

**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.,	)	
	)	
Defendant.	)	

**ACCELERATION BAY LLC’S REPLY IN FURTHER SUPPORT  
OF ITS MOTION FOR RECONSIDERATION OF THE COURT’S  
MEMORANDUM OPINION (D.I. 692) STRIKING THE  
SEER-SEMMETHODOLOGY USED BY DR. RICARDO VALERDI**

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Acceleration Bay offers the following reply in further support of its Motion for Reconsideration (D.I. 695) (the “Motion”).

**Activision now concedes SEER-SEM is a reliable methodology, confirming it should not be excluded under *Daubert*.** For the first time, Activision concedes that the SEER-SEM model is not unreliable and that it is only challenging the inputs. Opposition at 4. Challenging the particular inputs Dr. Valerdi selected to use with his model is properly an issue for cross-examination, not exclusion of his analysis. *Apple Inc. v. Motorola Inc.*, 757 F.3d 1286, 1319 (Fed. Cir. 2014), citing *Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000) (explaining that disagreements about the factual underpinnings of an expert’s analysis go to weight, not admissibility).

**Dr. Valerdi’s inputs are testable and tied to the facts of this case.** In opposing the Motion, Activision incorrectly contends that “Dr. Valerdi’s model used untestable inputs with no connection to the facts of the case.” Opposition at 1. This is incorrect. Dr. Valerdi’s model is testable because he disclosed each of the input variables and input them into the SEER-SEM deterministic model, which is available in the open market. Activision could replicate his results precisely, as well as test how changing his inputs and assumptions would modify the output of the SEER-SEM model. Dr. Valerdi’s inputs are tied to the facts of the case. He selected them based on evidence specific to the case and on the opinions of the other technical experts and their analysis of the source code for the accused products, which provides their functionality. Dr. Valerdi’s selection of the number of lines of code to use in his estimate was based on, at a minimum, replicating the same functionality as the infringing network, and his selection of the various other inputs into the model (discussed in the Motion) are objective, reproducible by Activision and unchallenged by Activision in its Opposition or motion to preclude Dr. Valerdi. D.I. 601, Ex. 3 (Valerdi Tr.) at 49:24- 51:22, 71:5-72:9.

**Activision mischaracterizes *Prism*.** Activision attempts to distinguish *Prism v. Sprint*, which approved a similar methodology to that offered by Acceleration Bay, by incorrectly contending that it was based on “an agreed upon, acceptable, non-infringing alternative.” Opposition at 3. Sprint challenged every aspect of Prism’s damages case, including the use of actual leasing costs as a basis for estimating the cost of a hypothetical, non-infringing network. *Prism Techs. LLC v. Sprint Spectrum LP*, 849 F.3d 1360, 1377 (Fed. Cir. 2017). Activision also incorrectly contends that the cost-estimate in *Prism* was somehow more testable than Dr. Valerdi’s analysis here. In *Prism*, actual backhaul costs were used as the basis for estimated costs of the hypothetical non-infringing network, just as here, actual lines of code are used as an input into the estimate of the costs of the hypothetical non-infringing alternative. In fact, Dr. Valerdi’s model, which Activision now concedes is reliable and widely used in industry, is far more detailed, testable and established than Dr. Minor’s “no less than two to three times” cost estimate approved by the Federal Circuit in *Prism. Id.*

For the reasons and as set forth in the Motion, the Court should reconsider its opinion striking the SEER-SEM methodology used by Dr. Valerdi.

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