

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

**PLAINTIFF ACCELERATION BAY LLC'S OPENING BRIEF IN SUPPORT
OF ITS MOTION TO EXCLUDE OPINIONS OF CATHARINE M. LAWTON**

OF COUNSEL:

Paul J. Andre
 Lisa Kobialka
 James Hannah
 Yuridia Caire
 KRAMER LEVIN NAFTALIS
 & FRANKEL LLP
 990 Marsh Road
 Menlo Park, CA 94025
 (650) 752-1700

Philip A. Rovner (#3215)
 Jonathan A. Choa (#5319)
 POTTER ANDERSON & CORROON LLP
 Hercules Plaza
 P.O. Box 951
 Wilmington, DE 19899
 (302) 984-6000
 provner@potteranderson.com
 jchoa@potteranderson.com

*Attorneys for Plaintiff
Acceleration Bay LLC*

Aaron M. Frankel
 KRAMER LEVIN NAFTALIS
 & FRANKEL LLP
 1177 Avenue of the Americas
 New York, NY 10036
 (212) 715-9100

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NATURE AND STAGE OF THE PROCEEDINGS

Acceleration Bay served the supplemental damages report of Russell Parr on December 7, 2018 (the “Parr Report”). D.I. 633. Activision served the supplemental rebuttal damages report of Catharine Lawton on January 25, 2019 (the “Lawton Supp. Report”). D.I. 635. Pursuant to the Court’s Order and the Parties’ Stipulation and Joint Statement Regarding Case Schedule (D.I. 630), Acceleration Bay hereby moves to exclude the following opinions disclosed in the Lawton Report:

(1) Ms. Lawton’s opinion, unsupported by any technical expert or fact witness, that earlier Call of Duty and World of Warcraft games, not at issue in this case, are available as non-infringing alternatives to the accused products and support a *de minimis* damages award (the “NIA Opinions”); and

(2) Criticisms of various aspects of Dr. Valerdi’s 2017 cost-savings analysis that Ms. Lawton offers without support from a technical expert or fact witness, including criticizing the source code and functionality that Dr. Valerdi included in his cost-savings estimate and Dr. Valerdi’s selection and configuration of software cost estimation tools (the “Software Cost Opinions”).

SUMMARY OF ARGUMENT

Ms. Lawton’s NIA and Software Cost Opinions should be excluded because they do not satisfy the standards of Federal Rule of Evidence 702 and *Daubert*. Ms. Lawton does not possess the “scientific, technical, or other specialized knowledge [that] will help the trier of fact to understand the evidence or to determine a fact in issue,” and the opinions are not “based on sufficient facts or data” and are not “the product of reliable principles and methods . . . applied . . . to the facts of the case.” Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589-91 (1993).

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