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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY, LLC)
)
Plaintiff,)
)
) Civil Action No. 16-453-RGA
v.)
)
ACTIVISION BLIZZARD, INC.,)
)
Defendant.)

J. Caleb Boggs Courthouse
844 King Street
Wilmington, Delaware

Wednesday, October 24, 2018
3:13 p.m.
Teleconference in Chambers

BEFORE: THE HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

APPEARANCES:

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-and-

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03:13:05 1 THE COURT: Good afternoon. This is Judge
03:13:46 2 Andrews in Acceleration Bay versus Activision Blizzard.
03:13:52 3 Civil Action Number 16-453.

03:13:55 4 I understand we have counsel for both
03:13:58 5 Acceleration Bay and for Activision Blizzard on the line.

03:14:11 6 Mr. Rovner, are you there?

03:14:13 7 MR. ROVNER: Yes, I am, Your Honor.

03:14:14 8 THE COURT: All right. And Mr. Blumenfeld, are
03:14:18 9 you?

03:14:18 10 MR. BLUMENFELD: Yes, I am, Your Honor.

03:14:20 11 THE COURT: Okay. So basically I was calling
03:14:24 12 because I spent quite a bit of time trying to work my way
03:14:30 13 through the various submissions, and I wanted to tell you
03:14:36 14 where I am, which is this: I think that the damages issues
03:14:40 15 in this case are up in the air sufficiently so that I'm not
03:14:47 16 going to be able to decide them confidently in the time
03:14:51 17 remaining before Monday. Thus, I want you to consider
03:15:00 18 alternatives.

03:15:01 19 And so alternative A is that we could try the
03:15:10 20 infringement and willfulness case next week, bifurcate the
03:15:17 21 damages. That would give me time to fully consider whether
03:15:23 22 to exclude plaintiff's damages case on either Daubert or
03:15:30 23 Pennypack grounds, whether to grant summary judgment of no
03:15:35 24 damages, whether to allow plaintiff to file supplemental
03:15:40 25 expert reports, if I decided to exclude the current damages

03:15:46 1 case or any other action that seemed reasonable under the
03:15:52 2 circumstances after input from counsel. That's alternative
03:15:58 3 A.

03:15:58 4 Alternative B is that I continue the trial next
03:16:08 5 week indefinitely and figure out a way to work through these
03:16:14 6 issues. And depending on how they work out, we can always
03:16:21 7 reschedule the trial.

03:16:24 8 So I'm not expecting -- what I'd like to do is
03:16:31 9 have you all think about this, perhaps even talk to each
03:16:38 10 other, and sort of let me know what you think by some
03:16:48 11 reasonable time, which I tend to think might be 5:30 today,
03:16:58 12 which you could file something on the docket or some other
03:17:03 13 way communicate whatever your views are.

03:17:10 14 Any questions?

03:17:14 15 MR. ROVNER: Your Honor, this is Phil Rovner.
03:17:17 16 It appears we were able to get all counsel on the line, so
03:17:20 17 it's not just the two of us. But I heard you loud and
03:17:24 18 clear, and we should be able to discuss this among
03:17:27 19 ourselves, hopefully in the next few hours.

03:17:31 20 THE COURT: Okay. And thank you, Mr. Rovner. I
03:17:33 21 did know there were a lot more people on the line. I just
03:17:36 22 didn't think it was necessary, under the circumstances, to
03:17:39 23 go through and have everyone identify themselves. But I do
03:17:44 24 appreciate your making sure that that is the case.

03:17:47 25 Anything else?

03:17:51 1 MR. BLUMENFELD: Not for the defendants. We
03:17:53 2 will get back to you a little later today.

03:17:56 3 Thank you, Your Honor.

03:17:57 4 THE COURT: All right. Well, thank you very
03:17:58 5 much, everyone, for calling in on short notice. I'm going
03:18:01 6 to hang up now.

03:18:03 7 (Teleconference in chambers was concluded at
03:18:12 8 3:18 p.m.)

9 I hereby certify the foregoing is a true and
10 accurate transcript from my stenographic notes in the
11 proceeding.

12 Heather M. Triozzi
13 Official Merit Reporter
14 U.S. District Court
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