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

Proceeding	92058543
Party	Defendant Razer (Asia-Pacific) Pte Ltd.
Correspondence Address	KEITH A BARRITT FISH & RICHARDSON PC PO BOX 1022 MINNEAPOLIS, MN 55440 1022 UNITED STATES barritt@fr.com, tmdoctc@fr.com, erickson@fr.com
Submission	Reply in Support of Motion
Filer's Name	Keith Barritt
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Signature	/Keith Barritt/
Date	01/14/2016
Attachments	razer (1).pdf(474183 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
U.S. 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
REPLY TO PETITIONER EDGE GAMES, INC.'S DECEMBER 29, 2015 BRIEF

On December 29, 2015, Edge Games filed what is essentially a "surreply" to Razer's reply brief regarding Razer's pending motion for judgment or in the alternative to compel discovery responses. Evidently seeking to avoid the proscription on such surreplies in Section 502.02(b) of the Trademark Trial and Appeal Board Manual of Procedure, Edge Games captions its filing as a brief in opposition to an allegedly "amended" motion. However, Razer's reply brief merely addresses issues raised in Edge Games' brief in opposition, and other than vague allegations of "new claims" being made by Razer in its reply brief, Edge Games has failed to identify how Razer has "amended" its motion in any way that would warrant the filing of a further brief by Edge Games. Thus, Razer believes that the Board should disregard the arguments raised by Edge Games in its December 29, 2015 brief.

However, as the Board has not yet issued an order *sua sponte* dismissing Edge Games' December 29, 2015 filing as an improper surreply, if the Board is to consider Edge Games' brief, Razer wishes to make a few brief points in reply.

As an initial matter, Edge Games' brief is not in the proper format, as it is clearly not double-spaced as required by 37 C.F.R. 2.126(b) and Section 502.02 of the TBMP. Notably, Edge Games' brief in opposition filed on December 7, 2015 is double-spaced, and thus the current reduced spacing seems to be a deliberate attempt to exceed the 10 page limit for reply briefs under Section 502.02(b) of the TBMP. The Board has already admonished Edge Games in footnote one of its September 25, 2015 order to comply with brief formatting rules, and this latest example of Edge Games flouting the TTAB's rules should be taken into account in determining whether to grant final judgment in this matter.

Regarding Edge Games' 852 page document production of November 17, 2015, Edge Games' decision not to include a copy of these documents with its December 7, 2015 brief in opposition to the pending motion gave Razer no choice but to include those pages with its December 21, 2015 reply brief. The submission of these documents by Razer does not constitute an "amended motion," but simply demonstrates for the Board the inadequacies of Edge Games' document production. Edge Games was at liberty to explain to the Board in its December 7 brief in opposition why these specific documents were fully compliant with its obligations, which it chose not to do.

Razer's decision to point out to the Board the infirmities in Edge Games' 852 page document production, rather than trying to work out the issues with Edge Games, was necessary considering that the clock was ticking on Razer's deadline to file a reply brief, and further considering how Edge Games had made it abundantly clear it believed it already produced everything it was required to produce. In essence, once the motion was filed and Edge Games' position made clear that it believed it had produced everything that was required of it, the most expeditious path forward to ensure future compliance with discovery

obligations was to demonstrate to the Board why Edge Games' production was still inadequate.[1]

Edge Games claims in footnote 3 of its December 29, 2015 brief that it should not be required to produce documents (or presumably, related information) regarding licenses that it is not "relying on," presumably for purposes of demonstrating Edge Games' purported rights as a licensor. While Edge Games may choose to rely upon use by certain licensees to try to demonstrate its rights as a licensor, it may not deny Razer documents and information that may demonstrate uncontrolled naked licensing in other license relationships, which is directly relevant to Razer's defense. Likewise, Edge Games claims in footnote 7 that it should not be required to produce documents and information regarding settlement agreements related to litigation. There is no question that if final judgment is not granted in this case, Edge Games must be compelled to produce all information and documents regarding all licenses and settlement agreements, including settlements that terminated litigation pursuant to Section 414(10) of the TBMP. *See Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 197 (TTAB 1976) (settlement agreements that have avoided litigation may show limitations on party's rights in mark or reveal inconsistent statements). Settlement agreements that terminate litigation are discoverable for the same reason.

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[1] As further evidence of the difficulty in dealing with Edge Games regarding discovery issues and the need for Board intervention if final judgment is not granted, attached as Exhibit 1 is a copy of recent correspondence between the parties subsequent to Edge Games' December 29, 2015 brief in which Edge Games takes the position that Razer's prior production of documents delivered directly to Edge Games somehow does not comply with the TBMP. To avoid any gamesmanship, if the Board does not grant final judgment in this case, Razer repeats its request in footnote 11 of its reply brief that the Board order Edge Games to produce documents by delivering them to the address of record of Razer's counsel, consistent with the past practice of both parties and as Razer requested the parties mutually formally agree to do in its email to Edge Games of January 8, 2016 as shown in Exhibit 1.

Regarding Razer's expectations of document production by Edge Games, as noted in Exhibit 4 of Razer's December 21, 2015 reply brief, the original deposition and subpoena schedule for Velocity Micro called for the production of documents on October 21, 2015, followed several days later by a deposition. Thus, it was Edge Games that set the expectation that documents would be produced at least several days prior to any deposition of Velocity Micro, and not at the deposition. Thus, the fact that Razer's counsel was unavailable for a deposition while on travel is of no consequence to its expectation that documents (from Velocity Micro and especially from Edge Games itself or otherwise) would be produced prior to any such deposition, and there was never any express or implied agreement that documents would be produced at the deposition itself.

Razer continues to believe this case is a prime example of where the Board should exercise its discretion and grant final judgment dismissing the cancellation action. However, if the Board does not do so, considering the amended discovery replies in Edge Games' December 29, 2015 filing the Board should issue yet another order compelling Edge Games at a minimum to: (1) provide complete responses to Interrogatory 8(e), Interrogatory 12(d) as it pertains to settlement agreements with Electronic Arts and Velocity Micro, and Interrogatories 12(e)-(f); and (2) produce to Razer's counsel at the address of record in this proceeding at Edge Games' expense any additional documents in response to all of Razer's Document Requests or state no such documents exist, and in particular all licenses, assignments, and settlement agreements including but not limited to those with Electronic Arts and Velocity Micro.

Respectfully submitted,

Razer (Asia-Pacific) Pte Ltd

By: _____

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January 14, 2016

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 January 14, 2016, a true copy of the foregoing Registrant Razer (Asia-Pacific) Pte Ltd's Reply To Petitioner Edge Games, Inc.'s December 29, 2015 Brief 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

Keith Barritt
Signature

41159939.doc

EXHIBIT 1

Keith Barritt

From: Tim <tim@edgegames.com>
Sent: Friday, January 08, 2016 12:56 PM
To: Keith Barritt
Subject: Re: Location of Document Production in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

Re: Razor have so far produced no documents per code

Mr Barritt

Thank you for your email which stands as an admission that you never asked our agreement to copy and mail documents for valid production and we never made such an agreement. Thus Razer has never yet validly produced any documents. You are thus in gross default and we shall file a motion to compel forthwith. However, we will agree your proposal - *retroactive and going forward* - **IF** you immediately withdraw **all** your motions **immediately.**

To be completely clear, we have never agreed that you may produce documents to us by some method other than that stated in the TBMP - that is, we have never agreed that you may meet the requirements of document production by photocopying pages and mailing them to us. Rather, until and unless the parties agree otherwise, or until and unless the Board order otherwise, then production per TBMP is to be done at an agreed upon location where documents are made available to view and copy at the viewers expense.

We are thus categorically *rejecting* your styling the situation as one where we would be "continuing our practice" of photocopying and mailing documents as if that had previously been established as an agreed practice up to now. Whereas we have never agreed to this practice (and you have never proposed it as something we permit you to do), you on the other hand specifically asked us to send you photocopies and complained loudly that we had not done so. Thus you agreed that we may produce by copying and mailing, but we still insist (as is our right) that since discovery commenced for Razer to comply with the rules in order for it to validly produce a document, it must do so at a location we agree on where we can view and copy.

To be clear, any photocopies mailed to us to-date do not meet the requirement for valid production since there has been no proposal (until today) that this be an agreed process for your production, and we have certainly never agreed such for your production.

Accordingly, Razer has yet to validly produce even a single page of documents. We shall thus file a motion to compel Razer to produce the documents at a location agreed by us at which we can view and copy.

Until then you are grossly passed due by many months in producing anything to us. We shall thus file a motion to compel forthwith, and your email below shall stand as a basis for judgment in or favor since you affirm we never agreed you could produce using mailed photocopies.

However, if you withdraw your motions immediately then we will agree your proposal, and will then (and only then) agree it is retroactive as well as going forward. In this way, and only in this way, you may covert anything you may have mailed into valid production (which it currently is not).

Please let me have your response before 4pm PST today when we shall otherwise seek permission to file a motion to compel to be heard concurrent with your motions.

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

Sent from my iPhone 6 with apologies for any errors due to Apple's auto-correct or my mis-typing.

On Jan 8, 2016, at 9:06 AM, Keith Barritt <barritt@fr.com> wrote:

FISH.
FISH & RICHARDSON

Dear Mr. Langdell:

To ensure there is no misunderstanding going forward, I propose we now memorialize in writing the practice we have each been following regarding document production, namely, that each party will produce documents by delivering them to the address of record for the other party, which is common practice in Board proceedings as noted in Section 406.04(b) of the Trademark Trial and Appeal Board Manual of Procedure. I also propose we continue our practice of copying and sending them at the sending party's expense. While this agreement is not retroactive, it does reflect our past practice and will govern our practice in the future.

As you know, Razer is located in Singapore, and thus I presume you will see the advantage of memorializing our agreement.

I look forward to your reply.

Sincerely,

Keith Barritt :: Principal :: Fish & Richardson P.C.
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fr.com :: FishTMCopyrightblog.com :: Bio

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