

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. )

**ACTIVISION’S RENEWED MOTION FOR SANCTIONS AND MOTION TO STRIKE  
ACCELERATION BAY’S INFRINGEMENT REPORTS**

Pursuant to the Court’s Order Appointing Special Master (D.I. 94 in C.A. No. 15-228-RGA, incorporated into this action by D.I. 62), Activision Blizzard, Inc. moves for relief under prior orders of the Special Master and Federal Rule of Civil Procedure 37.

In Order No. 3, the Special Master ordered Acceleration Bay to provide as “full, clear and complete responses as possible” to Activision’s interrogatories and to identify infringing elements “individually and with specificity.” D.I. 155 (SM Order No. 3) at 6–7 (emphasis added). In adopting Order No. 3, Judge Andrews made clear that the Master is “authorize[d]” to rule on requested sanctions and that the Master’s ruling on any sanctions issue “would be of significant assistance” to the Court. D.I. 193 at 2–3. After Acceleration Bay failed to provide those “full, clear and complete responses,” Activision moved for sanctions, which the Special Master denied without prejudice, noting: [I]t is realistic to await Plaintiff’s expert reports in September before considering possible sanctions. If those expert reports are consistent with Plaintiff’s interrogatory responses as to its infringement claims, there would appear to be no basis to impose sanctions. By contrast, if Plaintiff’s expert reports set forth infringement contentions that had not been previously disclosed, it may be appropriate to reconsider

Defendants' motion for sanctions and appropriate relief." D.I. 227 (SM Order No. 6) at 7. Because Plaintiff's reports set forth infringement contentions that have not been previously disclosed, Activision renews its request for sanctions and brings this Motion to Strike.

The grounds for this motion are set forth in Activision's accompanying letter brief, which will be provided to the Special Master pursuant to Paragraph 3 of the Order and the Special Master Order Relating to Procedures for Resolving Discovery Motions (D.I. 113 in C.A. No. 15-228- RGA). The precise relief sought is detailed in a proposed order accompanying this motion. A telephonic hearing on this motion is scheduled for November 2, 2017.

Pursuant to D. Del. LR 7.1.1, Defendants state that they have made reasonable effort to reach agreement with Plaintiff on the matters set forth in this motion and the parties could not reach agreement.

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*/s/ Stephen J. Kraftschik*

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October 20, 2017

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ACTIVISION BLIZZARD, INC.,	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER**

WHEREAS, the Special Master, having consider Activision Blizzard, Inc.’s Renewed Motion for Sanctions and Motion to Strike Acceleration Bay’s Infringement Reports;

IT IS HEREBY ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017, that Activision’s Motion is GRANTED.

- 1) Acceleration Bay shall be precluded from relying on information or arguments not disclosed in its discovery responses, specifically Plaintiff’s June 19, 2017 Responses to Activision Common Interrogatories 7 and 9;
- 2) Acceleration Bay shall be precluded from relying on source code not disclosed in its discovery responses, including the code identified in Activision’s Exhibits 3 and 4;
- 3) Acceleration Bay shall be precluded from making infringement arguments not disclosed in its infringement contentions, including those described in Activision’s brief and Exhibits CoD-1A, CoD-2A, CoD-4A, CoD-5A, CoD-6A, CoD-7A, WoW-1A, WoW-2A, WoW-3A, WoW-4A, WoW-5A, WoW-6A, WoW-7A, Destiny-1A, Destiny-2A, Destiny-3A, Destiny-4A, Destiny-5A, and Destiny-6A.
- 4) Acceleration Bay shall be precluded from relying on unexplained source code block citations in the infringement reports of Dr. Medvidovic and Dr. Mitzenmacher as

identified in Activision's Exhibits 1 and 2, and those citations shall be stricken from the reports;

- 5) Acceleration Bay shall be precluded from relying on source code citations without pincites in the infringement reports of Dr. Medvidovic and Dr. Mitzenmacher as identified in Activision's Exhibits 5, and 6, and those citations shall be stricken from the reports;
- 6) Acceleration Bay shall be precluded from relying on portions of the report that purport to incorporate more than one other portion of the report through cross-referencing (including embedded cross-references) and those cross-references shall be stricken from the reports. Cross-references to a single portion of the report are not objected to or stricken. Thus, for example, Paragraph 624 of the Medvidovic report is stricken, because it incorporates multiple other portions of the report.<sup>1</sup> In contrast, Paragraph 489 is not stricken, in that it incorporates only one other portion of the report, and that portion of the report does not contain any further "incorporation by reference" citations.

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Special Master Allen M. Terrell, Jr.

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<sup>1</sup> That paragraph states: "624. I incorporate the discussion of Elements 069:1(e), 344:12(a), 344:12(b), 147:1(a), 147:1(b), and Claim 19 of the '634 Patent which describe how CoD connects participants to the seeking participant."

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