IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, v. ACTIVISION BLIZZARD, INC., Defendant.	)	C.A. No. 16-453 (RGA) **PUBLIC VERSION**
ACCELERATION BAY LLC, Plaintiff, v. ELECTRONIC ARTS INC., Defendant.	)	C.A. No. 16-454 (RGA)
ACCELERATION BAY LLC, Plaintiff, v. TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., and 2K SPORTS, INC., Defendants.	)	C.A. No. 16-455 (RGA)

JOINT CLAIM CONSTRUCTION BRIEF (PHASE II) TERMS: 14, 15, 19, 20, 22

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I. INTRODUCTION[1]

A. Plaintiff's Opening Introduction & Statement of Facts

1. Introduction

Acceleration Bay proposes constructions for Terms 14, 15, 19, 20, and 22 that are consistent with their plain and ordinary meaning as understood by a person of ordinary skill in the art ("POSA") and even lay persons. The Court should adopt Acceleration Bay's constructions because they are consistent with the plain and ordinary meaning as understood by those of skill in the art and are readily understandable to the jury.

In contrast, Defendants' constructions for these terms largely repeat their same flawed constructions for m-regular and *m* as explained below.

2. Statement of Facts

Acceleration Bay incorporates by reference its Statement of Facts from the parties' prior joint claim construction brief. D.I. 186 (16-cv-453) at 3, 4.

B. Defendants' Opening Introduction & Background

1. Introduction

The six Asserted Patents relate to a system for "broadcasting" data over a specific and narrowly defined computer network. The claims of five of the six patents are defined with reference to graph theory, and in particular a graph that is m-regular and incomplete. A graph is a set of nodes and a set of edges, where each edge connects a pair of nodes. The Phase II Terms are key to how such a network is formed and operates. In four patents, the nodes are referred to as "participants" and in the '147 patent, the nodes are "computers." When two "participants" (or two

[1] Pursuant to the Court's July 5, 2017 Order (D.I. 206, 16-cv-453) and Stipulations Regarding Supplemental Claim Construction Briefing (D.I. 215 and 320, 16-cv-453) the parties hereby submit the second of three Supplemental Joint Claim Construction Briefs, addressing the following terms: 14, 15, 19, 20, 22. *See* Ex. 2 (D.I. 236, 16-cv-453) (Supplemental Joint Claim Construction Chart)("JCCC").

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"computers") are "connected," they are considered "neighbors." The graph formed by the participants must be both m-regular and "incomplete," meaning that no participant is connected to, or is neighbor of, all of the other participants.[2] The group of interconnected participants, or interconnected computers, form a "broadcast channel" where each participant or computer, receives all data that is broadcast on the channel.

This "Phase II" brief addresses 3 key aspects of the claims. This brief and the accompanying declaration of Dr. Kelly explain (1) how the "***computers***" or "***participants***" that comprise the network "***connect***" to each other and become "***neighbors***"; (2) why the broadcast channel is "always" incomplete; and (3) how the "***broadcast channel***" distributes the same "***data***" to all of the computers/participants of the broadcast channel.

Plaintiff's proposed constructions flatly contradict the Patents and Plaintiff's representations to the PTAB. For instance, Plaintiff disputes Defendants' construction that the "m-regular graph is always noncomplete." But ***before*** Plaintiff took technical discovery, it advised the PTAB that being "always" incomplete was a "***key attribute***" of the claims: "the number of network participants N ... is ***always*** greater than the number of connections m to each participant." *See, e.g.*, **D-2** at 11. Even more, Plaintiff argued to the PTAB the claimed inventions of the '344 and '966 patents "***require[] that any complete graph structure be avoided and replaced with an incomplete graph***" and that use of a complete graph is "***antithetical*** to the claims." **D-1** ('966 IPR, Patent Owner's Preliminary Response) at 19-21; **D-2** ('344 IPR, Patent Owner's Preliminary Response) at 27-28. Now, Plaintiff's position is the opposite: It argues that "the network may not always be

[2] As Plaintiff's own expert has confirmed, to determine whether a network is m-regular and incomplete, the entire set of nodes (computers/participants) and the entire set of edges (connections between neighboring computers/participants) must be known. Without that information, the graphical properties of the network cannot be determined. Ex. 4 (Bims Dep. Tr.) at 201:21-202:20.

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non-complete and therefore the graph is not always non-complete." Opening Br. 13-14.

Plaintiff's constructions of neighbors and connections seek to vastly expand the scope of the claims, and in so doing, render them meaningless. Plaintiff's defines a "connection" as a "link" and "neighbors" as "computers and/or computer processes that ***can communicate***." The term link is no construction at all – ***any*** two computers in a network can be said to be "linked" together. The construction for neighbor is equally vague – all computers on the same broadcast channel "can communicate" with each other. Plaintiff's constructions make it impossible to determine whether any broadcast channel or network is (or is not) m-regular or incomplete, and who is neighbors with whom, as required by the claims. Indeed, under Plaintiff's construction, it would seem that every network is a complete, full mesh-graph because all computers on the network are presumably "linked" and/or "can communicate." Plaintiff's constructions would, and presumably are intended to, improperly expand the scope of the claims and do so in a manner that provides Plaintiff with maximum flexibility as to infringement by making the claims broad and ambiguous. In contrast, Defendants offer clear constructions for neighbors and connections that are consistent with all disclosed embodiments as well as connection-oriented networking protocols in general.

Plaintiff also disputes that all of the participants/computers of the broadcast channel receive all messages – i.e. packets with the same payloads – broadcast on the channel. But, a leading treatise of the time and the patents themselves confirm Defendants' construction. *See* Ex. 1 (Computer Networks 3rd Ed., Prentice Hall (1996)) at 7 ("Broadcast networks have a ***single communication channel*** that is shared by all the machines on the network. ***Short messages, called packets in certain contexts, sent by any machine are received by all the others***.") (emphasis added); **A-1**, Abstract ("***Each computer that is connected to the broadcast channel receives all messages that are broadcast while it is connected***."). Defendants' constructions are correct, while Plaintiff's seek to impermissibly expand the bounds of the claims.

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