

**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.)	
)	
TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC. and 2K SPORTS, INC.,)	C.A. No. 16-455 (RGA)
)	
)	
Defendants.)	

**SPECIAL MASTER ORDER NO. 3 AS TO CROSS MOTIONS
TO COMPEL AND FOR SANCTIONS**

MOTIONS

On April 28, 2017, the parties filed the following motions:

Plaintiff Accleration Bay LLC’s (“Plaintiff”) motions to compel; specifically:

1. Defendant Activision Blizzard, LLC (“Activision”) to produce World of Warcraft wiki files;
2. Defendant Take-Two to provide documents, source code and software development kits and;
3. Joe Rumsey to comply with Acceleration Bay’s March 13, 2017 deposition and document subpoenas.

Defendants’ Motion to Compel Supplemental Responses to Party Specific Interrogatories 1, 2 and 4

Defendant Activision Blizzard, Inc.’s Motion to Compel Compliance with Special Master Orders for supplemental responses to interrogatories 7 and 9 and for Sanctions under Rule 37.

Defendants’ Motion to Compel compliance with subpoenas to Scott Smith and Robert Abarbanel.

On April 28, 2017 the parties filed their briefs and affidavits in support of their various motions.

On May 8, 2017, the parties filed their reply briefs and exhibits to the various motions.

On May 10, 2017, the foregoing motions were heard (the “Hearing”).

This is the Special Master’s Order resolving the foregoing motions.

PLAINTIFF’S MOTIONS TO COMPEL

1. Motion to compel Activision to produce the requested World of Warcraft wiki file.

Activision has already produced a number of documents concerning World of Warcraft (“WoW”). Its wiki file is designated as “Restricted Confidential-Source Code Material”, pursuant to the parties’ Protective Order (Document No. 58, filed Feb. 22. 2017). Although Plaintiff’s counsel and its experts have apparently reviewed the wiki file seven times, Plaintiff

seeks physical possession of the requested documents because its being limited to taking hand notes when inspecting the confidential complex documents pursuant to the Protective Order.

During the course of the Hearing on this Motion, the parties appeared to be moving towards a compromise under which Defendant would possibly produce a couple hundred pages of technical documents with appropriate redactions. The May 5, 2017 email from Plaintiff's attorney identified 67 articles out of 1,036 from the WoW wiki file that Plaintiff still seeks.

It is Ordered that within two (2) weeks Activision Blizzard, Inc. produce the files for the 67 articles, subject to reasonable redactions and limited to no more than 300 pages.

2. Plaintiff seeks to have Take-Two provide: (a) GTA and NBA 2 K Source Code; (b) GTA task list; (c) GTA Game Design Documents; and (d) Microsoft XBox and Sony SDKs.

This Motion consists of four sub-motions. Fortunately, during the Hearing the parties reached an agreement on some of the motions. Take-Two is making available for inspection these source code files. Rockstar is making available for inspection the Microsoft XBox and Sony SDKs. (Hearing Transcript, pgs. 94-95).

The GTA task list, according to Defendants, includes a variety of topics and thousands of reports, most of which Defendants contend are entirely irrelevant to this case. The Motion on this request is moot; as the parties agreed to limit production of task list documents to "networking". (Hearing Transcript, p. 101).

As to Take-Two GTA Game Design Documents, there are apparently more than 50 such design documents used by Take-Two. At the Hearing, the Plaintiff offered to compromise its

request for these design documents. The Motion on this request is moot; as the parties agreed that Defendants will produce those portions of these design documents that discuss networking.

3. Plaintiff's Request That Joe Rumsey Comply with its Deposition and Documents Subpoena

On March 13, 2017, Plaintiff filed a subpoena to compel the deposition and documents of Joe Rumsey. Mr. Rumsey was the author of the JAM server and JAM message protocol. Plaintiff maintains that JAM is an important part of its infringement claims with respect to Activision's WoW products. Defendants filed the Rumsey Declaration (Ex. A-25 to their reply brief) which states that Mr. Rumsey stopped working on WoW in 2007 and has not seen the source code for it since then. While he did develop the code for JAM, that code was continually changing after he left the WoW team. Accordingly, Defendants maintain that Mr. Rumsey has no relevant information and that it would be burdensome for Mr. Rumsey to sit for the requested deposition. Defendants also point out that they searched for relevant documents from Mr. Rumsey and he has none.

The Special Master Orders that Mr. Rumsey's deposition be conducted by telephone on a date and time convenient to him and that the deposition be limited to three hours.

ACTIVISION'S MOTION TO COMPEL COMPLIANCE WITH SPECIAL MASTER ORDERS FOR SUPPLEMENTAL RESPONSES TO INTERROGATORIES 7 AND 9 AND FOR SANCTIONS UNDER RULE 37

It may be helpful to the Court and to the parties for the Special Master to express some thoughts as to how to address this Motion. Litigation over the patents in question has been pending for approximately 2 years. Under the Rule 16 Scheduling Order, the parties are to complete all fact discovery by July 31, 2017.

Defendants have repeatedly complained and brought motions to compel Plaintiff to be more specific as to its infringement claims. Twice the Special Master has ruled on these motions. (see Special Master Order No. 2 on April 19, 2016 in the prior action among the parties, and Special Master Order No. 1 in this action on March 15, 2017).

Defendants are concerned that Plaintiff might not articulate specific infringement claims until it submits its expert reports. If that occurs, Defendants would only have a few months thereafter to respond with their own expert reports, and there may be insufficient time to take possible discovery as to any newly fashioned infringement claims.

Plaintiff has steadfastly maintained that it has provided sufficient notice of its infringement claims; that it will supplement its claims as discovery proceeds; and that it earnestly met its interrogatory disclosure obligations as to its infringement claims.

Plaintiff insists that its infringement claims need only meet a “notice” standard when responding to initial interrogatories as to its infringement claims. Even if the Special Master accepts Plaintiff’s contention as to the law, concerns remain as to the sufficiency of Plaintiff’s disclosures as the parties approach the fact discovery cut off. On February 17, 2017, Judge Andrews indicated that the Special Master should resolve as much as possible for the parties to adhere to the Scheduling Order. During that hearing on February 17, 2017, Defendants counsel argued that they still didn’t have adequate infringement contentions from Plaintiff. The Court stated that there comes a time when the Plaintiff cannot add new products and that the Defendants need to get a fixed target to try the case. (Trans. p. 11). With the parties scheduled for a July 10, 2017 claim construction (“Markman”) hearing, it is appropriate for Plaintiff to be as specific as possible to its infringement claims in its supplemental interrogatory responses.

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