

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|----------------------------|---|-----------------------|
| ACCELERATION BAY LLC, |) | C.A. No. 16-453 (RGA) |
| |) | |
| Plaintiff, |) | |
| |) | PUBLIC VERSION |
| v. |) | |
| |) | |
| ACTIVISION BLIZZARD, INC., |) | |
| |) | |
| 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. |) | |

**DECLARATION OF PAUL J. ANDRE IN SUPPORT OF PLAINTIFF
ACCELERATION BAY LLC'S OPENING SUMMARY JUDGMENT
AND DAUBERT BRIEF**

VOLUME 2 OF 3

[Exhibits 22-40 part 1]

I, Paul J. Andre, hereby declare as follows:

1. I am an attorney with the law firm Kramer Levin Naftalis & Frankel LLP, counsel of record for Plaintiff Acceleration Bay LLC (“Acceleration Bay”). I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts. I submit this declaration in support of Acceleration Bay’s Opening Summary Judgment and *Daubert* Brief.

2. Attached hereto as Exhibit 1 is a true and correct copy the Final Written Decision from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2015-01970, Paper 106 (P.T.A.B. Mar. 23, 2017).

3. Attached hereto as Exhibit 2 is a true and correct copy of the Final Written Decision from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2015-01951, Paper 107 (P.T.A.B. Mar. 23, 2017).

4. Attached hereto as Exhibit 3 is a true and correct copy of U.S. Patent No. 6,701,344, produced by Acceleration Bay LLC, bearing bates numbers AB-AB 000001 – 56.

5. Attached hereto as Exhibit 4 is a true and correct copy of U.S. Patent No. 6,714,966, produced by Acceleration Bay LLC, bearing bates numbers AB-AB 000291 – 348.

6. Attached hereto as Exhibit 5 is a true and correct copy of page 14 from Defendants’ Initial Invalidation Contentions from *Acceleration Bay LLC v. Activision Blizzard, Inc.*, Case No. 15-cv-00228-RGA, *Acceleration Bay LLC v. Electronic Arts Inc.*, Case No. 15-cv-00282-RGA, *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, Case No. 15-cv-00311-RGA (D. Del.), dated May 6, 2016.

7. Attached hereto as Exhibit 6 is a true and correct copy of pages 36-38, 128-129, 169, 182-184, 195-196, 215-216, 243-245, 247, and 379-381 from Expert Report of David R.

Karger, Ph.D. Regarding Invalidity of Certain Claims from U.S. Patent Nos. 6,701,344, 6,714,966, 6,829,634, 6,910,069, 6,732,147, and 6,920,497, dated September 25, 2017.

8. Attached hereto as Exhibit 7 is a true and correct copy of page 28 from the Expert Report of Scott Bennett, Ph.D. Regarding Prior Art Invalidity of Certain Claims from U.S. Patent Nos. 6,701,344, 6,714,966, 6,829,634, 6,910,069, 6,732,147, and 6,920,497, dated September 20, 2017.

9. Attached hereto as Exhibit 8 is a true and correct copy of the Expert Report of Michael Goodrich, Ph.D., Regarding Validity of U.S. Patent Nos. 6,701,344; 6,829,634; 6,714,966; 6,732,147; 6,920,497; 6,910,069, dated November 13, 2017.

10. Attached hereto as Exhibit 9 is a true and correct copy of pages 67-68 from the transcript of the deposition of David Karger, taken on January 25, 2018.

11. Attached hereto as Exhibit 10 is a true and correct copy of the Decision Denying Institution of *Inter Partes* Review from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2016-00726, Paper 11 (P.T.A.B. Sept. 9, 2016).

12. Attached hereto as Exhibit 11 is a true and correct copy of the Decision on Institution of *Inter Partes* Review from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2015-01972, Paper 8 (P.T.A.B. Mar. 24, 2016).

13. Attached hereto as Exhibit 12 is a true and correct copy of the Decision Denying Institution of *Inter Partes* Review from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2016-00931, Paper 13 (P.T.A.B. June 23, 2016).

14. Attached hereto as Exhibit 13 is a true and correct copy of the Decision on Institution of *Inter Partes* Review from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2016-00747, Paper 12 (P.T.A.B. Sept. 12, 2016).

15. Attached hereto as Exhibit 14 is a true and correct copy of the Final Written Decision from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2016-00747, Paper 50 (P.T.A.B. Sept. 6, 2017).

16. Attached hereto as Exhibit 15 is a true and correct copy of Decision Denying Institution of *Inter Partes* Review from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2016-00727, Paper 13 (P.T.A.B. Sept. 9, 2016).

17. Attached hereto as Exhibit 16 is a true and correct copy of a publication by S. Alagar entitled, “Reliable Broadcast in Mobile Wireless Networks”, produced by Scott Bennett, bearing bates numbers BENNETT_000627 – 31.

18. Attached hereto as Exhibit 17 is a true and correct copy of pages 120 and 265-266 from the Reply Expert Report of David R. Karger, Ph.D. Regarding Invalidity of Certain Claims from U.S. Patent Nos. 6,701,344, 6,714,966, 6,829,634, 6,910,069, 6,732,147, and 6,920,497, dated December 14, 2017.

19. Attached hereto as Exhibit 18 is a true and correct copy of pages 23-24 from the Supplemental Expert Report of David R. Karger, Ph.D. Regarding Invalidity of Certain Claims from U.S. Patent Nos. 6,701,344, 6,714,966, 6,829,634, 6,910,069, 6,732,147, and 6,920,497, dated January 23, 2018.

20. Attached hereto as Exhibit 19 is a true and correct copy of a publication by Daniel Kegel entitled “NAT and Peer-to-peer networking”, produced by Scott Bennett, bearing bates numbers BENNETT_000226 – 29.

21. Attached hereto as Exhibit 20 is a true and correct copy of a webpage produced by Acceleration Bay LLC, bearing bates numbers AB-AB 014173 – 74.

22. Attached hereto as Exhibit 21 is a true and correct copy of a webpage, produced by Acceleration Bay LLC, bearing bates numbers AB-AB 014175 – 77.

23. Attached hereto as Exhibit 22 is a true and correct copy of U.S. Patent No. 6,920,497, produced by Acceleration Bay LLC, bearing bates numbers AB-AB 001786 – 843.

24. Attached hereto as Exhibit 23 is a true and correct copy of pages 100, 108 and 116 of the transcript of the deposition of David Karger, taken on January 25, 2018.

25. Attached hereto as Exhibit 24 is a true and correct copy of the Declaration of Daniel R. Karger from *Activision Blizzard, Inc. v. Acceleration Bay LLC*, Case IPR2016-00724 and IPR2016-00727, dated March 10, 2016.

26. Attached hereto as Exhibit 25 is a true and correct copy of ActiveNet's "default.htm" file produced by Defendants, bearing bates number DEFS-I0025493 (DEFS-I0025493\anet-archive.zip\anet-archive\unpacked\98-11-10\default.htm).

27. Attached hereto as Exhibit 26 is a true and correct copy of ActiveNet's "default.htm" file produced by Defendants, bearing bates number DEFS-I0028725 (DEFS-I0028725\99-01-05\default.htm).

28. Attached hereto as Exhibit 27 is a true and correct copy of screen captures of the ActiveNet source code file directories. These screen captures show that Defendants produced multiple versions of ActiveNet.

29. Attached hereto as Exhibit 28 is a true and correct copy of the Expert Report of Michael Mitzenmacher, Ph.D., Regarding Infringement by Activision Blizzard Inc. of U.S. Patent Nos. 6,701,344; 6,829,634; 6,732,147; 6,714,966, 6,920,497; 6,910,069, dated September 23, 2017, including a November 7, 2017 markup of excerpts of that report with red highlighting indicating withdrawn citations.

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