

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

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|------------------------------------|---|-----------------------|
| ACCELERATION BAY LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 16-453 (RGA) |
| |) | |
| ACTIVISION BLIZZARD, INC., |) | |
| |) | |
| Defendant. |) | |
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| ACCELERATION BAY LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | C.A. No. 16-454 (RGA) |
| v. |) | |
| |) | |
| ELECTRONIC ARTS INC., |) | |
| |) | |
| Defendant. |) | |
| <hr/> | | |
| ACCELERATION BAY LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | C.A. No. 16-455 (RGA) |
| v. |) | |
| |) | |
| TAKE-TWO INTERACTIVE SOFTWARE, |) | |
| INC., ROCKSTAR GAMES, INC., and 2K |) | |
| SPORTS, INC., |) | |
| |) | |
| Defendants. |) | |

**DECLARATION OF AARON M. FRANKEL IN SUPPORT OF
PLAINTIFF ACCELERATION BAY'S OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE PROPOSED CLAIM CONSTRUCTIONS**

I, Aaron M. Frankel, hereby declare as follows:

1. I am an attorney with the law firm Kramer Levin Naftalis & Frankel LLP, counsel of record for Plaintiff Acceleration Bay LLC (“Acceleration Bay”). I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts.

2. Pursuant to the Scheduling Order, on April 10, 2017, the parties held a meet and confer regarding their respective claim construction positions. On behalf of Acceleration Bay, I spoke with counsel for Defendants for well over an hour.

3. During the meet and confer, I objected to the sheer number of Defendants’ proposed constructions and explained that construction of 56 terms was unwieldy and unnecessary. With the exception of the MPF terms, I explained that the remaining terms had plain and ordinary meanings and no constructions were needed. For example, I explained that terms such as “computer” and “network” had well understood meanings and did not require any constructions. In addition, I explained why various of Defendants’ constructions were overly narrow and improperly imported limitations.

4. I stated during the meet and confer that Acceleration Bay would provide a counter-proposal to Defendants’ new and overly narrow constructions for “m-regular” and “m-connected.” Acceleration Bay provided its counter-proposals for those two terms three days later (April 13, 2017).

5. During the meet and confer, I addressed all questions raised by Defendants regarding the “m-regular” and “m-connected” terms and the forty six terms for which Acceleration Bay proposed a plain and ordinary meaning. I was asked the details for why certain citations Acceleration Bay identified in its claim construction disclosure supported some of its means-plus-function constructions. In response, I stated that, while other members of the “tech

team” had worked on this issue, Acceleration Bay identified in its disclosure to Defendants all the citations to the specification upon which it would rely as the structures corresponding to those limitations. I did not reference other members of the team in connection with any other issue discussed during the meet and confer.

6. Attached hereto as Exhibit A is a chart comparing Acceleration Bay’s proposed constructions in the Joint Claim Construction Chart with Acceleration Bay’s proposed constructions in its claim construction briefing and the supporting Declarations of Nenad Medvidović.

7. Attached hereto as Exhibit 1 is a true and correct copy of an Order filed on December 3, 2014 in the case *Microbix Biosystems, Inc. v. Novartis Vaccines and Diagnostics, Inc.*, No. 6:14-cv-00003-JDL, D.I. 65 (E.D. Tex. Dec. 3, 2014).

8. Attached hereto as Exhibit 2 is a true and correct copy of an Order filed on March 13, 2017 in the case *Sound View Innovations, LLC v. Facebook, Inc.*, C.A. No. 16-116-RGA, D.I. 85 (D. Del. March 13, 2017) and a true and correct copy of an Order filed on September 9, 2014 in the case *EMC Corp. v. Pure Storage Inc.*, C.A. No. 13-1985-RGA, D.I. 66 (D. Del. Sept. 19, 2014).

9. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt of the United States District Court for the Northern District of California’s Patent Local Rule 4.1(b).

10. Attached hereto as Exhibit 4 is a true and correct copy of Skype Defendants’ Opening Brief in Support of their Motion to Strike Via Vadis’s Untimely Disclosed Proposed Claim Constructions filed on November 20, 2012 in the case *Via Vadis LLC v. Skype Inc.*, C.A. No.11-507-RGA, D.I. 91 (D. Del. Nov. 20, 2012).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 14, 2017 in New York, New York.

/s/ Aaron M. Frankel
Aaron M. Frankel

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