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

Proceeding	92058543
Party	Plaintiff Edge Games Inc
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Attachments	ReplyToRazersBriefInOppositionAddendum.pdf(590029 bytes)

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

EDGE GAMES, INC.
(California Corporation)

Petitioner

v.

RAZER (ASIA-PACIFIC PTE LTD
(Singapore Corporation)

Respondent

Cancellation No. 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

**PETITIONER EDGE GAMES INC'S REPLY TO REGISTRANT RAZER'S BRIEF IN
OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION OF
DECISION ON MOTION AND MOTION FOR RELIEF FROM FINAL JUDGMENT**

ADDENDUM

Petitioner notes that it has identified typing errors in the Declaration of Dr Timothy Langdell filed earlier. Please find attached the corrected version of the declaration. The exhibits remain unchanged and thus remain as they are in the main Reply (and are thus not repeated hereto).

Dated: August 6, 2016

Respectfully submitted:

By: /s/ Tim Langdell
Dr Tim Langdell ,
CEO, Edge Games Inc,
Opposer in Pro Se,
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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

CERTIFICATE OF SERVICE

It is hereby certified that on August 6, 2016 a true copy of the foregoing MOTION FOR RECONSIDERATION OF DECISION ON MOTION AND MOTION FOR RELIEF FROM FINAL JUDGMENT AND DECLARATION OF DR TIMOTHY LANGDELL, ADDENDUM, were deposited in U.S. certified mail postage prepaid, addressed to:

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

Signature: /s/ Tim Langdell

EXHIBIT

Corrected declaration of Dr Timothy Langdell

(Exhibits were attached
to previously filed version)

5. Prior to November 17, 2015, I and Petitioner's Virginia based attorney (based there since Velocity are based there), Dale Jensen, made our best efforts to keep Mr. Barritt updated as to when we believed the requested documents would be in Petitioner's possession and repeatedly assured Mr. Barritt that as soon as they are in Petitioner's possession then they would be produced as soon as reasonably possible. Attached in **Exhibit A** are email exchanges on or about October 6, 2015 between Mr. Jensen and Mr. Barritt that make this point clear. In his email of that date, Mr. Jensen clearly states: "*I will, of course, provide copies of produced documents to you as soon as practicable after their receipt.*"
6. Prior to November 17, 2015 Petitioner was not in possession of the requested documents and thus could not produce them. This fact was made clear to Mr. Barritt by me and by Mr. Jensen. In Mr. Jensen's email of October 23, 2015 (see **Exhibit B** hereto) he makes clear: "*We have received no substantive production thus far -- only boilerplate objections.*" Thus Mr. Barritt could be in no doubt that Petitioner was still making every possible effort to gain possession of the documents Registrant had requested, but that as of late October Petitioner had still not been able to gain possession of *any* of them.
7. The two parties were in close contact during this October to November 2015 timeframe, with Mr. Jensen and Mr. Barritt discussing mutually convenient dates for Velocity Micro's CEO to be deposed with both parties in attendance. And it could not have been more clear to Mr. Barritt that the clear goal was to first gain all requested documents from Velocity Micro before setting a date for the deposition. And that due to the problems in gaining the documents from Velocity, the deposition would need to be postponed until at least mid November, and perhaps to as late as early December.
8. In the email exchange between Mr. Jensen and Mr. Barritt also on October 23, 2015, Mr. Barritt confirmed that he would not be available between November 16-27, 2015 and thus by implication the deposition would likely take place after this time period (**Exhibit C** hereto).
9. Thus on November 17, 2015 at the moment Mr. Barritt filed Registrant's Motion for Sanctions for, in sizable part, failure to respond to discovery requests, Mr. Barritt was (as we maintain) very aware that he was about to be served with the documents Petitioner had just received from Velocity and ones Petitioner had just discovered from its search in storage. Or, in Mr. Barritt's best case, the last information he had from me or from Mr. Jensen was that we were still having trouble gaining copies of the documents from Velocity, and still not able to locate requested copies of documents from storage. Thus even in *his best case*, Mr. Barritt should have been of the understanding that the lack of produced documents was solely because none were yet in possession of Petitioner. Not because of any attempt by Petitioner to frustrate Registrant's discovery efforts.
10. Thus on November 17, 2015 there are only two possibilities: *either* Mr. Barritt knew (as we say he did) that he was about to receive the documents, *or* the last information he had was that they were still not in Petitioner's possession and thus quite reasonably could not be produced yet. Thus for Mr. Barritt to file a motion suggesting that Petitioner's responses to document production had been "woefully inadequate" was not only not true,

it was a deliberate falsehood intended to sway the minds of the Board members making the decision on Registrant's motion and gain a default judgment in an action that Registrant knew it was otherwise certain to lose if heard on the merits.

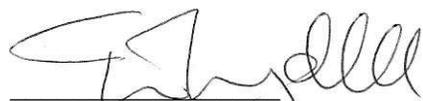
11. On November 17, 2015 Mr. Barritt was, or should have been, fully aware that Petitioner had abandoned the intention to depose Velocity's CEO because the CEO had provided a sworn declaration covering all of the information and confirming the existence of all the documents that Registrant had requested in discovery. On the day he filed the Motion, then, Mr. Barritt was aware, or should have been aware, that a copy of that declaration along with many *hundreds* of pages of the requested documents was on its way to him, and had been served by the agreed method of USPS mail earlier the same day.
12. As to the agreement that the parties would serve documents on each other via USPS mail, this was proposed by Mr. Barritt in his letter that Petitioner has identified in its current Motion. And Petitioner accepted that proposal. It is true that later when Mr. Barritt started to argue about whether he had been properly served with documents because he had not personally viewed them at a location in Pasadena, I did then send one email in which I sought to say that if the parties had not agreed production by USPS mail, then the few documents Registrant had sent Petitioner in response to Petitioner's discovery requests for document production were thus also not validly produced or served. The email was intended to show Mr. Barritt that he cannot have his cake and eat it too: if he was going to argue that Petitioner's 852 pages of documents were not validly served, then he would have to admit that Registrant did not validly serve its bundle of documents on Petitioner either.
13. The bottom line though, as Mr. Barritt's email of January 8, 2016 proves, is that Mr. Barritt understood that the parties had agreed to production of all requested documents by USPS mail. And he was being purely disingenuous when in Registrant's Brief in Opposition he seeks to claim the parties had not agreed to such method of production. Again, Registrant itself produced all its evidence via USPS mail, and if it sincerely believed that production via mail had not been agreed, then it would have instead proposed a time and place for documents to be viewed rather than sending them to Petitioner via mail.
14. As to Registrant's false allegation that Petitioner had withheld any information from Registrant and was thus "frustrating" Registrant's attempt to gain information they have a right to, this false picture was once again created by Mr. Barritt deliberately making false statements to the Board.
15. Since prior to or about November 17, 2015 Petitioner did not possess the documents that Registrant had requested, therefore it follows that Petitioner also did not possess the information in those documents in order to more fully respond to Registrant's interrogatories regarding license agreements, trademark assignments, quality control measures, the transfer of goodwill and so forth.

16. Just as it would be extremely unjust to sanction or punish Petitioner for failing to produce documents it did not possess, similarly it would be unjust to sanction or punish Petitioner for failing to give information that was at the time also not in Petitioner's possession.
17. Mr. Barritt invented the fiction that there were documents in Petitioner's possession regarding licenses other than the one with Velocity, and that therefore there were further documents and information being withheld by Petitioner in regard to such details as licensee/licensor relationships, quality control, assignments, passage of goodwill, and so forth. But this was all a fiction invented by Mr. Barritt since I had made clear to him that all the documents Petitioner had in its possession were promptly being produced -- thus if there were no documents relating to other license arrangements, quality control, mark assignment, etc, then that is because no such documents or information were in Petitioner's possession.
18. Yet this did not stop Mr. Barritt creating the fiction that Registrant had not received documents and information in Petitioner's possession which Petitioner was either being slow to produce or refusing to produce. There was never a time when that was true, and this fiction was invented by Mr. Barritt solely to try to convince the board of grounds for summary judgment because Mr. Barritt was aware that Registrant has little to no chance of prevailing on the merits at trial if Registrant is not successful in finding some loophole on which to base a summary judgment.
19. I also note that Registrant has displayed a consistent goal of seeking a default judgment on some basis or other ever since the action commenced, as can be seen by the sizable number of attempts to move for dismissal or for sanctions against Petitioner.
20. I remain confident that Registrant safely received a copy of Petitioner's Privilege Log and I am puzzled that Mr. Barritt should now deny this so many months after the events in question, and only when it served Registrant to deny receipt of the log.
21. To the best of my knowledge and recollection, all documents served on Registrant since the Board made its order dated January 30, 2015, were served using US Certified Mail. If the certificates of service dated July 2, 2016 and July 1, 2016, stated otherwise then I presume this was simple clerical error in typing the certificates.
22. A copy of Petitioner's substitution of counsel was served on Registrant, contrary to what Mr. Barritt alleges.
23. I am appalled that Registrant would suggest that the proof Petitioner filed of the 7 minute call from the Board's Interlocutory Attorney on October 5, 2015 is a "doctored document." That document is a copy of my telephone bill for that period, clearly showing the incoming 7 minute call made from the telephone number of the Interlocutory Attorney handling this action. This document is most certainly not doctored, and if the Board is at all minded to believe such blatant defamatory accusations by Registrant, then I am happy to produce the original of the document in question so that the Board may inspect it for itself.

24. Registrant states that showing there was a 7 minute incoming call from the Board to me on behalf of Petitioner does not prove what the call contained. This is true, but it misses the point: the mere fact that the Board's Interlocutory Attorney telephoned me and spoke to me for 7 minutes means the Attorney breached her own Board order of January 2015 since she stated in the "small print" footnote that there must be no such *ex parte* contact.
25. But it is a fact that the Board made such *ex parte* contact -- regardless of what was said in that call, it was undeniably *ex parte* contact with Petitioner instigated by the Board in response to an *ex parte* call from me to the Interlocutory Attorney.
26. With the other parallel case having the requirement that I call the Interlocutory Attorney by telephone (and usually have her then call me back) to make a verbal request for permission to file an unconsented motion, the fact that the Board telephoned me on October 5, 2015 caused me to believe that this was the action that had required me to make *ex parte* telephone contact for approval to file a motion. As can be seen from the evidence, I first called the Interlocutory Attorney and she then returned my call, exactly as if the "rule" in this action was to use an *ex parte* phone call to gain such permission. And, to be clear, what the Board stated in that 7 minutes was that Petitioner was being given permission to file an unconsented motion. And as can be seen from the first sentence of my January 8, 2016 email to the Board, I clearly thought this was the action that required me to make a phone call in order to request permission to file a motion.
27. In giving its permission on October 5, 2015 to file an unconsented motion, the Board also asked that the motion not be filed immediately, but that Petitioner make further attempts at amicable resolution before filing a motion. This is why Petitioner still had valid permission to file an unconsented motion in December.
28. And again, the filing Petitioner did on December 8, 2015 was not intended by me to be an unconsented motion, but if the Board is determined to view it as such then it remains a fact that Petitioner had gained permission to file such a motion and thus Petitioner should not be sanctioned or punished for doing so.
29. At the time Mr. Barritt filed Registrant's motion for sanctions on November 17, 2015, he was aware that within a few days of that date Registrant was due to serve on Petitioner its responses to Petitioner's second set of discovery requests. As can be seen by the evidence (see **Exhibit C** hereto), Mr. Barritt had just left for what I believe was vacation and would not return until well after he was due to file Registrant's new discovery responses. It is thus abundantly obvious that Mr. Barritt filed the motion in order to have a basis for the action to be stayed while he went on vacation. And this was clearly an abuse of process that ironically rather than the Board admonishing Mr. Barritt for doing, instead the Board rewarded Mr. Barritt's deceit by granting him the extreme sanction he was requesting (that I remain convinced he himself never for one moment believed the Board would actually grant Registrant).

30. The fact is that on November 17, 2015 there was no evidence at all that Petitioner was frustrating Registrant's attempts to obtain documents or information. On the contrary, all documents and all information were being produced and given promptly the moment they came into Petitioner's possession.
31. The Board's order sanctioning Petitioner by dismissal of the action thus stands as a travesty of justice in which the Board has given the ultimate sanction to Petitioner for allegedly failing to produce documents that Petitioner did not possess, failing to give information that Petitioner also did not possess, filing an unconsented motion which Petitioner actually had permission to file, and making *ex parte* contact with the Board that the Board expressly encouraged Petitioner to make (and which the Board made itself), despite having hidden in a small-print footnote in an earlier order that such *ex parte* contact should not occur.
32. In short, the only dispute between the parties over discovery in November 2015 was over a single Velocity Micro document (and the information contained in it) that I truly believed at the time Petitioner was barred by law from producing, and the fact that Registrant had used a trick of the proceedings to gain a stay of the proceedings at the very moment it was due to give crucial discovery responses to Petitioner's second set of discovery requests. While I continued several *template* objections to interrogatories, these were either merely put in as a general retention of rights (but not to *exercise* those rights of objection) or they were exercised solely in regard to the one document Petitioner was withholding because it believed in law it had to withhold it.
33. There were, then, not even grounds for the Board to issue an order to compel Petitioner to produce documents or answer interrogatories, since all documents had been produced and all questions answered. I note that in Registrant's moving papers since last Fall, including its most recent Brief in Opposition, Registrant does not deny that all discovery issues had been fully resolved by at latest early December 2015, and that they were 99% resolved even before Registrant filed its November 17, 2015 motion, and were then entirely resolved in early 2016 when Petitioner produced the final single remaining document that had been requested.
34. This then all does not amount to even an order to compel discovery, let alone sanction Petitioner at all, and certainly not a reasonable foundation or justification for giving (as the Board did) the ultimate sanction of dismissal when Petitioner did nothing particularly wrong and nothing that was not fully resolved to the Registrant's fully satisfaction many months prior to the Board issuing the order to dismiss the case under sanction. Not least since when this action is heard on the merits, Petitioner is *certain* to prevail.

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


Dr. Timothy Langdell

Date: August 6, 2016