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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, : CA NO. 16-453-RGA,  
 : 16-454-RGA, 16-455-RGA  
Plaintiff, :  
 :  
v. : February 17, 2017  
 :  
ACTIVISION BLIZZARD INC., et :  
al., :  
 :  
Defendants, : 11:06 o'clock a.m.  
.....:

TRANSCRIPT OF SCHEDULING CONFERENCE  
BEFORE THE HONORABLE RICHARD G. ANDREWS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: POTTER, ANDERSON & CORROON  
BY: PHILLIP A. ROVNER, ESQ

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-and-

KRAMER LEVIN NAFTALIS & FRANKEL

BY: PAUL J. ANDRE, ESQ

BY: AARON M. FRANKEL, ESQ

For Defendants: MORRIS, NICHOLS, ARSHT & TUNNELL

BY: JACK B. BLUMENFELD, ESQ

-and-

WINSTON & STRAWN

BY: DAVID P. ENZMINGER, ESQ

BY: MICHAEL A. TOMASULO, ESQ

Court Reporter:

LEONARD A. DIBBS

Official Court Reporter

P R O C E E D I N G S

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2  
3 (The proceedings occurred at 11:06 o'clock a.m. as  
4 follows:)

:06:51 5 THE COURT: All right.

6 Good morning. Please be seated.

7 So this is Acceleration Bay v. Activision, Civil Action  
8 No. 16-453, and also Electronics Arts, No. 15-454, and also  
9 Take-Two Interactive Software, No. 16-455.

:07:13 10 Mr. Rovner, good morning.

11 MR. ROVNER: Good morning, your Honor.

12 With me for plaintiff is Paul Andre and Aaron Frankel  
13 from Kramer Levin.

14 MR. ANDRE: Good morning, your Honor.

:07:22 15 THE COURT: Good morning to you all.

16 Mr. Blumenfeld?

17 MR. BLUMENFELD: Good morning, your Honor.

18 Jack Blumenfeld for all defendants along with David  
19 Enzminger and Mike Tomasulo from Winston & Strawn.

:07:32 20 THE COURT: All right.

21 So, you know, Mr. Blumenfeld and Mr. Rovner have heard  
22 me many times start off by thanking counsel for their efforts to  
23 reach agreement and how much I appreciate it. I'm not going to  
24 say that today.

:07:48 25 But before we got to the Scheduling Order, I was just

1 wondering why, not withstanding the fact that I referred  
2 everything to the Special Master here, I couldn't actually just  
3 resolve this, because it didn't seem like it was very difficult,  
4 so it might fall within my area of competence.

:08:09

5 What plaintiff proposed, as I understand it, is that  
6 simply because somebody worked on the IPR, which now it is  
7 represented you cannot change the claims on, does not in any way  
8 impede them from working on a going forward basis, is that  
9 right?

:08:36

10 MR. FRANKEL: Your Honor, the issue is that the -- we  
11 think the people who have been working on the IPRs should now be  
12 able to access source code because --

13 THE COURT: Right, I get that, but, I mean, it's  
14 because the IPR is over.

:08:48

15 MR. ANDRE: It's not over, your Honor, but the point  
16 where you can amend is over.

17 THE COURT: Right.

18 MR. ANDRE: Yes.

:08:58

19 THE COURT: So is there something wrong with the theory  
20 that what you -- why you sometimes restrict people, because they  
21 have decision-making capabilities that could somehow, you know,  
22 impact the case, aren't we past that point?

23 MR. ENZMINGER: We're not past that point. That's the  
24 problem, your Honor.

:09:14

25 The Motions to Amend the claims are still pending, so

1 there's no certainty as to how the Patent Office is going as to  
2 handle it.

3 THE COURT: Are the Motions to Amend still pending?

4 MR. ANDRE: We filed the motions. All the oral  
5 argument is done. We can't do anything else. There's nothing  
6 else we can affect the decision. The amendment have already  
7 been made. The proposed amendments have been made to the claims  
8 and we can't change those.

9 THE COURT: So is there a timetable for when somebody  
10 in the PTO, or I guess in the PTAB, or somewhere is going to  
11 rule on these?

12 MR. ANDRE: March 2nd, I believe. Less than two weeks.

13 The PTAB is statutorily required to come up with a  
14 decision on the IPRs by, I think, March 2nd or 3rd. You guys  
15 correct me if I'm wrong, but I think it's those dates.

16 MR. TOMASULO: Mid-March. There are two sets of  
17 decisions.

18 THE COURT: And, so, when the PTAB actually rules, what  
19 would your position be then?

20 MR. ENZMINGER: It depends on how the PTAB rules.

21 THE COURT: Let's say they -- why does their ruling  
22 make a difference?

23 MR. ENZMINGER: Suppose they ask for additional  
24 briefing or something?

25 MR. TOMASULO: Or they appeal?

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