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

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

# DECLARATION OF DR. JOHN P. J. KELLY IN SUPPORT OF DEFENDANT ACTIVISION BLIZZARD INC.'S OPPOSITION TO PLAINTIFF ACCELERATION BAY, LLC'S MOTION FOR SUMMARY JUDGMENT OF INFRINGEMENT OF CLAIM 12 OF U.S. PATENT NOS. 6,701,344

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#### 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").
- I have been asked to provide this declaration in support of Activision's opposition to Acceleration Bay's motion for summary judgment of infringement of claim 12 of the '344 Patent. 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. Attached to Defendants' Opposition to Acceleration Bay's Motion for Summary Judgment Brief as Exhibit A-12 is a true and correct copy of my Expert Report of Dr. John P. J. Kelly Regarding Noninfringement of U.S. Patent Nos. 6,701,344; 6,829,634; 6,714,966; and 6,920,497, dated November 13, 2017. I also incorporate by reference the opinions set forth in my November 13, 2017 report (Ex. A-12). The statements in Exhibit A-12 are true and accurate based on my personal knowledge and professional experience. Exhibit A-12 also accurately reflects the facts and circumstances described therein as I understand them.
- 3. In this declaration, I set forth certain opinions regarding non-infringement of claim 12 of



the '344 Patent 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 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.
- 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.

- 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



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