EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, : CA NO. 16-453-RGA, 16-454-RGA, 16-455-RGA
v.
ACTIVISION BLIZZARD INC., Defendant, : January 29, 2018 10:05 o'clock a.m.

TRANSCRIPT OF MOTION FOR CLARIFICATION
BEFORE THE HONORABLE RICHARD G. ANDREWS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: POTTER, ANDERSON & CORROON
BY: PHILIP A. ROVNER, ESQ

BY: ALAN R. SILVERSTEIN, ESQ
-and-
KRAMER LEVIN NAFTALIS & FRANKEL
BY: JAMES R. HANNAH, ESQ
BY: PAUL J. ANDRE, ESQ
BY: AARON M. FRANKEL, ESQ

For Defendant: MORRIS NICHOLS ARSHT & TUNNELL
BY: STEPHEN J. KRAFTSCHIK, ESQ
-and-
WINSTON & STRAWN LLP
BY: MICHAEL M. MURRAY, ESQ
BY: DAVID P. ENZMINGER, ESQ

PROCEEDINGS

(The proceedings occurred at 10:05 o'clock a.m. as follows:)

10:05:15 THE COURT: All right. Please be seated.

This is time the Court has set for a hearing with witnesses in Acceleration Bay v. Activision Blizzard, Civil Action No. 16-453, and two related cases.

Can we have counsel's appearances, Mr. Rovner?

10:05:33 MR. ROVNER: Good morning, your Honor.

Phil Rovner from Potter Anderson for Plaintiff Acceleration Bay.

With me from Kramer Levin is Jim Hannah.

MR. HANNAH: Good morning, your Honor.

10:05:41 MR. ROVNER: Paul Andre and Aaron Frankel.

And from my office Alan Silverstein.

Dr. Mitzenmacher, who you'll be hearing from, is in the back.

THE COURT: All right. Thank you.

10:05:53 Mr. Kraftschik?

MR. KRATSCHIK: Good morning, your Honor.

Stephen Kraftschik from Morris Nichols for defendants.

With me today from Winston & Strawn are Michael Murray and David Enzminger.

10:06:07 MR. MURRAY: Good morning, your Honor.

MR. ENZMINGER: Good morning, your Honor.

THE COURT: Good morning to you all.

Plaintiff, I presume you're going first?

MR. MURRAY: Excuse me, your Honor.

10:06:17 May I say one thing for the record before we get started?

THE COURT: Yes.

MR. MURRAY: We were just told right before the hearing started that the witness who put the Declaration in addressing this term to the Court is actually not the witness that they're calling today.

THE COURT: Well, they said Dr. Mitzenmacher. I thought it was probably going to be Dr. Medvidovic.

MR. MURRAY: So we were under the assumption that they

10:06:39 were bringing the witness in for the Declaration on its term, and they did not.

I just want that to be on the record.

THE COURT: Okay.

MR. HANNAH: Thank you, your Honor.

10:06:45 THE COURT: Go ahead, Mr. Hannah.

MR. HANNAH: So, your Honor, we were just calling to call the witness and have him testify on direct examination, and let them do cross-examination and then redirect.

Mitzenmacher, please.

DR. MICHAEL MITZENMACHER, after having been first duly sworn as a witness for the plaintiff, was examined and testified as follows:

10:07:47 MR. HANNAH: Your Honor, would I like to pass up some slides.

THE COURT: Sure.

MR. HANNAH: I have a couple of clean copies of the '344 patent, if you don't have them readily accessible.

10:07:59 THE COURT: Okay.

MR. HANNAH: May it please the Court?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. HANNAH:

10:08:22 Q. Good morning, Dr. Mitzenmacher.

A. Good morning.

Q. Can you please start out by describing your educational background?

A. Sure.

10:08:30 **I was an Undergraduate at Harvard University. I received an Undergraduate Degree in Mathematics and Computer Science in 1991.**

I then went to the other Cambridge, the University of Cambridge for a year in England where I did a mathematics

10:08:46 **program called the Part 3 Triopods, and received a certificate**

of Math Studies, sort of the equivalent of a Master's.

I then went to the University of California at Berkeley where I got a Ph.D. in Computer Science in 1996.

Q. Can you please tell us about your educational and your

10:09:03 appointment background?

A. Sure.

After I finished my Ph.D., I went to work as a research scientist at Digital Systems Research Center. That was part of the Digital Equipment Corporation in Palo Alto.

10:09:16 **And I switched over to being a professor. I joined Harvard in January of 1999. I was promoted to an Associate Professor in 2002. And then a full Professor in 2005.**

I have been -- I've stayed at Harvard since. I have served as Area Dean For Computer Science. That's the equivalent

10:09:38 **of a Department Chair, and it's called area Dean there, from 2010 to 2013.**

I've also done, while I've been employed at Harvard, a variety of consulting. Some of it legal expert work, some technology work for companies such as Microsoft, Digital

10:09:55 **Fountain, eHarmony, Akamai, and so on.**

Q. And at Harvard, what does your research focus on?

A. My research focus is on algorithms, particularly for networks and communication.

A. Sure.

So one time, a couple of years ago, I had my last graduate student that graduated. We were working on verification systems for cloud computing.

10:10:20 **And the idea there is that these days, whether you're a scientist or a business, you have may have some big problem that you're going to ask a lot of cloud system providers to compute the answer for you. Someone like Amazon, or Google, and so on.**

And, so, you send your process over, and it does this

10:10:40 **large computation for you, and it will return some sort of answer.**

So it might say the answer is 37.

I assume the question is on your side, why should we trust that answer?

10:10:51 **So part of it may be a security issue. You may have concerns that some malicious entity is taking over part of the cloud, and we try to give you a background answer. Or it may just be a concern that there's some sort of flaw in how they ran the software. We have the software and give you back the**

10:11:09 **answer.**

So what we devise is some sort of an algorithm and protocol that you communicate back and forth, so that the cloud system can convince you that it's actually presented, the right answer.

10:11:21 Q. What type of organizations are you involved with?

A. I'm a fellow for the Association of Computer Machinery. That's the ACM. They're a a flagship organization for Computing Professionals.

It's a fellow and honor that they give their best 30 or

10:11:39 **40 people a year. It's like the top one percent.**

I'm a member of the Editorial Board for a class of publications, The Communications of the ACM.

I'm actually the Chair of SIGACT. That's the ACM special interest group on algorithms and computation theories.

10:12:01 **There are some various groups within the ACM. This is the main one for algorithms.**

And, of course, I also do other sorts of organizational work.

I'm a member of various editorial boards. I serve

10:12:13 **regularly on program committees for conferences and so on.**

Q. Let's talk about some of the awards that you received for your work.

Can you explain what is being shown here on the slide?

Right.

10:12:26 So, again, I'm an ACM Fellow. And, again, that's given to like 30 or 40 people a year and given to something like the top one percent.

My citations -- the reason I've been given this award

Again, those are my main areas of research.

I've run several best paper awards, including the best paper award. And, in general, for the Institute of Electrical and Electronics Engineers Information Theory Society for my work on codings.

I've won the test of time award. That's an award looking back say like ten years for conventional papers, so my limitations of coding algorithms within network systems.

I received the National Science Foundation Career Award. That was for, you know, young faculty members starting out and doing research. I have several other NSF grants as well.

Q. And can you please tell the Court what kind of courses do you teach at Harvard?

A. Sure.

So I teach the undergraduate algorithms course. I pretty much taught that every year at Harvard since 1999, except for two years where I taught sort of a special honors versions of that course.

I also teach graduate courses. I tend to revolve two graduate courses, one is on Randomized Algorithms and Probabilistic Analysis. What the advanced algorithms responses were. I've actually written a textbook -- one of the main textbooks on the subject.

My other graduate level class is specifically on

algorithms for networks and communications.

This is a class in 2002, current research and current research papers, a lot of discussion with what the recent work is on. And the goal there is for the graduate students to enter the class by doing projects that can lead to research publications, and do research in general.

MR. HANNAH: Your Honor, at this time, we would like to tender Dr. Mitzenmacher as an expert in networking and algorithms?

THE COURT: Yes. Okay.

BY MR. HANNAH:

Q. So, Doctor, can you briefly tell us what was your assignment for today?

A. So my assignment for today was -- I understand there's an issue in particular about how algorithms are described and help me understand the descriptions of algorithms to the extent that I need to present background or answer questions related to -- to help you understand algorithms. I appear to do that.

Specifically, I understand that there was one of the claim terms, Term 4.

And, so, I examined Claim 4 and looked at the corresponding function and structure on, and why the Court's claim construction, in this particular -- I think one of the

the function that was recited in the Court's claim construction.

Q. And in forming that analysis, what level of the skill did you apply?

A. Right.

So to one of ordinary skill in the art, I used the following definitions.

I assumed it was someone who had a Bachelor's Degree in Computer Science or a related filed. Plus, some additional work or experience beyond just the Undergraduate Degree, which would be either a two or more years of industry experience or an advanced degree in computer science or related field, or Master's Degree.

Although, you know, my opinions wouldn't change given the small variations in this definition.

Q. And based on this level of skill, what type of courses does someone take to get a Bachelor's Degree in Computer Science?

A. Like I said, you know, for instance at Harvard, you would be required to take some of the programming courses, a number of courses related to algorithms and data structures.

You would also be expected to take courses in some number of advanced subjects, such as networking, for example. Artificial intelligence would be another category. Perhaps graphics or other areas, depending on their interests.

Q. So is it fair to say that they would have a basic understanding of computer science?

A. Yes. Someone at this level would certainly have a good understanding of computer science.

And, in particular, would have an understanding or experience with algorithms and how algorithms are described and used.

Q. And, so, what is an algorithm?

A. An algorithm is really a process to accomplish some task, you know, a sequence of steps. It's often like if you were to use metaphor analogy we use for interesting students -- we say it's just like a recipe.

So just as you would have -- in a recipe, you have ingredients, such as like flour, and sugar, and chocolate. And those are your inputs and your outputs that wind up being in the cake.

Except in computer science, it's like a recipe, but your inputs are the data, right, so you have some types of data elements that are your inputs, and you're producing some sort of corresponding output data.

Q. What's an example of an algorithm that would be commonly used?

A. Yes. So what I teach in my undergraduate class, and some variations of it are used on a regular basis, it would be like a shortest path algorithm.

there.

And what Google will return to you is -- they will give the shortest path in terms of finding the quickest route for you to get there. In fact, it will find you sort a mix of several quickest routes.

10:18:23

And as you can imagine, they have a lot of data as to maybe the individual distances and so on. That's the different points in the network. And then they have to use that basic information to compute this, you know, larger scale information of what is the shortest path between these two points.

10:18:38

Q. What's an example of an algorithm taught in interim classes for algorithm?

A. All right.

So when we teach -- in other classes as well, one of the ways likening this to this recipe description that I gave before is, when we sort of teach algorithms to newcomers, one example we sometimes use is, well, how do you make a peanut butter and jelly sandwich?

10:18:53

And the idea there is that you can give a very natural high-level description, right, you start with two pieces of bread, your peanut and jelly, and then you take the peanut butter, spread it on one side of one of the pieces of bread. Take the jelly, spread it on one side of the other piece of bread. You put the peanut butter side and the jelly side together and then you have your sandwich.

10:19:12

10:19:31

And that is a, you know, a natural way to describe an algorithm for making a peanut butter and jelly sandwich.

And then when we go into that we say, well, okay, when you're implementing that, there may be additional details that you need to provide the computer, because the computer is somewhat literal. And you don't really even need them to describe the algorithm, but there are things to think about.

10:19:47

For instance, when you're talking about peanut butter, you would think about looking in the jar first. And certainly one of skill in the art in making sandwiches would understand that you need to open the jar to make the peanut butter and jelly sandwich, without having to actually put that level of detail in the algorithm.

10:20:03

Q. So how does the function determine the level of detail required for an algorithm?

10:20:18

A. Right.

So when we're describing algorithms, we tend to focus on the high level, like what's the main idea, what's the -- the important steps that you need to know.

10:20:29

And, in particular, when we're talking about a high-level functionality, you expect to see a corresponding high-level description.

Q. So let's turn to Claim 13.

for connecting to the identified broadcast channel?

A. Yes, that's my understanding.

Q. And you understand there's a corresponding limitation in the '966 patent?

10:20:58

A. Yes.

Q. Can you understand that in order to satisfy a means-plus-function, you need to identify the function and the structure, is that right?

A. Yes, that's my understanding.

10:21:08

Q. So let's take a look at the function.

So the function has been construed as, connecting to the identified broadcast channel, do you see that?

A. Yes.

Q. What's your understanding of what type of function that is?

10:21:22

A. That's a very high level of function. We're talking about making a connection within a network, a particular type of connection.

They identify a broadcast channel. But, again, that's a very high level of function, one that people understand readily or skill in the art, because they have to deal with managing connections to the networks. They would have seen that and understood that.

10:21:37

And, so, one would expect that, you know, the corresponding description of an algorithm to do that would be a correspondingly high level.

10:21:53

Q. And, so, you keep mentioning high-level function.

Can you explain what a high-level function is versus a low-level function?

A. Yes.

So, if we're talking about a high-level function, by connecting to the identified broadcast channel, you would expect to see stuff like, well, you know, who do I connect to first? And then what sort of individual connections do I make among the discipline.

10:22:01

If you are talking about a things at a lower level, okay, where we're dealing with something that needed to be implemented on a chip, right, then you might need to get into issues of like, well, what gets put where, and what does -- this whole population needs to occur.

10:22:17

But here we're talking about a high level networking function where there is already in place various protocols such as TCP/IP and so on for individual connections -- in their sockets, TCP/IP and so on.

10:22:33

And, so, people understand the methodologies for doing connections. You would expect a description to take into account that people have this knowledge.

10:22:51

THE COURT: Mr. Hannah, can you hold on just a second?

MR. HANNAH: Sure.

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