

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-453 (RGA)

ACTIVISION BLIZZARD, INC.,)
)
Defendant.)

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-454 (RGA)

ELECTRONIC ARTS INC.,)
)
Defendant.)

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-455 (RGA)

TAKE-TWO INTERACTIVE SOFTWARE,)
INC., ROCKSTAR GAMES, INC., and 2K)
SPORTS, INC.,)
)
Defendants.)

**PLAINTIFF ACCELERATION BAY LLC'S
RESPONSE TO DEFENDANTS' NOTICE REGARDING *INTER PARTES* REVIEW**

Plaintiff Acceleration Bay LLC (“Acceleration Bay”) hereby responds to the April 4, 2017 Notice Regarding *Inter Partes* Review of Defendants Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., Rockstar Games, Inc. and 2K Sports, Inc. (CA 16-453, D.I. 106; CA 16-454, D.I. 78; CA 16-455, D.I. 77, the “IPR Notice”).

Defendants' IPR Notice mischaracterizes the record in the IPR proceedings in two important respects.

First, the Patent Trial and Appeal Board ("PTAB") has *not* made any findings that any asserted (or unasserted) claims are invalid as indefinite. Instead, the PTAB declined to institute review of claims 13-15 of U.S. Patent No. 6,701,344, claim 13 of U.S. Patent No. 6,714,966 and claims 9 and 16 of U.S. Patent No. 6,920,497. The PTAB found that these claims contain means-plus function limitations that it was unable to construe based on only the limited preliminary briefing in Defendants' Petitions and Acceleration Bay's Preliminary Responses and that, "neither party provides much analysis in support of its respective position." *See, e.g.*, IPR 2015-01970, Paper 9 at 9-10; IPR2015-01953, Paper 8 at 10 ("we are unable to construe claim 13, and dependent claims 14 and 15, *for purposes of this decision.*") (emphasis added). The parties will be fully briefing the construction of these claim limitations to the Court in connection with the claim construction procedures set forth in the Scheduling Order.

Second, Defendants incorrectly identify as "asserted claims found invalid by PTAB" claim 7 of U.S. Patent No. 6,701,344, claim 7 of U.S. Patent No. 6,714,966 and claim 5 of U.S. Patent No. 6,829,634. All three claims were narrowed through amendment during the IPR proceedings and confirmed valid over the prior art asserted by Defendants.

Acceleration Bay is not asserting any claims found unpatentable by the PTAB. Earlier today, Acceleration Bay served an Amended Preliminary Election of Asserted Claims on Defendants, noting the continued assertion of the three asserted claims narrowed through amendment during the IPR proceedings, adding two claims confirmed valid during the IPR proceedings and withdrawing the asserted claims found unpatentable by the PTAB. The two

claims added do not raise any new claim construction issues, especially in view of Defendants' prior identification of 41 terms and groups of terms requiring construction.

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1249770

By: /s/ Philip A. Rovner

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