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)
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)

ACCELERATION BAY'S OPPOSITION TO DEFENDANTS' SUPPLEMENTAL CLAIM CONSTRUCTION BRIEF (TERM 4)

I. Introduction

In construing means-plus-function Term 4, the Court found that the specifications adequately disclose structures for the function of "connecting to the identified broadcast channel," including Figures 3A and 3B, Figure 8 and corresponding portions of the detailed descriptions. D.I. 275 at 7-9[1]. The Court requested additional briefing to address the following two questions regarding Term 4:

> (1) whether there is a substantive difference between the algorithm/"process of new computer Z connecting to the broadcast channel" of Figure 3A and 3B and corresponding specifications and the algorithm/"process in the connect routine" of Figure 8 and corresponding specifications, and
>
> (2) if there is a difference, whether Figures 3A and 3B and corresponding specifications constitute a separate algorithm.

D.I. 332 at 2.

The answer to both questions is yes. Declaration of Nenad Medvidović in Support of Opposition to Supplemental Claim Construction (Term 4) ("Medvidović Decl."), at ¶¶ 34-36, 26, 29, 32.

The specifications for the '344 and '966 patents include multiple embodiments that describe how a participant can connect to a broadcast channel. *Id.* at ¶¶ 9-13. The first embodiment is disclosed in Figures 3A and 3B and described in the corresponding description ("First Embodiment"). The First Embodiment is a three-step algorithm. *Id.* at ¶¶ 15-23.

The second embodiment is shown in Figure 8 and further disclosed in the corresponding description and associated Figures 9, 11, 13, 14, 17, 18 ("Second Embodiment"). The Second Embodiment describes a more robust process for a participant to connect to broadcast channel.

[1] Citations to the docket refer to C.A. No. 16-453 unless otherwise noted.

While there are overlapping aspects in the connect algorithm disclosed in the First and Second Embodiments, there are substantive differences. Medvidović Decl. at ¶¶ 34, 26-33. The First Embodiment provides a streamlined and efficient process for connecting new computers to an established graph with five or more participants, and the specification characterizes this algorithm as "the process of connecting to the broadcast channel." Ex. A-1 ('344 patent) at 5:33-34. Further, the First Embodiment describes to a POSITA the algorithm for connecting to the broadcast channel. The Second Embodiment provides an additional, more robust algorithm and includes additional steps for connecting to a broadcast channel in particular circumstances.

To try to complicate the process of showing infringement, Defendants incorrectly urge the Court to combine the distinct embodiments shown in Figures 3A/3B and Figure 8. Defendants gloss over the differences between these embodiments and mischaracterize the fulsome disclosure of the First Embodiment as just an overview of the Second Embodiment. Defendants also rely on an oversimplification of the Second Embodiment that fails to grapple with the various sub-routines and additional steps to connect to the identified broadcast channel.

For these reasons, as currently drafted the Court's Claim Construction Order (D.I. 287) is correct (e.g., "the algorithms disclosed in steps 801 to 809 in Figure 8… ***or*** Figures 3A and 3B and described in the '344 Patent at 5:33-55….") (emphasis added).

II. Argument

A. The First Embodiment Discloses the Structure to Perform the Claimed Function of Connecting to a Broadcast Channel

The First and Second Embodiments are substantively different and separate algorithms, and both can be used to connect a participant to a broadcast channel. Therefore, the Court's current construction correctly identifies the relevant structures for Term 4 as shown in Figure 8 ***or*** Figures 3A and 3B. *Versa Corp. v. Ag-Bag Int'l Ltd.*, 392 F.3d 1325, 1328 (Fed. Cir. 2004)

(where a preferred embodiment included multiple structures that can perform the function, the presence of both is not needed); *Micro Chem. Inc. v. Great Plain. Chem.Co.*, 194 F.3d 1250, 1258-59 (Fed. Cir. 1999) (where multiple structures were disclosed for performing a function, infringement can be shown by the presence of any one of the structures or its equivalent).

A comparison of the algorithms in the First and Second embodiments confirms the substantive differences between them. The Asserted Patents describe the First Embodiment as "***the process*** of connecting to the broadcast channel" and that it "includes [1] locating the broadcast channel, [2] identifying the neighbors for the connecting computer, and then [3] connecting to each identified neighbor." Ex. A-1 ('344 patent) at 5:33-37 (emphasis added). The specifications further disclose this connection process for the First Embodiment as follows, with the portions corresponding to and further describing each of these three steps indicated:

> This description assumes that the broadcast channel is in the large regime, unless specified otherwise.) Thus, the process of connecting to the broadcast channel includes locating the broadcast channel, identifying the neighbors for the connecting computer, and then connecting to each identified neighbor. **[1a] Each computer is aware of one or more "portal computers" through which that computer may locate the broadcast channel. [1b] A seeking computer locates the broadcast channel by contacting the portal computers until it finds one that is currently fully connected to the broadcast channel. [2] The found portal computer then directs the identifying of four computers (i.e., to be the seeking computer's neighbors) to which the seeking computer is to connect. [3] Each of these four computers then cooperates with the seeking computer to effect the connecting of the seeking computer to the broadcast channel.**"

Id. at 5:31-48 (highlighting added); *see* Medvidović Decl. at ¶¶ 14-23.

Figures 3A and 3B illustrate the process described above and show new computer Z connecting to the broadcast channel in the large regime (*i.e.*, when five or more computers are connected):

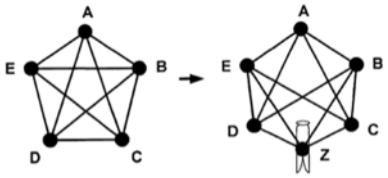

Fig. 3A *Fig. 3B*

This description alone describes a full algorithm for connecting a computer to a specific broadcast channel and is suitable for scenarios with at least five or more computers connected (the "large regime") because a POSITA would understand how to practice the invention. *See Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1385 (Fed. Cir. 2011) ("[T]he patent need only disclose sufficient structure for a [POSITA] to provide an operative software program for ***the specified function***.") (emphasis added); Medvidović Decl. at ¶¶ 36, 14-23.

In contrast to the First Embodiment, the Asserted Patents describe the Second Embodiment as "the processing of the connect routing ***in one embodiment***." Ex. A-1 ('344 patent) at 17:67-18:2 (emphasis added). The Second Embodiment presents a different algorithm for connecting to a broadcast channel with additional steps, including, for example, call-back and notifications routines. Because of the additional steps and routine, the Second Embodiment may also, for example, be used to connect a participant to a broadcast channel where there are less than five participants (*i.e*. the "small regime"), in contrast to the First Embodiment. *See* Ex. A-1 ('344 patent) at 18:15-16 ("When in the small regime, a fully connected process may have less than four neighbors."). This exemplary additional process in the Second Embodiment is further illustrated in Figure 11 and corresponding description:

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