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May 2, 2024

The Honorable William C. Bryson  
United States District Court  
for the District of Delaware  
844 North King Street  
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Acceleration Bay LLC v. Activision Blizzard Inc.*, C.A. No. 16-453

Dear Judge Bryson:

Acceleration Bay admitted years ago that asserted claim 1 of the '147 requires a network that is both m-regular *and* incomplete. Now that Acceleration Bay has identified this issue of claim scope as disputed,<sup>1</sup> *O2 Micro* prevents allowing the jury to decide whether this patent is limited to incomplete networks by intrinsic evidence. 521 F.3d 1351 (Fed. Cir. 2008).

**IPR Representations.** Acceleration Bay's own representations in its June 27, 2016 Patent Owner Preliminary Response in IPR proceedings on the '147 Patent (Ex. 1), which are now part of that intrinsic record, repeatedly acknowledge that the '147 patent is limited to networks that are both m-regular and incomplete in order to overcome prior art:

- Pages 4-5: “**More particularly, the '147 Patent describes using a broadcast channel that overlays a point-to-point network where each node, or participant, is connected to some—but not all—neighboring participants.**” (emph. added).
- Page 6: “The '147 Patent also describes a computer network in which the number of network participants  $N$  is greater than the number of connections  $m$  to each participant. This network topology, where no node is connected to every other node, is known as an incomplete graph.” (internal cites omitted).

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<sup>1</sup> Activision proposed adding this construction to the jury instructions on April 22, 2024. (D.I. 827). Acceleration Bay did not respond to this position in its April 25, 2024 “Re[s]ponse to Activision’s Proposed Claim Construction Chart” (D.I. 834), and did not indicate it objected to this proposal until the end of the trial day on May 1, 2024.

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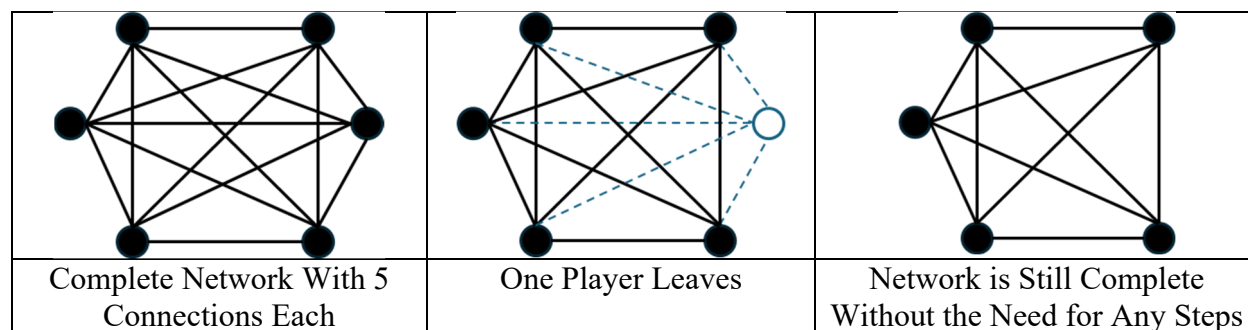
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- P. 6: “The incomplete graph topology relies on participants to disseminate information to other participants. *See* [‘147 Patent] at 1:60-2:15.”
- P. 25: “Rufino does not cure the deficiencies of Denes as Rufino does not address receiving disconnect messages in the context of maintaining an m-regular non-complete topology, as required by claim 1(b).”

**Claim Language.** Even if Acceleration Bay had not made these binding admissions to save the validity of the ‘147 Patent, the claim language of Claim 1 of the ‘147 Patent mandates this conclusion for at least three reasons.

First, the Court’s December 20, 2017 construction of “connection port search method” as it appears in Claim 1 of the ‘147 Patent, is a “message sent to locate a computer with less than m neighbors.” (D.I. 386, p. 17). If a network is fully complete, then by definition there can be no computer with “less than m neighbors,” as every computer is connected to every other computer.

Second, when a first computer decides to leave the network, the claim requires the second computer to send a message “to find a third computer to which it can connect *in order to maintain an m-regular graph.*” If the claim covered a complete (or full-mesh) network as m-regular, there would be no need to take any of these steps. When a player leaves a complete network, the network remains fully complete; there would be no need to perform any additional steps “to maintain an m-regular graph,” as shown below. It is only when a player leaves an m-regular, incomplete network that these steps accomplish the goal of returning a network from not m-regular to m-regular.



Third, Claim 1 of the ‘147 Patent requires a second computer to take certain steps “to find a third computer to which it can connect,” but if the network were already complete this could not occur because every computer would already be connected.

**Specification.** The ‘147 specification is fully aligned on this point, disparaging complete networks. *See* ‘147 Patent at 1:48-59 (“The interconnection of all participants using point-to-point connections, while theoretically possible, does not scale well as a number of participants grows.”).

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**This case.** It is unsurprising that, as Activision explained in its April 26, 2024 letter brief on claim construction issues, the parties in this case appear to have long operated under the understanding that the ‘147 patent is limited to incomplete networks (D.I. 838, p. 1); *see also Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, 612 F. Supp. 3d 408, 413 (D. Del. 2020) (“While the ‘069 and ‘147 patent claims describe methods, they are also limited to ‘incomplete’ and ‘m-regular’ networks.”), *aff’d in part, appeal dismissed in part sub nom., Acceleration Bay LLC v. 2K Sports, Inc.* 15 F. 4<sup>th</sup> 1069 (Fed. Cir. 2021).

**Conclusion.** Activision respectfully submits that the Court should therefore enter Activision’s proposed constructions adding “incomplete” to Claim 1 of the ‘147 patent (*see* D.I. 827, p. 4), or otherwise construe this claim to include a limitation that the network must be “incomplete.”

Respectfully,

*/s/ Jack B. Blumenfeld*

Jack B. Blumenfeld (#1014)

cc: Clerk of Court (Via Hand Delivery)  
All Counsel of Record (Via Electronic Mail)