

**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.,)	
)	
Defendant.)	
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ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	C.A. No. 16-454 (RGA)
v.)	
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
<hr/>		
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	C.A. No. 16-455 (RGA)
v.)	
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	
INC., ROCKSTAR GAMES, INC., and 2K)	
SPORTS, INC.,)	
)	
Defendants.)	
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**PLAINTIFF ACCELERATION BAY’S OPPOSITION TO
DEFENDANTS’ MOTION FOR CLARIFICATION TO
THE COURT’S CLAIM CONSTRUCTION OPINION AND ORDER**

I. INTRODUCTION

Looking for a third bite at the claim construction apple, Defendants' motion for clarification seeks to undo the Court's Claim Construction Order and Memorandum Opinion regarding means-plus-function (MPF) Term 4. The parties submitted extensive briefing, spent the majority of the Markman Hearing discussing this term, and also submitted supplemental briefing specifically addressing MPF Term 4. The Court's Claim Construction Order is entirely consistent with its Memorandum Opinion, the parties' extensive briefing, and arguments presented to the Court, in finding that the structure corresponding to this term could fall within alternative disclosures of the '966 and '344 Patents regarding alternative embodiments.

In particular, in its briefs and exhibits, Plaintiff proposed the following function and structures for MPF Term 4, including the fact that the structures could include portions of Figure 8 and corresponding specifications or Figures 3A and 3B and corresponding specifications:

Function: connecting a participant to an identified broadcast channel

'966:

Structure: a processor programmed to perform at least one of the algorithms disclosed in steps 801 to 806 in Figure 8 and described in the '966 Patent at 18:3-19:22 or Figures 3A and 3B and described in the '966 Patent at 5:32-52, 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.

'344:

Structure: a processor programmed to perform at least one of the algorithms disclosed in steps 801 to 806 in Figure 8 and described in the ['344] Patent at 17:67-18:47 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. 117-7, Ex. 1 (4/17/17 Joint Claim Construction Chart) Term 4 at 7-8 (emphasis added).

In view of these unambiguous arguments, Defendants' claim that the Court's Construction is not consistent with Plaintiff's arguments or the Court's reasoning is plainly incorrect, as explained below. For this reason alone, Defendants' arguments should be rejected.

Additionally, Defendants' arguments that the structures described in different and alternative embodiments (e.g., embodiments described in Figs. 3A and 3B and embodiment in Fig. 8) must be found in a single accused embodiments is nonsensical and Defendants are (for the third time) conflating alternative embodiments to read in additional limitations.

With respect to Term 18 (m-connected), the Court's Claim Construction Order requires the network be in "[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 *in a steady state*." D.I. 287 (Claim Construction Order) Term 18 at 5 (emphasis added). As discussed at the Markman Hearing and consistent with Court's Memorandum Opinion, the Court's construction captures the concept that the network must be configured to attempt to maintain, rather than something it maintains at all times. Including the phrase "in a steady state" is consistent with the Court's Memorandum Opinion. As such, Plaintiff defers to the Court to confirm if it intended to include "in a steady state," in the construction.

II. ARGUMENT

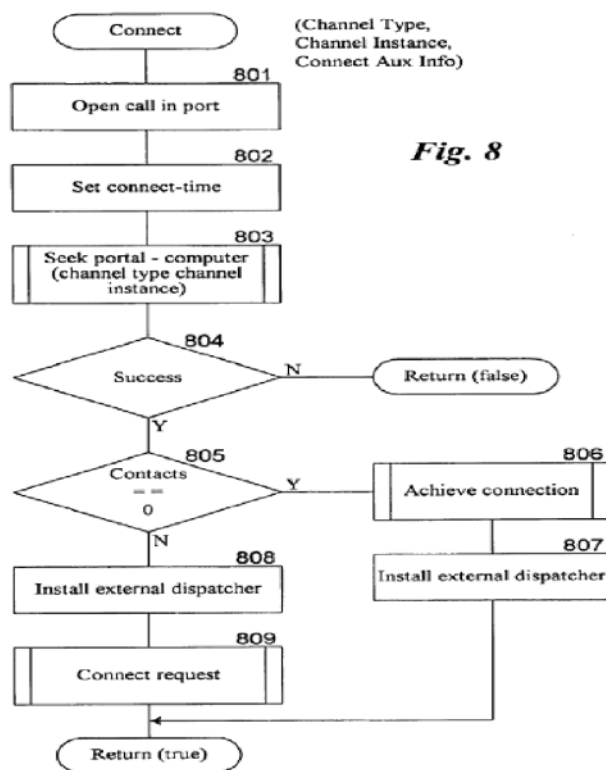
A. Term 4 ("means for connecting to the identified broadcast channel")

In its briefs and at the Markman Hearing, Plaintiff identified the function and supporting structures for Term 4. In doing so, Plaintiff identified alternative embodiments. Specifically Plaintiff identified an embodiment 1, which included portions of Figure 8 (and corresponding portions of the specifications) and embodiment 2, which included portions of Figures 3A and 3B (and corresponding portions of the specifications). See D.I. 117-1, Ex. 1 (4/17/17 Joint Claim Construction Chart) Term 4 at 7-8; D.I. 191-1, Ex. F (Medvidović Decl.) at ¶¶ 57-61; D.I. 225

(Plf. Supp. Br.) at 4, 5 (Fig. 8 shows completion of connection function at step 806 and similarly, Fig. 3A and 3B also show a connection function). In its Memorandum Opinion, the Court found that the function and supporting structures for alternative embodiments identified by Plaintiff were sufficient for validity. For embodiment 1, the Court included additional structures, including, for example, the specifications at 19:34, 19:66-20:44, 21:4-53, 22:61-24:6, and Figures 9, 11, 13, 14, 17. A side-by-side comparison of the Court's Construction and Plaintiff's proposed construction reflects the additional structures that the Court has already included:

Court's Claim Construction Order	Plaintiff's Proposed Construction
<p>Function: "Connecting to the identified broadcast channel"</p> <p>'344 Structure: 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, <u>or</u> 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.</p> <p>'966 Structure: A processor programmed to perform at least one of the algorithms disclosed in steps 801 to 809 in Figure 8 and described in the '966 Patent at 18:3-20:9, 20:41-21:19, 21:46-22:28,23:37-24:49, and Figures 9, 11, 13, 14, 17 and 18, <u>or</u> Figures 3A and 3B and described in the '966 Patent at 5:32-52, 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.</p> <p>D.I. 287 (Claim Construction Order) Term 4 at 3 (emphasis added).</p>	<p>Function: connecting a participant to an identified broadcast channel</p> <p>'344 Structure: a processor programmed to perform at least one of the algorithms disclosed in steps 801 to 806 in Figure 8 and described in the ['344] Patent at 17:67-18:47 <u>or</u> 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.</p> <p>'966 Structure: a processor programmed to perform at least one of the algorithms disclosed in steps 801 to 806 in Figure 8 and described in the '966 Patent at 18:3-19:22 <u>or</u> Figures 3A and 3B and described in the '966 Patent at 5:32-52, 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.</p> <p>D.I. 117-1, Ex. 1 (4/17/17 Joint Claim Construction Chart) Term 4 at 7-8 (emphasis added).</p>

Even if the Court entertains Defendants’ motion, for the reasons previously explained at the hearing and in Acceleration Bay’s supplemental briefing, the focus of this function, “connecting a participant to an identified broadcast channel,” is *connecting* a participant. Figure 8 (reproduced below) of the asserted patents is “a flow diagram illustrating the processing of the connect routine in one embodiment.” Ex. A-2 (‘966 Patent) at 3:7-8. A POSA would understand that a processor programmed to perform at least one of the algorithms disclosed in steps 801 to 806 in Figure 8 is sufficient to perform the function of *connecting* a participant to a broadcast channel. D.I. 191-1, Ex. F (Medvidović Decl.) at ¶¶ 60-61. In particular, the flow diagram can proceed from block 801 to block 806 to “Achieve connection” completing the process (with no reference to Figure 3A or 3B):



Following this extensive briefing, the Court, in its Memorandum Opinion, adopted

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