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January 2, 2018

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: Acceleration Bay LLC; C.A. Nos. 16-453 (RGA); 16-454 (RGA); and 16-455 (RGA)

Dear Judge Andrews:

Defendants write to request the Court's guidance on how to proceed with respect to the patent ineligibility of the six asserted "Computer Readable Medium" claims of the patents-in-suit. We have raised this issue with Plaintiffs' counsel several times, who have responded only they "will provide a response in the future." For the reasons set forth below, we believe that there are good reasons to address this issue now.

At the November 22 hearing, counsel for Plaintiff agreed that if the computer readable medium includes carrier waves, those claims are patent ineligible.

[PLAINTIFF COUNSEL]: The dispute here is the scope of computer-readable medium, which is our position is that in the context of the claims and the specification, it should be limited to non-fleeting medium.

THE COURT: Do you agree [if] this includes fleeting medium such as carrier waves, that the claims are ineligible?

[PLAINTIFF COUNSEL]: The short answer is yes. (Tr. 65-66)

The Court's December 20, 2017 Phase 1 Claim Construction Order (D.I. 386 in C.A. No. 16-453) adopted Defendants' proposed construction and held that "computer readable medium" (term 27) is "any medium for storing or transporting computer readable instructions, including memory, storage devices, carrier waves, and communications links." Based on that construction, Defendants believe – as Plaintiff's counsel had confirmed – that the "computer readable medium" claims are invalid as a matter of law for including ineligible subject matter, including carrier waves. *See, e.g., Mentor Graphics Corp.*, 851 F.3d at 1294; *Kinglite Holdings Inc. v.*

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Micro-Star Int'l Co. Ltd., C.A. No. 14-03009-JVS, 2016 WL 4205356, at *15-18 (C.D. Cal. May 26, 2016).

On December 21, 2017, Defendants, mindful of the Court's direction that the Parties should discuss limits for summary judgment briefing, requested that Plaintiff stipulate to invalidity of the six computer readable media claims, subject to its right to challenge the claim construction on appeal. If Plaintiff would not so stipulate, Defendants also requested that Plaintiff agree to a shortened briefing schedule to resolve the issue before summary judgment motions are filed on February 2, 2018. Given Plaintiff's failure to respond, Defendants request guidance on how to proceed.

Defendants submit that the issue is one of law, that it has already been resolved in Defendants' favor, and that getting clarity on this issue before summary judgment motions are filed would streamline the proceedings. If the issue is resolved as Defendants believe it should be, the summary judgment briefing will involve only ten, instead of sixteen claims, thus reducing the burden on the Court and the parties. Defendants believe that the issue could be submitted on letter briefs of no longer than three pages.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/rah

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