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>TABLE OF AUTHORITIES</u>

Page(s)

Cases

Statutes

Other Authorities

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

DOCKET ALARM

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 inter-face) 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.

fastcase®
Smarter legal research.