IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, v. ACTIVISION BLIZZARD, INC. Defendant.	Civil Action No. 16-453-RGA
ACCELERATION BAY LLC, Plaintiff, v. ELECTRONIC ARTS INC. Defendant.	Civil Action No. 16-454-RGA
ACCELERATION BAY LLC, Plaintiff, v. TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., AND 2K SPORTS, INC. Defendants.	Civil Action No. 16-455-RGA

MEMORANDUM ORDER

Presently before me is a Motion to Dismiss U.S. Patent Nos. 6,701,344 (the "'344 patent"), 6,714,966 (the "'966 patent"), and 6,829,634 (the "'634 patent") by Defendants Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive Software, Inc., Rockstar

Games, Inc., and 2K Sports, Inc. (collectively, "Defendants"). (C.A. No. 16-453, D.I. 21; C.A. No. 16-454, D.I. 22; C.A. No. 16-455, D.I. 23).[1] I have considered the parties' briefing. (D.I. 22; D.I. 28; D.I. 33). Defendants contend that all claims of the '344 and '966 patents, and claims 1–18 of the '634 patents (collectively, the "Broadcast Claims") are invalid for lack of patent-eligible subject matter under 35 U.S.C. § 101. (D.I. 21). I held oral argument on July 10, 2017. (D.I. 235 ("Tr.")).

I. BACKGROUND

Plaintiff's briefing does not dispute that Claim 1 from each of the '344, '966, and '634 patents is representative. (*See* D.I. 28 at 9 n.4). Claim 1 of the '344 patent provides:

> 1. A computer network for providing a game environment for a plurality of participants, each participant having connections to at least three neighbor participants, wherein an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and wherein each participant sends data that it receives from a neighbor participant to its other neighbor participants, further wherein the network is m-regular, where m is the exact number of neighbor participants of each participant and further wherein the number of participants is at least two greater than m thus resulting in a non-complete graph.

(D.I. 1-1, Exh. 1 ('344 patent), claim 1). Claim 1 of the '344 patent, for the purposes of this motion, is substantially similar to the language in claim 1 of the '966 and '634 patents. (*Compare* '344 patent, claim 1, *with* D.I. 1-1, Exh. 2 ('966 patent), claim 1 and D.I. 1-2, Exh. 4 ('634 patent), claim 1).

The Broadcast Claims generally relate to a "broadcast channel for a subset of [] computers of an underlying network." ('344 patent, 1:27–29). Prior communication techniques were not "particularly well suited to the simultaneous sharing of information among computers that are widely distributed." ('344 patent, 1:33–39). Prior communication techniques

[1] Citations to "D.I. ___" are to the docket in C.A. No. 16-453 unless otherwise noted.

interconnected all participants using point-to-point connections, and thus, did not "scale well" as the number of participants grew. ('344 patent, 1:44–49).

The Broadcast Claims overlay the underlying network system with a certain graph of point-to-point connections between host computers (or "nodes") through which a broadcast channel is implemented. ('344 patent, 4:23–26). This graph is a non-complete, m-regular network. A non-complete, m-regular network is a network where each node is connected to the same number of other nodes, or "m" number of other nodes, and where each node is not connected to all other nodes. (*See* '344 patent, 4:26–47). Figure 1 of the '344 patent illustrates an example of a non-complete, m-regular network, where m is four.

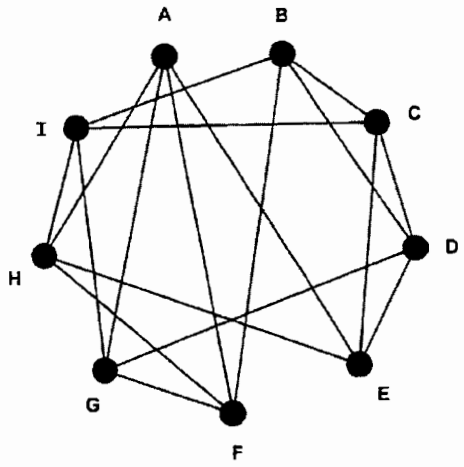

Fig. 1

('344 patent, fig. 1). This graph is implemented at the application level using an underlying network system (like the Internet). ('344 patent, 4:14–19). The Broadcast Claims meet the need for "a reliable communications network that is suitable for the simultaneous sharing of information among a large number of the processes that are widely distributed." ('344 patent, 2:38–42).

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II. LEGAL STANDARD

A. Motion to Dismiss

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

"Though 'detailed factual allegations' are not required, a complaint must do more than simply provide 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action.'" *Davis v. Abington Mem'l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (quoting *Twombly*, 550 U.S. at 555). I am "not required to credit bald assertions or legal conclusions improperly alleged in the complaint." *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). A complaint may not be dismissed, however, "for imperfect statement of the legal theory supporting the claim asserted." *See Johnson v. City of Shelby*, 135 S. Ct. 346, 346 (2014).

A complainant must plead facts sufficient to show that a claim has "substantive plausibility." *Id.* at 347. That plausibility must be found on the face of the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the [complainant] pleads factual content that allows the court to draw the reasonable inference that the [accused] is liable for the misconduct alleged." *Id.* Deciding whether a claim is plausible will be a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

B. Patent-Eligible Subject Matter

Section 101 of the Patent Act defines patent-eligible subject matter. It provides: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. The Supreme Court has recognized an implicit exception for three categories of subject matter not eligible for patentability—laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). The purpose of these carve outs is to protect the "basic tools of scientific and technological work." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012). "[A] process is not unpatentable simply because it contains a law of nature or a mathematical algorithm," as "an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection." *Id.* at 1293–94 (emphasis omitted). In order "to transform an unpatentable law of nature into a patent-eligible application of such a law, one must do more than simply state the law of nature while adding the words 'apply it.'" *Id.* at 1294 (emphasis omitted).

The Supreme Court recently reaffirmed the framework laid out in *Mayo* "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 134 S. Ct. at 2355. First, the court must determine whether the claims are drawn to a patent-ineligible concept. *Id.* If the answer is yes, the court must look to "the elements of the claim both individually and as an 'ordered combination'" to see if there is an "'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (alteration in original).

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