IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, v. ACTIVISION BLIZZARD, INC., Defendant.	)	C.A. No. 16-453 (RGA)

UPDATED PRELIMINARY JURY INSTRUCTIONS

1. INTRODUCTION[1]

Members of the Jury: Now that you have been sworn, I am now going to give you some preliminary instructions to guide you in your participation in the trial.

These instructions will give you some general guidance that might apply to any civil case. However, because this is a patent trial, which will deal with subject matter that is not within the everyday experience of most of us, I will also give you some additional preliminary instructions regarding patents to assist you in discharging your duties as jurors.

[1] *AVM Techs. v. Intel Corp.*, Case 1:15-cv-00033-RGA, Dkt. No. 611 (D. Del. Apr. 14, 2017) (joint proposed preliminary jury instructions) ("AVM 2"); *AVM Techs., LLC v. Intel Corp*, Case No. 10-610-RGA (D. Del. Jan. 22, 2013) (joint proposed preliminary jury instruction) ("AVM 1"); *Innovative Display Technologies LLC v. LG*, No. 13-cv-2109-RGA, D.I. 498 (joint proposed preliminary jury instructions)("IDT").

2. THE PARTIES AND THEIR CONTENTIONS[2]

Before I begin with those instructions, however, allow me to give you an overview of who the parties are and what each contends.

You may recall that during the process that led to your selection as jurors, I advised you that this is a civil action for patent infringement arising under the patent laws of the United States. The parties in this case are the plaintiff, Acceleration Bay, LLC, which I will refer to as "Acceleration Bay" or the "plaintiff" and the defendant, Activision Blizzard, Inc., which I will refer to as "Activision" or the "defendant."

The case involves United States Patent Numbers: 6,701,344; 6,714,966; 6,732,147; and 6,910,069, obtained by Fred B. Holt and Virgil E. Bourassa, and assigned to Boeing and then to Acceleration Bay. For convenience, the parties and I will often refer to these patents by the last three numbers of the patent. For example, I may simply say "the '344 Patent" instead of "U.S. Patent No. 6,701,344."

Acceleration Bay filed suit in this court against Activision for allegedly infringing the Asserted Patents by making, importing, using, selling, and offering for sale in the United States products that Acceleration Bay argues are covered by claim 12 of the '344 Patent, claim 13 of the '966 Patent, claim 1 of the '147 Patent, and claims 1 and 11 of the '069 Patent. These claims may be referred to as the "Asserted Claims" of the Asserted Patents. The products that are alleged to infringe are Call of Duty: Black Ops III and Call of Duty: Advanced Warfare, Destiny, and World of Warcraft.

Activision denies that it has infringed the Asserted Claims of the Asserted Patents. You will determine the question of infringement for each Asserted Claim.

During the course of this case, you will hear references to certain terms and phrases from the Asserted Claims of the Asserted Patents. I will give you a glossary of some of those term and phrases for which I have provided a definition that you are to use in deciding the issues

[2] AVM 2; 1993 Model Instructions; Fed. Cir. Bar Association Model Patent Jury Instructions (July 2016)

presented to you. Any other terms and phrases that are not included in the glossary should be given their plain and ordinary meaning.

Your job will be to decide whether or not the Asserted Claims of the Asserted Patents have been infringed. If you decide that any claim of an Asserted Patent has been infringed, you will then need to decide any money damages to be awarded to Acceleration Bay to compensate it for the infringement. You will also need to make a finding as to whether Activision's infringement was willful. If you decide that any infringement was willful, that decision should not affect any damages award you give. I will take willfulness into account later.

3. WHAT A PATENT IS AND HOW ONE IS OBTAINED[3]

This case involves a dispute relating to United States patents. Before summarizing the positions of the parties and the legal issues involved in the dispute, let me take a moment to explain what a patent is and how one is obtained.

Patents are granted by the United States Patent and Trademark Office (sometimes called "the USPTO" or "the PTO"). A United States patent gives the patent owner the right to prevent others from making, using, offering to sell, or selling the patented invention within the United States, or from importing it into the United States, during the term of the patent without the patent holder's permission. A violation of the patent owner's rights is called infringement. The patent owner may try to enforce a patent against persons believed to be infringers by filing a lawsuit in federal court.

The process of obtaining a patent is called patent prosecution. To obtain a patent, one must file an application with the PTO. The PTO is an agency of the Federal Government and employs trained examiners who review applications for patents. The application includes what is called a "specification," which must contain a written description of the claimed invention telling what the invention is, how it works, how to make it, and how to use it so others skilled in the field will know how to make or use it. The specification concludes with one or more numbered sentences. These are the patent "claims." When the patent is eventually granted by the PTO, the claims define the boundaries of its protection and give notice to the public of those boundaries.

After the applicant files the application, a PTO Patent Examiner reviews the patent application to determine whether the claims are patentable and whether the specification adequately describes the invention claimed. In examining a patent application, the patent examiner reviews certain information about the state of the technology at the time the application was filed. The PTO searches for and reviews information that is publicly available or that is

[3] Fed. Cir. Bar Association Model Patent Jury Instructions (July 2016); 1993 Delaware Patent Jury Instructions ("1993 Model Instructions"); D&M Holdings Inc. d/b/a The D+M Group and D&M Holdings U.S. Inc v. Sonos, Inc., C.A. No. 16-141 (RGA), D.I. 304 (joint proposed instructions) (D. Del. Feb. 20, 2018) ("D&M").

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