

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

ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	C.A. No. 16-454-RGA
v.)	
)	PUBLIC VERSION
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	

**PLAINTIFF ACCELERATION BAY LLC'S REPLY BRIEF
IN SUPPORT OF ITS SUMMARY JUDGMENT AND DAUBERT MOTIONS**

OF COUNSEL:

Paul J. Andre
Lisa Kobialka
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700

Aaron M. Frankel
Cristina Martinez
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100

Dated: April 27, 2018
Public version dated: May 7, 2018

Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
POTTER ANDERSON & CORROON LLP
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

Attorneys for Plaintiff
ACCELERATION BAY LLC

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT	1
I. EA Directly Infringes the Asserted Claims	1
A. EA Directly Infringes the System Claims of the ‘497, ‘344, and ‘966 Patents.....	1
B. EA Directly Infringes the Method Claims of the ‘147 and ‘069 Patents	5
C. EA Directly Infringes the Computer Readable Medium Claims	7
II. The Accused Products Infringe Claims 9 and 16 of the ‘497 Patent	7
A. EA Puts Into Use the Hardware “Component” in the ‘497 Patent	7
B. The Accused Products Include a Means for Identifying a Portal Computer Having a Dynamically Selected Call-In Port.....	10
C. The Accused Products Include a Means for Identifying the Call-In Port by Repeatedly Trying to Establish a Connection	11
D. The Accused Products Include a Means For Selecting the Call-In Port of the Identified Portal Computer Using a Port Ordering Algorithm	12
E. The Accused Products Include a Means for Re-Ordering the Communications Ports Selected By the Port Ordering Algorithm	13
F. The [REDACTED] Server is a Portal Computer.....	14
G. The Accused Products Use TCP/IP Connections and Infringe Claim 16.....	15
III. Ms. Lawton’s Damages Opinions Should be Excluded.....	15
A. Ms. Lawton’s Opinion Regarding Non-Infringing Alternatives is Legally Wrong and Unsupported.....	15
B. Ms. Lawton’s Neglect of the Most Relevant Comparable Damages Information Renders Her Opinion Unreliable	19
C. Ms. Lawton Failed to Demonstrate the [REDACTED] License is Comparable	20
D. Ms. Lawton’s Reasonable Royalty Opinion is Unsupported and Unreliable.....	22
E. Ms. Lawton’s Opinion Regarding the Hypothetical Negotiation Date is Unsupported and Arbitrary	24
CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Akamai Techs., Inc. v. Limelight Networks, Inc.</i> , 797 F.3d 1020 (Fed. Cir. 2015).....	2, 3, 5, 6
<i>Applied Med. Res. Corp. v. U.S. Surgical Corp.</i> , 435 F.3d 1356 (Fed. Cir. 2006).....	24
<i>BMC Res., Inc. v. Paymentech L.P.</i> , 498 F.3d 1378 (Fed. Cir. 2007).....	6
<i>Caserto v. Metro-N. R.R. Co.</i> , No. 14-CV-7936 (JMF), 2016 WL 406390 (S.D.N.Y. Feb. 2, 2016).....	7
<i>Centillion Data Sys., LLC v. Qwest Commc’ns Int’l, Inc.</i> , 631 F.3d 1279 (Fed. Cir. 2011) (en banc).....	<i>passim</i>
<i>Centrak, Inc. v. Sanotor Techs., Inc.</i> , No. 14-193-RGA, 2017 WL 3730617 (D. Del. Aug. 30, 2017)	2, 3
<i>DataQuill Ltd. v. High Tech Comput. Corp.</i> , No. 08CV543-IEG (BGS), 2012 WL 1284381 (S.D. Cal. Apr. 16, 2012).....	20
<i>Eli Lilly & Co. v. Teva Parenteral Medicines, Inc.</i> , 845 F.3d 1357 (Fed. Cir. 2017).....	2
<i>ePlus, Inc. v. Lawson Software, Inc.</i> , 700 F.3d 509 (Fed. Cir. 2012).....	19
<i>Finjan v. Secure Computing</i> , 626 F.3d 1197 (Fed. Cir. 2010).....	20
<i>Fujifilm Corp. v. Motorola Mobility LLC</i> , No. 12-cv-03587-WHO, 2015 WL 1265009 (N.D. Cal. Mar. 19, 2015)	24
<i>Grain Processing Corp. v. Am. Maize-Prods. Co.</i> , 185 F.3d 1341 (Fed. Cir. 1999).....	15
<i>Grecia v. McDonald’s Corp.</i> , No. 2017-1672, 2018 WL 1172580 (Fed. Cir. Mar. 6, 2018).....	1, 4
<i>Intellectual Ventures I LLC v. Motorola Mobility LLC</i> , 870 F.3d 1320 (Fed. Cir. 2017).....	4

Mars, Inc. v. Coin Acceptors, Inc.,
527 F.3d 1359 (Fed. Cir. 2008).....15, 16

NTP, Inc. v. Research in Motion, Ltd.,
418 F.3d 1282 (Fed. Cir. 2005).....1

Power Integrations, Inc. v. Fairchild Semiconductor, Int’l, Inc.,
843 F.3d 1315 (Fed. Cir. 2016).....9

Ricoh Co. v. Quanta Computer Inc.,
550 F.3d 1325 (Fed. Cir. 2008).....6

Travel Sentry, Inc. v. Tropp,
877 F.3d 1370 (Fed. Cir. 2017).....2, 3, 5, 8

Uniloc USA, Inc. v. Microsoft Corp.,
632 F.3d 1292 (Fed. Cir. 2011).....3

Wordtech Sys. Inc. v. Integrated Network Sols., Inc.,
609 F.3d 1308 (Fed. Cir. 2010).....20, 21

Statutes

35 U.S.C. § 271(a)1, 2, 7

Other Authorities

Fed. R. Civ. P. 56.....5

ARGUMENT

I. EA Directly Infringes the Asserted Claims

A. EA Directly Infringes the System Claims of the ‘497, ‘344, and ‘966 Patents

Summary judgment is warranted based on the undisputed facts. Electronic Arts (“EA”) acknowledges that the Accused Products are made, used, sold and offered for sale in the U.S. D.I. 437, Acceleration’s Opening Brief (“AB Br.”) at 1-6. EA also acknowledges that it owns and controls the Accused Products that infringe the asserted system claims of the ‘497, ‘344, and ‘966 Patents. Ex. 9 at ¶ 93; Ex. 10 at ¶ 150. Additionally, EA concedes that the inventions in the asserted claims reduce the need for additional servers and provide enhanced online multiplayer game experiences. *See, e.g.*, D.I. 431, Barry Decl., Ex. A-7 at ¶¶ 78-80 (peer-to-peer architecture can reduce need for servers and points of failure). These admissions alone establish that EA is liable as a direct infringer because EA “puts into use” the accused systems by controlling the accused systems and derives benefit from its customers’ use of the accused systems. *Centillion Data Sys., LLC v. Qwest Commc’ns Int’l, Inc.*, 631 F.3d 1279, 1284 (Fed. Cir. 2011) (citing *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1317 (Fed. Cir. 2005)).

EA argues it cannot directly infringe because it purportedly does not itself make, use or sell the entire network covered by the system claims. There are multiple flaws with that theory. Based on the undisputed facts listed above and *Centillion*, EA is legally deemed to “put into use” the entire system, even if, as EA contends, the processors running EA’s software are owned by EA’s customers. *Id.* at 1286; *see also Grecia v. McDonald’s Corp.*, No. 2017-1672, 2018 WL 1172580, at *3 (Fed. Cir. Mar. 6, 2018) (“a single party can still use, and thus directly infringe under § 271(a), a claimed system even when that system requires multiple parties to function.”).

Moreover, even if EA’s customers are using parts of the system (which is not the case

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.