

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC,

*Plaintiff,*

v.

ACTIVISION BLIZZARD,

*Defendant.*

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Civil Action No. 16-453-WCB

**PRELIMINARY JURY INSTRUCTIONS**

Members of the jury, now that you have been sworn in as jurors, we are ready to begin the trial in this case. As I have mentioned, this is a case involving patents. Because you may not be familiar with patents, a 17-minute video will be shown to you as an introduction. The video contains background information to help you understand what patents are, why they are needed, what the role the patent office plays in the process, and why disputes over patents arise. The video was prepared by the Federal Judicial Center, not by the parties in this case. After we play the video, I will talk to you about the general rules that will apply to the trial. Please note that the video discusses patent invalidity, but that is not an issue in this case.

We will play the video now:

[play video]

As you heard on the video, infringement is the legal term for the violation of a patent owner's rights under a patent. A person or company that is sued for infringing a patent can deny infringement. In this case, Acceleration Bay is the owner of United States Patent Numbers 6,701,344 and 6,732,147. These patents will be referred to as the '344 Patent and the '147 Patent, which are the last three digits of each patent's number. Acceleration Bay contends that Activision has infringed certain claims of those patents. As was explained in the video you saw, the "claims" of a patent are the parts that set forth what the inventor asserts he or she has invented and is protected by the patent. The rest of the patent does not define the patent right, only the claims do. Acceleration Bay contends that Activision has infringed by making, using, selling, or offering to sell certain products that Acceleration Bay argues are covered by claim 12 of the '344 Patent and claim 1 of the '147 Patent. These claims may be referred to as the "Asserted Claims" of the Asserted Patents. The products that are alleged to infringe are World of Warcraft, Call of Duty: Black Ops III, and Call of Duty: Advanced Warfare. These products that Acceleration Bay accuses of infringing its patents will be referred to as the "Accused Products." Activision denies that it has infringed the Asserted Patents.

Your role in this trial will be to find from the evidence what the facts are. You will then apply those facts to the law as I give it to you, and you will be responsible for reaching a verdict. My role is not to suggest to you what that verdict should be, but simply to rule on disputes between the parties that arise in the course of the trial, and to instruct you on the legal principles that you are to apply. Nothing I say or do should be taken by you as indicating what your verdict should be. I may ask questions of the witnesses from time to time, but when I do so it will be only to clarify points in a way that I think may be helpful to you; it is not an indication that I have a view one way or another as to any witness's testimony or more generally how the case should come out.

The evidence from which you will find the facts will include the testimony of witnesses in response to questions asked by the attorneys. The evidence will also include documents and other things received into the record as exhibits and any facts that the lawyers agree to. But certain other things are not evidence. Statements and arguments by the lawyers, for example, are not evidence but are merely intended to guide your consideration of the evidence. At various points, the lawyers may raise objections to certain questions that are asked, and I will rule on those objections. Those objections and my rulings on them are not evidence, and you should not be influenced by any objection or my ruling on it. And if I tell you to disregard a particular question or answer that comes up during the trial, you must do so. Finally, anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case based solely on the evidence presented here in the courtroom.

You are the sole judges of each witness's credibility. You should consider each witness's knowledge and memory, whether the witness's testimony is consistent or has been contradicted, whether the witness has any bias in favor of one side, the witness's manner on the witness stand, and any other circumstance that you would consider in gauging a person's credibility in everyday life. The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testify. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. You are not required to believe any witness if you do not find their testimony believable.

Much of the evidence you will hear will be in the form of testimony from live witnesses through direct examination by one side and cross-examination by the other. But you will also hear some evidence that will be presented through what we call deposition testimony. A deposition is the sworn, recorded testimony of a witness that is taken in advance of trial, typically when a

witness is not available to testify in person at the trial. You should judge deposition testimony in the same way that you judge live testimony.

You will also hear testimony from witnesses referred to as expert witnesses. When knowledge of technical subject matter may be helpful to a jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. That person is referred to as an expert witness. But you are not required to accept that opinion simply because it comes from an expert. As in the case of every other witness, it is up to you to decide whether to rely on it.

Now let me talk a bit about burdens of proof. We use the word “burden” because the person that has the burden of proof on a particular issue is the party that must persuade you with respect to that issue. If at the end of the trial you’re not persuaded by the party that has the burden on a particular issue, then that party loses on that issue.

As the patent owner, Acceleration Bay has the burden of proving infringement, and it is required to prove infringement by what is called the preponderance of the evidence. That means Acceleration Bay has to produce evidence which, considered in the light of all the facts, leads you to believe that what Acceleration Bay alleges is more likely true than not. If Acceleration Bay does not satisfy that burden, you must rule in favor of Activision on that issue.

Acceleration Bay also contends that Activision willfully infringed Acceleration Bay’s patents. Acceleration Bay has the burden of proving willful infringement by a preponderance of the evidence.

Those of you who may be familiar with the burden of proof in criminal cases will have heard of the burden of proof beyond a reasonable doubt, which is a very high burden. That burden

does not apply to a civil case such as this one, so you should put that burden of proof out of your mind.

In this case, you will be asked to decide several things according to the legal instructions I will give you at the end of the trial. Those instructions will cover some of the same ground that I have discussed today, only in more detail. You will be required to decide three things: first, you must decide whether Acceleration Bay has proved by a preponderance of the evidence that the Accused Products infringe one or more of the Asserted Claims; second, if you find that Activision's Accused Products infringe one or more of the Asserted Claims, you must decide the amount of money, if any, to award to Acceleration Bay to compensate it for the infringement; and third, if you find that one or more of the Asserted Claims are infringed, you must decide whether Acceleration Bay has proved by a preponderance of the evidence that Activision's infringement was willful.

Now let me say a few words about your conduct as jurors:

First, during the trial you may find that people want to talk to you about the case. This is very natural and quite common. You go home, someone says, "What is the case about?" As much as you might want to talk about the case, you need to tell that person that you cannot discuss it until it's over. You can tell them that you were selected for a jury in a civil case—that it's not a criminal case—but that is as much as you should say. The reason is that if you start down the road of talking about the case, you never know what will happen.

You might talk to someone who says, "Oh, yes, I sat on a case like that, and here's what happened," and suddenly you have outside information coming in and influencing the way you look at this case. We do not want that. So if anyone starts to talk to you about the case, just tell them politely that you cannot discuss it until it is over.



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