

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, a Delaware))	
Limited Liability Corporation,)	
)	C.A. No. 15-228-RGA
Plaintiff,)	
)	DEMAND FOR JURY TRIAL
v.)	
)	
ACTIVISION BLIZZARD, INC.,)	
a Delaware Corporation,)	
)	
Defendant.)	

PLAINTIFF ACCELERATION BAY LLC'S OPPOSITION TO
ACTIVISION BLIZZARD, INC.'S MOTION TO DISMISS

OF COUNSEL:

Paul J. Andre
Lisa Kobialka
James R. Hannah
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700

Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
POTTER ANDERSON & CORROON LLP
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

Attorneys for Plaintiff Acceleration Bay LLC

Dated: May 21, 2015

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT AND NATURE OF THE PROCEEDINGS	1
II. SUMMARY OF ARGUMENT	1
III. STATEMENT OF FACTS	2
IV. ARGUMENT	2
A. Activision's Motion Should Be Denied Because Acceleration Bay Alleges Inducement of a Single Direct Infringer	2
B. Acceleration Bay Alleges That Activision Knew of the Asserted Infringement Claims At Least As of the Filing of This Action	5
V. CONCLUSION	7

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Amakai Techs. Inc. v. Limelight Networks, Inc.</i> , 2015 WL 2216261 (Fed. Cir. May 13, 2015)	3
<i>Andrulis Pharms. Corp. v. Celgene Corp.</i> No. 13-1644-RGA, 2014 WL 1572906 (D. Del. Apr. 10, 2014).....	5
<i>Apeldyn Corp. v. Sony Corp.</i> , 852 F. Supp. 2d 568 (D. Del. 2012).....	6
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3
<i>In re Bill of Lading Transmission & Processing Sys. Patent Litig.</i> , 681 F.3d 1323 (Fed. Cir. 2012).....	4
<i>Chalumeau Power Systems LLC v. Alcatel-Lucent</i> C.A. No. 11-1175-RGA, 2012 WL 6968938 (D. Del. July 18, 2012).....	7
<i>Courtesy Prods., L.L.C. v. Hamilton Beach Brands, Inc.</i> , 2014 WL 5780877 (D. Del. Nov. 5, 2014)	6
<i>Deston Therapeutics LLC v. Trigen Labs. Inc.</i> , 723 F. Supp. 2d 665 (D. Del. 2010).....	4
<i>Global-Tech Appliances, Inc. v. SEB S.A.</i> , 131 S. Ct. 2060 (2011).....	6
<i>Internet Media Corp. v. Hearst Newspapers, LLC</i> , Civ. No. 10-690-SLR, 2011 WL 2559556 (D. Del. June 28, 2011).....	4
<i>IpVenture Inc. v. Lenovo Group Ltd.</i> , C.A. No. 11-588-RGA, 2013 WL 126276 (D. Del. Jan. 8, 2013)	6
<i>McRo, Inc. v. Rockstar Games, Inc.</i> , C.A. No. 12-1513-LPS-CJB, 2014 WL 1051527 (D. Del. Mar. 17, 2014)	3
<i>Novartis Pharms. Corp. v. Actavis, Inc.</i> , C.A. No. 12-366-RGA-CJB, 2012 WL 6212619 (D. Del. Dec. 5, 2012).....	4
<i>Rosenau v. Unifund Corp.</i> , 539 F.3d 218 (3d Cir. 2008).....	3

Walker Digital, LLC v. Facebook, Inc.,
852 F. Supp. 2d 559 (D. Del. 2012).....4, 6

Other Authorities

Fed. R. Civ. P. 8(a)(2).....3, 6

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 singled~~ed~~*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.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.