



## PTAB Institutes IPR Despite Potential Time Bar to Petition

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In its preliminary response, patent owner Game and Technology Co., LTD. argued that a real party-in-interest to the petitioner was served with a complaint alleging infringement of the challenged patent over a year before the filing of the petition for *inter partes* review, thereby time-barring Wargaming Group Limited's petition. In support of this assertion, the patent owner submitted a declaration detailing the manner in which Wargaming's real party-in-interest was served.

On August 11, 2017, the parties and the Board held a conference call to discuss the issue of whether the petition was time barred. During the call, counsel for petitioner denied service was made when the patent owner alleged. In fact, petitioner submitted a declaration from the individual upon whom Game and Technology alleged service was made. Ex. 1017. Petitioner's declarant testified that he could not "recollect...receiving any documents" and that he "most likely [ ] wasn't in the office" when the documents were allegedly delivered. Decision, Paper 14 at p. 7; Ex. 1017 ¶¶3-5. Petitioner, however, "did not dispute that, if service of the complaint occurred pursuant to the Hague Convention more than one year before the filing of the Petition, as asserted by Patent Owner, the Petition would be time barred." Decision, Paper 14 at p. 6.

With petitioner and patent owner urging the Board to accept the testimony of their respective declarants as fact, the Board determined that the record needed to be developed further before a decision on the potential time-bar could be made. While this record is being developed, the Board instituted review of claims 1-7 of the challenged patent as unpatentable under 35 U.S.C. § 103(a) over the combined teachings of a U.S. Patent publication and a Dungeons and Dragons Player's handbook. The parties must now proceed with trial to

determine whether claims 1-7 are obvious over the cited references without knowing whether the petition was statutorily barred.

*Wargaming Group Limited v. Game and Technology Co., LTD.*, IPR2017-01082, Paper No. 14 (PTAB Oct. 6, 2017).

## Categories

Patent Trial & Appeal Board

35 U.S.C. § 103

Inter Partes Review

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