

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.)	
)	
Defendant.)	

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

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

~~PROPOSED~~ **RULE 16 SCHEDULING ORDER**

This 29 day of October, 2015, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Initial Disclosures & Discovery.

a. Rule 26(a)(1) Initial Disclosures. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) on or before **November 2, 2015**.

b. By **November 2, 2015** Plaintiff shall specifically identify the accused products and the asserted patents Defendants allegedly infringe, and produce the file history for each asserted patent.

c. By **November 12, 2015**, Plaintiff and each Defendant Group¹ shall disclose:

i. Custodians. The 10 custodians most likely to have discoverable information in their possession, custody or control, from the most likely to the least likely. The custodians shall be identified by name, title, role in the instant dispute, and the subject matter of the information.

ii. Non-custodial data sources.² A list of the non-custodial data sources that are most likely to contain non-duplicative discoverable information for preservation and production consideration, from the most likely to the least likely.

iii. Notice. The parties shall identify any issues relating to:

1. Any ESI (by type, date, custodian, electronic system or other criteria) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i).

2. Third-party discovery under Fed. R. Civ. P. 45 and otherwise, including the timing and sequencing of such discovery.

3. Production of information subject to privacy protections,

¹ The three Defendant Groups are: (1) Activision|Blizzard, Inc. (“Activision”); (2) Electronics Arts, Inc. (“EA”); and (3) Take-Two Interactive Software, Inc., Rockstar Games, Inc., and 2K Sports, Inc. (collectively, “Take-Two”).

² That is, a system or container that stores ESI, but over which an individual custodian does not organize, manage or maintain ESI in the system or container (e.g., enterprise system or database).

including information that may need to be produced from outside of the United States and subject to foreign laws.

d. Defendants shall produce to Plaintiff the core technical documents related to the accused product(s) and accused networking functionalities (to the extent such documents exist), including but not limited to operation manuals, product literature, schematics, and specifications as follows:

- i. December 16, 2015: for specific games and version identified in Original Complaint as to Take-Two and EA and the First Amended Complaint as to Activision.³
- ii. January 25, 2016: for other games or versions identified in Plaintiff's ID of Accused Products.

e. Plaintiff shall produce to Defendant(s) an initial claim chart relating each accused product to the asserted claims each product allegedly infringes as follows:

- i. February 17, 2016: for specific games and version identified in Original Complaint as to Take-Two and EA and the First Amended Complaint as to Activision, as well as any other versions of those games for which core technical documents were produced prior to December 16, 2015.
- ii. March 25, 2016: for other games or versions identified in

³ Specifically, those games are:

<u>Activision/Blizzard</u>	<u>EA</u>	<u>Take Two</u>
<ul style="list-style-type: none"> • World of Warcraft • Destiny • Call of Duty: Advanced Warfare 	<ul style="list-style-type: none"> • FIFA 15 • NHL 15 • Tiger Woods PGA Tour 14 • Crysis 3 • Plants v. Zombies: Garden Warfare 	<ul style="list-style-type: none"> • Grand Theft Auto V • Grand Theft Auto Online • NBA 2K15 • NBA 2K16

Plaintiff's ID of Accused Products.

f. By **April 22, 2016**, Defendants shall produce to Plaintiff their initial invalidity contentions for each asserted claim, as well as the related invalidating references (e.g., publications, manuals and patents).

g. Absent a showing of good cause, follow-up discovery shall be limited to a term of six (6) years before the filing of the complaint, except that discovery related to asserted prior art or the conception and reduction to practice of the inventions claimed in any patent-in-suit shall not be so limited.

2. Joinder of Other Parties and Amendment of Pleadings.

All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **July 22, 2016**.

3. Discovery.

a. Discovery Cut Off. All fact discovery in these cases shall be initiated so that it will be completed on or before **January 20, 2017**. All expert discovery in this case shall be initiated so that it will be completed on or before **June 2, 2017**.

b. Document Production. Document production shall be substantially complete by **September 14, 2016**. No later than **March 2, 2016**, if the producing party elects to use search terms to locate potentially responsive ESI, it shall disclose the search terms to the requesting party. Absent a showing of good cause, a requesting party may request no more than 10 additional terms be used in connection with the electronic search. Focused terms, rather than over-broad terms (e.g. product and company names), shall be employed. The producing party shall search (i) the non-custodial data sources identified in accordance with paragraph 1(c); and (ii) emails and other ESI maintained by the custodians identified in accordance with paragraph 1(c).

c. Requests for Admission.

A maximum of 35 requests for admission are permitted for each side. Requests for admission regarding the authenticity of a document do not count against this total.

d. Interrogatories.

Plaintiff may serve 15 common⁴ interrogatories and 10 additional interrogatories to each Defendant Group. Defendants may serve 15 common interrogatories and 10 additional interrogatories per Defendant Group.

e. Depositions.

i. Limitation on Hours for Deposition Discovery.

The total number of depositions and time limits will be subject to the Federal Rules of Civil Procedure, and 30(b)(6) depositions will be considered independent of personal depositions for purposes of the time limits. Defendants may depose each named inventor for a maximum of 14 hours per inventor, not to exceed 7 hours of deposition time per day. Plaintiff or Defendants may request additional hours from the Court for good cause. The 14 hours of deposition for each inventor shall not exceed two days and those two days of deposition will be scheduled within a reasonable amount of time of each other to alleviate any undue burden on the inventor.

The foregoing limitations do not apply to depositions of experts that will be limited to a maximum of 7 hours per expert report. For example, if an expert submits two expert reports on infringement and an expert report on validity, that expert will be subject to a total of 21 hours of deposition (7 hours for each of the expert reports on infringement and 7 hours for the expert report on validity).

ii. Location of Depositions. Unless otherwise agreed to by the parties, depositions shall take place within fifty (50) miles of the place of employment of the deponent.

f. Discovery Matters and Disputes Relating to Protective Orders. Counsel for the parties shall meet and confer in good faith and attempt to resolve or otherwise narrow any

⁴ For the purposes of this order "common" discovery requests mean that the Plaintiff propounds the same request to all Defendant Groups, who answer the request individually, and that Defendants propound one request to the Plaintiff who answers the request to all Defendants.

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