

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

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

**PLAINTIFF ACCELERATION BAY LLC’S OPPOSITION TO
DEFENDANT ACTIVISION BLIZZARD INC.’S MOTION
TO STRIKE MR. PARR’S SUPPLEMENTAL DAMAGES REPORT**

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NATURE AND STAGE OF THE PROCEEDINGS

In its October 30, 2018 Case Management Order, the Court continued the trial scheduled in this action pending resolution of the admissibility of Acceleration Bay's damages case. D.I. 619. In that Order, the Court authorized Acceleration Bay to provide a supplemental damages report, after excluding certain opinions of Acceleration Bay's prior damages expert, Dr. Meyer. *Id.* The Court later confirmed that Acceleration Bay was permitted to submit a damages report from a new damages expert. D.I. 630. On December 7, 2018, Acceleration Bay submitted the supplemental damages expert report of Russell Parr. *Id.* Activision submitted a responsive supplemental report on January 25, 2019. *Id.* Activision then deposed Mr. Parr. After Acceleration Bay submitted a proffer detailing its damages claims, Activision filed its motion to strike Mr. Parr's supplemental damages report. D.I. 652 (the "Motion"). In the Motion, Activision does not challenge Mr. Parr's credentials or the substance of his opinions; rather, Activision focuses on its incorrect argument that Mr. Parr's opinions and certain facts upon which he relies were not properly disclosed. Acceleration Bay hereby opposes the Motion.

SUMMARY OF THE ARGUMENT

The Court should deny Activision's Motion to strike Mr. Parr's report because Acceleration Bay fully disclosed the bases for its damages case over two years ago. Even if it did not, Activision cannot meet its high burden under Rule 37 or *Pennypack* to warrant the extreme sanction of excluding Mr. Parr's opinions.

Mr. Parr's report presents seven opinions for a reasonable royalty, based on three methodologies: (1) Activision's cost savings from infringement, (2) Activision's revenues from

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