



1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951
302 984 6000
www.potteranderson.com

Philip A. Rovner
Partner
provner@potteranderson.com
(302) 984-6140 Direct Phone
(302) 658-1192 Fax

January 3, 2018

BY CM/ECF & HAND DELIVERY

The Honorable Richard G. Andrews
U.S. District Court for the District of Delaware
U.S. Courthouse
844 North King Street
Wilmington, DE 19801

Re: *Acceleration Bay LLC v. Activision Blizzard, Inc. et al.*
D. Del., C.A. No. 16-453-RGA, 16-454-RGA, 16-455-RGA

Dear Judge Andrews:

Acceleration Bay writes in brief response to Defendants' letter, dated January 2, 2018 (D.I. 401 in C.A. No. 16-453-RGA).

The Court's construction of Term 27 does not render invalid claims 19 and 22 of the '634 Patent or Claims 11, 14, 15 and 16 of the '147 Patent. Defendants misstate the record in claiming that Acceleration Bay agreed that these claims are invalid if the Court's construction of "computer readable medium" included carrier waves. In particular, Defendants omit counsels' statements that "the case law is not as clear as defendants have made it out to be" and "I just want to put on the record that we don't agree that even if carrier waves was included that the patent would be invalid. . . . it might be a consideration, but there's a *Hughes* case that specifically says that carrier waves can be patent eligible, subject matter." 11/21/17 Hearing Tr. at 64:24-65:11, 87:13-23. Thus, the validity of these claims remains a disputed issue.

In their letter, Defendants ask the Court to determine now whether all computer readable medium claims are invalid based on three-page letter briefs. However, summary judgment briefs on validity issues are due on February 2, 2018 in all three cases, and may not be filed more than ten days before that date without leave of the Court. C.A. No. 16-453-RGA, D.I. 62 at § 11. Defendants already filed one dispositive motion on patent eligibility, which the Court denied, and their latest theory of invalidity should be addressed in accordance with the case schedule. D.I. 276. Deviation from the Scheduling Order in these cases and Defendants' proposed draconian page limit is unwarranted, especially given that: (1) there are six claims at issue; (2) resolution of this issue will require consideration of the intrinsic record (and likely expert opinion as well); and (3) the parties are in the middle of expert discovery.

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Accordingly, to the extent Defendants intend to file a motion for summary judgment on validity, they should do so in accordance with the existing case schedule.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

cc: All Counsel of Record (Via ECF Filing, Electronic Mail)
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