

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 13, 2016
 :
ACTIVISION BLIZZARD INC., et :
al., :
 :
Defendants, : 1:33 o'clock p.m.
.....

TRANSCRIPT OF DISCOVERY DISPUTE
BEFORE THE HONORABLE RICHARD G. ANDREWS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: POTTER, ANDERSON & CORROON
BY: PHILIP A. ROVNER, ESQ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP
BY: AARON M. FRANKEL, ESQ

For Defendants: MORRIS, NICHOLS, ARSHT & TUNNELL
BY: JACK B. BLUMENFELD, ESQ

-and-

WINSTON & STRAWN LLP
BY: DAVID P. ENZMINGER, ESQ

Court Reporter: LEONARD A. DIBBS
Official Court Reporter

1 P R O C E E D I N G S

2

3 (The proceedings occurred at 1:33 o'clock p.m. as
4 follows:)

5 THE COURT: All right.

6 Good afternoon. Please be seated.

7 This is Acceleration Bay LLC v. Activision Blizzard,
8 Inc., plus two related cases.

9 Mr. Rovner?

10 MR. ROVNER: Good afternoon, Your Honor.

11 Phil Rovner from Potter, Anderson & Corroon for the
12 plaintiff in the three cases, the two related cases.

13 And with me is Aaron Frankel from Kramer Levin in New
14 York.

15 THE COURT: Mr. Blumenfeld?

16 MR. BLUMENFELD: Good afternoon, your Honor.

17 Jack Blumenfeld from Morris Nichols for the defendants
18 in all three cases.

19 With me today is a David Enzminger from Winston &
20 Strawn in Los Angeles.

21 THE COURT: All right.

22 So, mister -- sorry, I read the papers.

23 Mr. Frankel, do you want to sum up what your view is,
24 plus anything that's happened since -- in the last 24 hours in
25 about three minutes or so?

1 MR. FRANKEL: Three minutes. Okay, your Honor.

2 We're here because we need your help getting this case
3 back on track, focusing on the substance. I know there are
4 discovery disputes before you all the time.

5 I'm not saying that this is the most outrageous conduct
6 that we've ever seen, and we need sanctions, and fees, and all
7 that.

8 We have a fundamental disagreement with the defendants
9 about their obligations for core-technical discovery, which
10 we're hoping that you'll be able to clarify today.

11 On December 16th, when we were supposed to get the core
12 productions, we got 75,000 pages of documents. There were four
13 technical documents from one of the five defendants. The rest
14 of it was completely irrelevant.

15 And we raised the issue -- what we were told is, we
16 really don't have any documents. What you need to look at is
17 the source code.

18 And since we've pursued this issue, brought this issue
19 to the Court's attention, we've received several rounds of
20 supplemental production, confirming that these technical
21 documents exist, including the Declarations, which were put in
22 yesterday, where the officers from several of the defendants
23 say, we do have technical documents, other than source code, we
24 just don't think they're as important as the source code.

25 So we know the documents are there. And we've heard

1 from the defendants that they produced some, there's more to
2 come, but what we don't have is a date certain.

3 So what we're hoping you can do today is to clarify the
4 obligation of defendants.

5 THE COURT: What kind of technical core documents are
6 you expecting them to have, or that they say they have, that you
7 have not been given?

8 MR. FRANKEL: Well, the way software engineering works,
9 when you have a large team, is people work from design
10 documents, specification documents that describes the
11 functionality.

12 Then the teams of -- large teams of programmers turn
13 those documents into the source code.

14 And, for example, in the case of Electronic Arts, there
15 are literally 7.5 million files of source code -- not pages or
16 lines -- 7.5 million files.

17 And without this kind of information, someone could
18 spend a lifetime reading through those source code files without
19 really getting to the functionality that they need.

20 Having those sign documents, and it's the sort of --

21 THE COURT: So by "design documents," you mean
22 something that is written before the source code is written
23 saying, here's roughly what we're trying to accomplish?

24 MR. FRANKEL: That's -- that's one type.

25 And then another type of documents, which are often

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.