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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

ACCELERATION BAY LLC,)
)
Plaintiff,)
) C.A. No. 16-454 (RGA)
v.)
)
ELECTRONIC ARTS INC.,)
)
Defendant.)

J. Caleb Boggs Courthouse
844 North King Street
Wilmington, Delaware

Thursday, November 4, 2021
2:01 p.m.
Status Conference

BEFORE: THE HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

APPEARANCES:

POTTER ANDERSON & CORROON LLP
BY: PHILIP A. ROVNER, ESQUIRE

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP
BY: PAUL J. ANDRE, ESQUIRE
BY: AARON M. FRANKEL, ESQUIRE



1 APPEARANCES CONTINUED:

2 MORRIS NICHOLS ARSHT & TUNNELL LLP
3 BY: JACK B. BLUMENFELD, ESQUIRE

4 -and-

5 SHOOK HARDY & BACON LLP
6 BY: JORDAN T. BERGSTEN, ESQUIRE
7 BY: B. TRENT WEBB, ESQUIRE

8 For the Defendant
9 Activision Blizzard, Inc.

10 MORRIS NICHOLS ARSHT & TUNNELL LLP
11 BY: CAMERON P. CLARK, ESQUIRE

12 -and-

13 WINSTON & STRAWN LLP
14 BY: DAVID P. ENZMINGER, ESQUIRE

15 For the Defendant
16 Electronic Arts

01:51:27 14

01:51:27

01:59:17 15

*** PROCEEDINGS ***

01:59:17 16

DEPUTY CLERK: All rise. Court is now in

01:59:20 17

session. The Honorable Richard G. Andrews presiding.

02:00:32 18

THE COURT: All right. Please be seated. If

02:00:39 19

you're fully vaccinated and you want to, you can take your

02:00:43 20

mask off.

02:00:46 21

All right. So this is the status conference in

02:00:49 22

the *Acceleration Bay vs. Activision Blizzard*, which is

02:00:56 23

16-453, and *Acceleration Bay vs. Electronic Arts*, which is

02:00:59 24

16-454.

02:01:03 25

Good afternoon, Mr. Rovner.

02:01:05 1 MR. ROVNER: Good afternoon, Your Honor. I'll
02:01:07 2 just stand here and do the introductions?

02:01:09 3 THE COURT: Yes.

02:01:10 4 MR. ROVNER: I'm here with my co-counsel from
02:01:12 5 Kramer Levin, Paul Andre and Aaron Frankel.

02:01:14 6 THE COURT: All right. Good afternoon to you
02:01:15 7 all.

02:01:16 8 Mr. Blumenfeld.

02:01:19 9 MR. BLUMENFELD: Good afternoon, Your Honor.
02:01:19 10 Jack Blumenfeld from Morris Nichols for both Defendants.
02:01:22 11 Next to me is Jordan Bergsten, Trent Webb, both from Shook
02:01:28 12 Hardy & Bacon for the Activision Defendant, and then David
02:01:32 13 Enzminger from Winston & Strawn for Electronic Arts. And
02:01:37 14 Cameron Clark is with Morris Nichols.

02:01:38 15 THE COURT: Okay. Thank you.

02:01:41 16 All right. So do I take it that the
02:01:51 17 *Acceleration Bay vs. Take-Two* case is over in the sense that
02:01:56 18 the Plaintiff isn't looking for rehearing of one kind or
02:02:01 19 another? So that, even though the mandate may or may not
02:02:05 20 have issued, that case is done?

02:02:08 21 MR. ANDRE: It's done.

02:02:08 22 THE COURT: Okay. Thank you.

02:02:15 23 All right. So part of what I was trying to do
02:02:19 24 after getting these status reports or, I guess, yeah, two
02:02:24 25 status reports, was I was -- which seemed to me to be -- and

02:02:33 1 they were status reports, so I'm not being critical here,
02:02:36 2 but particularly the Defendants' positions seemed to involve
02:02:49 3 some steps that might benefit me from having a little bit
02:03:02 4 more explanation of exactly what the theory is here as to
02:03:11 5 why there should be more of summary judgment motions.

02:03:14 6 You know, I went, I spent a little bit of time
02:03:21 7 looking at the summary judgment opinions in these two cases
02:03:28 8 and looking, reviewing the Court of Appeals' decision, and
02:03:32 9 also looking at the summary judgment decision in the
02:03:37 10 underlying Take-Two or my decision. And I'm guessing, but
02:03:48 11 this is, but if I guess it wrong, tell me, tell me what I
02:03:52 12 should be thinking about, but I'm guessing it's not so much
02:03:55 13 what the Court of Appeals said about anything in particular
02:03:58 14 other than the fact that the litigation is now over. It
02:04:03 15 gives you these arguments for collateral estoppel; is that
02:04:07 16 right?

02:04:08 17 MR. BERGSTEN: Yes, that's right.

02:04:11 18 THE COURT: And so one of the things that, you
02:04:15 19 know, I'm thinking about is the various arguments that you
02:04:24 20 might want to say -- and so, basically, what you want to do
02:04:32 21 is to say how the -- whatever the -- some of the decisions
02:04:37 22 that I made in the Take-Two case, it now apply retroactively
02:04:44 23 to the analogous issue in the two earlier cases or the other
02:04:51 24 two cases that I would then grant summary judgment for the
02:04:56 25 Defendants.

02:04:56 1 Is that the general theory?

02:04:57 2 MR. BERGSTEN: Yes, that's correct, along with
02:05:01 3 the collateral estoppel effect of unappealed issues in that
02:05:05 4 judgment after that -- the appeal has come back.

02:05:09 5 THE COURT: Well, so you know, a lot of -- so
02:05:17 6 the issues that were appealed, and even the ones that aren't
02:05:21 7 appealed, they mostly involve non-infringement; right?

02:05:25 8 MR. BERGSTEN: That is correct, although before
02:05:30 9 the stay, we took the position that some of the findings
02:05:35 10 that were dispositive in the Take-Two Order were
02:05:37 11 clarifications of claim constructions or legal rulings, for
02:05:41 12 example, on vitiation and prosecution history estoppel. And
02:05:46 13 in opposing our initial briefing, they never denied that
02:05:50 14 those were legal rulings or clarifications of claim
02:05:53 15 constructions.

02:05:53 16 THE COURT: Well, you know, the claim
02:06:02 17 construction, I'm not really sure was any kind of
02:06:05 18 clarification. Yeah, there was more explication, but it's
02:06:10 19 not as though I said I'm changing anything. I was just kind
02:06:13 20 of applying it to the Take-Two case, wasn't I?

02:06:17 21 MR. BERGSTEN: Well, you know, it's -- sometimes
02:06:20 22 that's a difficult line to draw. I think the issue is
02:06:23 23 simplified somewhat now that the appeal has been exhausted.
02:06:28 24 I think, you know, we cited you to a couple of cases where
02:06:32 25 the Federal Circuit has said that a non-infringement Order

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