

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 ANSWERING BRIEF IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF ACCELERATION
BAY'S CROSS-MOTION FOR ATTORNEYS' FEES AND SANCTIONS**

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I. NATURE AND STAGE OF PROCEEDINGS

Activision's Rule 11 Motion is just another chapter in its vexatious approach to this litigation. In the predecessor case, Activision thwarted discovery multiple times, leading to the Special Master ordering it to make witnesses available for deposition. Then, after Acceleration Bay filed the instant action and asked that the first case be dismissed to address a standing issue, Activision filed an unsuccessful and unwarranted exceptional case motion asking this Court for a fee award. Meanwhile, despite telling this Court it was a prevailing party on the predecessor action, Activision filed an anticipatory declaratory judgment action in California in a failed attempt to move venue for this dispute. Now that its machinations have been thwarted and its motions denied, Activision filed the instant Motion as its latest attempt to harass Acceleration Bay and its principal and delay the progression of this case.

II. SUMMARY OF THE ARGUMENT

Activision's Motion is completely baseless, and the Court should sanction Activision for filing it. Indeed, the Special Master, after evaluating extensive briefing, including an expert declaration, and a full day hearing, considered and rejected the very arguments Activision recycles in its Motion — a decision Activision did not challenge.

Acceleration Bay and its counsel did not file this action lightly. Before filing, counsel conducted a careful pre-filing investigation that included: (i) reviewing the asserted patents and their file histories, (ii) conducting an extensive search of publicly available information on the accused products and their functionality, (iii) comparing the claims, construed in light of the intrinsic record, with the accused products; (iv) reviewing technical and academic literature on the games and multiplayer networks, (v) testing and playing the games to verify their relevant functionality, (vi) engaging Dr. Nenad Medvidović, a leading expert in the field of software and distributed systems architecture, who conducted an independent investigation and concluded that Activision's accused products infringe Acceleration Bay's patents and (vii) preparing a detailed pre-filing memorandum, which can be made available to the Court for *in camera* inspection, that set forth the analysis of Activision's infringement.

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