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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, : CA NO. 16-453-RGA,  
 : 16-454-RGA, 16-455-RGA  
Plaintiff, :  
 :  
v. : July 10, 2017  
 :  
ACTIVISION BAY INC, et al., :  
 :  
Defendants, : 9:04 o'clock a.m.  
.....:

TRANSCRIPT OF MARKMAN HEARING  
BEFORE THE HONORABLE RICHARD G. ANDREWS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: POTTER, ANDERSON & CORROON  
BY: PHILIP A. ROVNER, ESQ  
BY: ALAN R. SILVERSTEIN, ESQ

1 doesn't carry any weight?

2 MR. ANDRE: I've not seen a case either way on that. I  
3 mean, it would lead to an amazing practice. The petitioners  
4 intentionally would not rely on the proper structure.

:56:40 5 So the PTAB would say, we can't construe them, and then  
6 they would argue in the District Court, ah, they're indefinite,  
7 because the PTAB couldn't construe them.

8 You can't let them have control of the process and then  
9 do it poorly, and then punish the patent owner for doing that.

:56:57 10 THE COURT: The IPR procedure is only designed to  
11 address 102 and 103, right, and not 112?

12 MR. ANDRE: That's correct.

13 THE COURT: Okay.

14 MR. ANDRE: So with that in mind, I think we're all on  
:57:05 15 the same page.

16 I think you've taken the breadth of my knowledge out at  
17 this point. I'm going to let Mr. Hannah start going through the  
18 terms and they can bounce through the terms very quickly that  
19 way.

:57:15 20 THE COURT: All right.

21 MR. HANNAH: Thank you, your Honor.

22 We'll start with the means for connecting term.

23 This is in the '344 and '966 patent. The parties  
24 agreed essentially with regards to the function here.

:57:32 25 And I think it's clear from the case law, what is

1 required in the spec is that someone of skill in the art has to  
2 be able to recognize and identify the structure, so they can  
3 program a software program in order to perform the necessary  
4 steps of the algorithm.

:57:49

5 And then I think the easiest way is to just look at the  
6 means for connecting is to see what the patent talks about. It  
7 talks about the connect routine.

8 I think that is the clearest example and it's provided  
9 out all throughout the '966 and the '344 patent.

:58:10

10 And it specifically says that Figure 8 is a flow  
11 diagram illustrating the process of the connect routine in one  
12 embodiment. It's talking exactly about the means for connecting  
13 and how that works.

14 And it goes through what this routine is.

:58:21

15 If you look through this portion that we provided in  
16 the specification, it says this routine is perhaps a channel  
17 type or a channel instance. It identifies broadcast channel.  
18 Routine also has some additional information.

:58:36

19 When the connection is established, the callback  
20 routine is invoked to notify the application program.

21 And when this process invokes a routine, it's in a  
22 connection seek state. I mean, it goes through the algorithm  
23 step-by-step in terms of what is required by the means for  
24 connecting. And it specifically calls it a connect routine in  
25 the specification.

:58:51

1 THE COURT: And, so, the structure -- so you're  
2 submission for structure has a lot of other stuff besides that  
3 portion of the specification?

4 MR. HANNAH: Yes. And, your Honor, the reason we did  
5 this is because other judges have liked this. We proposed some  
6 means-plus-functions in unrelated cases.

7 And, frankly, we had a judge come back to ask us, how  
8 am I supposed to just give these citations to the jury.

9 Give me something that I can actually read to the jury  
10 and then put the citations in that.

11 So that is why we adopted this format. We think it's a  
12 little cleaner and easier for a jury to understand, but the  
13 algorithm is what's in the citations that are provided.

14 THE COURT: Well, so it's probably good for me, even if  
15 I decide to do what you're suggesting there, which sounds  
16 reasonable. What is good for me is, for you to be, I think,  
17 very specific about what the algorithm is, right?

18 You've got a lot of verbiage here.

19 And, so, for the connecting, are you saying that the  
20 portions that you just showed me, which I think that's in column  
21 -- whatever it is -- Column 18, Lines 3 to 18 of the '966  
22 patent, that is the algorithm?

23 MR. HANNAH: Yes, your Honor.

24 So, if you look at -- so I'm just going back to the  
25 construction on Slide 22 -- and you'll see for the '966 that's

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