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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

Thursday, February 28, 2019
3:00 p.m.
Hearing

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE RICHARD G. ANDREWS
United States District Court Judge

APPEARANCES:

POTTER ANDERSON & CORROON, LLP
BY: PHILIP A. ROVNER, ESQ.

-and-

KRAMER LEVIN
BY: AARON M. FRANKEL, ESQ.
BY: MARCUS COLUCCI, ESQ.

Counsel for the Plaintiff

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APPEARANCES CONTINUED:

MORRIS NICHOLS ARSHT & TUNNELL LLP
BY: JACK B. BLUMENFELD, ESQ.

-and-

WINSTON & STRAWN
BY: DAVID ENZMINGER, ESQ.
BY: MICHAEL A. TOMASULO, ESQ.
BY: LOUIS CAMPBELL, ESQ.

Counsel for the Defendant

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P R O C E E D I N G S

(REPORTER'S NOTE: The following hearing was
held in open court, beginning at 3:00 p.m.)

THE COURT: Good afternoon everyone. Please be
seated. This is the time set for argument in the
Acceleration Bay versus Electronics Art, Civil Action Number
16-454. Summary judgment.

Mr. Rovner.

MR. ROVNER: Good afternoon, Your Honor.

03:00:40 1 THE COURT: Good afternoon.

03:00:41 2 MR. ROVNER: Phil Rovner from Potter Anderson on
03:00:44 3 behalf of Acceleration Bay. With me from Kramer Levin is
03:00:47 4 Aaron Frankel and Marcus Colucci.

03:00:50 5 THE COURT: Colucci. All right. Thank you.
03:00:53 6 Welcome.

03:00:54 7 Mr. Blumenfeld.

03:00:57 8 MR. BLUMENFELD: Good afternoon, Your Honor.
03:01:01 9 Jack Blumenfeld from Morris Nichols representing Electronic
03:01:05 10 Arts. And at counsel table are David Enzminger, Michael
03:01:10 11 Tomasulo and Louis Campbell from Winston & Strawn. And for
03:01:14 12 Electronic Arts, Betsy Contro.

03:01:16 13 THE COURT: All right. Thank you everybody.
03:01:19 14 All right. So this hearing involves defendant's motions for
03:01:26 15 summary judgment on a couple of issues. So it would make
03:01:30 16 sense for me that defendants are going to go first. Right?

03:01:34 17 MR. ENZMINGER: Yes.

03:01:34 18 THE COURT: And I figured it would make most
03:01:38 19 sense if you do one discrete issue and then when you're
03:01:42 20 finished, Acceleration responds to that discrete issue and
03:01:48 21 maybe we can focus in on some things I can actually resolve.
03:01:53 22 All right.

03:01:54 23 So Mr. Enzminger, you seem to be in the jump
03:01:58 24 seat there.

03:02:01 25 MR. ENZMINGER: Good afternoon, Your Honor.

03:02:20 1 Following the Court's guidance, we'll begin with the
03:02:23 2 argument concerning whether the accused EA games directly
03:02:29 3 infringe through making, using, or selling or offering to
03:02:35 4 sell the accused functionality.

03:02:37 5 This is very similar to arguments that you have
03:02:43 6 heard before. I just want to provide a little background.
03:02:49 7 First, can we start at slide one. The accused games here
03:03:08 8 are FIFA, it's a soccer game; NHL is a hockey game; Plants
03:03:16 9 for Zombies is a battle game, Plants versus Zombies.

03:03:21 10 And the three main arguments that we'll be
03:03:25 11 presenting today are first that there is no direct
03:03:27 12 infringement because under the plaintiff's allegations, the
03:03:31 13 customers' consoles have to run the software to actually
03:03:35 14 complete the network and make the component for the '497.
03:03:40 15 It's very similar to how the Court considered what the Court
03:03:43 16 considered already in the Activision case and found in favor
03:03:47 17 of the defendants.

03:03:48 18 The issues that we're presenting today are
03:03:54 19 dispositive of all claims of all products in EA, so it's a
03:03:58 20 little bit different from the related case where it was not
03:04:01 21 entirely case dispositive, these issues are.

03:04:06 22 We'll start with the direct infringement issues.
03:04:11 23 And this relates to the '344, the '966 and the '497. The
03:04:18 24 '344 and '966 are the network patents and the '497 is a
03:04:25 25 component patent for accessing the network.

03:04:30 1 Mr. Tomasulo on the next issue will talk about
03:04:34 2 the applicability of M-regular and incomplete.

03:04:43 3 I apologize, Your Honor, I did provide slides.

03:04:46 4 THE COURT: Sure.

03:04:55 5 MR. ENZMINGER: The jump seat a little bit too
03:04:57 6 literally.

03:05:01 7 So let's dive into the direct infringement
03:05:04 8 argument.

03:05:05 9 In order under the plaintiff's allegations for
03:05:11 10 there to be any infringement, the customers have to buy the
03:05:16 11 game and they have to install it on their own consoles which
03:05:19 12 are provided by Microsoft, and not provided by EA at all.
03:05:25 13 The things which the EA is accused and the plaintiff's
03:05:33 14 opposition of doing are owning and controlling the software,
03:05:37 15 mastermind and control of the software, providing a
03:05:40 16 component of a system that could infringe if combined by
03:05:44 17 someone else into an infringing system and compiling
03:05:47 18 software code.

03:05:48 19 Each of these was already considered by the
03:05:52 20 Court in the Activision case and rejected as a basis for
03:05:57 21 271(a) infringement of a network or system claim.

03:06:01 22 The plaintiff has acknowledged that the Court's
03:06:09 23 make and sell decision in the Activision case is dispositive
03:06:14 24 of all products in this case, leaving us to argue about use,
03:06:17 25 which the plaintiff contended --

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