

**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’S OPPOSITION TO ACTIVISION BLIZZARD, INC’S  
MOTION FOR SUMMARY JUDGMENT AS TO THE MEANS PLUS FUNCTION  
CLAIMS OF U.S. PATENT NOS. 6,701,344 AND 6,714,966**

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Dated: May 2, 2018

### **NATURE AND STAGE OF THE PROCEEDINGS**

On April 10, 2018, the Court provided a modified construction for Term 4 (“means for connecting to the identified broadcast channel”), which appears in certain asserted claims in U.S. Patent Nos. 6,701,344 (“344 Patent”) and 6,714,966 (“966 Patent”) (the “New Construction”). D.I. 519. On April 18, 2018, the Court granted Activision leave to submit its supplemental summary judgment motion based on the New Construction. D.I. 533. The Court also allowed Acceleration Bay to supplement its infringement expert reports to address the New Construction. *Id.*

### **ARGUMENT**

The Court should deny Activision’s supplemental motion for summary judgment based on the New Construction as moot. The only basis for Activision’s supplemental motion is that Acceleration Bay’s infringement expert reports, served in 2017, purportedly did not address the Court’s New Construction, which issued on April 10, 2018. This argument is now moot because Acceleration Bay served supplemental infringement reports, as expressly authorized by the Court, addressing infringement under the New Construction. Declaration of Paul Andre, Ex. 1 (Supplemental Infringement Report of Dr. Medvidovic); *id.*, Ex. 2 (Supplemental Infringement Report of Dr. Mitzenmacher). *See Carrier Corp. v. Goodman Global, Inc.*, 64 F. Supp. 3d 602, 612-13 (D. Del. 2014) (denying motion for summary judgment of non-infringement where the accused infringer provided only attorney argument against infringement expert analysis).

Further, no additional depositions or motions for summary judgment based on these reports are necessary because the supplemental reports rely on the same underlying infringement theories and evidence as in the original infringement reports, and confirm that the accused products continue to infringe under the New Construction. *See, e.g.*, Andre Decl., Ex. 1 at ¶ 10

(“The Court’s 4/10/18 Claim Construction Order . . . does not change my prior analysis of this claim element because the Accused Products have functionality corresponding to these structures, which I already discussed in my prior reports.”); *id.*, Ex. 2 at ¶ 10 (same). Because Activision already had a chance to depose Drs. Medvidovic and Mitzenmacher on their infringement opinions based on the same functionalities and structures, Activision should not be allowed to take additional depositions on these experts. Additionally, the parties already submitted 250 pages of summary judgment and *Daubert* briefs. Activision’s motion covered virtually every issue in the case and it should not be permitted any further briefing. Thus, Activision’s supplemental motion for summary judgment should be denied and no further summary judgment or *Daubert* motion briefing permitted.

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