IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	C.A. No. 16-453 (RGA)
	)	
v.	)	**JURY TRIAL DEMANDED**
	)	
ACTIVISION BLIZZARD, INC.,	)	**PUBLIC VERSION**
	)	
Defendant.	)	
	)	

JOINT PROPOSED PRETRIAL ORDER

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Dated: April 17, 2018
Public version dated: April 24, 2018

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On April 20, 2018 at 9:00 a.m., counsel for Plaintiff Acceleration Bay LLC ("Acceleration Bay") and Defendant Activision Blizzard, Inc. ("Activision") will participate in a pretrial conference before this Court pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16.3.

Pursuant to this Court's Amended Scheduling Order (D.I. 62), a jury trial will take place beginning on April 30, 2018. This jury trial will address Acceleration Bay's claims that (i) Activision directly infringes, literally and/or under the doctrine of equivalents, certain asserted claims of U.S. Patent Nos. 6,701,344 ("'344 Patent"), 6,714,966 ("'966 Patent"), 6,920,497 ("'497 Patent"), 6,829,634 ("'634 Patent"),[1] 6,732,147 ("'147 Patent"), and 6,910,069 ("'069 Patent"), (collectively, the "Asserted Patents"), (ii) Activision's infringement is willful, and (iii) Acceleration Bay is entitled to damages in the amount of no less than a reasonable royalty for Activision's infringement. Acceleration Bay seeks from the Court findings that (iv) this case is exceptional and Acceleration Bay is entitled to its costs and reasonable attorneys' fees as provided by 35 U.S.C. §§ 284 and 285; (v) it is entitled to injunctive relief; and (vi) it is entitled to an accounting of all of Activision's infringing sales and revenues, together with post-judgment interest and pre-judgment interest from the first date of Activision's infringement. This jury trial will also address Activision's defenses to the claims, including that the asserted claims are invalid. There are no counterclaims to be addressed at trial.

[ACCELERATION BAY: Acceleration Bay respectfully submits that this case is ready to proceed to trial on April 30, 2018, as scheduled. The parties have aggressively pursued fact and

[1] [[**ACTIVISION:** The asserted claims of the '643 Patent were found indefinite under 35 U.S.C. § 112 and, as such, are invalid. D.I. 370 at 14-17 ("'A non-routing table based computer readable medium ...' is indefinite."). Activision thus objects to Acceleration Bay's stated intention to try its allegations of infringement of these invalid claims, as those allegations have been rendered moot. *See Shelcore, Inc. v. Durham Industries, Inc.*, 745 F.2d 621, 628 (Fed. Cir. 1984) ("[T]he issue of infringement is now moot. [Defendant] can incur no liability for 'infringement' of invalid claims."); *Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1580 (Fed. Cir. 1983) ("The claim being invalid there is nothing to be infringed").]]

expert discovery, engaged in extensive discovery motion practice and filed their respective motions for summary judgment and on *Daubert* issues and are filing herewith their respective motions *in limine*. Along with its predecessor case, this litigation has been pending for over three years. The schedules of the nearly two dozen expert and fact witnesses from around the United States, as well as counsel, have been arranged for a trial to proceed as scheduled. Acceleration Bay is prepared to address the patents and the validity issues that Activision has raised. Like Activision, like Acceleration Bay, has not yet limited the evidence as of yet as to what will be presented at trial, but anticipates that both parties will do so after the Pretrial Conference.]

[ACTIVISION: Activision respectfully submits that this case is not ready to proceed to a five day trial on April 30, 2018. Plaintiff is seeking to supplement its infringement and damage reports, and if permitted, Plaintiff's supplementation will of course require additional discovery and likely motion practice. There are six Asserted Patents, 16 Asserted Claims and 3 completely distinct accused product lines. The parties' summary judgment and Daubert Motions are still pending and a hearing date on those motions has not been set. Aside from the Daubert and non-infringement issues, there are palpable validity issues that would make a trial unnecessary. For example, the Court's claim construction ruling that the term "computer readable medium" includes carrier waves requires invalidation of those claims.In addition, the Court found that the '634 patent was indefinite, but the Plaintiff filed a motion to "correct" a claim term to avoid the Court's indefiniteness ruling. One of Defendants' written description arguments covers 5 of 6 currently Asserted Patents. If this case proceeds to trial, Plaintiff should be limited to no more than two Asserted Patents and no more than four Asserted Claims. Plaintiff should identify the maximum four Asserted Claims from two Asserted Patents no later than a week before the start of trial.]

The following matters as to the conduct of the trial have been stipulated by the parties and are hereby ordered by the Court:

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