, not only is there unrebuttable evidence that Applicant served the Requests, there is also unrebuttable evidence that Opposer received the Requests. And there is no TBMP rule that requires documents to have been *received* via First Class Mail, only that documents can be *served* in that manner. TBMP § 113. At the very least, Applicant's emails to Opposer attaching the Requests demonstrate that Opposer has been on notice of the Requests for almost four months.

III. Conclusion

Applicant has submitted ample evidence that it served the Requests on January 6, 2015, and the record is clear that Opposer has been in possession of the requests since at least March 2,

2015. As such, Opposer must respond to the Requests. Applicant requests that Opposer's response date be set at 20 days from the date of the Order granting Applicant's motion. Also, to prevent similar issues in the future, Applicant requests an order that email service is proper moving forward in this opposition.

Dated: June 29, 2015

Respectfully submitted by:

By: */s/ Robert N. Phillips*

Robert N. Phillips
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101 Second Street
San Francisco, CA 94105
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Facsimile: (415) 391-8269
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Attorneys for Applicant,
Future Publishing Limited

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES was served on Opposer via First Class U.S. Mail, postage prepaid, with a courtesy copy via email on June 29, 2015.

Dr. Tim Landell
Edge Games, Inc.
530 South Lake Avenue, Suite 171
Pasadena, CA 91101
Phone: (626)449-4334
Fax: (626) 844-4334
Email: tim@edgegames.com

/s/ Deborah Kalahele
Deborah Kalahele

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

EDGE GAMES, INC., Opposer, v. FUTURE PUBLISHING LIMITED, Applicant.	**Opposition No. 91214673**

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

DECLARATION OF ROBERT N. PHILLIPS IN SUPPORT OF APPLICANT'S MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS

I, Robert N. Phillips, declare:

1. I am an attorney at law licensed to practice in the State of California and a partner of Reed Smith LLP, attorneys of record for Applicant Future Publishing Limited ("Applicant"). The matters set forth in this declaration are based upon my personal knowledge, except where otherwise indicated, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of Applicant's First Set of Requests for Production of Documents, including a Certificate of Service on the last page, dated January 6, 2015.

3. Attached hereto as Exhibit B is a true and correct copy of Applicant's First Set of Interrogatories, including a Certificate of Service on the last page, dated January 6, 2015.

4. Attached hereto as Exhibit C is a true and correct copy of an email string between Mr. Tim Langdell and me, dated between January 16, 2015 and March 4, 2015.

5. Attached hereto as Exhibit D is a true and correct copy of an email string between Mr. Langdell and me, as well as others at Reed Smith copying me, dated between April 6, 2015 and April 10, 2015.

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA680801**

Filing date: **06/29/2015**

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

Proceeding	91214673
Party	Defendant Future Publishing Limited
Correspondence Address	ROBERT N PHILLIPS REED SMITH LLP 101 SECOND STREET, SUITE 1800 SAN FRANCISCO, CA 94105 UNITED STATES IPDocket-CHI@reedsmith.com, robphillips@reedsmith.com, nborders@reedsmith.com, dkalahele@reedsmith.com
Submission	Motion to Compel Discovery
Filer's Name	Robert N. Phillips
Filer's e-mail	robphillips@reedsmith.com, dkalahele@reedsmith.com, sherring@reedsmith.com
Signature	/s/ Robert N. Phillips
Date	06/29/2015
Attachments	Applicant's Motion to Compel Responses to Discovery Requests.pdf(20239 bytes) Declaration of Robert N. Phillips In Support Of Applicant's Motion to Compel Responses to Discovery Requests .pdf(13946 bytes) Exhibit A to Phillips Decl.pdf(28048 bytes) Exhibit B to Phillips Decl.pdf(25432 bytes) Exhibit C to Phillips Decl.pdf(169351 bytes) Exhibit D to Phillips Decl.pdf(132985 bytes) Exhibit E to Phillips Decl.pdf(185470 bytes) Declaration of Deborah Kalahele In Support of Applicant's Motion to Compel Responses to Discovery Requests.pdf(13312 bytes) Exhibit 1 to Kalahele Decl.pdf(3597585 bytes)

EXHIBIT 8

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

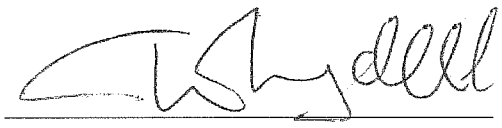
EDGE GAMES, INC., Petitioner v. RAZER (ASIA-PACIFIC) PTE LTD Respondent	**Cancellation No 92058543** **Registration No. 4394393** **Mark "EDGE"**

DECLARATION OF DR TIM LANGDELL

On behalf of Petitioner, I, Dr Tim Langdell, CEO of Petitioner corporation, do attest and affirm that I have read Sections 402 (Scope of Discovery) and 414 (Selected Discovery Guidelines) of the Trademark Trial and Appeal Board Manual (2014).

In accord with Trademark Rule 2.20, the undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: February 2, 2015



Dr Tim Langdell, CEO Petitioner in *pro se*
Edge Games, Inc., 530 South Lake Avenue, 171, Pasadena, CA 91101
Tel: 626 449 4334; Fax: 626 844 4334; Email: tim@edgegames.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing DECLARATION OF DR ~~TIM LANGDELL in regard to Petition to Cancel No. 92058543 has been served on~~ Respondent by mailing said copy on February 2, 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*

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA653427**

Filing date: **02/02/2015**

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

~~Proceeding~~	~~92058543~~
Party	Plaintiff Edge Games Inc
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE 171, PASADENA, CA 91101 UNITED STATES uspto@edgegames.com, tim@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
Filer's e-mail	tim@edgegames.com, uspto@edgegames.com
Signature	/Tim Langdell/
Date	02/02/2015
Attachments	TimLangdellDeclaration.pdf(53780 bytes)

EXHIBIT 9

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: December 30, 2014

Opposition No. 91214673

Edge Games, Inc.

v.

Future Publishing Limited

Ann Linnehan, Interlocutory Attorney
(571) 272-3946

This case now comes up for consideration of the following motions:

(1) Opposer's motion (filed September 25, 2014) to compel discovery and to test the sufficiency of responses to admission requests and for sanctions and/or summary judgment. The motion is fully briefed. In its response brief of October 14, 2014, Applicant moves for sanctions against Opposer.

(2) Applicant's motion for partial judgment on the pleadings. The motion is fully briefed. The Board deems the November 8, 2014 and November 19, 2014 filings by Opposer to be a surreplies which will not be considered.[1] Trademark Rule 2.127(a).

In its combined motion of September 25, 2014, Opposer states that such motion was intended to modify or replace Opposer's previous combined motion to compel and for sanctions, filed on September 12, 2014. The Board construes such statement as a withdraw of the September 12, 2014 motion.

[1] In view thereof, Applicant's November 18, 2014 filing will not be considered.

Hence, the Board will give no further consideration to the September 12, 2014 motion.[2]

The Board turns to consider the combined motion (filed September 25, 2014) to compel discovery and test the sufficiency of responses to admission requests, and, in the alternative, for sanctions and/or summary judgment.

After reviewing the arguments and supporting papers submitted by the parties, the Board finds that Opposer has not satisfied its obligation under Trademark Rule 2.120(e) and (h) to make a good faith effort to resolve the discovery disputes at issue prior to seeking the Board's intervention. Opposer's only apparent effort to resolve the parties' discovery disputes consisted of one email to Applicant containing a demand for Applicant to confirm that it would provide "fully responsive Responses" within twenty-four hours. There was no discussion as to why Opposer believed Applicant's responses to be improper or deficient.

It appears the parties should be able to resolve their differences if they actually discuss such disputes on the telephone. The Board finds that Opposer's efforts fall far short of its obligations under Trademark Rule 2.120(e) and (h).

Opposer is reminded that the purpose of discovery is to advance the case so that it may proceed in an orderly manner within reasonable time constraints. To this end, the parties must adhere to the strictures set forth

[2] Applicant's motion to strike Opposer's September 12, 2014 filing is moot.

in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986), and repeated below:

> [E]ach party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case. Moreover, where the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

Accordingly, Opposer's motion to compel is denied without prejudice.

In consequence of the above, the parties are directed to work together to resolve their discovery problems, in the spirit of good faith and cooperation which is required of all litigants in Board proceedings. The Board believes that the parties should be able to resolve most, if not all, of the discovery disputes identified in Opposer's motion. In particular, no motion to compel should be filed unless the parties are truly unable, after making their best efforts, to work out mutually acceptable solutions to their discovery problems without the Board's help. Applicant is encouraged to work with Opposer and to not construe the denial of Opposer's motion to compel as an indication that it does not have to satisfy the discovery needs of Opposer. The discovery

phase of this proceeding is meant to involve a fair exchange of relevant information so that, at trial, the parties may introduce the evidence that each believes to be most important, with no "surprises."

As for Opposer's alternative motion for sanctions and/or summary judgment, the Board notes that Opposer asks within its brief that Applicant be ordered to give "fully responsive replies to all the requests and interrogatories or, in the alterative Applicant should be sanctioned by, but not limited to, granting summary judgment in Opposer's favor for Applicant's clear repeated refusal to properly participate in Discovery...." To the extent Opposer seeks sanctions for Applicant's alleged "refusal to participate in Discovery" the Board construes this motion as merely one for sanctions, and not summary judgment.

A motion for sanctions under Trademark Rule 2.120(g)(1) for failure to comply with an order of the Board lies when the Board has entered an order relating to discovery (i.e., an order compelling discovery or a protective order) and the order has been violated. See TBMP Section 527.01(a) (2014). In this instance, the Board has yet to issue an order compelling discovery. In view of the foregoing, applicant's motion for sanctions under Trademark Rule 2.120(g)(1) is premature and will receive no further consideration.

A motion for sanctions under Trademark Rule 2.120(g)(2) lies when a party affirmatively states that it will not respond to its adversary's discovery requests. See TBMP Section 527.01(b). Here, Applicant has not

affirmatively stated as such, rather Applicant has provided responses to certain discovery requests.

In view of the foregoing, applicant's motion for sanctions under Trademark Rule 2.120(g)(2) is denied.[3]

The Board turns to Applicant's motion for partial judgment on the pleadings on the ground that Opposer cannot rely upon its canceled trademark registrations as a basis for opposing the subject applications. To the extent Applicant is asking for matter to be removed from the pleading, the Board construes such motion as one to strike the pleading with respect to such allegations. See TBMP Section 506.01 (2014).

In its September 28, 2014 response to the motion, Opposer states that it does not intend to state that it relies upon its canceled registrations, but rather Opposer intended to show that it "is relying upon them to give the complete history and facts of Opposer's common law rights in the mark EDGE." To be clear, Opposer states "there is no disagreement between the parties that this Opposition is not filed on the grounds that Opposer currently owns registered U.S. rights in the mark, but rather on other grounds that make reference to the canceled marks germane."

In view of the above, the Board grants the motion to strike to the extent any reference in Opposer's pleading that may be construed as a claim of ownership by Opposer of a registered mark is hereby stricken.

---

[3] In further view thereof, any request for judgment in this regard is not reached.

In the course of reviewing the record in this matter, the Board notes that an inordinate number of papers have been filed in this proceeding. In order to move this case along without needless delay and increased expense, the Board hereby orders that the parties must contact the interlocutory attorney assigned to this case (or another interlocutory attorney designated to handle this case in her absence) by telephone and receive verbal permission to file any more papers in this proceeding.[4] See TBMP Section 527.03.

The Board notes that Opposer is representing itself in this proceeding. Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: http://www.uspto.gov/trademarks/process/appeal/index.jsp. Also on the

[4] In view of this order, Applicant's motion for sanctions is moot.

Board's web page are links to ESTTA, the Board's electronic filing system[5] at http://estta.uspto.gov, and TTABVUE, for case status and prosecution history at http://ttabvue.uspto.gov/ttabvue.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board **must be served upon the attorney for the other party**, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP Section 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

> **I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (name and address of opposing counsel or party).**
>
> **Signature**_____
> **Date**_____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties

[5] The Board strongly encourages parties to file all papers through ESTTA, which operates in real time and provides a tracking number that the filing has been received. For assistance in using ESTTA, call 571-272-8500.

before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent,* 81 USPQ2d 1212, n.2 (TTAB 2006).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.

Proceedings herein are resumed and trial dates, including the close of discovery, are reset as follows:

Discovery Closes	**1/6/2015**
Plaintiff's Pretrial Disclosures	**2/20/2015**
Plaintiff's 30-day Trial Period Ends	**4/6/2015**
Defendant's Pretrial Disclosures	**4/21/2015**
Defendant's 30-day Trial Period Ends	**6/5/2015**
Plaintiff's Rebuttal Disclosures	**6/20/2015**
Plaintiff's 15-day Rebuttal Period Ends	**7/20/2015**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within

thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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

EXHIBIT 10

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

coggins

Mailed: July 31, 2015

Opposition No. 91212834

Edge Games, Inc.

v.

Mobigame

Before Kuczma, Hightower, and Goodman,
Administrative Trademark Judges.

By the Board:

Now before the Board are Applicant's Request for Reinstatement (filed December 28, 2014) and Opposer's motion for reconsideration (filed February 15, 2015) of the Board's February 4, 2015 Order. The issues raised by these filings are fully briefed. Except for Applicant's March 20, 2015 sur-reply,[1] we have considered each filing. The filings are full of accusations, insults, and posturing, but we need only discuss herein those facts most relevant to the ultimate issues raised by the filings.

[1] *See* Trademark Rule 2.127(a) and TBMP § 502.02(b) (2015) (after a reply brief, no further papers will be considered by the Board).

Background

Opposer filed a Notice of Opposition which contained a certificate of service indicating that a copy of the filing was sent "by international airmail" to Applicant at its correspondence address of record as that address appeared in the Office's database at that time. Two days later, the Board instituted this proceeding and sent a copy of the institution order to Applicant at its correspondence address of record as that address appeared in the Office's database at the time. The address used by the Board for the institution order was identical to the address listed by Opposer in the Notice of Opposition.

The institution order set November 13, 2013, as the due date for Applicant's answer. No answer having been filed, Opposer moved for default judgment on November 20, 2013. The Board granted the motion for default judgment as conceded on January 7, 2014, and abandoned the application. As a result of the abandonment, the Trademark Examining Operation ("TMEO") automatically generated a Notice of Abandonment which was mailed to Applicant at its correspondence address of record as that address appeared in the Office's database at the time, the same address used previously by the Board and Opposer.

The next day, January 8, 2014, Applicant's copy of the institution order was returned to the Board as undeliverable. Although it is usual Board procedure to make all reasonable efforts to locate the applicant in an opposition when the applicant's copy of the institution order is returned to the Board as undeliverable and that applicant is not represented by an

attorney (*see* TBMP § 310.02 (2015)), the Board took no action upon receipt of Applicant's undeliverable copy of the institution order in this case.

On March 26, 2014, Applicant's copy of the Notice of Abandonment was returned to the TMEO as undeliverable. Six months later, on September 26, 2014, Applicant filed with the TMEO a change of correspondence address and a Petition to the Director under Trademark Rule 2.146. The Petition was dismissed as untimely on December 5, 2014. Approximately three weeks later, on December 28, 2014, Applicant filed the outstanding Request for Reinstatement with the TMEO.

When the Board became aware of the request, a copy was placed in the electronic Board file for this case. Based on the Board's earlier failure to act upon the return as undeliverable of Applicant's copy of the institution order, the Board issued an order on February 4, 2015, which reinstated this opposition, vacated default judgment, restored the subject application to pendency, suspended proceedings, construed the Request for Reinstatement as a motion to dismiss for insufficient service, and set time for the parties to brief the issues raised by the Request for Reinstatement. In addition to contesting the construed motion to dismiss, Opposer filed a motion for reconsideration of the Board's February 4th order.

Procedural Issues

Applicant is reminded that every motion, paper, or communication filed with the Board must include proof of service of a copy on opposing counsel or

the party, if not represented by counsel, in compliance with Trademark Rule 2.119(a) and (b). The Board may decline to consider any motion, paper, or communication filed in a proceeding which does not include proof of service. Proof of service usually takes the form of a Certificate of Service. Following is a suggested format for a Certificate of Service on behalf of Applicant:

> I hereby certify that a true and complete copy of the foregoing [*insert title of submission*] has been served on [*insert name of opposing counsel or party*] by sending said copy on [*insert date of mailing*], via overnight courier to: [*set out name and address of opposing counsel or party*].

The Certificate of Service must be signed.

As a practical matter, parties located outside the United States must meet the service requirement through transmission by overnight courier or electronic transmission (but only if mutually agreed). *See* TBMP § 113.04 and Trademark Rules 2.119(b)(5)-(6). Parties located outside the United States are strongly encouraged to list an email address with the Board for the duration of the inter partes proceeding, and to seek written agreement from the adverse party to service by email.

Trademark Rule 2.126(a)(1) requires, *inter alia*, that all submissions must be double-spaced. In addition, briefs on motions are subject to page limitations and time requirements. Briefs in support of and in response to a motion may not exceed 25 pages in length, and a reply brief may not exceed 10 pages. *See* Trademark Rule 2.127(a) and TBMP § 502.02(b).

Papers pertaining to this opposition should be filed with the Board, not the TMEO.

It is highly recommended that both Applicant and Opposer obtain U.S. trademark counsel. It is clear from Applicant's filings that Applicant is not familiar with the procedural and substantive law involved in an opposition before the Board. While Patent and Trademark Rule 11.14(e) permits a company to represent itself through an officer, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of a U.S. attorney who is familiar with such matters.

If Applicant does not retain U.S. counsel, it must familiarize itself with Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and which is available on the Board's webpage at the following URL: http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab.html. The Board's webpage also includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a link to the Board's manual of procedure (the TBMP) which will be most helpful to the parties.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. *See*

McDermott v. San Francisco Women's Motorcycle Contingent, 81 USPQ2d 1212, 1212 n.2 (TTAB 2006). Both parties are cautioned that, in all matters before the Board, they are required to conduct their business with decorum and courtesy without needless hyperbole, insult, or ad hominem attack. *See* Trademark Rule 2.192 and TBMP § 115.01.

Request for Reinstatement

Although Applicant filed a Request for Reinstatement, and a prior interlocutory order stated that it could be treated as a motion to dismiss the opposition as a nullity under Fed. R. Civ. P. 12(b)(5) for insufficient service, we may nonetheless construe the request as a motion for relief from default judgment under Fed. R. Civ. P. 55(c) and 60(b). *See Jack Lenor Larsen Inc. v. Chas. O. Larson Co.*, 44 USPQ2d 1950, 1952 (TTAB 1997) (petition to Commissioner seeking reopening of cancellation proceeding appropriately construed as motion to reopen cancellation under Fed. R. Civ. P. 60(b)). Indeed, Opposer's motion for reconsideration addresses the issue of Applicant's request as a possible motion under Rule 60(b). *See* Motion, pp. 20-22 (12 TTABVUE 21-23).

Fed. R. Civ. P. 60(b) provides for relief from judgment in specified instances, and Fed. R. Civ. P. 60(c) requires that any motion for such relief be made within a "reasonable time," and within one year if the motion is based on, *inter alia*, mistake, inadvertence, surprise, or excusable neglect. In this case, Applicant appears to base its motion on "mistake, inadvertence,

surprise, or excusable neglect,"[2] and the motion was filed within a year of default judgment. Under the circumstances, the motion was filed within a reasonable time. Applicant filed its first attempt at reinstatement on September 26, 2014, by way of its Petition to the Director under Trademark Rule 2.146, and once the petition was determined, it was only 23 days later that Applicant filed the current, construed motion.

Because default judgments for failure to timely answer the complaint are not favored by the law, a motion under Fed. R. Civ. P. 55(c) and Fed. R. Civ. P. 60(b) seeking relief from such a judgment is generally treated with more liberality by the Board than are motions under Fed. R. Civ. P. 60(b) for relief from other types of judgments. *See Information Sys. and Networks Corp. v. United States*, 994 F.2d 792, 795 (Fed. Cir. 1993) ("Rule 60(b) 'is applied most liberally to judgments in default.'") (*quoting Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 403 (5th Cir. 1981)). *See also* TBMP § 312.03. We remain mindful of the fact that it is the policy of the law to decide cases on their merits, and that the resolution of an action on the merits wherever possible is a basic tenet underlying the Federal Rules of Civil Procedure. *See Johnston Pump/General Valve, Inc. v. Chromalloy Am. Corp.*, 13 USPQ2d 1719, 1720 (TTAB 1989). *See also Thrifty Corp. v. Bomax Enters.*, 228 USPQ 62, 63 (TTAB 1985).

---

[2] Indeed, Opposer agrees that Applicant's motion might be based on "mistake, inadvertence, surprise, or excusable neglect"; however, Opposer argues none of the grounds is meritorious. *See* Mot. for Recon., pp. 20-22 (12 TTABVUE 21-23).

The factors to be considered in determining whether a defendant should be granted relief from a default judgment for failure to timely answer the complaint are (1) whether opposer will be prejudiced, (2) whether the default was willful, and (3) whether applicant has a meritorious defense to the action. *See Djeredjian v. Kashi Co.*, 21 USPQ2d 1613, 1615 (TTAB 1991) (*citing United Coin Meter Co. Inc. v. Seaboard Coastline Railroad*, 705 F.2d 839 (6th Cir. 1983)); *Davis v. Musler*, 713 F.2d 907 (2d Cir. 1983) (motion granted pending showing of meritorious defense where other two elements were established).

With respect to the first factor, it does not appear that there is any prejudice to Opposer if default judgment is set aside. There is no evidence or argument that any of Opposer's prospective witnesses or evidence has become unavailable as a result of the delay in proceedings.

With respect to the second factor, the parties hotly contest whether Applicant's default was willful. Opposer provides pages of argument and many exhibits to craft its theory, while Applicant similarly provides pages of argument and several exhibits to refute the assertions made. The record contains no admission by Applicant that its default was willful, and we cannot state under the circumstances of this case that Applicant willfully defaulted. Applicant maintains that it did not know about this opposition proceeding. Even if the assertion is dubious, we cannot say with certainty that it is untrue. We note that each party repeatedly accuses the other of

lying;[3] but, in the end, there is no firm evidence to show that Applicant willfully defaulted. Opposer's argument that it sent an email warning to Applicant during the extension period granted to Opposer does not demonstrate that Applicant willfully failed to file an answer to the later-filed notice of opposition. *See* Mot. for Recon., Ex. D (12 TTABVUE 40-42). Inasmuch as Applicant's copy of the institution order was returned to the Board as undeliverable, there is some doubt that Applicant knew of its obligation to file an answer in this proceeding.

With respect to the third factor, Applicant argues that Opposer "has no mark EDGE anymore in [C]lass 9, and so [it] cannot challenge our application. This opposition has no legal ground." Opp. to Recon., unnumbered p. 6 (14 TTABVUE 7). Applicant also asserts that over the past five years it "regularly wrote to the USPTO to alert them that [Opposer's principal] ... never used this mark." Request for Reinstatement, p. 1 (8 TTABVUE 1). Under the specific circumstances of this case, and resolving all doubts in favor of a trial on the merits, *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 97 (2d Cir. 1993), our consideration of Applicant's statements supports resolving the third factor in Applicant's favor. In view thereof, it appears that Applicant has a meritorious defense to this proceeding. In so finding, we are mindful that default judgments for failure to timely answer

[3] For example, Opposer labels as "perjury," "entirely untrue," and "deliberate falsehood[]" Applicant's statement that it did not see any document relating to this proceeding prior to filing the Request for Reinstatement; and Applicant claims that Opposer's latest filings in this case are full of "lies and made up evidence."

the complaint are not favored by the law, and that it is the policy of the Board to decide cases on their merits.

Accordingly, the construed motion for relief from default judgment under Fed. R. Civ. P. 55(c) and 60(b) is granted.

Motion to Dismiss

To the extent the Request for Reinstatement could be considered as a motion to dismiss the opposition as a nullity under Fed. R. Civ. P. 12(b)(5) for insufficient service, it is denied. Opposer attached to its response to the Request the declaration of its CEO Tim Langdell, which states that on October 2, 2013, he sent by first-class mail a copy of the Notice of Opposition to Opposer at its correspondence address of record as that address appeared in the Office's database at that time. *See* Declaration, pp. 1-2 (11 TTABVUE 12-13). The declaration also states that Opposer sent additional copies to Applicant the next day via email and international Express Mail, but the Express Mail copy was eventually returned to Opposer. *Id.* at p. 2. Opposer submitted a copy of the mailing label of the returned Express Mail envelope as Exhibit B (11 TTABVUE 19-20) and a copy of the email as Exhibit G (11 TTABVUE 31-32). The email states, in part, that Opposer could find attached thereto a courtesy copy of Notice of Opposition which Opposer "filed yesterday," and that service copies had also been sent to Opposer by first-class mail and Express Mail.

Trademark Rule 2.101(b) requires an opposer to include with the notice of opposition proof of service pursuant to Rule 2.119 at the correspondence address of record in the Office. Rule 2.101(b) "does not require an opposer to provide *proof of receipt* of a notice of opposition, but only proof of service thereof." *Musical Directions v. McHugh*, 104 USPQ2d 1157, 1159 (TTAB 2012) (emphasis original). Opposer's Notice of Opposition contained a certificate of service indicating that a copy was sent "by international airmail" to Applicant at its correspondence address of record as that address appeared in the Office's database at that time. We find credible Opposer's statement that its CEO appropriately served a copy of the Notice of Opposition upon Applicant. The veracity of the statement is bolstered by Opposer's contemporaneous email[4] and the returned Express Mail envelope.

As noted earlier, Applicant filed with the TMEO a change of correspondence address on September 26, 2014. Board records have been updated accordingly. Applicant is reminded of its obligation to file with the Board a separate written notice of a change of address should Applicant move or change its email address. It is the responsibility of a party to a proceeding before the Board to ensure that the Board has the party's current correspondence address, including an email address. *See* TBMP § 117.07.

[4] We acknowledge that Applicant calls the email "a pure invention" which "does not exist." 14 TTABVUE 3.

Parties are encouraged to file a change of address online using ESTTA.[5] If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party.

Motion for Reconsideration

In view of our grant of the motion for relief from default judgment, Opposer's motion for reconsideration of the Board's order reinstating this proceeding is effectively moot.

Schedule

Proceedings are resumed. The prohibition on filing papers is lifted. Dates are reset on the following schedule:

Time to Answer	8/29/2015
Deadline for Discovery Conference	9/28/2015
Discovery Opens	9/28/2015
Initial Disclosures Due	10/28/2015
Expert Disclosures Due	2/25/2016
Discovery Closes	3/26/2016
Plaintiff's Pretrial Disclosures	5/10/2016
Plaintiff's 30-day Trial Period Ends	6/24/2016
Defendant's Pretrial Disclosures	7/9/2016
Defendant's 30-day Trial Period Ends	8/23/2016
Plaintiff's Rebuttal Disclosures	9/7/2016
Plaintiff's 15-day Rebuttal Period Ends	10/7/2016

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within

[5] Inasmuch as Board records have been updated to reflect Applicant's Rue du Faubourg Saint-Antoine address provided in the September 26, 2014 filing, no separate filing is needed unless and until Applicant's address changes.

thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Applicant's answer should comply with Fed. R. Civ. P. 8(b) which provides, in part:

> [A] party must state in short and plain terms its defenses to each claim asserted against it and admit or deny the allegations asserted against it by an opposing party. A denial must fairly respond to the substance of the allegation. A party that intends in good faith to deny all the allegations of a pleading ... may do so by a general denial. ... A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial. (internal subsections removed).

The Notice of Opposition filed by Opposer consists of sixteen numbered paragraphs (numbered 1-3 and 10-21, with 19 appearing twice) setting forth the basis of Opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on Applicant to answer the Notice of Opposition by admitting or denying the allegations contained in each paragraph. If Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial. The admissions and denials should be made in numbered paragraphs corresponding to the numbered paragraphs in the Notice of Opposition. Fed. R. Civ. P. 10(b). Applicant "should not argue the

merits of the allegations in [the Notice of Opposition] but rather should state, as to each of the allegations contained [therein], that the allegation is either admitted or denied." TBMP § 311.02(a).

Applicant is again strongly encouraged to obtain U.S. Trademark Counsel.