

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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

SUPPLEMENTAL JOINT PROPOSED PRETRIAL ORDER

[VOLUME II of II]

Exhibits H1 - H2

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TABLE OF SCHEDULES

Item	Schedule
Joint Statement of Undisputed Facts	A
Acceleration Bay's Statement of Issues of Fact that Remain to be Litigated	B1
Activision's Statement of Issues of Fact that Remain to be Litigated	B2
Acceleration Bay's Statement of Issues of Law that Remain to be Litigated	C1
Activision's Statement of Issues of Law that Remain to be Litigated	C2
Acceleration Bay's Trial Witness List	D1
Activision's Trial Witness List	D2
Acceleration Bay's Deposition Designations	E1
Activision's Deposition Designations	E2
Acceleration Bay's Trial Exhibit List	F1
Activision's Trial Exhibit List	F2
Joint Trial Exhibit List	F3
Acceleration Bay's Brief Statement of Intended Proofs	G1
Activision's Brief Statement of Intended Proofs	G2
Acceleration Bay's Motions in Limine; Activision's Oppositions Thereto	H1
Activision's Motions in Limine; Acceleration Bay's Oppositions Thereto	H2

On April 20, 2018, counsel for Plaintiff Acceleration Bay LLC (“Acceleration Bay”) and Defendant Activision Blizzard, Inc. (“Activision”) participated in a pretrial conference before this Court pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16.3. Acceleration Bay and Activision will participate in a further pretrial conference on October 19, 2018 at 8:30 a.m. In advance of the October 19, 2018 pretrial conference, the parties submit this supplemental pretrial order.

Pursuant to this Court’s Oral Order (D.I. 545), a jury trial will take place beginning on October 29, 2018 at 9:30 a.m. This jury trial will address Acceleration Bay’s claims that (i) Activision directly infringes, literally and/or under the doctrine of equivalents, certain asserted claims of U.S. Patent Nos. 6,701,344 (“344 Patent”), 6,714,966 (“966 Patent”), 6,920,497 (“497 Patent”), 6,732,147 (“147 Patent”), and 6,910,069 (“069 Patent”), (collectively, the “Asserted Patents”), (ii) Activision’s infringement is willful, and (iii) Acceleration Bay is entitled to damages in the amount of no less than a reasonable royalty for Activision’s infringement. Acceleration Bay seeks from the Court findings that (iv) this case is exceptional and Acceleration Bay is entitled to its costs and reasonable attorneys’ fees as provided by 35 U.S.C. §§ 284 and 285; (v) it is entitled to injunctive relief; and (vi) it is entitled to an accounting of all of Activision’s infringing sales and revenues, together with post-judgment interest and pre-judgment interest from the first date of Activision’s infringement. This jury trial will also address Activision’s defenses to the claims, including that the asserted claims are invalid. Activision contends this case is exceptional and Activision is entitled to its costs and reasonable attorneys’ fees as provided by 35 U.S.C. §§ 284 and 285. There are no counterclaims to be addressed at trial.

[DISPUTED ISSUE: Activision: On August 29, 2018, the Court excluded the only expert opinion Plaintiff ever disclosed providing a reasonable royalty calculation. [D.I. 578]. Acceleration disclosed that it intends to offer at trial a royalty rate of 15.5% taken by Acceleration from an unauthenticated, third-party website having nothing to do with the patents in suit. Activision moved

to preclude Acceleration from presenting the new rate and the new damages theories and any other damages theory not fulsomely described in a timely expert report. Briefing is complete, and the briefs can be found at D.I. 581, 583 and 587. **Acceleration Bay:** Acceleration Bay's disagreement with Activision's position is set forth in its opposition to Activision's motion, wherein Acceleration Bay explained that it provided Activision with a detailed explanation of how the Court's *Daubert* Order does not preclude the damages case it will present at trial and that Acceleration Bay fully disclosed its damages claims and evidence during the discovery period. D.I. 583. Moreover, the 15.5% royalty rate has been disclosed since the outset of the case and is the rate used by Acceleration Bay to negotiate licenses.]

The following matters as to the conduct of the trial have been stipulated by the parties and are hereby ordered by the Court:

I. NATURE OF ACTION & PLEADINGS

A. Pleadings, Motions, & Orders Related to Acceleration's Claims

1. On June 17, 2016, Acceleration Bay filed its Complaint for Patent Infringement. In its Complaint, Acceleration Bay accused Activision of directly infringing the Asserted Patents. Acceleration Bay sought a judgment of infringement (literally and/or under the doctrine of equivalents), a judgment of willful infringement, damages in the amount of no less than a reasonable royalty, injunctive relief, an award of treble damages, costs (including reasonable attorney fees), an accounting of all infringing sales and revenues, pre- and post-judgment interest, and any other relief as the Court may deem just and proper. *Id.* Acceleration Bay demanded a jury trial. *Id.*

2. The Court entered a scheduling order on February 27, 2017, which stated "Plaintiff shall not be entitled to seek damages for alleged infringement prior to the dates the Complaints were served in the 2015 Cases, namely: For Activision: March 12, 2015" D.I. 62.

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