

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

ACCELERATION BAY LLC, a Delaware) Limited Liability Corporation,)) Plaintiff,)) v.)) ACTIVISION BLIZZARD, INC.,) a Delaware Corporation,)) Defendant.)		C.A. No. 15-228-RGA DEMAND FOR JURY TRIAL
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**PLAINTIFF ACCELERATION BAY LLC'S OPPOSITION TO
ACTIVISION BLIZZARD, INC.'S MOTION TO DISMISS**

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Dated: May 21, 2015

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I. STATEMENT AND NATURE OF THE PROCEEDINGS

On March 11, 2015, Plaintiff Acceleration Bay LLC (“Acceleration Bay”) filed a complaint against Defendant Activision Blizzard, Inc. (“Activision”), alleging six counts of direct infringement and three counts of indirect infringement of the following six patents: U.S. Patent Nos. 6,701,344 (the “’344 Patent”), 6,714,966 (the “’966 Patent”), 6,732,147 (the “’147 Patent”), 6,829,634 (the “’634 Patent”), 6,910,069 (the “’069 Patent”) and 6,920,497 (the “’497 Patent”) (collectively the “Patents-in-Suit”). D.I. 1. On March 31, 2015, Acceleration Bay filed an amended complaint adding to each direct infringement count allegations that Activision is jointly and vicariously liable for infringement by the users of its products because Activision has direction or control over those users. D.I. 7 (the “Complaint”).

On May 4, 2015, Activision sought to dismiss Acceleration Bay’s three counts of induced infringement of the ‘147, ‘069 and ‘497 Patents (collectively the “Method Patents”). D.I. 11, 12. Activision does not seek dismissal of the six counts of direct infringement of the Patents-in-Suit. *Id.*

II. SUMMARY OF ARGUMENT

1. Activision’s motion should be denied because Acceleration Bay plausibly pleads that Activision’s customers, users and developers are each single *direct* infringers who have been induced by Activision to perform “all the steps of the method claims.” D.I. 7, ¶¶ 75, 106, 127. At this pleading stage, these factual allegations must be taken as true, which alone defeats Activision’s motion.

2. Activision’s motion should also be denied because Acceleration Bay plausibly pleads that Activision had knowledge of the Method Patents and the factual basis for Acceleration Bay’s infringement theories at least as of the filing of this action, which is sufficient to state a claim of post-filing induced infringement at this pleading stage.

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