

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.,) **PUBLIC VERSION**
)
 Defendant.)

ACCELERATION BAY LLC,)
)
 Plaintiff,)
)
 v.) C.A. No. 16-454 (RGA)
)
 ELECTRONIC ARTS INC.,) **PUBLIC VERSION**
)
 Defendant.)

ACCELERATION BAY LLC,)
)
 Plaintiff,)
)
 v.) C.A. No. 16-455 (RGA)
)
 TAKE-TWO INTERACTIVE SOFTWARE,) **PUBLIC VERSION**
 INC., ROCKSTAR GAMES, INC. and)
 2K SPORTS, INC.,)
)
 Defendants.)

**PLAINTIFF ACCELERATION BAY LLC'S ANSWERING BRIEF IN OPPOSITION TO
DEFENDANTS' PARTIAL MOTION TO DISMISS FOR LACK OF STANDING**

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I. NATURE AND STAGE OF PROCEEDINGS

Plaintiff Acceleration Bay LLC filed suits against Defendants in March and April 2015, alleging that Defendants' video games infringe Acceleration Bay's patents. Discovery began in December 2015. After Defendants twice moved to dismiss those actions, the Court dismissed the 2015-filed cases without prejudice in favor of these actions, so that Acceleration Bay could cure a purported defect in prudential standing. C.A. No. 15-228-RGA, D.I. 149.

Defendants then filed a Motion to Dismiss, Stay or Transfer these actions in favor of declaratory judgment actions filed by Defendants in the Northern District of California (the "DJ Actions"). Defendants abandoned their third motion to dismiss as untenable after Judge Seeborg transferred the DJ Actions to this Court, finding that Acceleration Bay's Delaware cases were effectively first filed, Defendants' DJ Actions were filed in anticipation of litigation to preempt these suits and this Court was the most appropriate venue for the parties' dispute. D.I. 13-1¹ at 6-9 (Judge Seeborg's Order); D.I. 14 (withdrawing Motion to Dismiss).

Notwithstanding that they had already moved to dismiss, rather than respond to Acceleration Bay's Complaints, Defendants improperly filed two additional motions to dismiss (their fourth and fifth), including the instant motion. Defendants moved for partial dismissal as to Acceleration Bay's infringement claims against the PlayStation versions of the accused products (but not any other version) and dismissal of some of the claims from three of the six asserted patents for purported lack of patent eligibility. D.I. 18; D.I. 21.²

¹ Docket citations herein are to *Acceleration Bay LLC v. Activision Blizzard Inc.*, C.A. No. 16-453-RGA. The parties filed substantially similar pleadings in related actions *Acceleration Bay LLC v. Electronic Arts Inc.*, C.A. No. 16-454-RGA and *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, C.A. No. 16-455-RGA.

² Defendants' argument concerning ██████████ was first raised in the 2015 actions. C.A. No. 15-228-RGA, D.I. 100. The Court ultimately did not reach ██████████ given its finding regarding prudential standing.

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