IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)
Plaintiff,))) C.A. No. 16-453 (RGA)
v.)
ACTIVISION BLIZZARD, INC.,	REDACTED PUBLIC VERSION
Defendant.))
ACCELERATION BAY LLC,)
Plaintiff,))
) C.A. No. 16-454 (RGA)
V.)
ELECTRONIC ARTS INC.,	REDACTED PUBLIC VERSION
Defendant.)
ACCELERATION BAY LLC,)
Plaintiff,))
) C.A. No. 16-455 (RGA)
V.))
TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC. and 2K SPORTS, INC.,	PUBLIC VERSION)
Defendants.	,)

DEFENDANTS' RESPONSE TO PLAINTIFF ACCELERATION BAY LLC'S OBJECTIONS TO SPECIAL MASTER ORDER NO. 6

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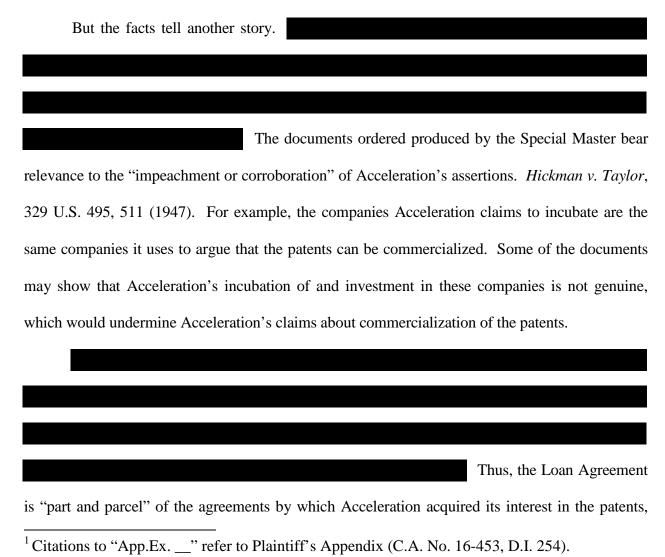
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I. Introduction

The documents the Special Master ordered produced go to a central issue: the truth of claims made by Acceleration Bay in its pleadings about itself and the damages it has supposedly suffered. Acceleration has pled and argued throughout this litigation that it is an operating company, that litigation is not its sole business, that it incubates businesses, invests in companies, collaborates with research institutions, and brings solutions to market through partnerships with companies and startups. App.Ex. C, F5 (Complaint) at ¶¶ 3-4. Acceleration has also pled that Defendants' alleged infringement is causing it "irreparable harm," and presumably it will argue that the alleged infringement has impaired its supposed non-litigation business operations.





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and is therefore directly relevant to the issues of damages and ownership for this reason alone.

Acceleration Bay's objections to the Special Master's Order depend on the erroneous allegations that Defendants seek to "tar" Plaintiff and seek its litigation budget. Neither argument is correct. Acceleration's \$15 million litigation budget, including its total expenditures to date, is already matter of public record in an unrelated criminal proceeding. Ex. 1 (Burstein Declaration), ¶¶ 8-13. Nor are Defendants attempting to "tar" plaintiff; but Defendants are certainly permitted to full discovery to challenge *Plaintiff's pleaded assertions* that it is an operating technology company that has been "irreparably harmed" by Defendants. See Avago Techs. Fiber IP (Singapore) Pte. Ltd. v. IPtronics Inc., No. 10-CV-02863-EJD, 2011 WL 3267768, at *5 (N.D. Cal. July 28, 2011) (noting that whether plaintiff is a "non-practicing entity" or a competitor is relevant to irreparable harm). undermines Acceleration's pleaded allegations that it is an "investor" and "incubator." documents are thus discoverable and the Order was not an "abuse of discretion." See Callwave Commc'ns LLC v. AT&T Mobility LLC, 2016 WL 3450736, at *1 & n.3 (D. Del. June 16, 2016). Acceleration's objections to the Order should be overruled and Acceleration should be required to immediately produce documents in compliance with the Special Master's Order.

II. The Unredacted Hamilton Capital Agreement.

Acceleration asserts that the Special Master's Order countermands a previous order by the Court. It does not. Eighteen months ago and in the context of the narrow issue of standing, the Court allowed production of the February 27, 2015 litigation finance agreement with Hamilton Capital (App.Ex. D, G3) with the litigation budget redacted because the financial information was not relevant to standing. The Court did not address whether the information was relevant to other issues. The Special Master recognized correctly that the testimony of Acceleration's designee, coupled with the apparently contradictory Complaint, and Acceleration's refusal to commit to not

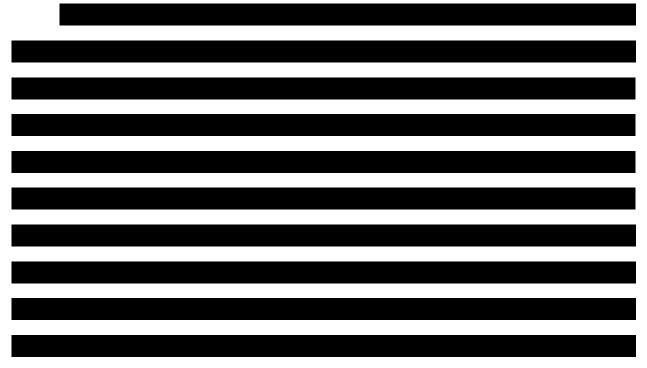


making this argument at trial makes this information relevant. The Order should be sustained.

A. Background and History of Dispute

On February 27, 2015, *two months after* it had supposedly bought the patents from Boeing, Acceleration entered into the Loan Agreement with Hamilton Capital. Ex. 1 at ¶ 8-13. Defendants sought production of the Loan Agreement and Plaintiff objected to producing it. App.Ex. D, G4 (February 12, 2016 Hearing), 51:12-18. In evaluating whether a redacted version of the document would satisfy the concerns of both parties, this Court asked Defendants' counsel whether a redaction of the numbers would affect its arguments on standing to sue. *Id.* at 52:4-11, 56:19-57:2 ("if I redact the litigation budget, you don't care, because that's not what you are interested in; right?"). Defendants' counsel confirmed that the numbers were not relevant to standing, and the Court ordered the production of a redacted version. *Id.* at 52:8-11.

But Acceleration redacted more than just its litigation budget, it redacted *how Acceleration could use the funds* (App.Ex. D, G3 at 2335), how licensing and litigation proceeds would be distributed (*id.* at 2336), and *the amount to be repaid* (*id.* at 2323, 2330, 2337, 2345, 2347).





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