

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

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

**PLAINTIFF ACCELERATION BAY LLC'S
OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT AS A
MATTER OF LAW PURSUANT TO FED. R. CIV. P. 50(b) AND REMITTITUR**

OF COUNSEL:

Paul J. Andre
Lisa Kobialka
James R. Hannah
Christina Finn
Aakash Jariwala
Melissa Brenner
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
333 Twin Dolphin Dr., Suite 700
Redwood Shores, CA 94065
(650) 752-1700

Aaron M. Frankel
Cristina Martinez
Marcus Colucci
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100

POTTER ANDERSON & CORROON LLP
Philip A. Rovner (#3215)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com

Attorneys for Acceleration Bay LLC

Dated: June 17, 2024
Public version dated: June 26, 2024
11567483

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 1

 A. Judge Andrews Already Found That Collateral Estoppel Does Not Apply 1

 1. Collateral Estoppel Does Not Apply to CoD 2

 2. Collateral Estoppel Does Not Apply to WoW 5

 B. AB Presented Substantial Evidence of Direct Infringement..... 7

 1. AB Presented Substantial Evidence That CoD Infringes 7

 (a) Activision Performs Every Step of Claim 1 of the ‘147 Patent 7

 (b) CoD Sends a Disconnect Message Including a List of Neighbors 9

 (c) CoD Uses an M-Regular Network 10

 (d) CoD Creates Connections to Maintain M-Regularity 11

 2. AB Presented Substantial Evidence That WoW Infringes 11

 (a) WoW Uses M-Regular Networks 11

 (b) WoW Broadcasts Data 12

 C. AB Presented Substantial Evidence Supporting the Damages Award 13

 1. AB Presented Substantial Evidence of the Revenue Base 13

 2. AB Presented Substantial Evidence on Apportionment 16

 3. AB Presented Substantial Evidence on the Royalty Rate 20

 D. The Jury Verdict is Well-Supported, and Remittitur is Unwarranted 23

III. CONCLUSION 25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Acceleration Bay LLC v. Take-Two Interactive Software, Inc.</i> , 612 F. Supp. 3d 408 (D. Del. 2020).....	2, 4, 5
<i>ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.</i> , 694 F.3d 1312 (Fed. Cir. 2012).....	21
<i>ArcelorMittal Atlantique et Lorraine v. AK Steel Corp.</i> , 908 F.3d 1267 (Fed. Cir. 2018).....	4, 7
<i>Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.</i> , 876 F.3d 1350 (Fed. Cir. 2017).....	21
<i>Aspex Eyewear, Inc. v. Zenni Optical Inc.</i> , 713 F.3d 1377 (Fed. Cir. 2013).....	4
<i>Bayer Healthcare LLC v. Baxalta Inc.</i> , 989 F.3d 964 (Fed. Cir. 2021).....	13
<i>Bio-Rad Lab'ys, Inc. v. 10X Genomics Inc.</i> , 967 F.3d 1353 (Fed. Cir. 2020).....	21
<i>Brumfield, Tr. for Ascent Tr. v. IBG LLC</i> , 97 F.4th 854 (Fed. Cir. 2024)	16
<i>Burlington N.R. Co. v. Hyundai Merch. Marine Co.</i> , 63 F.3d 1227 (3d Cir. 1995).....	2
<i>In re California Expanded Metal Prods. Co.</i> , No. 2023-1140, 2024 WL 1190943 (Fed. Cir. Mar. 20, 2024).....	25
<i>Finjan, Inc. v. Blue Coat Sys., Inc.</i> , 879 F.3d 1299 (Fed. Cir. 2018).....	17, 24
<i>Finjan, Inc. v. Blue Coat Sys., Inc.</i> , No. 13-cv-03999-BLF, 2016 WL 3880774 (N.D. Cal. July 18, 2016), <i>aff'd in relevant part</i> , 879 F.3d 1299 (Fed. Cir. 2018).....	24
<i>Helena Chem. Co. v. Nelson</i> , No. CIV. A. 97-5662 (JBS), 2000 WL 1880331 (D.N.J. Dec. 29, 2000).....	25
<i>Hologic, Inc. v. Minerva Surgical, Inc.</i> , No. 1:15-cv-1031, 2019 WL 1958020 (D. Del. May 2, 2019), <i>vacated in part on other grounds</i> , 44 F.4th 1358 (Fed. Cir. 2022)	22

i4i Ltd. P’ship v. Microsoft Corp.,
598 F.3d 831 (Fed. Cir. 2010).....7

Joy Techs., Inc. v. Flakt, Inc.,
6 F.3d 770 (Fed. Cir. 1993).....8

Lightning Lube, Inc. v. Witco Corp.,
4 F.3d 1153 (3d Cir. 1993).....9, 13

Marra v. Phila. Hous. Auth.,
497 F.3d 286 (3d Cir. 2007).....1

Meyer Intell. Props. Ltd. v. Bodum, Inc.,
690 F.3d 1354 (Fed. Cir. 2012).....8

Mhl Custom, Inc. v. Waydoo USA, Inc.,
No. CV 21-0091-RGA, 2023 WL 1765553 (D. Del. Feb. 3, 2023)23

Mondis Tech. Ltd v. LG Elecs., Inc.,
No. CV 15-4431 (SRC), 2023 WL 3749992 (D.N.J. June 1, 2023).....15, 24

Motter v. Everest & Jennings, Inc.,
883 F.2d 1223 (3d Cir.1989).....23, 24

Packet Intel. LLC v. NetScout Sys., Inc.,
965 F.3d 1299 (Fed. Cir. 2020).....8

Ricoh Co. v. Quanta Comput. Inc.,
550 F.3d 1325 (Fed. Cir. 2008).....8

Seal4Safiti, Inc. v. California Expanded Metal Prods. Co.,
No. 2:20-cv-10409-MCS-JEM, 2022 WL 16710721 (C.D. Cal. Oct. 3, 2022),
aff’d in relevant part, No. 2023-1140, 2024 WL 1190943 (Fed. Cir. Mar. 20,
2024)25

SRI Int’l, Inc. v. Cisco Sys., Inc.,
254 F. Supp. 3d 680 (D. Del. 2017), *aff’d in part, vacated in part and
remanded on other grounds*, 918 F.3d 1368 (D. Del. 2019)18, 20

Summit 6, LLC v. Samsung Elecs. Co.,
802 F.3d 1283 (Fed. Cir. 2015).....20

Trell v. Marlee Elecs. Corp.,
912 F.2d 1443 (Fed. Cir. 1990).....21

WesternGeco LLC v. ION Geophysical Corp.,
138 S. Ct. 2129 (2018).....16

I. INTRODUCTION

After nine years, Acceleration Bay (“AB”) finally had its day in Court. AB proved its case to the jury through Activision’s technical documents, network traffic testing, source code, deposition and cross-examination testimony from Activision’s engineers, and testimony from four experts. The jury found that Activision’s World of Warcraft (“WoW”) infringed Claim 12 of U.S. Patent No. 6,701,344 and Call of Duty: Black Ops III and Advanced Warfare (“CoD”) infringed Claim 1 of U.S. Patent No. 6,732,147, and awarded AB damages of \$23.4 million. The jury’s verdict is supported by substantial evidence and there is no basis to set it aside.

Activision fails to carry its heavy burden to obtain judgment as a matter of law (“JMOL”). “[JMOL] is a ‘sparingly’ invoked remedy, ‘granted only if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability.’” *Marra v. Phila. Hous. Auth.*, 497 F.3d 286, 300 (3d Cir. 2007) (citations omitted). Activision’s motion is based on rehashed arguments that the Court previously rejected and on factual disputes, which cannot be resolved through a motion for JMOL. Thus, Activision’s motion for JMOL should be denied.

Activision’s request for remittitur also should be denied as it is based on Activision’s flawed JMOL arguments and factual disputes, which are not a basis to set aside the damages award.

II. ARGUMENT

A. Judge Andrews Already Found That Collateral Estoppel Does Not Apply

Judge Andrews rejected Activision’s argument that collateral estoppel applies to AB’s infringement case. D.I. 744. After Judge Andrews granted summary judgment of non-infringement in *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.* (“Take-Two”), Activision contended that AB was estopped from asserting infringement based on issues decided against it in that case. *Id.* at 3. In denying Activision’s motion in relevant part, Judge Andrews

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.