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

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
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Date	07/06/2012
Attachments	CoRegistrantsReplyToPetitionersOppositionJuly2012.pdf (5 pages)(63931 bytes)

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

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

In the Matter of Registration No. 3,105,816
For the Trademark EDGE
Issued June 20, 2006

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

**EA DIGITAL ILLUSIONS CE AB,
ELECTRONIC ARTS INC.,**

Petitioners in pro per,

v.

**EDGE GAMES, INC.
FUTURE PUBLISHING LTD**

Co-Registrants/Co-Defendants.

)
) **CO-REGISTRANT EDGE**
) **GAMES INC'S REPLY TO**
) **PETITIONERS' AND CO-**
) **REGISTRANT FUTURE'S**
) **OPPOSITION TO EDGE**
) **GAMES' MOTION TO**
) **SUSPEND PROCEEDINGS**
) **PENDING OUTCOME OF**
) **MOTION BEFORE CIVIL**
) **COURT.**
) **Cancellation No. 92051465**
)

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

First, Co-Registrant and Co-Defendant Edge Games, Inc. (“Edge”) notes that the attachment exhibited as “Exhibit A” to Petitioners’ and Co-Defendant Future’s (collectively “Respondents”) Opposition is not date stamped (it is not a conformed copy) and thus there is no evidence before the Board that such a “Motion to Strike” has actually been filed with the District Court. Despite there being a written reference to a filing date, this is not written by the court, and Edge thus presumes this Exhibit A is merely a draft by Mr. Klieger of a motion his client, Electronic Arts, Inc., may be contemplating filing on the date referenced, but which has not actually filed.

Certainly, Edge has not been served with any such motion (as is required by the court at the time of filing such a motion), nor has Edge been copied with any such motion by Mr Klieger or the Petitioners themselves even as a courtesy non-service copy, which further suggests the exhibited Motion to Strike is merely at best a draft copy that has not actually been filed with the District Court. In addition, there is no proof of service on Edge of such a Motion to Strike in Exhibit A, which further indicates that the exhibit is merely a draft document, not a motion that has actually been filed with the court and properly served on the other party or its representatives. Accordingly, in the absence of any proof that such a Motion to Strike has actually been filed and properly served, the Board should ignore the exhibit and assume there is no such Motion to Strike.

We note that Respondents once again point out that the Board only permitted Edge 20 days to file a motion with the District Court seeking reconsideration, review or modification of the final judgment. As we have previously stated, 20 days was an extremely unfairly short amount of time for the Board to give Edge to identify legal counsel and prepare and file such a document with the District Court. Further, we have previously stated (with relevant supporting case law) that where a court order is void on its face (as here), one cannot file a motion with the

court for reconsideration, review or modification of a void final judgment. At the most all one can do where a final judgment is void is to file a motion under FRCP 60(b)(4), and thus consequently it was legally impossible for Edge to act within the 20 days given by the Board, or at all, since what the Board required Edge to show proof of doing within 20 days simply cannot be done by anyone in a circumstance such as this where a final order is void on its face.

Further, as previously explained, 20 days was not sufficient for Edge to even gain legal advice as to what action to take given it is not legally possible to file for relief with a court from a void order by filing a motion for reconsideration, review or modification. Even now, the legal advice given to Edge by highly experienced trial and appellant attorneys is that what Edge felt forced to do in filing the motion under FRCP 60(b)(4) is not appropriate in a situation such as this where a final order is void *on its face*, and entirely void (not just *arguably partially* void). Motions under this FRCP 60, Edge is advised by both counsel and by the District Court Clerk, should be filed only when a final order is *potentially* void, or *potentially* void in part but not whole and should not be filed where an order is void on its face. Thus while Edge felt the Board had given it no choice by its order other than to file a motion Edge filed it since the Board gave it no alternative other than to do so or lose these proceedings unfairly.

Regardless of when filed, the outcome of the motion will have a direct bearing on these proceedings: put simply, if the District Court grants Edge's Motion to confirm the final judgment as void then these proceedings should clearly be terminated in Edge's favor. It would thus be unjust, and unfair, for the Board to terminate these proceedings and rule against Edge for simply failing to file with the District Court within the 20 days indicated. Edge thus respectfully repeats its request that the Board be flexible on its previously indicated 20 days and grant Edge an extension to the date it filed the motion, or to such date as is necessary to gain the court's ruling on the issue of the final order being void.

As to Respondent's repeated assertion that Edge could not file the Motion before the District Court in pro se, we respond that the Court clearly accepted the motion as valid since we have provided proof of its filing and acceptance in the form of the conformed copy. The Court Clerk always checks each filed motion for validity, and if Edge could not validly file the motion in pro se then the court would have rejected it and refused to process it. Further, again, we confirm that the District Court Clerk specifically confirmed to Edge that it may file the motion in pro se, it only must be legally represented for any actual appearance before the Judge in court. And as we have stated before, Edge will be represented by counsel at the hearing of the motion. If need be, Edge's counsel will ask the court to consider the motion filed by counsel, or if required will re-file the motion as Edge's counsel with leave of the court to do so. In the hopefully unlikely event the court asks that the motion be re-filed by Edge's counsel, then it will be promptly re-filed and Edge's counsel will ask that the hearing of the motion go ahead as scheduled.

The Board should thus please disregard Respondent's arguments in opposition, disregard its Exhibit A, and permit these proceedings to be stayed pending the outcome of the District Court hearing the Motion to deem the original final order as void.

Date: July 6, 2012

Respectfully submitted,

By: 

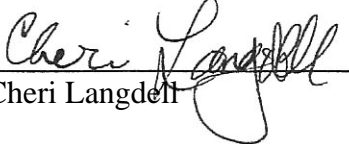
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Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Co-Defendant Edge Games Inc's Reply to Petitioners' and Co-Defendant Future's Joint Opposition to Edge Games' Request For Stay Pending Outcome of Motion Before Civil Court was served on the following parties of record, by depositing same in the U.S. Mail, first class postage prepaid, this 6th day of July, 2012:

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Cheri Langdell