

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
V,)	C.A. No. 15-228 (RGA)
)	
ACTIVISION BLIZZARD, INC.,)	
)	
Defendant.)	
)	
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 15-282 (RGA)
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
)	
ACCELERATION BAY LLC,)	
)	
Plaintiff.)	
)	
v.)	
)	
TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC. and 2K SPORTS, INC.,)	C.A. No. 15-311 (RGA)
)	
)	
Defendants.)	

**SPECIAL MASTER ORDER NO. 2 AS TO CERTAIN DISCOVERY MOTIONS
BY BOTH PLAINTIFF AND DEFENDANTS**

Before me are Motions for Discovery from both Plaintiff and Defendants as follows:
Plaintiff’s Motion to Compel Depositions, Responses to Interrogatories Nos. 10-11, and
Production of Source Code; and Defendants’ Motion to Compel Plaintiff to Further Respond to

Interrogatories No. 7 and 9 Regarding Infringement Contentions, Granting a Protective Order as to Further Technical Discovery, and Compelling Plaintiff to Respond to Interrogatory No. 5 and Produce Plaintiff's Testing of Defendants' Products.

These Motions were heard on April 14, 2016, following submissions by the parties of briefs and reply briefs, affidavits, various exhibits and documents comprising more than two "bankers boxes". I will first address Plaintiff's Motion and then Defendants' Motion.

1. Plaintiff's Motion to Compel Depositions.

Plaintiff requests that Defendants produce witnesses in response to Plaintiff's Rule 30(b)(6) Deposition Notices served on January 5, 2016. Defendants contend that they ought not to be compelled to produce witnesses until Plaintiff has provided "proper infringement contentions sufficient to allow Defendants to prepare witnesses". Plaintiff has produced over 5,000 pages of claim charts and other documents purporting to be its infringement claims. Defendants, however, based on the affidavit of Professor Karger, contend that Plaintiff's infringement contentions provided on or about March 2, 2016 failed to identify what is actually accused and failed to provide notice to Defendants as to how the accused products supposedly meet the key limitations that were added to the claims regarding the patents. Plaintiff responds that Defendants must have understood Plaintiff's infringement theories sufficiently when Defendants produced what Defendant described as the "relevant" portions of their source code.

The legal test as to whether the infringement claims are sufficient for the purpose of scheduling depositions at this stage in the case is a "notice" standard, not whether Plaintiff has provided sufficient evidence of infringement. *Invensas Corp. v. Renesas Elecs. Corp.* 287 F.R.D. 273, 283 (D. Del 2012). Applying both the liberal "notice" standard and considering the negotiations that have occurred between the parties to narrow the scope of the Rule 30(b)(6)

deposition, I am satisfied that Plaintiff may proceed with these depositions but only to the extent of the negotiated limitations on the scope of the depositions.

2. Plaintiff's Motion to Compel Responses to Interrogatories Nos. 10-11.

Plaintiff's interrogatories 10-11 are opposed by Defendants on the grounds that the interrogatories were issued that after Plaintiff exceeded its allotment of 15 common interrogatories, and that interrogatories 10-11 are excessively broad and burdensome. Defendants also assert that the interrogatories are redundant of interrogatory 5, to which Defendants have responded.

I find for the Defendants as Plaintiff has exceeded the number of common interrogatories and interrogatory 10-11 would appear to cover every aspect of Defendants' accused games.

3. Plaintiff's Motion for Production of Source Code.

Plaintiff seeks production of the source code for a particular game referenced in the briefs as "PvZ2". Plaintiff represents that it has provided an infringement claim for this game and the Defendants' only objection to its production relates to the role of one of Plaintiff's attorneys. During the hearing, Plaintiff assured Defendants that the attorney in question has not and will not review any source code until allowed to do so. Based on that representation, Defendants will produce the requested source code.

4. Defendant's Motion to Compel Plaintiff to Provide Proper Infringement Contention and Responses to Interrogatory Nos. 7 and 9.

Defendants, relying again on the affidavit of Professor Karger, contend that Plaintiff's responses to interrogatories 7 and 9 are incomplete. For purposes of scheduling the Rule 30(b)(6) deposition, I concluded that Plaintiff's disclosures were sufficient for that purpose. However, I am not satisfied that Plaintiff has fulfilled its obligation to completely respond to interrogatories 7 and 9. Furthermore, interrogatories impose a burden on a party to supplement

its responses as more information becomes available to it. Accordingly, Plaintiff shall provide further responses to interrogatories 7 and 9 as soon as reasonably possible.

5. Defendant's Motion to Require Plaintiff to Respond to Interrogatory No. 5 and to Produce Its Testing Documents.

Defendants seek from interrogatory 5 to learn of Plaintiff's testing of Defendants' products. Plaintiff objects on the grounds that such testing is privileged and work product. Defendants respond that any privilege has been waived where Plaintiff has relied on such testing to support its infringement contentions. At the hearing, Plaintiff represented that there had been no testing by it for its infringement claims and contentions. Based upon that representation, Defendants were willing to withdrawal their Motion to Compel Further Response to Interrogatory No. 5.

In conclusion, I appreciate the thorough briefing and presentation by Counsel for the parties. I would expect them to work in good faith to implement this Order in a timely fashion.

/s/ Allen M. Terrell, Jr.

Special Master Allen M. Terrell, Jr.

Dated: April 19, 2016