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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY, LLC )  
 )  
Plaintiff, )  
 )  
 ) Civil Action No. 15-453-RGA  
v. )  
 )  
ACTIVISION BLIZZARD, INC., )  
 )  
Defendant. )

J. Caleb Boggs Courthouse  
844 King Street  
Wilmington, Delaware  
  
Friday, October 19, 2018  
8:32 a.m.  
Pretrial Hearing

BEFORE: THE HONORABLE RICHARD G. ANDREWS  
United States District Court Judge

APPEARANCES:

PHILIP A. ROVNER, ESQUIRE  
POTTER ANDERSON & CORROON, LLP  
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-and-

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19 For the Defendant

20 Also Present:

21 Mr. Omar Salik  
22 Ms. Julia Kazaks

08:51:13

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08:32:58 1 THE CLERK: All rise.

08:33:07 2 THE COURT: All right. Good morning. Please be  
08:33:09 3 seated.

08:33:16 4 This is Acceleration Bay versus Activision  
08:33:19 5 Blizzard. Civil Action Number 16-453.

08:33:22 6 Good morning, Mr. Rovner.

08:33:23 7 MR. ROVNER: Good morning, Your Honor. Phil  
08:33:25 8 Rovner from Potter Anderson for plaintiff, Acceleration Bay.  
08:33:27 9 With me from Kramer Levin, Paul Andre.

08:33:27 10 MR. ANDRE: Good morning, Your Honor.

08:33:30 11 MR. ROVNER: Lisa Kobialka.

08:33:30 12 MS. KOBIALKA: Good morning, Your Honor.

08:33:32 13 MR. ROVNER: And Aaron Frankel.

08:33:33 14 MR. FRANKEL: Good morning, Your Honor.

08:33:34 15 THE COURT: All right. Good morning to you all.  
08:33:36 16 Mr. Blumenfeld.

08:33:37 17 MR. BLUMENFELD: Good morning, Your Honor. Jack  
08:33:43 18 Blumenfeld for Activision Blizzard. And with me are Trent  
08:33:45 19 Webb from Shook Hardy & Bacon, David Enzminger, and Mike  
08:33:48 20 Tomasulo from Winston & Strawn.

08:33:51 21 Behind them Aaron Hankel from Shook Hardy &  
08:33:54 22 Bacon, and Kathleen Barry from Winston & Strawn.

08:33:58 23 And in the first row, Omer Salik and Julia  
08:34:01 24 Kazaks, next to him, from Activision.

08:34:03 25 THE COURT: All right. Well, good morning to

08:34:06 1 you all, too. All right.

08:34:11 2 So, though I've read portions of the Pretrial  
08:34:15 3 Order, including the motions in limine and the body of it,  
08:34:19 4 but I guess the first thing to address is damages.

08:34:24 5 What are we going to do about that, Mr. Andre?

08:34:29 6 MR. ANDRE: Your Honor, we're going to be  
08:34:35 7 putting forward a damages case that has three factual bases  
08:34:38 8 that the jury can decide a reasonable royalty.

08:34:42 9 First being a cost savings methodology that you  
08:34:45 10 have allowed in the case with Dr. Valerdi and others who  
08:34:48 11 will be talking about the cost-savings basis. This is  
08:34:52 12 largely based on a few other Federal Circuit cases that have  
08:34:57 13 allowed this type of damages model.

08:34:59 14 We also have a revenue-based model based on the  
08:35:04 15 proper apportionment of the revenue and the profits of the  
08:35:08 16 infringing technology over the relevant time period that the  
08:35:12 17 jury can base a reasonable royalty on.

08:35:15 18 And we also have a per-unit royalty possibility  
08:35:18 19 that the jury can base a reasonable royalty on as well.

08:35:22 20 THE COURT: All right. So for example, the per  
08:35:24 21 unit, let's say cost, I don't know, \$100 to buy an  
08:35:30 22 Activision software package.

08:35:31 23 How do you get to a per-unit royalty?

08:35:35 24 MR. ANDRE: It's actually a per-user royalty  
08:35:38 25 because it's -- when I say per unit, it's per unit per user.

08:35:41 1 THE COURT: Right.

08:35:43 2 MR. ANDRE: And there the jury can rely on  
08:35:46 3 different ways. They can look at it from the profits that  
08:35:50 4 are involved in those per-user base and then determine what  
08:35:54 5 would be a reasonable royalty based on that. It wouldn't be  
08:35:58 6 a running royalty, per se, but it would be a lump sum  
08:36:00 7 royalty on the life of the sales of those patents on those  
08:36:03 8 products.

08:36:04 9 THE COURT: And so is Dr. Meyer going to show up  
08:36:06 10 and do calculations related to this?

08:36:09 11 MR. ANDRE: Dr. Meyer will show up. I think  
08:36:11 12 about 75, 80 percent of her report is still in. The only  
08:36:13 13 thing you excluded was the final number based on the Uniloc.

08:36:19 14 THE COURT: Right.

08:36:20 15 MR. ANDRE: So she's going to give a lot of  
08:36:22 16 numbers. She has a lot of numbers by calculation. She does  
08:36:25 17 the apportionments. She does the Georgia-Pacific Factors.  
08:36:28 18 She does most of the things you would expect a damage expert  
08:36:31 19 to do and give the jury the factual predicate to come up  
08:36:34 20 with a reasonable royalty.

08:36:35 21 THE COURT: Okay. All right. I might have  
08:36:43 22 something more for you on this topic. Let me just hear from  
08:36:46 23 the defendants on this.

08:36:47 24 Mr. Enzminger.

08:36:56 25 MR. ENZMINGER: Your Honor, none of those three

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