

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.) REDACTED - PUBLIC VERSION
)
Defendant.)

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 15-282 (RGA)
)
ELECTRONIC ARTS INC.,) REDACTED - PUBLIC VERSION
)
Defendant.)

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 15-311 (RGA)
)
TAKE-TWO INTERACTIVE SOFTWARE,) REDACTED - PUBLIC VERSION
INC., ROCKSTAR GAMES, INC. and)
2K SPORTS, INC.,)
Defendants.)

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF
THEIR MOTION FOR ATTORNEYS' FEES**

OF COUNSEL:

Michael A. Tomasulo
Gino Cheng
David K. Lin
WINSTON & STRAWN LLP
333 South Grand Avenue, 38th Floor
Los Angeles, CA 90071
(213) 615-1700

David P. Enzminger
WINSTON & STRAWN LLP
275 Middlefield Road
Suite 205
Menlo Park, CA 94025
(650) 858-6500

Daniel K. Webb
Kathleen B. Barry
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600

Originally Filed: August 15, 2016
Redacted Version Filed: August 22, 2016

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jack B. Blumenfeld (#1014)
Stephen J. Kraftschik (#5623)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
skraftschik@mnat.com

Attorneys for Defendants

TABLE OF CONTENTS

	Page
I. Defendants Are Prevailing Parties	1
II. These Cases Are Exceptional.....	4
A. Acceleration Bay’s Assertion Of Standing Was Objectively Unreasonable Under Longstanding Supreme Court And Federal Circuit Precedent	4
B. Acceleration Bay Litigated These Cases In An Unreasonable Manner	7
III. Fees Are Warranted Under The Court’s Inherent Power	9
IV. The Fees Are Reasonable And Will Be Itemized At The Appropriate Time	9

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Advanced Video Techs. LLC v. HTC Corp.</i> , 2015 WL 7621483 (S.D.N.Y. Aug. 28, 2015).....	7
<i>Alfred E. Mann Found. For Sci. Research v. Cochlear Corp.</i> , 604 F.3d 1354 (Fed. Cir. 2010).....	5, 6
<i>Alps South, LLC v. Ohio Willow Wood Co.</i> , 787 F.3d 1379 (Fed. Cir. 2015).....	4
<i>Apple v. Rensselaer Polytechnic Inst.</i> , IPR2014-00319, Paper 12 (P.T.A.B. June 12, 2014).....	3
<i>Aspex Eyewear, Inc. v. Miracle Optics, Inc.</i> , 434 F.3d 1336 (Fed. Cir. 2006).....	5
<i>Audubon Eng'g Co., LLC v. Int'l Procurement & Contracting Grp., LLC</i> , 2015 WL 4084053 (D. Del. July 6, 2015).....	10
<i>Bluestone Innovations LLC v. Nichia Corp.</i> , 2013 WL 1729814 (N.D. Cal. Apr. 22, 2013).....	6, 7
<i>Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.</i> , 532 U.S. 598 (2001).....	1, 2
<i>Chalumeau Power Sys. LLC v. Alcatel-Lucent</i> , 2014 WL 4675002 (D. Del. Sept. 12, 2014).....	10
<i>Clouding IP, LLC v. EMC Corp.</i> , 2015 WL 5766872 (D. Del. Sept. 30, 2015).....	5
<i>CRST Van Expedited, Inc. v. E.E.O.C.</i> , 136 S. Ct. 1642 (2016).....	1, 2
<i>Deep Sky Software, Inc. v. Sw. Airlines Co.</i> , 2015 WL 10844231 (S.D. Cal. Aug. 19, 2015).....	10
<i>Enzo APA & Son, Inc. v. Geapag A.G.</i> , 134 F.3d 1090 (Fed. Cir. 1998).....	4
<i>Fieldturf, Inc. v. Sw. Recreational Indus., Inc.</i> , 357 F.3d 1266 (Fed. Cir. 2004).....	6
<i>FR Indus., Inc. v. Century Steps, Inc.</i> , 477 F.3d 1348 (Fed. Cir. 2007).....	2

H.R. Techs., Inc. v. Astechologies, Inc.,
275 F.3d 1378 (Fed. Cir. 2002).....2

Hygienics Direct Co. v. Medline Indus., Inc.,
33 F. App’x 621 (3d Cir. 2002)2

IA Labs CA, LLC v. Nintendo Co.,
2012 WL 1565296 (D. Md. May 1, 2012), *aff’d*, 515 F. App’x 892 (Fed. Cir.
2013)..... 10

Independent Wireless Tel. Co. v. Radio Corp.,
269 U.S. 459 (1926)5

Int’l Gamco, Inc. v. Multimedia Games, Inc.,
504 F.3d 1273 (Fed. Cir. 2007).....5, 6

MarcTec, LLC v. Johnson & Johnson,
664 F.3d 907 (Fed. Cir. 2012).....8

Mars, Inc. v. JCM Am. Corp.,
2009 WL 2356834 (D.N.J. July 30, 2009)2

Media Techs. Licensing, LLC v. Upper Deck Co.,
334 F.3d 1366 (Fed. Cir. 2003).....3

Octane Fitness, LLC v. ICON Health & Fitness, Inc.,
134 S. Ct. 1749 (2014) 2, 4, 7

Parallel Iron LLC v. NetApp Inc.,
70 F. Supp. 3d 585 (D. Del. 2014).....9

Rambus v. Infineon Techs. AG,
318 F.3d 1081 (Fed. Cir. 2003)..... 10

Semtek Int’l Inc. v. Lockheed Martin Corp.,
531 U.S. 497 (2001)2

TufAmerica, Inc. v. Michael Diamond et al.,
2016 WL 1029553 (S.D.N.Y. March 9, 2016) 2, 7

TufAmerica, Inc. v. Michael Diamond et al.,
2016 WL 3866578 (S.D.N.Y. July 12, 2016) 1, 2, 7

Walker Digital, LLC v. Expedia, Inc.,
2013 WL 5799912 (D. Del. 2013) 2, 5

Walker Digital, LLC, v. Expedia, Inc.,
950 F. Supp. 2d 729 (D. Del. 2013)2

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.