

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

**PLAINTIFF ACCELERATION BAY LLC'S
OBJECTIONS TO SPECIAL MASTER ORDER NO. 13**

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TABLE OF CONTENTS

I. NATURE AND STAGE OF THE PROCEEDINGS 1

II. OBJECTIONS..... 1

III. ARGUMENT 2

 A. Confidential Communications Between Counsel for Acceleration Bay and its Litigation Funder are Non-Discoverable Work Product 2

 B. The Common Interest Doctrine Extends Attorney-Client Privilege to Confidential Communications Between Counsel for Acceleration Bay and its Litigation Funder 4

 C. The Diligence Emails Are Not Relevant 6

IV. CONCLUSION..... 7

I. NATURE AND STAGE OF THE PROCEEDINGS

Acceleration Bay respectfully objects, in part, to the Special Master’s November 22, 2017 Order No. 13. Ex. A, (D.I. 361, the “Order”)¹. The Order requires Acceleration Bay to “produce what it provided in writing to Hamilton Capital [Acceleration Bay’s litigation funder] or its counsel at the time of Hamilton Capital’s due diligence.” *Id.* at 7. Acceleration Bay already produced [REDACTED]

[REDACTED] However, Acceleration Bay objects to producing emails exchanged between its counsel and counsel for Hamilton Capital, on the grounds that such emails are work product, protected under the common interest doctrine and not relevant to the issues in the case.

II. OBJECTIONS

Acceleration Bay objects, in part, to the Order pursuant to Rule 53(f)(2) of the Federal Rules of Civil Procedure and the Court’s Order Appointing Special Master dated February 18, 2016 (C.A. No. 15-228-RGA, D.I. 94 at ¶6)². The Court reviews the Special Master’s Order *de novo*. Fed. R. Civ. P. 53(f). Acceleration Bay respectfully requests that the Court overrule the Order on the following three grounds:

(1) the emails exchanged between outside counsel for Acceleration Bay and Hamilton Capital are non-discoverable, attorney work product;

¹ All docket citations are to C.A. No. 16-453-RGA, and are representative to filings in the related cases.

² In accordance with that Order, Acceleration Bay submits herewith an Appendix containing the transcript from the hearing before the Special Master (Ex. B) and the materials submitted by the parties in connection with the hearing.

(2) because Acceleration Bay and Hamilton Capital share a common legal interest in the successful enforcement of the asserted patents against Defendants, the emails exchanged between their counsel are protected by attorney-client privilege; and

(3) the emails are irrelevant to the issue of Acceleration Bay's business operations.

III. ARGUMENT

A. **Confidential Communications Between Counsel for Acceleration Bay and its Litigation Funder are Non-Discoverable Work Product**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Upon the Court's request, Acceleration Bay will make the Diligence Emails available for *in camera* inspection to confirm that, to the extent they contain substantive content, they are attorney work product.³

As attorney work product, the Diligence Emails are not discoverable "absent a showing of substantial need, undue hardship, or inability to obtain their equivalent by other means." *WebXchange Inc. v. Dell Inc.*, 264 F.R.D. 123, 128 (2010) (denying motion to compel work-product); Fed. R. Civ. P. 26(b)(3). The Order does not identify any such need. Nor did Defendants make any showing of a substantial need for the work product in the Diligence Emails in their briefing. Indeed, they could not. [REDACTED]

[REDACTED]

[REDACTED] and withholding them would not impose an undue hardship on

³ As noted above, Acceleration Bay already produced to Defendants the attachments to the Diligence Emails, and does not object to the portions of the Order requiring production of those attachments.

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