

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,

Plaintiff,

v.

ELECTRONIC ARTS INC.,

Defendant.

Civil Action No. 1:16-cv-00454-RGA

ORDER

Presently before me are Plaintiff's Motion to Exclude Testimony of Catharine M. Lawton and Defendant's *Daubert* Motion to Exclude Expert Opinions of Dr. Nenad Medvidović, Dr. Michael Mitzenmacher, Dr. Christine Meyer, Dr. Harry Bims, and Dr. Ricardo Valerdi. (D.I. 425, 435). The Parties have fully briefed the issues. (D.I. 426, 437, 465, 467, 476, 478). For the reasons set out below, the Parties' motions to exclude damages experts are dismissed as moot and Defendant's Motion to Exclude Expert Testimony as to Dr. Medvidović and Dr. Mitzenmacher is denied.

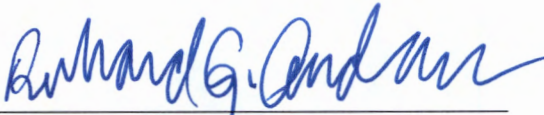
Plaintiff's Motion to Exclude Expert Testimony of Catharine M. Lawton and Defendant's Motion to Exclude Expert Testimony of Dr. Meyer, Dr. Bims, and Dr. Valerdi are dismissed as moot. The Parties are in the process of reworking their damages cases. Plaintiff has stipulated to striking certain portions of its current damages case and is submitting a supplemental damages report from Mr. Russell Parr. (D.I. 513 at 3). Defendant plans to serve responsive reports and take additional depositions. (*Id.*). The present motions, which assume a damages case that no

longer exists, are therefore moot. The Parties will have an opportunity to object to damages expert testimony once the damages experts' opinions are finalized.¹

Defendant filed the only *Daubert* motion that is unrelated to damages. It argues that I should exclude the opinions of Dr. Medvidović and Dr. Mitzenmacher as “nothing but bare conclusions.” (D.I. 426 at 33). Defendant’s argument does not substantively differ from the argument which I rejected in the Activision Blizzard matter. (D.I. 499 at 25-26). Like Activision, Defendant does not make a serious case to exclude expert testimony based on “qualification, reliability, and fit.” See *Schneider ex rel. Estate of Schneider v. Fried*, 320 F.3d 396, 404-405 (3d Cir. 2003). And, as it did in the Activision Blizzard matter, Plaintiff points to sections in its experts’ reports which provide explanations of the experts’ infringement opinions. (D.I. 467 at 31-33). Accordingly, I will deny Defendant’s motion as to the opinions of Dr. Medvidović and Dr. Mitzenmacher.

Plaintiff’s Motion to Exclude Expert Testimony of Catharine M. Lawton (D.I. 435) is DISMISSED-IN-PART as MOOT.² Defendant’s Motion to Exclude Expert Testimony (D.I. 425) is DISMISSED as MOOT as to Dr. Meyer, Dr. Bims, and Dr. Valerdi and DENIED as to Dr. Medvidović and Dr. Mitzenmacher.

IT IS SO ORDERED this 23 day of January 2019.


United States District Judge

¹ Several issues that the Parties raise in the currently filed *Daubert* briefing are similar to issues which I addressed in the Activision Blizzard matter, C.A. 16-453. (D.I. 499). The Parties should note that, absent a compelling reason, I do not intend to reach a different conclusion in this case on the admissibility of an expert opinion which is substantially identical to an expert opinion I admitted in the Activision Blizzard matter.

² D.I. 435 remains pending as to Plaintiff’s Motion for Partial Summary Judgment.