

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

JACK B. BLUMENFELD
(302) 351-9291
(302) 425-3012 FAX
jblumenfeld@mnat.com

January 24, 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:

We write on behalf of Defendants to advise Your Honor of a remaining dispute related to the [Proposed] Second Supplemental Claim Construction Order (D.I. 430 in C.A. 16-453) (“Proposed Order”) submitted by the parties yesterday. The Parties’ respective positions are contained within the Proposed Order; however, the Proposed Order itself does not highlight that there is a dispute or provide any context for that dispute.

Regarding Terms 24, 25, 26 and 28, the Parties had previously disputed whether or not the respective preambles were limiting. The Court resolved that issue, finding that the preambles are limiting. *See* D.I. 422. As a result, the Proposed Order states that each of the preambles of these terms is limiting. In addition, the Court has found that the limiting preamble of Term 24 is indefinite. *See* D.I. 423, at 14-17. Plaintiff refuses to acknowledge that this limiting indefinite preamble renders the claims in which it appears (i.e., claims 19-24 of the ‘634 patent) invalid. Thus, in the Proposed Order, the parties state their respective positions on this issue for Term 24. Defendants ask the Court to resolve this dispute when considering the Proposed Order. Defendants submit that these claims are invalid and should not remain a part of the case after the Court has found them to contain an indefinite limitation.

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)