

PHOENIX S. PAK  
212.704.6259 telephone  
212.704.6288 facsimile  
Phoenix.pak@troutmansanders.com

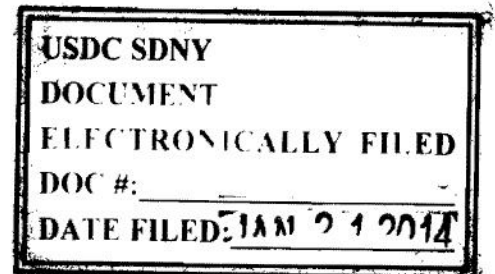
# TROUTMAN SANDERS

TROUTMAN SANDERS LLP  
Attorneys at Law  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174-0700  
212.704.6000 telephone  
troutmansanders.com

January 21, 2014

## VIA ECF FILING AND ELECTRONIC MAIL

The Honorable Katherine B. Forrest  
United States Courthouse  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312



**Re: Baseball Quick, LLC v. MLB Advanced Media, L.P., et al.,  
Case No. 1:11-cv-01735-KBF**

Dear Judge Forrest:

We represent Baseball Quick, LLC ("Baseball Quick") in the above-entitled matter and write pursuant to your Order entering a stay of this litigation pending reexamination of U.S. Patent No. 7,628,716 ("the '716 patent") and ordering that the parties notify the Court of "any relevant developments in the USPTO reexamination of the '716 Patent by letter." (Dkt. 140 at p. 5).

Last Friday, Examiner Saadat the USPTO Examiner assigned to the reexamination of the '716 patent reversed his previous action and allowed all of the claims of the patent. (Right of Appeal Notice ("RAN"), attached hereto). All 10 rejections that had been previously raised have now been withdrawn (RAN p. 4-5). The action concludes:

Claims 1-5 are confirmed. The prior art of record fails to disclose, teach, or suggest the following limitations of claim 1:

...editing the game recording of each appearance-at-bat to produce an edited recording by deleting substantially all game action other than (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in and out not associated with the game action resulting from the final pitch ...

(RAN p. 19).

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In its ruling granting the stay in this litigation, this Court stated, “[i]t is not this Court’s typical practice or inclination to stay patent infringement actions pending resolution of the USPTO reexamination process.” (Dkt. 140 at p. 2). Yet, the Court entered the stay, reasoning: “the clear message from the USPTO at this stage of the reexamination proceedings is that the ‘716 Patent will not survive the reexamination process, which will require this Court to dismiss Baseball Quick’s claims in this case that are based on infringement of the ‘716 Patent.” (Dkt. 140 at p. 3).

As the claims have now been allowed over all prior art references relied upon by MLBAM, the main premise upon which the stay was entered – that the claims would not survive the reexamination – can no longer form the basis for a litigation stay. Accordingly, Baseball Quick respectfully requests that the Court lift the pending stay. Any appeal that MLBAM may bring in the USPTO should not justify extending the stay and delaying the litigation any further at least because, by MLBAM’s own admission, the likelihood of success of any appeal is low:

For all *inter partes* re-examinations appealed to the P.T.A.B (and the B.P.A.I. before that), more than 92% were *not* reversed on appeal. (*Id.* at 2.) Similarly, for all *inter partes* re-examinations in Group Art Unit 3992 appealed to the P.T.A.B. (and the B.P.A.I. before that), more than 92% were *not* reversed on appeal. (*Id.* at 2.)

MLBAM Letter to Court dated Oct. 7, 2013 (emphasis in original).

Counsel for Baseball Quick can be available for a phone conference at the Court’s convenience to discuss the most expeditious path forward toward concluding claim construction and preparing for trial in this matter.<sup>1</sup>

Sincerely,

*s/ Phoenix S. Pak*  
Phoenix S. Pak

cc: Cynthia Rigsby (via email)

ordered

The parties shall appear at a conference to set a schedule in this case, on 1/27/14 at 2pm.

<sup>1</sup> We contacted counsel for MLBAM to ask whether they would consent to a lifting of the stay, however they indicated that they would not be able to respond in advance of this submission.

1/21/14 ← R. Forrest  
USDS