IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, v. ACTIVISION BLIZZARD, INC. Defendant.	Civil Action No. 16-453-RGA
ACCELERATION BAY LLC, Plaintiff, v. ELECTRONIC ARTS INC. Defendant.	Civil Action No. 16-454-RGA
ACCELERATION BAY LLC, Plaintiff, v. TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., AND 2K SPORTS, INC. Defendants.	Civil Action No. 16-455-RGA

MEMORANDUM OPINION

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ANDREWS, U.S. DISTRICT JUDGE:

Presently before me is the issue of claim construction of multiple terms in U.S. Patent No. 6,701,344 ("the '344 patent"), U.S. Patent No. 6,714,966 ("the '966 patent"), U.S. Patent No. 6,829,634 ("the '634 patent"), U.S. Patent No. 6,910,069 ("the '069 patent"), and U.S. Patent No. 6,732,147 ("the '147 patent"). I have considered the parties' Joint Claim Construction Brief (D.I. 281).[1] I issued an Order and Stipulation Regarding Supplemental Claim Construction Briefing, pursuant to which the parties address terms 27, 29-34, and 38-40. (D.I. 206; D.I. 215). I held oral argument on November 21, 2017. (D.I. 363 ("Tr.")).

I. LEGAL STANDARD

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "'[T]here is no magic formula or catechism for conducting claim construction.' Instead, the court is free to attach the appropriate weight to appropriate sources 'in light of the statutes and policies that inform patent law.'" *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324) (alteration in original). When construing patent claims, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977–80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, "the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (internal quotation marks omitted).

[1] Citations to "D.I. ___" are to the docket in C.A. No. 16-453 unless otherwise noted.

"[T]he words of a claim are generally given their ordinary and customary meaning. . . . [Which is] the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1312–13 (citations and internal quotation marks omitted). "[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent." *Id.* at 1321 (internal quotation marks omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314.

When a court relies solely upon the intrinsic evidence—the patent claims, the specification, and the prosecution history—the court's construction is a determination of law. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). The court may also make factual findings based upon consideration of extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Phillips*, 415 F.3d at 1317–19. Extrinsic evidence may assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art, and how the invention works. *Id.* Extrinsic evidence, however, is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

"A claim construction is persuasive, not because it follows a certain rule, but because it defines terms in the context of the whole patent." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). It follows that "a claim interpretation that would exclude the inventor's device is rarely the correct interpretation." *Osram GMBH v. Int'l Trade Comm'n*, 505 F.3d 1351, 1358 (Fed. Cir. 2007) (citation omitted).

II. BACKGROUND

The following claims are the most relevant for the purposes of this Markman.

Claim 11 of the '147 Patent

> 11. *A computer-readable medium* containing instructions for controlling disconnecting of a computer from another computer, the computer and other computer being connected to a broadcast channel, said broadcast channel being an m-regular graph where m is at least 3, comprising:
>
> a component that, when the computer decides to disconnect from the other computer, the computer sends a disconnect message to the other computer, said disconnect message including a *list of neighbors* of the computer; and
>
> a component that, when the computer receives a disconnect message from another computer, the computer broadcasts a *connection port search message* on the broadcast channel to find a computer to which it can connect *in order to maintain an m-regular graph*, said computer to which it can connect being one of the neighbors on said list of neighbors.

(D.I. 117-2, Exh. A-3 ("'147 patent"), claim 11) (emphasis added).

Claim 1 of the '069 Patent

> 1. A computer-based, non-routing table based, non-switch based method for adding a participant to a network of participants, *each participant being connected to three or more other participants*, the method comprising:
>
> identifying a pair of participants of the network that are connected wherein a seeking participant contacts a *fully connected portal computer*, which in turn *sends an edge connection request* to a number of randomly selected neighboring participants to which the seeking participant is to connect;
>
> disconnecting the participants of the identified pair from each other; and
>
> connecting each participant of the identified pair of participants to the seeking participant.

(D.I. 117-2, Exh. A-5 ("'069 patent"), claim 1) (emphasis added).

Claim 1 of the '344 Patent

> 1. A computer network for providing a game environment for a plurality of participants, each participant having connections to at least three neighbor participants, *wherein an originating participant sends data* to the other

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