

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.)	
<hr/>		
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-454 (RGA)
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
<hr/>		
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-455 (RGA)
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	
INC., ROCKSTAR GAMES, INC. and)	
2K SPORTS, INC.,)	
)	
Defendants.)	

**DEFENDANTS' OPENING BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS,
STAY, OR TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA**

Jack B. Blumenfeld (#1014)
Stephen J. Kraftschik (#5623)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
skraftschik@mnat.com

Attorneys for Defendants

OF COUNSEL:

Michael A. Tomasulo
Gino Cheng
David K. Lin
WINSTON & STRAWN LLP
333 S. Grand Avenue, 38th Floor
Los Angeles, CA 90071
(213) 615-1700

David P. Enzlinger
WINSTON & STRAWN LLP
275 Middlefield Road
Menlo Park, CA 94025
(650) 858-6580

Daniel K. Webb
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE AND STAGE OF THE PROCEEDINGS	1
II. SUMMARY OF ARGUMENT	2
III. STATEMENT OF FACTS	3
A. The Parties Have Meaningful Connections to California	3
B. The History Of The Alleged Inventions.....	5
C. Boeing’s Efforts To License The Asserted Patents	5
D. The Dismissed Actions	7
IV. ARGUMENT	7
A. The “First-To-File” Rule Supports Dismissal Of These Actions	7
B. Alternatively, These Cases Should Be Transferred Pursuant To Section 1404(a)	9
1. These cases could have been brought in the Northern District of California	10
2. The private and public interest factors favor transfer.....	11
3. The balance of the factors favors transfer.....	15
V. CONCLUSION	16

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alltrade, Inc. v. Uniweld Prods., Inc.</i> , 946 F.2d 622 (9th Cir. 1991)	9
<i>Audatex N. Am., Inc. v. Mitchell Int'l, Inc.</i> , C.A. 12-139 (GMS), 2013 WL 3293611 (D. Del. June 28, 2013).....	10
<i>Collectis S.A. v. Precision Biosciences, Inc.</i> , 881 F. Supp. 2d 609 (D. Del. 2012)	9
<i>E.E.O.C. v. Univ. of Penn.</i> , 850 F.2d 969 (3d Cir. 1988)	7, 8
<i>Elecs. for Imaging, Inc. v. Coyle</i> , 394 F.3d 1341 (Fed. Cir. 2005).....	8
<i>EMC Corp. v. Bright Response, LLC</i> , No. C-12-2841 EMC, 2012 WL 4097707 (N.D. Cal. Sept. 17, 2012).....	9
<i>In re Genentech, Inc.</i> , 566 F.3d 1338 (Fed. Cir. 2009).....	14
<i>Genentech, Inc. v. Eli Lilly & Co.</i> , 998 F.2d 931 (Fed. Cir. 1993) <i>abrogated on other grounds by Wilton v. Seven Falls Co.</i> , 515 U.S. 277, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995)	7, 8
<i>Intravascular Research Ltd. v. Endosonics Corp.</i> , 994 F. Supp. 564 (D. Del. 1998).....	1
<i>Jumara v. State Farm Ins. Co.</i> , 55 F.3d 873 (3d Cir. 1995)	2
<i>Link_A_Media Devices In Corp.</i> , 662 F.3d at 1124.....	2, 11, 14
<i>Mannie & Catherine Jackson Descendant Trust v. Rizzo</i> , No. 15-659-RGA, 2015 WL 6449149 (D. Del. Oct. 26, 2015)	11
<i>Microsoft Corp. v. Geotag Inc.</i> , 847 F. Supp. 2d 675 (D. Del. 2012)	13
<i>Nexans Inc. v. Belden Inc.</i> , 966 F. Supp. 2d 396 (D. Del. 2013)	8

<i>OpenLCR.com, Inc. v. Rates Tech., Inc.</i> , 112 F. Supp. 2d 1223 (D. Colo. 2000)	8
<i>Save Power Ltd. v. Syntek Fin. Corp.</i> , 121 F.3d 947 (5th Cir. 1997)	9
<i>Semcon Tech, LLC v. Intel Corp.</i> , C.A. No. 12-531-RGA, 2013 WL 126421 (D. Del. Jan. 8, 2013)	<i>passim</i>
<i>Signal Tech, LLC v. Analog Devices, Inc.</i> , C.A. No. 11-1073-RGA, 2012 WL 1134723 (D. Del. Apr. 3, 2012).....	12
<i>In re TC Heartland LLC</i> , No. 2016-105, 2016 WL 1709433 (Fed. Cir. Apr. 29, 2016).....	10
<i>In re Telebrands Corp.</i> , No. 2016-106, 2016 WL 3033331 (Fed. Cir. Feb. 24, 2016).....	9
<i>VE Holding Corp. v. Johnson Gas Appliance Co.</i> , 917 F.2d 1574 (Fed. Cir. 1990).....	11
<i>In re Verizon Bus. Network Servs. Inc.</i> , 635 F.3d 559 (Fed. Cir. 2011).....	16
<i>Wacoh Co. v. Kionix Inc.</i> , 845 F. Supp. 2d 597 (D. Del. 2012) (Andrews, J.)	13
Statutes	
28 U.S.C. § 1404(a)	1, 9, 10, 16

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.