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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC : CA NO. 15-228-RGA,
: 15-282-RGA,
Plaintiff, : 15-311-RGA

v. : May 2, 2016

:
ACTIVISION BLIZZARD INC., et :
al., :
: :
Defendants, : 2:00 o'clock p.m.

.....

TRANSCRIPT OF MOTION TO DISMISS FOR LACK OF STANDING
BEFORE THE HONORABLE RICHARD G. ANDREWS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: POTTER, ANDERSON & CORROON
BY: PHILIP A. ROVNER, ESQ

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-and-

KRAMER LEVIN NAFTALIS & FRANKEL

BY: PAUL J. ANDRE, ESQ

BY: AARON M. FRANKEL, ESQ

For Defendants:

MORRIS, NICHOLS, ARSHT & TUNNELL

BY: STEPHEN J. KRAFTSCHIK, ESQ

-and-

WINSTON & STRAWN

BY: DAVID P. ENZMINGER, ESQ

BY: MICHAEL A. TOMASULO, ESQ

Also present:

OMER SALIK

Activision Blizzard - Representative

Court Reporter:

LEONARD A. DIBBS

Official Court Reporter

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P R O C E E D I N G S

(The proceedings occurred at 2:00 o'clock p.m. as follows:

THE COURT: Good afternoon. Please be seated.
Sorry for the delay.

This is Acceleration Bay v. Activation Blizzard, Civil Action No. 15-228, and also other related cases; 15-282 and 15-311.

Mr. Rovner, who have you got with you?

MR. ROVNER: Good afternoon, your Honor.
Phil Rovner from Potter, Anderson for the plaintiff.
With me is Paul Andre and Aaron Frankel from Kramer Levin.

THE COURT: Good afternoon to you.

THE COURT: Mr. Kraftschik?

MR. KRAFTSCHIK: Good afternoon, your Honor.
Stephen Kraftschik from Morris Nichols.
With me is David Enzminger and Michael Tomasulo from Winston & Strawn.

And from one of the clients is Omer Salik from Activision Blizzard.

THE COURT: Good afternoon to you all.

Mr. Enzminger, are you making the argument here?

MR. ENZMINGER: Yes, I am.

1 THE COURT: All right.

2 You may proceed.

3 MR. ENZMINGER: I have hard copies of our presentation,
4 if I may hand them up?

5 THE COURT: Sure.

6 (Pause)

7 MR. ENZMINGER: Good afternoon, your Honor.

8 David Enzminger from Winston & Strawn on behalf of all
9 of the defendants.

10 We have moved for Dismissal for Lack of Standing based
11 on the production by Boeing of the agreement between Boeing and
12 the plaintiffs, which we received nine months after the
13 litigation started, in which it became clear that the plaintiffs
14 do not have standing to bring this litigation.

15 I will make four basic arguments in my presentation
16 today.

17 The first two deal with prudential standing and the
18 second two deal with constitutional standing.

19 We have reversed the traditional order, because the
20 prudential standing arguments apply to the entire case, and all
21 the products. The constitutional standing arguments apply only
22 to a subset of products, although, they are a majority of the
23 products, but not all.

24 So let me start with the first concept with respect to
25 prudential standing, which is the one issue that is completely

1 undisputed in this case, and it is that Boeing owns an exclusive
2 right to practice this patent, an exclusive right to enforce
3 this patent, and exclusive right to sue on this patent, within
4 its reserved field of use.

5 There is no dispute about that. Boeing is an
6 exclusive -- at least an exclusive licensee. We contend that
7 they are the owner. But Boeing has exclusive rights to this
8 patent, and they are not in this courtroom.

9 THE COURT: If they were in this courtroom, all the
10 issues would be resolved, right?

11 MR. ENZMINGER: If they were in this courtroom, all of
12 the prudential standing issues would be resolved.

13 If they were in this courtroom, there would be a
14 dispute as between Acceleration Bay and Boeing concerning the
15 defendants' products that have flight simulators, because
16 Acceleration Bay has no rights to products that include flight
17 simulation technology.

18 THE COURT: So, in other words, if Boeing was joined,
19 they would both be plaintiffs, and, so, Boeing could sue you on
20 -- assuming you're right about what's covered by simulation,
21 Boeing could sue you for whatever part Acceleration Bay couldn't
22 sue you on?

23 MR. ENZMINGER: Boeing would be able to make that
24 allegation, yes.

25 THE COURT: Okay.

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