

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

**DEFENDANT ACTIVISION BLIZZARD, INC.'s BRIEF IN SUPPORT OF ITS MOTION
FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 50(a)**

OF COUNSEL:

B. Trent Webb
Aaron E. Hankel
John D. Garretson
Jordan T. Bergsten
Maxwell C. McGraw
Lauren E. Douville
Brenna L. Kingyon
SHOOK HARDY & BACON LLP
2555 Grand Boulevard
Kansas City, MO 64108
(816) 474-6550

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jack B. Blumenfeld (#1014)
Jeremy A. Tigan (#5239)
Cameron P. Clark (#6647)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
jtigan@morrisnichols.com
cclark@morrisnichols.com

Attorneys for Defendant

Anita Liu
David Morehan
SHOOK HARDY & BACON LLP
JPMorgan Chase Tower
600 Travis Street, Suite 3400
Houston, TX 77002
(713) 227-8008

May 2, 2024

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE AND STAGE OF THE PROCEEDINGS	1
II. LEGAL STANDARD UNDER RULE 50(A).....	1
III. SUMMARY OF ARGUMENT	2
IV. ARGUMENT.....	2
A. Acceleration Bay is Collaterally Estopped from Asserting Infringement with Respect to Both Call of Duty and World of Warcraft	2
B. No Reasonable Jury Could Find That Activision Has Infringed the Asserted Claims of Acceleration Bay's Patents.....	3
i. Legal Standards for Infringement	4
ii. No Reasonable Jury Could Find That Activision Has Infringed Asserted Claim 1 of the '147 Patent	4
iii. No Reasonable Jury Could Find That Activision Has Infringed Asserted Claim 12 of the '344 Patent	9
C. Acceleration Bay Has Failed to Provide Evidence Upon Which the Jury Can Award Damages.....	11

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>American Seating Co. v. USSC Group, Inc.</i> , 514 F.3d 1262, 85 U.S.P.Q.2d 1683 (Fed. Cir. 2008)	17
<i>Apple Inc. v. Samsung Electronics Co., Ltd.</i> , 839 F.3d 1034, 1040 (Fed. Cir. 2016) (en banc).....	1
<i>Bai v. L & L Wings, Inc.</i> , 160 F.3d 1350 (Fed. Cir. 1998).....	4
<i>Brumfield, Trustee for Ascent Trust v. IBG LLC</i> , 97 F.4th 854 (Fed. Cir. 2024)	18
<i>Donlin v. Philips Lighting</i> , 581 F.3d 73 (3rd Cir. 2009)	17
<i>Dow Chem. Co. v. Mee Indus., Inc.</i> , 341 F.3d 1370 (Fed. Cir. 2003).....	11
<i>Ericsson v. D-Link Sys., Inc.</i> , 773 F.3d 1201 (Fed. Cir. 2014).....	14
<i>Finjan v. Blue Coat Sys., Inc.</i> , 879 F.3d 1299 (Fed. Cir. 2018).....	18
<i>Garretson v. Clark</i> , 111 U.S. 120 (1884).....	12
<i>i4i Ltd. Partnership v. Microsoft Corp.</i> , 598 F.3d 831 (Fed. Cir. 2010).....	6
<i>Joy Technologies, Inc. v. Flakt, Inc.</i> , 6 F.3d 770 (Fed. Cir. 1993)	6
<i>Karlin Tech., Inc. v. Surgical Dynamics, Inc.</i> , 177 F.3d 968 (Fed. Cir. 1999).....	4
<i>Kremsky v. Kremsky</i> , 758 Fed. Appx. 236 (3d Cir. 2018).....	1
<i>Lucent Techs., Inc. v. Gateway, Inc.</i> , 580 F.3d 1301 (Fed. Cir. 2009).....	11, 12, 15

<i>Marra v. Phila. Hous. Auth.,</i> 497 F.3d 286 (3d Cir. 2007).....	1
<i>Meyer Intellectual Properties Ltd. v. Bodum, Inc.,</i> 690 F.3d 1354 (Fed. Cir. 2012).....	6
<i>Mhl Custom, Inc. v. Waydoo USA, Inc.,</i> C.A. No. CV 21-0091-RGA, 2023 WL 1765553 (D. Del. Feb. 3, 2023).....	12
<i>Odetics, Inc. v. Storage Tech. Corp.,</i> 185 F.3d 1259 (Fed. Cir. 1999).....	17
<i>Omega Pats., LLC v. CalAmp Corp.,</i> 13 F.4th 1361 (Fed. Cir. 2021)	18
<i>Packet Intel. LLC v. NetScout Sys., Inc.,</i> 965 F.3d 1299 (Fed. Cir. 2020).....	6
<i>Philip v. Nock,</i> 84 U.S. 460 (1873).....	12
<i>Promega v. Life Techs Corp.,</i> 875 F.3d 651 (Fed. Cir. 2017).....	18
<i>Rego v. ARC Water Treatment Co. of Penn.,</i> 181 F.3d 396 (3d Cir. 1999).....	2
<i>ResQNet.com, Inc. v. Lansa, Inc.,</i> 594 F.3d 860 (Fed. Cir. 2010).....	11
<i>Ricoh Co., Ltd. v. Quanta Computer, Inc,</i> 550 F.3d 1325 (Fed. Cir. 2008).....	6
<i>Rite-Hite Corp. v. Kelley Co.,</i> 56 F.3d 1538 (Fed. Cir. 1995) (en banc).....	16, 17
<i>Seal-Flex, Inc. v. Athletic Track & Ct. Const.,</i> 172 F.3d 836 (Fed. Cir. 1999).....	4
<i>Sloan Valve Co. v. Zurn Indus., Inc.,</i> 33 F. Supp. 3d 984 (N.D. Ill. 2014)	16
<i>TecSec, Inc. v. Adobe, Inc.,</i> 978 F.3d 1278 (Fed. Cir. 2020).....	19
<i>Trell v. Marlee Elecs. Corp.,</i> 912 F.2d 1443 (Fed. 1990).....	13

VirnetX, Inc. v. Cisco Sys., Inc.,
767 F.3d 1308 (Fed. Cir. 2014).....12

Weisgram v. Marley Co.,
528 U.S. 440 (2000).....2

Other Authorities

9B Fed. Prac. & Proc. § 2524 (3d ed. 2011).....2

Rules and Statutes

35 U.S.C. § 271(a)4, 6, 18

35 U.S.C. § 284.....18

Fed. R. Civ. P. 50.....1

Fed. R. Civ. P. 50(a)1, 2

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.