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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

Thursday, October 25, 2018  
9:35 a.m.  
Teleconference in Chambers

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

APPEARANCES:

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For the Defendant

09:35:47 1 THE COURT: Good morning, this is Judge Andrews  
09:35:50 2 in Acceleration Bay versus Activision Blizzard. Number  
09:35:55 3 16-453.

09:35:57 4 Who's on the line for plaintiff, please?

09:35:58 5 MR. ROVNER: Good morning, Your Honor. It's  
09:36:03 6 Phil Rovner of Potter Anderson. And with me from Kramer  
09:36:05 7 Levin is Paul Andre, Lisa Kobialka, and Aaron Frankel.

09:36:09 8 THE COURT: All right. Good morning to you all.  
09:36:11 9 And for Activision?

09:36:14 10 MR. BLUMENFELD: Good morning, Your Honor. It's  
09:36:16 11 Jack Blumenfeld from Morris Nichols. I'm with David  
09:36:20 12 Enzminger, Kathleen Barry, Mike Tomasulo from Winston &  
09:36:25 13 Strawn, and Trent Webb from Shook Hardy & Bacon.

09:36:28 14 THE COURT: Okay. So good morning to you all,  
09:36:30 15 too.

09:36:31 16 So there were two things, after I got your  
09:36:33 17 letters yesterday, that I was interested in hearing about.  
09:36:39 18 The first one is really for the plaintiff.

09:36:44 19 Mr. Andre, in terms of your proof on  
09:36:49 20 willfulness, what exactly do you have?

09:36:53 21 MR. ANDRE: Your Honor, Paul Andre here. We  
09:36:55 22 have the fact that we provided the defendants notice of the  
09:37:01 23 patent in March 2015. They had the explicit, you know,  
09:37:07 24 infringement reason, et cetera.

09:37:09 25 And we had a meeting with them to try to

09:37:12 1 negotiate a license with them. They basically told us to go  
09:37:16 2 pound sand, and they continued their conduct, even ramping  
09:37:20 3 up the conduct, releasing new products, and increasing their  
09:37:24 4 infringing activity in spite of the fact that they had  
09:37:28 5 knowledge of the patent and the ongoing lawsuit.

09:37:30 6 THE COURT: So is any part of that relating to  
09:37:33 7 dollars and cents, or I mean, based on what you have -- I  
09:37:41 8 guess, does any part of your willfulness case depend upon  
09:37:44 9 you presenting financial numbers of one kind or another?

09:37:49 10 MR. ANDRE: Not at all, Your Honor.

09:37:50 11 THE COURT: Okay. Thank you.

09:37:53 12 All right. So Mr. Enzminger or Mr. Webb, or  
09:37:57 13 whoever is speaking for the defendant here, you know, your  
09:38:05 14 letter said, and I'm paraphrasing here, great prejudice,  
09:38:11 15 unfair prejudice to respond to the case that we thought we  
09:38:20 16 were responding to, but without the damages component. And  
09:38:26 17 you know, what I saw and part of the reason we're on the  
09:38:31 18 phone is because I know I only gave you an extremely brief  
09:38:34 19 time to think about what you want to do and to submit  
09:38:36 20 something.

09:38:39 21 I'm interested in what the specifics are that  
09:38:43 22 you're talking about because it's not apparent to me that  
09:38:52 23 there's really that much overlap between -- I mean, it's not  
09:39:01 24 apparent to me that it really isn't just a case of  
09:39:05 25 subtraction from what you were planning on both responding

09:39:09 1 to and doing. But so what do you have to say about that?

09:39:15 2 And can you also tell me who's talking?

09:39:20 3 MR. WEBB: This is Trent Webb, and I'm speaking  
09:39:22 4 on behalf of the --

09:39:24 5 THE COURT: Hold on, Mr. Webb. I'm sorry.  
09:39:33 6 Mr. Webb. Mr. Webb, I'm sorry, something happened to the  
09:39:35 7 phone at your end.

09:39:36 8 Could you start over again?

09:39:37 9 MR. WEBB: Sure, Your Honor. Again, Trent Webb  
09:39:42 10 on behalf of the defendant. Will I be given a chance to  
09:39:46 11 respond to Mr. Andre's position on willfulness?

09:39:47 12 THE COURT: If you think it's worthwhile, but  
09:39:49 13 first let's hear -- well, why don't we just take care of  
09:39:53 14 that. What is your response to that?

09:39:56 15 MR. WEBB: To the willfulness issue, Your Honor?

09:40:00 16 THE COURT: Yeah.

09:40:02 17 MR. WEBB: Yeah. I believe the products that  
09:40:04 18 are released after the 2015 date are not accused of  
09:40:08 19 infringement in this case. I have to confirm that, but  
09:40:11 20 that's my belief.

09:40:12 21 But the other position with respect to Your  
09:40:16 22 Honor's question about how this impacts our case, we have  
09:40:19 23 built our case plan and strategy around the assumption that  
09:40:23 24 damages and liability would be tried together. That  
09:40:26 25 includes witness preparation, deposition designations,

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