

EXHIBIT A

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

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ACCELERATION BAY, LLC,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
ACTIVISION BLIZZARD,	:	
	:	
Defendant.	:	NO. 16-0453-RGA
-----	:	
ACCELERATION BAY, LLC,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
ELECTRONIC ARTS INC.,	:	
	:	
Defendant.	:	NO. 16-0454-RGA

- - -

Wilmington, Delaware
Monday, December 18, 2017
9:03 o'clock, a.m.

- - -

BEFORE: HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

- - -

Valerie J. Gunning
Official Court Reporter

1 ACCELERATION BAY, LLC, : CIVIL ACTION
 2 Plaintiff, :
 3 vs. :
 4 TAKE-TWO INTERACTIVE :
 5 SOFTWARE, INC., ROCKSTAR :
 6 GAMES, INC. and 2K SPORTS, :
 7 INC., :
 8 Defendants. : NO. 16-0455-RGA

1 APPEARANCES (Continued):
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 27 WINSTON & STRAWN LLP
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 29 (Los Angeles, California)
 30
 31 -and-

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1 PROCEEDINGS
 2
 3 THE COURT: All right. Good morning, everyone.
 4 Please be seated.
 5 This is Acceleration Bay versus Activision
 6 Blizzard, Inc., Civil Action No. 16-453, plus the two
 7 related cases.
 8 Mr. Silverstein?
 9 MR. SILVERSTEIN: Good morning, Your Honor.
 10 THE COURT: Good morning.
 11 MR. SILVERSTEIN: Good morning. Alan
 12 Silverstein, Potter Anderson. With me today is James
 13 Hannah.
 14 MR. HANNAH: Good morning, Your Honor.
 15 MR. SILVERSTEIN: And Aaron Frankel from Kramer
 16 Levin.
 17 THE COURT: Good morning, gentlemen.
 18 Mr. Blumenfeld?
 19 MR. BLUMENFELD: Good morning, Your Honor. Jack
 20 Blumenfeld from Morris Nichols for the defendants along with
 21 Tom Dunham and Mike Tomasulo from Winston & Strawn, and
 22 Linda Zabriskie from Take-Two is a few rows back.

1 MR. HANNAH: Your Honor, we have some
2 housekeeping issues that we can kind of take care of,
3 take some terms off the table based on the recent
4 submission.

5 THE COURT: All right. Tell me about this happy
6 news.

7 MR. HANNAH: It's indeed happy, Your Honor.

8 So, again, we reiterated our position that, you
9 know, these terms and all of the terms in the subsequent
10 briefing, the plain and ordinary meaning should apply and
11 that would resolve the parties' dispute. However, to the
12 extent the Court wishes to construe these terms, we've
13 agreed to the construction of term -- for term 10.

14 THE COURT: Ten, yes.

15 MR. HANNAH: 13 of the '344 patent and claim 13
16 of the '966 patent.

17 And --

18 THE COURT: Wait a second. These are not terms
19 that are for today. Right?

20 MR. HANNAH: Term 10.

21 THE COURT: Term 10 is, yes.

22 MR. HANNAH: Network. So network within the
23 construct of claim 13 of the '344 patent we would agree
24 would be each of the broadcast channels.

25 THE COURT: Wait. Is term 13 on today's list?

1 channel within a network.

2 THE COURT: Yes.

3 MR. HANNAH: We would agree that defendant's
4 proposed construction, which is a computer-readable medium
5 containing instructions that control communications of a
6 participant of a broadcast channel within a network that
7 does not use routing tables, we would agree with that
8 construction for claim, for term 24, which is claim 19 of
9 the '634 patent.

10 THE COURT: I'm sorry. Did the defendant's
11 proposal change somewhere in the middle of the briefing?

12 MR. HANNAH: Your Honor asked for supplemental
13 briefing, I mean supplemental positions from the defendants,
14 and to the extent that the term is not found.

15 THE COURT: Okay.

16 MR. HANNAH: And that was a submission on
17 Friday. We haven't had a chance to respond to that and so
18 we analyzed it over the weekend.

19 THE COURT: All right. Yes. I'm not apparently
20 sure I even saw that.

21 All right. In any event, whatever is in
22 defendant's letter, you agree with that?

23 MR. HANNAH: Yes, which I just stated.

24 THE COURT: Yes.

25 MR. HANNAH: I mean, I say I agree to the

1 MR. HANNAH: I'm sorry if I misspoke. Term 10,
2 and that only relates to claim 13 of the '344 patent.

3 THE COURT: Oh, claim 13. Sorry. I'm getting
4 claims and terms mixed up here. Okay.

5 MR. HANNAH: I apologize Your Honor.

6 THE COURT: All right. Term 10. I got that.
7 Network.

8 MR. HANNAH: Yes. So network within claim 13 of
9 the '344 patent and claim 13 of the '966 patent. We would
10 agree that network, the plain and ordinary meaning is each
11 of the broadcast channels that comports with Acceleration
12 Based's understanding.

13 And then for term 24, that relates to claim 19
14 of the '634 patent.

15 THE COURT: Yes.

16 MR. HANNAH: We would agree that the preamble,
17 which is a computer based non-routing table based
18 non-switched based method for adding a participant to a
19 network of participants.

20 THE COURT: All right. That's term 25.

21 MR. HANNAH: Term 25. I'm sorry. Let me go to
22 term 24. Let's do this in order.

1 construction. I'm not agreeing to the positions that
2 they're taking.

3 THE COURT: All right. In any event, 24 is
4 resolved in your view?

5 MR. HANNAH: Correct. And then term 25. Now
6 I'm messing up claims and terms. Term 25, which is Claim 1
7 of the '069 patent. Again, defendants propose a
8 construction for the term, a computer-based, non-routing
9 table based, non-switched based method for adding a
10 participant to a network of participants. They proposed a
11 construction this last Friday, a computer-based method for
12 adding a participant to a network of participants that does
13 not use routing tables or switches. And we would agree to
14 that construction for Claim 1 of the '069 patent.

15 THE COURT: Okay.

16 MR. HANNAH: But we met and conferred with the
17 defendants and they were fine with taking these off the
18 table. However, they did wish me to inform the Court that
19 they preserve their indefiniteness arguments and would
20 submit that on the briefing unless the Court had any
21 questions regarding those terms this morning.

22 THE COURT: All right.

1 THE COURT: All right. Let me just check before
2 you go. Mr. Dunham or Mr. Tomasulo, you are in agreement
3 with what has been stated?

4 MR. DUNHAM: We are, Your Honor. This is Tom
5 Dunham for defendants. And we agree to the constructions
6 that we submitted Friday for the three terms will apply, and
7 then today, if the Court would like, I would be prepared to
8 address the other issues we raised with respect to those
9 terms, the 112 issues, the Beauregard issues, the printed
10 matter issues.

11 If the Court would like to hear that today, I
12 would be happy to. If you'd like to defer to those
13 validity-related issues --

14 THE COURT: The only thing I think I might be
15 interested in hearing -- hold on. Let me go back.

16 Yes. The only out of those three I might be
17 interested in hearing about would be for term 24, the
18 indefiniteness issue. Okay?

19 MR. DUNHAM: Absolutely. I will be prepared to
20 address that then.

21 THE COURT: All right. All right. So otherwise
22 we have a game plan here.

23 So we're starting with computer network. Is
24 that right, Mr. Hannah?

25 MR. HANNAH: I'm sorry, Your Honor. Mr. Frankel

1 have to be at least two computers.

2 I will first address the physical versus process
3 issue. I think the two computer issues are entirely
4 hypothetical. I don't believe that's relevant to the
5 infringement or validity issues in the case, but it's
6 unnecessary, confusing, and incorrect.

7 THE COURT: All right. Go ahead.

8 MR. FRANKEL: The specification makes clear that
9 the network includes computer processes. It says that the
10 network is made up of participants. The parties agreed to
11 the construction for participants, that it includes computer
12 processes.

13 So term 13 was participant, and everyone has
14 agreed that a participant is a computer and/or computer
15 process that participates in a network. So if we go back to
16 claim 12, which depends from claim 1, the computer network
17 is connected participants, and the parties have already
18 agreed that the participants can be computers and/or
19 computer processes.

20 If you look at our construction, it's just
21 taking the definition of participants, which is already
22 agreed.

23 THE COURT: Do I take it that claim 1 is not
24 asserted?

25 MR. FRANKEL: That's correct, your Honor. Claim

1 will be taking that one.

2 THE COURT: All right. Good enough.

3 MR. FRANKEL: Good morning, your Honor.

4 THE COURT: Good morning, Mr. Frankel.

5 MR. FRANKEL: Here we have the parties' proposed
6 constructions -- oh. Your Honor, may I approach to hand up
7 some copies of the presentation?

8 THE COURT: Sure, yes.

9 (Mr. Frankel handed slides to the Court.)

10 THE COURT: Mr. Frankel, can you just hold on a
11 second? Go ahead.

12 MR. FRANKEL: This is another term, Your Honor,
13 that we think does not require construction. Computer
14 network is a term that everyone would understand.

15 There's nothing in the patents or the file
16 history that gives --

17 THE COURT: But nevertheless, even though you
18 say that, you have a proposed construction.

19 MR. FRANKEL: As ordered by the Court to provide
20 a construction, we complied with that order, and our
21 construction we think is consistent with the plain and
22 ordinary meaning, that a computer network is computers or

1 12 is asserted, so it incorporates the limitations of claim
2 1.

3 THE COURT: Right. Okay. I assumed that, but I
4 just wanted to check.

5 MR. FRANKEL: So we have an agreed upon
6 definition that really should resolve this issue already.
7 But turning to the specification, as we highlighted in our
8 briefing and we pulled some excerpts out on the slides, it
9 repeatedly refers to the network as connecting computer
10 processes. For example, it says, each computer is connected
11 to four other computers, and then parenthetically it says,
12 actually, it's process executing on a computer that's
13 connected to four other processes.

14 If four people are driving around in cars and
15 talking on their cellphones, in a sense you could say that
16 the cars are communicating with each other, but in reality
17 it's the people in the cars talking on the phones. Here, if
18 we have four or more computers in a network, it's really the
19 processes inside of the computers that are communicating
20 with each other, as is made clear in the spec.

21 THE COURT: So what is a -- I mean, I understand
22 maybe you've stipulated to this and the construction is