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.	)	

DEFENDANT ACTIVISION BLIZZARD, INC'S BRIEF IN SUPPORT OF ITS SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT AS TO THE MEANS PLUS FUNCTION CLAIMS OF U.S. PATENT NOS. 6,714,344 AND 6,714,966

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NATURE AND STAGE OF THE PROCEEDINGS

Acceleration Bay LLC ("Plaintiff") alleges that four video games published and sold by Activision Blizzard Inc. ("Activision") infringe six U.S. patents. Activision filed its motion for summary judgment and to exclude expert opinion under FRE 702 on February 2, 2018. D.I. 440. Briefing on that motion is complete. On April 10, 2018, the Court granted Defendants' Motion For Clarification Of The Court's Claim Construction Opinion And Order. D.I. 519. Trial is scheduled to begin on April 30, 2018.

SUMMARY OF ARGUMENT

The Court clarified its prior claim construction regarding a means plus function term in asserted claims 13 of U.S. Pat. No. 6,701,344 ("the '344 patent") and 6,714,966 ("the '966 patent"), and dependent claims 14 and 15 of the '344 patent. D.I. 519. This clarification makes it clear that the accused products do not infringe. Accordingly, Activision requests summary judgment of non-infringement as to claims 13-15 of the '344 patent and claim 13 of the'966 patent.

ARGUMENT

The term "means for connecting to the identified broadcast channel" is a limitation of independent claims 13 of the '344 and '966 patents. On April 10, 2018, the Court adopted the following as the claimed structure for the term:

> A processor programmed to perform the algorithms disclosed in steps 801 to 809 in Figure 8 (described in the '344 Patent at 17:67-19:34, 19:66-20:44, 21:4-53, 22:61-24:6), and Figures 9, 11, 13, 14, 17 and 18, which involves invoking the connecting routine with the identified broadcast channel's type and instance, connecting to the broadcast channel, connecting to a neighbor, and connecting to a fully connected state.

D.I. 519 (Memo Order) at 5.

Plaintiff's expert reports refer to this claim limitation as "Element 13(i)." *See generally* D.I. 454, Ex. 28 (Expert Report of Dr. Mitzenmacher) at ¶¶ 187-193 (for the '344 patent), 384-385 (for the '966 patent); D.I. 455, Ex. 40 (Expert Report of Dr. Medvidovic) at ¶¶ 288-295 (for the '344 patent), 518-519 (for the '966 patent). The sections of those expert reports that purport to address this claim limitation do not mention any of the seven algorithms as depicted by Figures 8, 9, 11, 13, 14, 17, and 18 of the '344 and '966 patents required by the Court's claim construction. *Id.* That is, they provide no discussion of the claimed algorithms as depicted by Figures 8, 9, 11, 13, 14, 17, and 18. *Id.* Plaintiff's experts only assert that the Accused Networks practice the algorithm of Figures 3A and 3B and lines 5:33-55. *Id.* But, as the Court held, "Figures 3A and 3B and lines 5:33-55 are not relevant to the claims in which [the term] appears." D.I. 519 at 5.

For an accused structure to literally infringe a means-plus-function limitation, "the accused structure must either be the same as or equivalent to the disclosed structure. To be equivalent, the accused structure must (1) perform the identical function and (2) be otherwise insubstantially different with respect to structure." *Kemco Sales, Inc. v. Control Papers Co., Inc*., 208 F.3d 1352, 1364 (Fed. Cir.2000). "[S]tructures may be 'equivalent' for purposes of section 112, paragraph 6 if they perform the identical function, in substantially the same way, with substantially the same result." *Id*.

Because Plaintiff has no evidence that the accused products meet the claimed structure, summary judgment of non-infringement is appropriate as to claims 13-15 of the '344 patent and claim 13 of the '966 patent.

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