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)

PLAINTIFF ACCELERATION BAY LLC'S
MOTION TO CORRECT CLAIM 19 OF THE '634 PATENT

NATURE AND STAGE OF THE PROCEEDINGS

The Court found Term 24 from Claim 19 of U.S. Patent No. 6,829,634 ("A non-routing table based computer readable medium containing instructions for controlling communications of a participant of a broadcast channel within a network") to be indefinite. The Court held that "non-routing table based" modified "computer-readable medium," and not "network," and that "non-routing table based computer-readable medium" is "nonsensical." D.I. 423 at 16-17.

Claim 19, however, contains an obvious error. In view of the Court's construction, Acceleration Bay now moves the Court to correct that error by moving the adjective "non-routing table based" to modify "method." The corrected Term 24 should read as follows: "A computer readable medium containing instructions for controlling communications of a participant of a broadcast channel within a network, by a **non-routing table based** method comprising."[1]

SUMMARY OF THE FACTS

Term 24 recites "A non-routing table based computer readable medium containing instructions for controlling communications of a participant of a broadcast channel within a network, by a method comprising." D.I. 423 at 14.

The Court held Term 24 to be indefinite based in-part on the purported agreement between Acceleration Bay and the Defendants that the phrase "non-routing table based computer-readable medium" is "nonsensical" as drafted. *Id.* at 17. As a basis for the Court's decision, the Court stated that the patent could not be rewritten to make "non-routing table based" modify "network."

[1] Counsel for Acceleration Bay made reasonable efforts to reach agreement with Defendants' counsel. Defendants do not agree to the relief requested.

In the same Opinion, the Court found to be definite similar Term 25 (the preamble of Claim of U.S. Patent No. 6,910,069), which recites "[a] computer-based, non-routing table based, non-switch based method for adding a participant to a network of participants." The Court concluded that Term 25 did not "fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." (*Id.*). at *9.

ARGUMENT

Acceleration Bay moves the Court to correct Term 24 to recite "A computer readable medium containing instructions for controlling communications of a participant of a non-routing table based broadcast channel." The correction is limited to moving the adjective "non-routing table based" from modifying "computer readable medium" to modifying the "method."

The Court noted in its claim construction order that, for purposes of determining if the claim as drafted was definite, the Court could not ignore the actual language and "rewrite" the claim. D.I. 375 at 17. This motion, however, does not ask the Court to ignore the actual language of the claim for purposes of claim construction. Instead, Acceleration Bay asks the Court to exercise its authority to correct Claim 19 to fix a clear error based on the intrinsic record of the '634 Patent.

The Federal Circuit confirmed that a district court may correct "obvious" errors in a patent claim if "(1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims." *CBT Flint Partners, LLC v. Return Path, Inc.*, 654 F.3d 1353, 1358 (Fed. Cir. 2011) (reversing the district court's summary judgment of invalidity based on indefiniteness because the court could have corrected an obvious error within the claim) (citing *Novo Indus., L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1354 (Fed. Cir. 2003)

(establishing a two-part test to correct obvious errors in patent claims); *Advanced Med. Optics, Inc. v. Alcon Inc.*, 361 F. Supp. 2d 370, 384 (D. Del. 2005) (correcting an obvious error under *Novo Indus.*). Both factors are present here.

The meaning of Term 24 does not require any "debate." The Court found it is nonsensical as drafted, but found definite a very similar preamble that simply located the "non-routing table based" modifier to make clear it was modifying the nature of the network. The same meaning can be achieved here simply by moving the phrase to modify "a method."

The prosecution history of the '634 Patent is not to the contrary, and gives no indication that "non-routing table based" was intended to modify computer readable medium, as opposed to modifying the nature of the subject network. Indeed, the applicant specifically stated that Claim 19 (which was Claim 44 during prosecution) was amended to cover "a 'non-routing table based' method for routing information." D.I. 118-2, Ex. B-4, '634 Patent File History (Response to Office Action dated February 4, 2004) at Pg. 13. Thus, one of skill in the art reading the intrinsic record as a whole would understand that the amendment to the computer readable medium was an obvious error and should be corrected to modify the type of method.

Because the requested correction satisfies the two-part *Novo Industries* test, the Court can and should correct the obvious error on the face of Claim 19 of the '634 Patent.

CONCLUSION

As discussed above, the Court should correct the preamble of Claim 19 of the '634 Patent to read "A computer readable medium containing instructions for controlling communications of a participant of a broadcast channel, by a non-routing table based method comprising."

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