EXHIBIT 1

United States Court of Appeals for the Federal Circuit

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ACCELERATION BAY LLC,
Plaintiff-Appellant

v.

2K SPORTS, INC., ROCKSTAR GAMES, INC., TAKE-TWO INTERACTIVE SOFTWARE, INC.,
Defendants-Appellees

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2020-1700

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Appeal from the United States District Court for the District of Delaware in No. 1:16-cv-00455-RGA, Judge Richard G. Andrews.

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Decided: October 4, 2021

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AARON M. FRANKEL, Kramer Levin Naftalis & Frankel LLP, New York, NY, argued for plaintiff-appellant. Also represented by CRISTINA MARTINEZ; PAUL J. ANDRE, JAMES R. HANNAH, LISA KOBIALKA, Menlo Park, CA.

MICHAEL A. TOMASULO, Winston & Strawn LLP, Los Angeles, CA, argued for defendants-appellees. Also represented by DAVID P. ENZMINGER; LOUIS CAMPBELL, Menlo Park, CA; GEOFFREY P. EATON, Washington, DC.

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Before MOORE, *Chief Judge**, REYNA, and HUGHES, *Circuit Judges*.

REYNA, *Circuit Judge*.

This is an appeal from the U.S. District Court for the District of Delaware's decisions construing certain claim terms in plaintiff-appellant Acceleration Bay LLC's four asserted patents, U.S. Patent Nos. 6,701,344, 6,714,966, 6,910,069, and 6,920,497, and granting defendant-appellees 2K Sports, Inc., Rockstar Games, Inc., and Take-Two Interactive Software, Inc.'s motion for summary judgment of non-infringement. We conclude that Acceleration Bay's appeal is moot with respect to the '344 and '966 patents, and therefore we dismiss the appeal in part for lack of jurisdiction. We further affirm the district court's claim construction of the '069 patent and its grant of summary judgment of non-infringement as to the '069 and '497 patents.

BACKGROUND

The Patents-in-Suit

Acceleration Bay asserted four patents that are at issue in this appeal: U.S. Patent Nos. 6,701,344 ("'344 Patent"), 6,714,966 ("'966 Patent"), 6,910,069 ("'069 Patent"), and 6,920,497 ("'497 Patent"). The patents are unrelated but were filed on the same day, July 31, 2000, and share similar specifications.[1] The patents disclose a networking

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*   Chief Judge Kimberly A. Moore assumed the position of Chief Judge on May 22, 2021.

[1]   The '069 and '497 patents have identical specifications. The other two patents' specifications differ in that the '344 patent adds a section titled "Distributed Game Environment," *see* '344 patent col. 16 l. 29–col. 17 l. 11, and

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technology that allegedly improves upon pre-existing communication techniques because it is "suitable for the simultaneous sharing of information among a large number of the processes that are widely distributed." *See* '344 patent col. 2 ll. 38–41. Specifically, the patents describe a "broadcast technique in which a broadcast channel overlays a point-to-point communications network." *Id.* at col. 4 ll. 3–5.

The '344 and '966 patents' claims at issue—namely claims 12 to 15 of the '344 patent and claims 12 and 13 of the '966 patent—are drawn to networks that provide broadcast channels and information distribution services where participating computers (i.e., nodes) are connected and organized via a virtual network (i.e., overlay network). *See* '344 patent col. 30 ll. 4–32; '966 patent col. 30 ll. 36–57. Pertinent to this subject matter, the patents teach, for example, that an originating computer sends a message to its neighbors on the broadcast channel using point-to-point connections. '344 patent at col. 4 ll. 26–32. Then each computer that receives the message sends it to its neighbors using point-to-point connections. *Id.* at col. 4 ll. 32–34. Requiring the computers to send the message only to their neighbors, rather than to all network participants, improves efficiency and reliability of communication because it reduces both the number of connections that each participant must maintain and the number of messages that each participant must send. *See id.* at col. 4 ll. 23–47; *see also* Appellant's Br. 8–11. The technology also allegedly improves communication by using redundancy to avoid transmission errors. '344 patent col. 7 ll. 50–51 ("The redundancy of the message sending helps to ensure the overall reliability of the broadcast channel."). Claim 12 of the

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the '966 patent adds a section called "Information Delivery Service," '966 patent col. 16 l. 24–col. 17 l. 26. This opinion cites for convenience to the '344 patent.

'344 patent, which depends from claim 1, is representative of the '344 patent's claims at issue in this case. Those claims recite:

> 1. A computer network for providing a game environment for a plurality of participants,
>
> each participant having connections to at least three neighbor participants,
>
> wherein an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and
>
> wherein each participant sends data that it receives from a neighbor participant to its other neighbor participants,
>
> further wherein the network is m-regular, where m is the exact number of neighbor participants of each participant and
>
> further wherein the number of participants is at least two greater than m thus resulting in a non-complete graph.
>
> 12. The computer network of claim 1 wherein the interconnections of participants form a broadcast channel for a game of interest.

And asserted claims 12 and 13 of the '966 patent are nearly identical to asserted claims 12 and 13 of the '344 patent, containing no differences material to the outcome of the appeal.[2] '966 patent col. 30 ll. 36–57.

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[2] The '966 patent's asserted claims are different in that they refer to an "information delivery service" rather than a "game environment" or "game system"; "distributing

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