

**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. MICHAEL R. MACEDONIA IN SUPPORT OF  
DEFENDANT ACTIVISION BLIZZARD INC.'S  
MOTION FOR SUMMARY JUDGMENT OF  
NON-INFRINGEMENT OF U.S. PATENT NOS. 6,732,147 AND 6,910,069**

Original Filing Date: February 2, 2018

Redacted Filing Date: February 13, 2018

**CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
RESTRICTED HIGHLY CONFIDENTIAL ACTIVISION AND NON-PARTY SOURCE CODE**

**I. INTRODUCTION**

1. My name is Dr. Michael R. Macedonia, 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 U.S. Patent Nos. 6,732,147 (the “’147 patent”) and 6,910,069 (the “’069 patent”), collectively “the Acceleration Patents” or “Asserted Patents.” I understand that the Plaintiff Acceleration Bay LLC (“Acceleration”) has asserted that the following claims are allegedly infringed: Claims 1, 11, 15 and 16 of the ’147 patent and claims 1 and 11 of the ’069 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 February 2, 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”) 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. My C.V., including my publications and articles, is attached as Appendix A. If asked, I will testify regarding my qualifications, background, and experience in the field of the design, development, and implementation of networked games.

5. I am the Assistant Vice President for Research and Innovation at the University of

**CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
RESTRICTED HIGHLY CONFIDENTIAL ACTIVISION AND NON-PARTY SOURCE CODE**

Central Florida, Deputy Director for the UCF Applied Research Institute, and Co-PI of the Defense Department-sponsored Intelligence Community Center for Academic Excellence (“IC CAE”). Prior to joining UCF, I was a Vice President and Technical Fellow at SAIC, and a General Manager for a virtual world game software startup, Forterra. Previously, I was a member of the federal Senior Executive Service and Director of the Disruptive Technology Office (now “IARPA”) for the Office of the Director of National Intelligence in Washington, DC. IARPA is the U.S. intelligence community’s centrally funded research activity for advanced technology. I am also the former Chief Technology Officer for the United States Army Program Executive Office for Simulation, Training and Instrumentation (“PEO STRI”). PEO STRI develops and provides products and services for training, instrumentation, targets, and threat simulations for a wide variety of customers including the United States Army, United States Marine Corps, United States Special Operations Command, the United States Department of Defense (“DoD”) testing community, and over fifty international customers. I was responsible for the technology acquisition strategy of simulation systems for the United States Army.

6. While at PEO STRI, I led the Army’s effort to develop the Institute for Creative Technologies, initiated the Full Spectrum Warrior X-Box project, and established the Massive Multiplayer Game project. I served as the lead for the Graphics Processing Unit (“GPU”) initiative for simulation under the Defense Advanced Research Products Agency (“DARPA”) Polymorphous Computing Architecture (“PCA”) program and co-sponsored the Association of Computing Machinery (“ACM”) Special Interest Group on Computer Graphics (“SIGGRAPH”) GPU (geometry processing unit) Workshop with NVidia and ATI.

7. I also served as an infantry officer in a variety of command and staff positions in the

**CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
RESTRICTED HIGHLY CONFIDENTIAL ACTIVISION AND NON-PARTY SOURCE CODE**

United States and overseas assignments including Germany and the Middle East. I also served as a project manager for computer and electronic warfare systems.

8. I am a member of IEEE Computer Society and the ACM. I am a former contributing editor and on the editorial board of *IEEE Computer* and the former Entertainment Computing editor for *IEEE Computer*. I also was a contributing editor to *IEEE Computer Graphics and Applications* and the Army Principal to the Interservice/Industry Simulation, Training, and Education Conference. I am a member of the Army Science Board.

9. I have a Bachelor of Science degree with a concentration in Electrical Engineering and Political Science from West Point, and a Master of Science in Telecommunications from the University of Pittsburgh. I have a Ph.D. in Computer Science from the Naval Postgraduate School. My dissertation, “A Network Software Architecture for Large Scale Virtual Environments,” is widely referenced in the network game community.

**A. PRIOR TESTIMONY**

10. A list of cases in which I have testified at deposition or trial or in written reports during at least the past four years is attached as Appendix B of this report.

**B. COMPENSATION**

11. My rate of compensation for my work in this case is [REDACTED] per hour plus any direct expenses incurred. I have no financial interest in the outcome of the litigation between Activision and Acceleration.

**C. 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 report. Attached as Appendix C which is a listing of the information I have considered in forming my opinions. I have also reviewed all documents cited in relation

**CONFIDENTIAL – OUTSIDE COUNSEL ONLY  
RESTRICTED HIGHLY CONFIDENTIAL ACTIVISION AND NON-PARTY SOURCE CODE**

to the patents discussed herein in the Infringement Reports of Drs. Medvidovic and Mitzenmacher. I have also played the accused games.

**D. 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 related field of study; and (ii) four or more years of industry experience relating to networking protocols or network topologies. Additional graduate experience could substitute for professional experience, or significant experience in the field could substitute for formal education.

17. Drs. Medvidovic and Mitzenmacher and I disagree about the appropriate level of skill in the art. See Ex. A-1, Opening Expert Report of Dr. Medvidovic (excerpts), at ¶43; Ex. A-2 Opening Expert Report of Dr. Mitzenmacher (excerpts), at ¶38. In my opinion, the differences

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.