

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,

Defendant.

Civil Action No. 1:16-cv-00453-RGA

ORDER ON MOTIONS IN LIMINE

The Court mostly resolved the motions in limine at the pre-trial conference on October 19, 2018. This Order memorializes the rulings. No testimony or evidence contrary to these rulings may be introduced absent my express consent.

Acceleration Bay's MIL #1 (D.I. 591-1, Exh. H1) is **GRANTED-IN-PART** for the reasons which I expressed during the pre-trial conference. Its request to exclude Saralyn Smith's testimony about the hypothetical negotiation date, or Ms. Lawton's relying on a conversation with Saralyn Smith to establish the hypothetical negotiation date, is **GRANTED**. Plaintiff's motion to exclude Pat Griffith's testimony about non-infringing alternatives for Call of Duty is **GRANTED**. Further review of the record confirms my initial view that Defendant did not sufficiently disclose Mr. Griffith as a witness who has knowledge of non-infringing alternatives. Plaintiff cannot be faulted for failing to ask Mr. Griffith about topics outside those disclosed by Defendant. Its request to exclude Dr. Kelly from relying upon the work of Bill Chinn is **DENIED**.

Acceleration Bay's MIL #2 (D.I. 591-1, Exh. H1) is **GRANTED** for the reasons which I expressed during the pre-trial conference, but is subject to reconsideration if Plaintiff opens the door during trial. Defendant may not refer to the role of Plaintiff's attorneys in the formation of Acceleration Bay or in the acquisition of the asserted patents. Defendant may not reference Plaintiff's litigation funding agreement with Hamilton Capital. Defendant may refer to Plaintiff as Plaintiff, Acceleration Bay, Acceleration, AB, the business, the company, the corporation, and/or the LLC. Defendant may not call Plaintiff anything else. Defendant may cross-examine Dr. Medvidovic about his fees and any interest in Acceleration Bay. Defendant may not refer to Dr. Medvidovic's role in providing opinions in connection with the financing for this litigation.

Acceleration Bay's MIL #3 (D.I. 591-1, Exh. H1) is **GRANTED-IN-PART** for the reasons which I expressed during the pre-trial conference. Defendant may not introduce prosecution history to establish the scope of the patents. Defendant may not present a "practicing the prior art" defense to infringement. Defendant may not argue or imply that the patent is somehow inferior or defective based on the prior art. Defendant may, however, mention the dates that references were published and discuss the art in connection with, at least, damages.

Activision's MIL #1 (D.I. 591-1, Exh. H2) is **DENIED-IN-PART** and **DISMISSED-AS-MOOT-IN-PART** for the reasons which I expressed during the pre-trial conference. Plaintiff may present the testimony of Mr. Bourassa regarding efforts to license the patents in the early 2000s. Plaintiff concedes that Defendant's alleged willfulness dates from the filing of the 2015 complaint. The parties agree that Mr. Bourassa's testimony is irrelevant to willfulness, and Plaintiff will not argue or imply that it is. Since there is no obviousness defense, no evidence will be presented about Sony's employee, Mr. Van Datta, and copying.

Activision's MIL #2 (D.I. 591-1, Exh. H2) is **GRANTED** for the reasons which I expressed during the pre-trial conference. Plaintiff may not reference the IPR petitions or the PTAB proceedings. Defendant may introduce the testimony of Mr. Terrano and testimony of Mr. Kegel for the purpose establishing non-infringing alternatives, and such testimony will not open the door for introduction of evidence about the IPR petitions or PTAB proceedings.

Activision's MIL #3 (D.I. 591-1, Exh. H2) is **GRANTED** with Plaintiff's consent, but subject to reconsideration if Defendant opens the door during trial.

IT IS SO ORDERED this 23 day of October 2018.

  
United States District Judge