

EXHIBIT A

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ACTIVISION BLIZZARD INC.,

Plaintiff,

v.

ACCELERATION BAY LLC,

Defendant.

Case No. 16-cv-03375-RS; 16-cv-3377-RS;
16-cv-3378-RS

**ORDER GRANTING MOTIONS TO
TRANSFER AND DENYING AS MOOT
MOTIONS TO DISMISS**

TAKE-TWO INTERACTIVE SOFTWARE,
INC., et al.,

Plaintiffs,

v.

ACCELERATION BAY LLC,

Defendant.

ELECTRONIC ARTS INC.,

Plaintiff,

v.

ACCELERATION BAY LLC,

Defendant.

I. INTRODUCTION

Plaintiffs Activision Blizzard Inc. (“Activision”), Electronic Arts Inc. (“EA”), Take-Two Interactive Software, Inc. (“Take-Two”),¹ and defendant Acceleration Bay LLC (“AB”) have been

¹ Take-Two is comprised of two subsidiary companies, Rockstar Games, Inc. and 2K Sports, Inc. These entities will be referred to collectively as “Take-Two.” Additionally, Activision, EA, and

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1 tussling in the District of Delaware over allegations that plaintiffs’ video games infringe AB’s
2 networking patents. A little over a year into those proceedings, the video game companies moved
3 to dismiss based on a defect in AB’s prudential standing. The court spotted the same defect but
4 elected to give AB fourteen days to fix it. Twelve days thereafter, AB announced the problems
5 with prudential standing were resolved, yet sensing opportunity, the video game companies
6 quickly commenced these declaratory actions on the opposite coast. AB, for its part, in lieu of
7 amending its pleadings, filed new Delaware complaints the next day. Now, as so often is the case
8 in these patent venue chess games, AB moves to dismiss or transfer these actions back to
9 Delaware.

10 For the reasons explained below, AB’s motions to transfer under the first-to-file rule will
11 be granted. AB’s re-filed complaints functionally amended its original 2015 Delaware pleadings,
12 and in any event, the instant matters were filed in anticipation of imminent litigation. It also is
13 appropriate to defer to the Delaware court’s superior familiarity with these proceedings. As such,
14 these suits will be transferred back to “The First State” where they belong.

15 **II. BACKGROUND**

16 AB is an incubator for next generation businesses, particularly those delivering content in
17 real-time. Activision, EA, and Take-Two are video game developers and publishers. The patents-
18 in-suit disclose “Small-world Wide Area Networking (“SWAN”)” technology that allegedly
19 implicates multiplayer or multisystem gaming environments.² Lin Decl. Ex. 11. Fred Holt and
20 Virgil Bourassa, the inventors of the technology, worked at The Boeing Company (“Boeing”)
21 when the patents were issued. *See id.* Ex. 10.

22 Holt and Bourassa established Panthesis Inc. in 2001 to develop and commercialize
23 Boeing’s SWAN technology. *Id.* They eventually sought to sell or license the patents, and
24 ostensibly came into contact with Sony Entertainment, RPX Corporation, and Acorn

25 _____
26 ² The patents-in-suit include U.S. Patent Nos. 6,701,344 (“the ’344 patent”), 6,829,634 (“the ’634
27 patent”), 6,732,147 (“the ’147 patent”), 6,714,966 (“the ’966 patent”), 6,920,497 (“the ’497
28 patent”), and 6,910,069 (“the ’069 patent”).

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1 Technologies, Inc. None of these suitors ultimately worked out, but that changed in December
2 2014, when Boeing and AB entered into a “Patent Purchase Agreement.” Through the agreement,
3 AB purportedly acquired all “substantial rights” to the patents, and it commenced suit shortly
4 thereafter against Activision in the District of Delaware on March 11, 2015. AB sued EA and
5 Take-Two in the same venue on March 30 and April 13, 2015, respectively. The suits allege
6 infringement of the SWAN patents, which the video game companies reject.

7 The Delaware court related the cases for discovery, claim construction, and pre-trial
8 activities. Discovery then kicked off in December 2015. The parties served and responded to 434
9 requests for production and 42 interrogatories, while collectively serving eighteen (18) third-party
10 subpoenas. Kobialka Reply Decl. ¶ 8. Over 118,000 pages of documents were produced and the
11 parties held over two dozen days of source code review. *Id.* ¶ 9. After twice moving to compel
12 depositions, AB deposed two Activision 30(b)(6) employees. *Id.* ¶ 7. Four additional depositions
13 were scheduled to take place, and all depositions were conducted in locations convenient for the
14 witnesses. *Id.* AB served initial infringement claim charts on March 2, 2016, and the video game
15 companies served invalidity contentions on May 6, 2016. *Id.* ¶ 10. The Delaware court appointed
16 a special master *sua sponte*, and together with the special master held six hearings and issued ten
17 orders covering a range of matters.

18 Through the course of discovery, the video game companies received the “Patent Purchase
19 Agreement,” and after reviewing its terms, moved to dismiss based on a defect in prudential
20 standing. They correspondingly moved to stay proceedings pending the court’s decision, which
21 AB opposed, claiming it “may cure any defect in prudential standing.” Lin Decl. Ex. 15. At the
22 hearing on the motions, AB represented that Boeing was unlikely to join the suits, but noted
23 “prudential standing can be cured in multiple ways. To join the party and also amending the
24 agreement.” Kobialka Reply Decl. Ex. 1 at 69:21–23. On June 3, 2016, the court found AB was
25 an “exclusive licensee,” and that Boeing did not convey “all substantial rights,” giving rise to a
26 defect in prudential standing. Lin Decl. Ex. 5. The court accordingly indicated the video game
27 companies’ motion to dismiss would be granted “unless Boeing joins this action within 14 days.”

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Id.

Twelve days later, in connection with inter partes review (“IPR”) proceedings initiated by the video game companies, AB sent a letter to the Patent Trial and Appeal Board (“PTAB”), with copies to the video game companies. It informed the PTAB “that subsequent to th[e] [Delaware court’s] Order, Acceleration Bay and the Boeing Company entered into an Amended and Restated Patent Purchase Agreement resolving all of the issues identified by the District Court in its June 3, 2016 Order.” Lin Decl. Ex. 32. The very next day, June 16, 2016—one day prior to expiration of AB’s fourteen day window—the video game companies filed suit in this Court, seeking declaratory judgments of non-infringement of the SWAN patents. The complaints invoke the March 2015 Delaware litigation and AB’s letter to the PTAB to support the proposition the video game companies have “a reasonable apprehension that [AB] may again commence litigation against [them] on the asserted patents.” Compl. ¶ 14. The Northern California suits raise the same claims and defenses as the Delaware actions.

On June 17, 2016, prior to expiration of the fourteen day window, AB sent the Delaware court a letter to update it on the recent developments. It reported Boeing would not be joining the pending actions, but said the amended purchase and license agreement “confirm[s] that Acceleration Bay has standing to pursue its claims against the Defendants without Boeing.” Lin Decl. Ex. 16. AB indicated it would “now” refile complaints against the video game companies, and asked the court to reserve the existing trial dates, “as only minor adjustments to the schedule will be necessary in view of the resolution of this standing issue within two weeks of the Court’s Order.” *Id.* AB also requested the 2015 Delaware actions be dismissed without prejudice. *Id.* AB refiled its claims against the video game companies in new actions that same day. Three days later, on June 20, 2016, the Delaware court dismissed without prejudice the March and April 2015 actions commenced by AB. The court also vacated the trial dates and closed the dismissed cases. *See id.* Exs. 17, 18.

All of the entities involved in this action are incorporated in the state of Delaware. Almost all of them, however, also have significant ties to California. AB maintains its principal place of

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