IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, v. ACTIVISION BLIZZARD, INC. Defendant.	Civil Action No. 16-453-RGA
ACCELERATION BAY LLC, Plaintiff, v. ELECTRONIC ARTS INC. Defendant.	Civil Action No. 16-454-RGA
ACCELERATION BAY LLC, Plaintiff, v. TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., AND 2K SPORTS, INC. Defendants.	Civil Action No. 16-455-RGA

MEMORANDUM OPINION

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January 17, 2018

ANDREWS, U.S. DISTRICT JUDGE:

Presently before me is the issue of claim construction of multiple terms in U.S. Patent No. 6,701,344 (the "'344 patent"), U.S. Patent No. 6,714,966 (the "'966 patent"), U.S. Patent No. 6,829,634 (the "'634 patent"), U.S. Patent No. 6,910,069 (the "'069 patent"), U.S. Patent No. 6,732,147 (the "'147 patent"), and U.S. Patent No. 6,920,497 (the "'497 patent"). I have considered the parties' Joint Claim Construction Brief. (D.I. 366).[1] I issued an Order and Stipulation Regarding Supplemental Claim Construction Briefing, pursuant to which the parties address terms 9, 10, 21, 24-26, 28, and 37. (D.I. 206; D.I. 215). I held oral argument on December 18, 2017. (D.I. 391 ("Tr.")).

I. LEGAL STANDARD

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "'[T]here is no magic formula or catechism for conducting claim construction.' Instead, the court is free to attach the appropriate weight to appropriate sources 'in light of the statutes and policies that inform patent law.'" *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324) (alteration in original). When construing patent claims, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977–80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, "the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (internal quotation marks omitted).

[1] Citations to "D.I. ___" are to the docket in C.A. No. 16-453.

"[T]he words of a claim are generally given their ordinary and customary meaning. . . . [Which is] the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1312–13 (citations and internal quotation marks omitted). "[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent." *Id.* at 1321 (internal quotation marks omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314.

When a court relies solely upon the intrinsic evidence—the patent claims, the specification, and the prosecution history—the court's construction is a determination of law. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). The court may also make factual findings based upon consideration of extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Phillips*, 415 F.3d at 1317–19. Extrinsic evidence may assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art, and how the invention works. *Id.* Extrinsic evidence, however, is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

"A claim construction is persuasive, not because it follows a certain rule, but because it defines terms in the context of the whole patent." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). It follows that "a claim interpretation that would exclude the inventor's device is rarely the correct interpretation." *Osram GMBH v. Int'l Trade Comm'n*, 505 F.3d 1351, 1358 (Fed. Cir. 2007) (citation omitted).

II. BACKGROUND

The following claims are the most relevant for the purposes of this Markman.

Claim 1 of the '147 Patent

1. *A method of disconnecting a first computer from a second computer, the first computer and the second computer being connected to a broadcast channel, said broadcast channel forming an m-regular graph where m is at least 3, the method comprising:*

when the first computer decides to disconnect from the second computer, the first computer sends a disconnect message to the second computer, said disconnect message including a list of neighbors of the first computer; and

when the second computer receives the disconnect message from the first computer, the second computer broadcasts a connection port search message on the broadcast channel to find a third computer to which it can connect in order to maintain an m-regular graph, said third computer being one of the neighbors on said list of neighbors.

(D.I. 117-2, Exh. A-3 ("'147 patent"), claim 11) (emphasis added).

Claim 11 of the '147 Patent

11. *A computer-readable medium containing instructions for controlling disconnecting of a computer from another computer, the computer and other computer being connected to a broadcast channel, said broadcast channel being an m-regular graph where m is at least 3*, comprising:

a component that, when the computer decides to disconnect from the other computer, the computer sends a disconnect message to the other computer, said disconnect message including a list of neighbors of the computer; and

a component that, when the computer receives a disconnect message from another computer, the computer broadcasts a connection port search message on the broadcast channel to find a computer to which it can connect in order to maintain an m-regular graph, said computer to which it can connect being one of the neighbors on said list of neighbors.

('147 patent, claim 11) (emphasis added).

Claim 15 of the '147 Patent

15. The computer-readable medium of claim 11 wherein the computers that are connected to the broadcast channel are *peers*.

('147 patent, claim 15) (emphasis added).

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