

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

1201 NORTH MARKET STREET  
P.O. BOX 1347  
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200  
(302) 658-3989 FAX

**JACK B. BLUMENFELD**  
(302) 351-9291  
(302) 425-3012 FAX  
jblumenfeld@mnat.com

September 7, 2017

The Honorable Richard G. Andrews  
United States District Court  
for the District of Delaware  
844 North King Street  
Wilmington, DE 19801

*VIA ELECTRONIC FILING*

Re: Acceleration Bay LLC; C.A. Nos. 16-453 (RGA); 16-454 (RGA); and 16-455 (RGA)

Dear Judge Andrews:

On September 1, 2017, Special Master Terrell issued his Order No. 9 (D.I. 283<sup>1</sup>), limiting each side to 2,500 pages of expert reports in each of these three cases, for a total of 7,500 pages across the three cases. On September 6, 2017, Acceleration Bay objected to that Order (D.I. 288) and Defendants have responded to those objections today. That Order, and Acceleration Bay's objections, have some urgency because opening expert reports in all three cases are currently due in two weeks, on September 22, 2017.

This issue is related to another issue pending before the Court – Defendants' request that the schedule for expert reports (and summary judgment and Daubert motions) be extended until after the ongoing claim construction proceedings have been completed, and claim construction has been resolved by the Court. That issue is the subject of the parties' August 7 and 14, 2017 letter briefs (D.I. 253 and 260). The Defendants do not believe that expert reports should go forward in the absence of the Court's claim construction rulings. The same issue, of course, also affects the length of expert reports because, without claim construction, the experts will have to address infringement and validity under competing claim construction proposals that have not been decided by the Court (both of which may be different than the Court's actual constructions).

Defendants respectfully submit that a modification of the schedule such as that requested in their August 7, 2017 letter is appropriate. In any event, Defendants submit that the length of expert reports should be determined well in advance of the date for opening reports. Acceleration says that it will submit "at least" six expert reports in each case. The facts suggest that there may be more. For each of the three cases, Plaintiff has identified nine experts. Acceleration Bay identified four of the seven technical witnesses under the Protective Order

<sup>1</sup> All D.I. references are to C.A. No. 16-453.

The Honorable Richard G. Andrews  
September 7, 2017  
Page 2

within the last few days, meaning that they will have only a few days to prepare reports based on Defendants' confidential information. As things stand now, Defendants will have to respond to thousands of pages of expert reports simultaneously, and to do so without the benefit of most of the Court's claim constructions.

It would be enormously difficult to respond to a large number of expert reports across three cases in six weeks, as set forth in the scheduling order. Thus, alternatively, a modification that would (1) extend the schedules by at least a month or two and/or (2) stagger the expert discovery dates for the second and third scheduled trials would be helpful, so that Defendants do not have to respond to thousands of pages of expert reports in three cases at the same time, in the absence of claim construction rulings.

We are available for a telephone conference to discuss these issues if that would be helpful to the Court.

Respectfully,

*/s/ Jack B. Blumenfeld*

Jack B. Blumenfeld (#1014)

JBB/dlw

cc: Clerk of Court (Via Hand Delivery)  
All Counsel of Record (Via Electronic Mail)