

**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.)

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-454 (RGA)
)
ELECTRONIC ARTS INC.,)
)
Defendant.)

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-455 (RGA)
)
TAKE-TWO INTERACTIVE SOFTWARE,)
INC., ROCKSTAR GAMES, INC., and 2K)
SPORTS, INC.,)
)
Defendants.)

**PLAINTIFF ACCELERATION BAY LLC'S REPLY BRIEF IN SUPPORT OF ITS
MOTION TO CORRECT CLAIM 19 OF THE '634 PATENT**

INTRODUCTION

The Court should grant the instant Motion because the intrinsic record confirms that Claim 19 contains an obvious typographical error. Claim 19, as written, provides for a “non-routing table based computer readable medium.” D.I. 117-2, Ex. A-4 (‘634 Patent) at Claim 19. This is an obvious typographical error as the Applicant explicitly stated during prosecution that Claim 19 was supposed to be amended to cover a “‘non-routing table based’ method for routing information. D.I. 118-2, Ex. B-4, ‘634 Patent File History (Response to Office Action dated February 4, 2004) at Pg. 13. Because the error is clear on its face, the Court should correct Claim 19 by moving the term “non-routing table based” to be placed directly before the term “method” in the preamble in order to be consistent with the statements made in the prosecution history record.

In addition to the prosecution history, the specification, as part of the intrinsic record, also makes clear that Claim 19 should be corrected in the manner proposed by Acceleration Bay because it supports the notion that Claim 19 was meant to cover a “non-routing table based method,” not a non-routing table computer readable medium. *See, e.g.*, D.I. 117-2, Ex. A-4 (‘634 Patent) at 2:45-52. For instance, the opening paragraph of the “Summary” section of the specification makes clear that the intended meaning of Claim 19 provides a method for moving data through the network that is not based on routing tables. *Id.*

Moreover, Acceleration Bay’s proposed correction provides consistency to the Court’s current interpretation of the claims in the instant case. In particular, Claim 1 of the ‘069 Patent covers “a computer-based, non-routing table based, non-switch based method for adding a participant to a network of participants.” D.I. 117-2, Ex. A-5 (‘069 Patent) at Claim 1. As such, there is no reason for the Court to treat terms that are parallel in nature any differently.

Furthermore, rather than addressing the statements made in the prosecution history, Defendants' response focuses on non-sequiturs and contains conclusory arguments that do not address the merits of the instant Motion. However, when the evidence is fully considered, it becomes readily apparent that Claim 19 contains a drafting error that the Court can correct. Acceleration Bay's Motion should, therefore, be granted.

ARGUMENT

I. Acceleration Bay Moves To Correct Term 24, Not For Reconsideration Of The Prior Construction.

Contrary to the Defendants' assertions, there is nothing inconsistent with Acceleration Bay's Motion. D.I. 472 at 1-3. Acceleration Bay initially proposed that Term 24 in Claim 19 be given its plain and ordinary meaning. D.I. 366 at 34. Subsequently, the Court ordered that Acceleration Bay provide a construction for the term. D.I. 206. Acceleration Bay complied with the Court's Order and provided its construction. Then, in an effort to minimize the disputes before the Court, Acceleration Bay agreed to the Defendants' proposed claim construction of Term 24 during the claim construction hearing because it was consistent with the plain and ordinary meaning of the term.¹ D.I. at 14. Following the hearing, the Court held that Claim 19 was indefinite as drafted and did not provide a construction for the term. D.I. 423 at 17. Based on the Court's ruling that claim construction was not the appropriate vehicle to correct the claim as written, Acceleration Bay filed the instant motion to correct the typographical error under the Court's inherent power to correct such obvious errors, particularly in light of the prosecution

¹ Notably, the fact that Defendants provided a construction for the term that is consistent with the plain and ordinary meaning highlights that the term contains an obvious drafting error, and that the claim is understandable when read in light of the intrinsic record as a whole.

history. Thus, Acceleration Bay's position has not waivered that it is readily understood by those of skill in the art in light of the intrinsic record.

Defendants' attempt to frame the Motion as another claim construction dispute is a red herring. The instant Motion requests the Court to *correct* Term 24 rather than give it a different construction as it is drafted. The only "change" set forth by Acceleration Bay in this respect has been where to move the "non-routing table based" modifier in the preamble of Claim 19. This perceived "change" in no way alters the significance of the modifier because the intent behind the use of the modifier has been consistently preserved by Acceleration Bay throughout case proceedings.

For example, as Acceleration Bay proposed during claim construction proceedings, Term 24 should receive its "plain and ordinary" meaning because one skilled in the art would recognize that Term 24 makes clear that (1) the computer-readable medium contains instructions for controlling communications within a network and (2) the nature of the network is that it is non-routing table based. D.I. 366 (Group III Claim Construction) at 34, ("Acceleration Bay proposes constructions that are consistent with the specifications and their plain and ordinary meaning") (citing D.I. 367-1 (Medvidović Decl.), ¶ 20); *see also id.* at 55-57. Indeed, the intention behind the use of the modifier "non-routing table based" was also emphasized in Acceleration Bay's claim construction brief when Acceleration Bay argued that "read as a whole and in the context of the specifications, the term makes clear that the computer-readable medium contains 'instructions for controlling communications within a network' and that the nature of the network is that it is non-routing table based." *See, e.g.,* D.I. 366 at 34-35. In fact, as pointed out by Acceleration Bay in the same excerpt, "[d]efendants had no trouble understanding this limitation or arguing (incorrectly) that it is found in the prior art." *Id.* Furthermore, during

Markman hearings, Acceleration Bay pointed out that its position with regards to Term 24 was maintained despite its agreement with the Defendants regarding their proposed construction. (Mr. Hannah: “I say I agree to the construction. I’m not agreeing to the positions that they’re taking.”). Exhibit 1 attached hereto, 12/18/17 *Markman* Tr. at 8:25-9:2.

Thus, given that (1) Acceleration Bay never deviated throughout the case proceedings from the intent behind Term 24 and (2) a non-routing table-based network is the same as a network that does not use a routing-table based method, there are no inconsistencies between Acceleration Bay’s prescribed correction and any of Acceleration Bay’s previous claim constructions.

II. The Court Should Correct Term 24 Because The Error In The Preamble Is Obvious In View Of The Intrinsic Record.

Acceleration Bay’s proposed correction meets the standard for judicial correction. The correction is not subject to any form of reasonable debate because the intrinsic evidence clearly establishes the intended meaning of Claim 19.² Defendants’ opposition is not to the contrary.

1. The File History In the Intrinsic Record Demonstrates An Obvious Error.

Defendants fail to rebut the fact that the prosecution history makes clear that Claim 19 was meant to cover a “non-routing table based method,” not a non-routing table computer readable medium. The claim language, written description, and patent prosecution history form

² The Federal Circuit confirmed that a district court may correct “obvious” errors in a patent claim if “(1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims.” *CBT Flint Partners, LLC v. Return Path, Inc.*, 654 F.3d 1353, 1358 (Fed. Cir. 2011) (reversing the district court’s summary judgment of invalidity based on indefiniteness because the court could have corrected an obvious error within the claim) (citing *Novo Indus., L.P. v. Micro Molds Corp.*, 350 F.3d 1348, 1354, 1357 (Fed. Cir. 2003) (establishing a two-part test to correct obvious errors in patent claims); *Advanced Med. Optics, Inc. v. Alcon Inc.*, 361 F. Supp. 2d 370, 384 (D. Del. 2005) (correcting an obvious error under *Novo Indus.*)).

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