EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

LETTER BRIEF IN SUPPORT OF
PLAINTIFF ACCELERATION BAY LLC'S MOTION TO STRIKE

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after Mr. Argent's deposition that, to the extent there were any corrections on this issue, that Take-Two provide them promptly. Take-Two was on clear notice of the importance of the accuracy of this information based on Acceleration Bay's deposition of Mr. Argent and the follow up request to confirm the information. Nonetheless, Take-Two waited until six hours before Acceleration Bay's damages report was due to provide errata, two weeks after the deadline in Rule 30(e). At no time did Take-Two request an extension to provide the errata or warn Acceleration Bay that it was reviewing this issue or than an errata was forthcoming. Thus, Take-Two's bad faith further mandates striking this untimely errata which is unduly prejudicial to Acceleration Bay.

Accordingly, the Special Master should strike the Griffith and Argent erratas as untimely under Federal Rule of Civil Procedure 30(e), and to ensure that Acceleration Bay is not unfairly prejudiced given the material changes these erratas made to their testimony.

II. Defendants Should Not Be Permitted To Advance New Invalidity Arguments Not Disclosed In Their Invalidity Contentions

The report of Defendants' invalidity expert, Dr. David Karger, improperly advances various new grounds for invalidity that Defendants did not timely elect or disclose in their invalidity contentions. Defendants should not be permitted to assert these brand new grounds for the first time in their expert report, which amounts to unfair surprise and significant prejudice to Acceleration Bay. Indeed, fact discovery closed two months ago, and Defendants did not seek to amend their invalidity contentions to disclose these new grounds. As a result, Acceleration Bay appropriately relied on Defendants' invalidity contentions in handling fact discovery and with respect to claim construction positions and symmetrical infringement contentions. Defendants' injection of these brand new theories of invalidity into the case at this late stage is exactly what they incorrectly claimed Acceleration Bay would do — and would be the equivalent of

Acceleration Bay sandbagging Defendants by having its experts offer opinions in their reports that new products infringed previously undisclosed claims (which Acceleration Bay's experts have not done).

Additionally, for several prior art references, Dr. Karger failed to provide any invalidity analysis and he simply purports to reserve the right to provide an invalidity analysis at some future time. The schedule requires Defendants to identify their experts' invalidity opinions at this time, and does not permit the provision of new invalidity theories after initial reports.

Accordingly, the Special Master should strike these portions of Dr. Karger's report.[4]

A. Dr. Karger Provides Invalidity Opinions For Shoubridge Never Disclosed By Defendants

Dr. Karger opines that asserted claims 12-15 of the '344 Patent and claims 12 and 13 of the '966 Patent are anticipated and rendered obvious by the Shoubridge reference, but Defendants never alleged that Shoubridge anticipates any of those claims and only alleged that Shoubridge renders obvious claim 12 of the '344 Patent and claim 12 of the '966 Patent (but not claims 13-15 of the '344 Patent or claim 13 of the '966 Patent). Thus, Defendants' anticipation claim using Shoubridge has never been disclosed and Dr. Karger's anticipation opinion should be stricken in its entirety. And Dr. Karger's opinion that Shoubridge renders obvious claims 13-

[4] Acceleration Bay also objects to Defendants' reliance on the Alagar reference for seven of its nineteen prior art-based invalidity arguments advanced in Dr. Karger's report because Defendants did not include Alagar in their preliminary election of prior art, which was the disclosure that required Defendants to identify their asserted prior art in these cases. Defendants are not permitted to rely on new prior art references without first moving the Court for leave to amend their prior art election after demonstrating good cause. Ex. 8 (D.I. 116, 4/13/17 Order) ("Absent good cause . . . Defendants cannot substitute different art for the ones currently asserted"); Ex. 9 (Defs. 5/6/16 Election of Prior Art) at 24-26 (not including Alagar as elected prior art). The parties are submitting this dispute to the Court and, should the Court deny Defendants' motion for leave to amend their election of prior art to include Alagar, the portions of Dr. Karger's report and corresponding opinions relying on the Alagar reference will be stricken.

references not disclosed in the parties' infringement contentions or invalidity contentions.") (internal quotations and citation omitted); *ASUS Computer Int'l v. Round Rock Research, LLC*, No. 12-cv-02099 JST (NC), 2014 WL 1463609, at *1 (N.D. Cal. Apr. 11, 2014) (same).

B. Dr. Karger Argues Invalidity Based on New Combinations of Prior Art References Not Identified By Defendants

Dr. Karger improperly provides opinions that various Asserted Claims are invalid as obvious in view of combinations of prior art that Defendants did not identify in their invalidity contentions:

- asserted claims of the '344 Patent are obvious over DirectPlay combined with Alagar
- asserted claims of the '344 Patent are obvious over DirectPlay combined with Alagar and Shoubridge
- asserted claims of the '344 Patent are obvious over Age of Empires combined with Shoubridge and/or Alagar
- asserted claims of the '966 Patent are obvious over DirectPlay combined with Alagar
- asserted claims of the '966 Patent are obvious over DirectPlay combined with Alagar and Shoubridge
- asserted claims of the '966 Patent are obvious over Age of Empires combined with Shoubridge and/or Alagar
- asserted claims of the '634 Patent are obvious over Age of Empires combined with Shoubridge
- asserted claims of the '497 Patent are obvious over ActiveNet combined with Naugle

Defendants failed to provide the requisite disclosure for any of these invalidity grounds. Among other considerations, a prima facie claim of obviousness requires an identification of multiple references that are being combined, a motivation to combine those references and the content from each reference that is subject to the combination. Ex. 15, *AstraZeneca AB v. Mylan Labs. Ltd.*, No. 12-cv-1378-MLC-TJB, Dkt. No. 66, Letter Order at 11 (D.N.J. Jan. 30, 2013); *see also Cohesive Techs.*, 543 F.3d at 1364. Defendants' invalidity contentions do not specifically identify any of these combinations. They also do not discuss the motivation to

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