

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

**DEFENDANTS' MOTION FOR CLARIFICATION OF
THE COURT'S CLAIM CONSTRUCTION OPINION AND ORDER**

Defendants respectfully move for clarification of the Court's August 29, 2017 Claim Construction Opinion (D.I. 275) and September 6, 2017 Claim Construction Order (D.I. 287).¹ Defendants requested but Plaintiff did not agree to a joint submission requesting clarification.

¹ All citations to docket entries refer to C.A. No. 16-453 unless otherwise stated.

Defendants believe that two terms, Terms 4 and 18, require clarification because the language of the constructions is subject to different interpretations, one of which is not consistent with the reasoning in the Court’s Memorandum Opinion or arguments presented by the parties. Defendants request that the Court enter the Proposed Amended Claim Construction Order submitted herewith.

I. Term 4 (“means for connecting to the identified broadcast channel”)

For term 4 (“means for connecting to the identified broadcast channel”), the Court’s construction for the ’344 patent is:²

A processor programmed to perform *at least one of* the algorithms disclosed in steps 801 to 809 in Figure 8 and described in the ’344 Patent at 17:67-19:34, 19:66-20:44, 21:4-53, 22:61-24:6, and Figures 9, 11, 13, 14, 17 and 18, *or* Figures 3A and 3B and described in the ’344 Patent at 5:33-55, which involves invoking the connecting routine with the identified broadcast channel's type and instance, connecting to the broadcast channel, connecting to a neighbor, and connecting to a fully connected state.

D.I. 287 at 3 (emphasis added). The placement of the words “at least one of” and “or” might lead to confusion as to whether less than all of the identified algorithms (or equivalents thereof) are required as the corresponding structure for performing the recited function. Defendants believe that the Court’s Memorandum Opinion indicates that *all* of the identified algorithms are required as part of the structure. Specifically, the Court stated:

Thus, the specification describes all of Figure 8 as the structure for “connecting to the identified broadcast channel.” The algorithm in Figure 8 is further fleshed out by Figures 9, 11, 13, 14, 17 and 18 and their corresponding descriptions in the specification. (See, e.g., ’966 patent, 18:3-20:9, 20:41-21 :19, 21 :46-22:28, 23:37-24:49). Block 806 is therefore relevant to the connecting function that is claimed. I think Figure 8, considered as a whole, and its accompanying disclosures, are “integral to performing the stated function.”... The specification describes Figures 3A and 3B as ‘illustrat[ing] the process of a new computer Z connecting to the broadcast channel.’ (See, e.g., ’966 patent, 5:62-63). The specification also provides a description of the process. (See, e.g., ’966 patent, 5:32-52). Thus, this portion of the specification also serves as structure for the function. Overall, the

² Term 4 for the ’966 patent has the same issue as Term 4 for the ’344 patent.

specification adequately discloses structure for the function, and thus, the claims are not indefinite.

D.I. 287 at 7-8. Defendants seek clarification of the construction of Term 4 to reflect this reasoning by the Court.

During meet and confers regarding this point of clarification, Plaintiff has implied that the Court's construction renders the recited algorithms as *alternative*, and that, e.g., only Figures 3A-3B and col. 5:33-55 need to be addressed as the required structure. Defendants believe that this position is contrary to the Court's intent as reflected in its claim construction order.

Further, Plaintiff never even argued that Figures 3A-3B and col. 5:33-55 are an algorithm on its own. At the hearing, when the Court asked Plaintiff's counsel to confirm that "3A and 3B by themselves don't possibly give an algorithm," Plaintiff's counsel initially said "no" but then conceded that it was Figures 3A and 3B "in combination" with Figure 8 that provided support for this means term. *See* Ex. 1, Markman 7/10/17 Tr. at 80:20-81:19. Also, in its supplemental claim construction brief regarding Term 4 filed after the hearing, Plaintiff said about Figs 3A-B and the related disclosure: "these figures and the related portions of the specification *further disclose* the algorithms for performing the function of 'connecting a participant to an identified broadcast channel,'" and "*the structures discussed above [including Figs. 801 to 806, Figs. 3A-B, and related discussions] are sufficient* to complete the connection process." D.I. 225 at 5; *see also* D.I. 198 (Acceleration Bay's Reply Statement for Term 4) at 35 ("Figures 3A and 3B and the associated discussion *further* illustrate the corresponding steps.") (emphasis added). Thus, Plaintiff has never argued that Figs 3A-3B (and col. 5:33-55) alone constitute an algorithm. It should not now be permitted to interpret the Court's Memorandum Opinion in a way that it can ignore Fig. 8, and the related Figs. 9, 11, 13, 14 and 17, and focus its infringement case on Figs 3A and 3B alone.

Term 4 for the '966 patent has the same construction as the '344 patent where the only differences are for the column and line citations. Thus, the issue for Term 4 for the '966 patent is the same as it is for the '344 patent.

Therefore, Defendants respectfully request that the Court clarify the construction by deleting “at least one of” and changing “or” to “in combination with,” as shown in the Proposed Amended Claim Construction Order submitted herewith, to confirm that the Court’s construction should not be interpreted to be a finding that Figs. 3A and 3B alone are sufficient structure

II. Term 11 ("m-connected" and "m-connected network")

For term 11 (“m-connected” and “m-connected network”), the Court's construction is:

A state that the network is configured to maintain, where the network may be divided into disconnected sub-networks by the removal of m participants *in a steady state*.

D.I. 287 at 5 (emphasis added). The issue is whether the Court intended to include the phrase “in a steady state.” It appears that the Court’s construction here was intended to mirror the construction it provided for m-regular. D.I. 275 at 16 (“For the reasons given above in connection with the previous term, I am changing ‘seeks’ to ‘is configured’ and striking ‘at all times’ from Defendants’ proposed construction.”). With regard to the m-regular construction, the *Markman* Order states that the “steady state” issue was resolved by taking out Defendants’ language of “at all times.” *Id.* at 14. Because the Court similarly took out Defendants’ language of “at all times” from the construction for the “m-connected” terms, Defendants believe it was the Court’s intention to remove the “in a steady state” language. Accordingly, Defendants request that “in a steady state” be stricken from this construction to be consistent with the construction for the m-regular terms.

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