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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. : January 10, 2017

ACTIVISION BLIZZARD INC., et :  
al., :  
 :  
Defendants. : 10:03 o'clock a.m.

.....

TRANSCRIPT OF MOTION FOR ATTORNEY'S FEES  
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: JACK B. BLUMENFELD

-and-

WINSTON & STRAWN

BY: DAVID P. ENZMINGER, ESQ

BY: MICHAEL A. TOMASULO, ESQ

Court Reporter:

LEONARD A. DIBBS

Official Court Reporter

P R O C E E D I N G S

(The proceedings occurred at 10:03 o'clock a.m. as follows:)

:02:39

THE COURT: All right.

Good morning. Please be seated.

This is Acceleration Bay v. Activision Blizzard, Civil Action No. 15-228, plus two others other cases.

Mr. Rovner?

:02:52

Here you are.

MR. ROVNER: Good morning, your Honor.

THE COURT: Good morning.

MR. ROVNER: Happy new year.

:03:06

With me representing Acceleration Bay is Paul Andre and Aaron Frankel from Kramer Levin.

THE COURT: All right. Good morning.

Mr. Blumenfeld, good morning to you.

MR. BLUMENFELD: Thank you.

:03:17

Jack Blumenfeld from Morris Nichols for all of the defendants.

And with me is David Enzminger and Mike Tomasulo from Winston & Strawn.

With the Court's permission, Mr. Enzminger is going to be doing the presentation for the defendants this morning.

:03:29

THE COURT: All right. Okay.

1 Mr Enzminger.

2 MR. ENZMINGER: Good morning, your Honor.

3 We're here on a Motion for Attorneys' Fees following  
4 the dismissal of all of these actions for Lack of Standing.

:03:49

5 Under the Supreme Court's decision in Octane Fitness,  
6 the question in this case is whether it stands out from the  
7 others. And under the Court's inherent authority, the question  
8 is whether the suit was brought in good faith.

:04:06

9 We submit that the fees are appropriate under both  
10 tests for the following reasons.

:04:23

11 First, the issue of standing in this case was not a  
12 close call, so much so that it stands out from the others, and  
13 demonstrates that the plaintiff didn't have a good faith basis  
14 to sue these defendants based on the rights that it had when it  
15 filed these cases.

:04:40

16 Second, in furtherance of that, Boeing's exclusive  
17 right to practice the patent, defeated standing that any  
18 reasonable litigant looking at that License Agreement would have  
19 understood that the rights retained by Boeing precluded  
20 standing. Regardless of whether the Court determined that  
21 Boeing was the owner or a licensee, under controlling Supreme  
22 Court Federal Circuit, and decisions of this District Court, all  
23 were very clear that the plaintiff lacked standing. In fact,  
24 it's no exaggeration to say that there was no authority for the

:05:00

25 contract position.

1 All of this shows that the case was exceptional.

2 The plaintiff was created for the sole purpose of  
3 exploiting these patents against these defendants, which is what  
4 we heard in that standing hearing. And yet, they didn't acquire  
5 ownership before they sued.

:05:15

6 As part of the documents, they created a separate  
7 public assignment document, which did not accurately reflect the  
8 true terms of the deal, and purported to say that they owned all  
9 right, title, and interest in the patent to the same extent that  
10 Boeing owned them before the transaction.

:05:34

11 That was the document they filed with the Patent  
12 Office. That was the document in their initial disclosures they  
13 pointed us to by identifying the Patent Office assignment  
14 document, and for nine months did not disclose that there was  
15 another agreement that had substantially different terms. Terms  
16 which showed clearly upon first reading to anyone in this field  
17 that they lacked standing.

:05:53

18 Further, they never produced that document to us.

19 We eventually got it nine months after the litigation  
20 began via a subpoena from Boeing, and only after threatening to  
21 move to compel.

:06:12

22 THE COURT: Now, the defendants or the plaintiff says  
23 that was two weeks after the Protective Order was entered, is  
24 that right?

:06:30

25 MR. ENZMINGER: It was about six -- if I'm remembering

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