

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.,)	
)	
Defendant.)	

ACTIVISION’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 Activision Blizzard, Inc. (“Activision”) moves for summary judgment of noninfringement, limitations on damages, no willful infringement, and invalidity.

The grounds for this motion are set forth in Activision’s accompanying brief. The precise relief sought is detailed in a proposed order accompanying this motion.

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February 2, 2018

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[PROPOSED] ORDER

WHEREAS, the Court, having consider Activision Blizzard, Inc.’s Motion for Summary Judgment of Non-Infringement, Limitations on Damages, No Willful Infringement, and Invalidity

IT IS HEREBY ORDERED this _____ day of _____, 2018, that Activision’s Motion is GRANTED:

- 1) Activision does not infringe claims 12, 13, 14, and 15 of the ‘344 Patent and claims 12 and 13 of the ‘966 Patent because Activision does not make, use, or sell the accused Call of Duty and Destiny Networks.
- 2) Activision does not infringe claims 9 and 16 of the ’497 Patent because, for the accused Call of Duty and Destiny games, it does not make, use or sell the accused hardware component.
- 3) Activision does not directly infringe method claim 1 of the ’147 Patent and method claims 1 and 11 of the ’069 Patent because, for the accused Call of Duty and Destiny games, it does not perform any of the steps alleged to cause infringement.

- 4) Activision does not infringe any of the asserted patents because, for the accused Call of Duty and Destiny games, Plaintiff has no evidence that Activision has infringed any asserted patent through testing.
- 5) Activision does not infringe any asserted claim of the '344, '966, '634, '147, and '069 Patents because the accused networks are not m-regular and non-complete, they are not broadcast channels, and they do not meet the broadcast/rebroadcast requirements of these asserted patents.
- 6) Activision's Call of Duty and Destiny games do not infringe the asserted claims of the '069 and '634 Patents, and the World of Warcraft game does not infringe the '634 Patent.
- 7) Activision's Call of Duty and Destiny games do not infringe the asserted claims of the '147 Patent.
- 8) Activision's Call of Duty, World of Warcraft, and Destiny games do not infringe the asserted claims of the '497 Patent.
- 9) Activision's Call of Duty, World of Warcraft, and Destiny games do not infringe any of the asserted patents under the doctrine of equivalents.
- 10) Any accused acts outside the United States do not infringe any of the asserted patents.
- 11) Activision did not willfully infringe the asserted claims of the '344, '966, '634, '497, '147, and '069 Patents.
- 12) The asserted claims of the '634 Patent are indefinite and therefore invalid.
- 13) The asserted claims of the '344, '966, '634, '147, and '069 Patents are invalid for lack of written description.
- 14) The asserted claims of the '344, '966 and '497 Patents are invalid as covering non-statutory subject matter under 35 U.S.C. § 101 because they cover pure software.

- 15) The “Computer Readable Media” claims (’634 Claims 19 And 22/’147 Claims 11, 15,
16) are invalid as including non-statutory subject matter under 35 U.S.C. § 101.

Judge Richard G. Andrews

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