

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

ACCELERATION BAY LLC,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,

Defendant.

C.A. No. 16-453 (RGA)

**REDACTED
PUBLIC VERSION**

**DECLARATION OF DR. JOHN P. J. KELLY IN SUPPORT OF DEFENDANT
ACTIVISION BLIZZARD INC.'S MOTION FOR SUMMARY JUDGMENT OF
NON-INFRINGEMENT OF U.S. PATENT NOS. 6,701,344; 6,714,966; 6,829,634 AND
6,920,497**

Original Filing Date: February 2, 2018

Redacted Filing Date: February 13, 2018

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RESTRICTED HIGHLY CONFIDENTIAL ACTIVISION AND NON-PARTY SOURCE CODE**

I. INTRODUCTION

1. My name is Dr. John P. J. Kelly, and I have been retained by counsel for Activision Blizzard, Inc. (“Activision”), to provide assistance in the above-captioned matter, which I understand to be related to the alleged infringement of certain claims in 6,701,344 (the “’344 patent”); 6,714,966 (the “’966 patent”); 6,829,634 (the “’634 patent”); and 6,920,497 (the “’497 patent”), collectively, “the Acceleration Patents” or “Asserted Patents.” I understand that Plaintiff Acceleration Bay LLC (“Acceleration” or “Plaintiff”) has asserted that the following claims are allegedly infringed: Claims 12-15 of the ’344 patent; claims 19 and 22 of the ’634 patent; claims 12 and 13 of the ’966 patent; and claims 9 and 16 of the ’497 patent (“Asserted Claims”).

2. I have been asked to provide this declaration in support of Activision’s motion for summary judgment. My opinions in this declaration reflect the opinions in my expert report on noninfringement of November 13, 2017, and my supplemental expert report on noninfringement of January 24, 2018.

3. In this declaration, I set forth certain opinions regarding non-infringement of the Acceleration Patents by the following accused products: Call of Duty: Advanced Warfare and Call of Duty: Black Ops 3 (collectively, “CoD”), World of Warcraft current base game and the Legion expansion (collectively “WoW”), and Xbox One and Xbox 360 versions of Destiny (collectively, “Destiny”) (collectively, “Accused Products”). This declaration contains a statement of certain of my opinions formed in this case and provides the bases and reasons for those opinions. I make the following statements based on my own personal knowledge and, if called as a witness, I could and would testify to the following.

4. I hold Bachelor of Arts and Master of Arts degrees with Honors in Mathematics from the

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University of Cambridge, England. I hold a Ph.D. in Computer Science from U.C.L.A. From 1982 through 1986, I was a professor in the Computer Science Department at U.C.L.A. From 1986 through 1997, I was a professor in the Electrical and Computer Engineering Department of the University of California, Santa Barbara, where I held tenure. A true and accurate copy of my curriculum vitae is attached hereto as Appendix A.

5. I am the principal of Santa Barbara Technology Group, Inc. I teach and consult in many different aspects of computer science and engineering, including computer hardware and software architecture and design, software engineering and fault tolerance. My particular areas of expertise include network computing (including Internet computing), computer architecture, software engineering and “clean-room” development and evaluation, reverse engineering, operating systems (including real-time and embedded), storage systems, fault tolerance, parallel and distributed computing systems, transaction processing systems, database systems, and program management.

6. As a result of my education and professional experience, I have extensive knowledge of computer operating systems including access control concepts, networking technologies, database systems, communication protocols including network communication protocols, user interfaces including graphical user interfaces and computer hardware design, and software analysis, design, and development. I have also analyzed several software products related to access control, audio and video playback, network transmission of audio and video including software and systems for Voice over IP, Internet games, storage of audio and video in multimedia databases, and content delivery networks. For example, I have analyzed database systems used to store and access audio file repositories; network based distribution of electronic tokens; set top boxes; content delivery network architectures of leading content delivery network providers; etc.

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7. I have also analyzed the source code for computer operating systems such as Microsoft Windows, Mac OS, Linux, etc. I have also testified in Court on several occasions as a computer science expert.

8. I have worked in the area of computer software, hardware and system design and development for over forty years. I have extensive experience in the design and development of small and large scale software systems. I have been involved in the specification, development, integration, and testing of computer systems with a wide range of requirements, sizes and types. These have included, by way of example, custom hardware and software for a US Air Force fighter plane, a distributed real-time system for US FAA air traffic control, and a distributed geographical information system for the US Department of Energy.

9. From 1978 to 1995, I specified, designed and implemented distributed database architectures, systems and applications for Los Alamos National Laboratory and NASA's Jet Propulsion Laboratory and distributed database machine design and implementation at Transaction Technology Incorporated, Ordain, Inc. and Teradata. For these and many other projects, I designed and implemented computer networks and communication protocols used by computers on those networks.

10. From 1985 to 1998, I consulted for AT&T GIS, NCR, Symbios Logic, and LSI Logic, including working as a member of the AT&T GIS Science Advisory Committee ("SAC"). The SAC evaluated AT&T's organization, technical direction and product strategy and made recommendations to the Vice President of Technology and Development.

11. Appendix B lists the testimony that I have provided in the last four years and my compensation. I am being compensated for my time spent in connection with this case. I have no financial interest in the outcome of this case. The opinions provided in this declaration are my

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own and my compensation does not depend in any way on the substance of my opinions.

A. MATERIALS CONSIDERED

12. In order to perform the analysis and evaluation necessary for the reports from which this declaration is derived, I reviewed and relied on a variety of sources and documents, including those expressly cited in this declaration. Attached as Appendix C is a listing of the information I have considered in forming my opinions. I have also reviewed all documents cited in relation to the patents discussed herein in the Infringement Reports of Drs. Medvidovic and Mitzenmacher. I have also played the accused games.

B. PERSON OF ORDINARY SKILL IN THE ART

13. I have been asked to opine on the knowledge and understanding of a person of ordinary skill in the art (“POSITA”) as of the time of invention of the Asserted Patents. Each of the Asserted Patents was filed on July 31, 2000, and I understand that Plaintiff contends that the inventors have testified that they conceived of the subject matter of the Asserted Patents by November 1996. My opinion as to who a POSITA is does not change if the time of invention falls within the range of November 1996 to July 2000.

14. I understand that the factors considered in determining the ordinary level of skill in the art include: (i) the levels of education and experience of persons working in the field; (ii) the types of problems encountered in the field; and (iii) the sophistication of the technology. I understand that a POSITA is not a specific real individual, but rather a hypothetical individual having the qualities reflected by the factors above.

15. In my opinion, the field of art relevant to the asserted patents is a combination of computer networking and graph theory, which are related disciplines.

16. In my opinion, a POSITA at the time of the claimed inventions would have a minimum of:
(i) a bachelor’s degree in computer science, computer engineering, applied mathematics, or a

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