IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

ACCELERATION BAY LLC'S OPPOSITION TO
ELECTRONIC ARTS, INC.'S MOTION FOR LEAVE
TO FILE A SUPPLEMENTAL SUMMARY JUDGMENT BRIEF

INTRODUCTION

The Court should deny Defendant Electronic Arts, Inc.'s ("EA") motion for leave to file a second supplemental summary judgment brief (D.I. 558, "Motion"). EA already moved for summary judgment on over 30 issues, submitted two supplemental summary judgment briefs, and now moves for leave to submit yet further supplemental summary judgment briefing. The Court already ruled against EA on the issues it now seeks to reargue, and EA did not timely move for leave to reargue them (nor would it have had a basis to do so).

EA bases its request for a sixth summary judgment brief on purported developments in a different case concerning different defendants, different products, and different infringement contentions—*Acceleration Bay LLC v. Take-Two, et al.*, Case No. 1:16-cv-00455-RGA, D.I. 492 (D. Del. Mar. 23, 2020) ("*Take-Two*"). The outcome in *Take-Two* has no impact on how EA's own products operate or on EA's own acts of infringement. As set forth below, the infringement issues in *Take-Two* are very different from the infringement issues in this case. Nothing has

changed in this case that warrants burdening the Court with yet further summary judgment briefing. Therefore, EA's Motion should be denied.

NATURE AND STAGE OF THE PROCEEDINGS

In this action alone, the Court authorized each party to submit 125 pages of briefing on summary judgment and *Daubert* motions. D.I. 377 (Oral Order re: Page Limits). EA moved for summary judgment twice, joining Activision Blizzard's motion on a host of invalidity grounds, and then filed a separate motion raising yet further arguments, for a total of over 30 issues. D.I. 389, 426 (EA's joinder motion and opening summary judgment brief); D.I. 407 (EA's opposition to Acceleration Bay's summary judgment brief); D.I. 476 (EA's reply brief in support of its own motion for summary judgment). The Court held a lengthy hearing on EA's summary judgment motion, after which EA submitted two additional summary judgment briefs. D.I. 525; D.I. 526 (EA's first supplemental summary judgment brief); D.I. 535 (EA's reply supplemental summary judgment brief).

In its prior summary judgment motion, EA moved for the same rulings it seeks in the current Motion: findings of (1) no infringement of the m-regular limitation, (2) no infringement under the participant limitation, and (3) no infringement under the doctrine of equivalents. *See, e.g.*, D.I. 426 (EA's Opening MSJ Brief) at 11–15, 29–31. On August 29, 2018, the Court denied EA's motion for summary judgment on these issues. D.I. 499.

The Court later issued an order granting summary judgment in *Take-Two* based on the specific factual issues presented in that case. *Take-Two*, D.I. 492 (the "*Take-Two* Order"). Acceleration Bay filed a notice of appeal in that case. *Take-Two*, D.I. 497.

EA now moves for leave to submit further supplemental summary judgment briefing in this case. Acceleration Bay opposes that request.

ARGUMENT

I. EA Lacks Good Cause to Submit Further Summary Judgment Briefing

EA had many opportunities and pages to present its best arguments for summary judgment. EA's Motion fails to demonstrate good cause for yet further summary judgment motion practice, especially given that it already moved for summary judgment on these very issues. Indeed, as EA's Motion highlights, the Court already heard oral argument on these issues.

That the Court rejected similar previous arguments is confirmed by EA's citations in the current Motion to the same portions of Acceleration Bay's expert reports that it cited to in its prior motion for summary judgment. *Compare* Motion at 6 (citing Medvidovic Rpt. at ¶ 2) *with* D.I. 426 (EA's Motion for Summary Judgment) at 11 (citing Medvidovic Rpt. at ¶ 2).

Accordingly, the Court should deny the Motion as simply seeking leave to rehash arguments the Court has already heard and denied. *Liger6, LLC v. Sarto Antonio*, No. 13-4694 (JLL)(JAD), 2017 WL 3574845, at *2-3 (D.N.J. Aug. 17, 2017) (denying motion for leave to file summary judgment where there were no new issues); *Bernstein v. Virgin Am., Inc.*, No. 15-cv-02277-JST, 2017 WL 7156361, at *2 (N.D. Cal. Dec. 29, 2017) (denying motion for leave to file a second summary judgment motion where the "[defendant] makes plain that its proposed second summary judgment motion will address the same arguments that [it] made in its first motion.").

II. The *Take-Two* Order is Not a Reason to Reconsider Infringement of the M-Regular and Participant Limitations in This Case

EA did not move for reargument when the Court denied its motion for summary judgment of non-infringement as to the m-regular and participant limitations in this case. EA also did not move for reargument or clarification of the Court's prior claim construction orders

as to any of the issues it now seeks to reargue in its Motion.[1] Such motions are due within 14 days after the Court issued these decisions and, as a result, have long since been waived. Local Rule 7.1.5(a).

Nor does the order in *Take-Two* warrant reargument on infringement issues in this case. The infringement issues in *Take-Two* are very different from the infringement issues in this case. In the *Take-Two* Order, the Court concluded that Grand Theft Auto V Online's proximity rules and NBA 2K's park relay server are not infringing networks. *Take-Two* Order at 14-15, 18-19. In contrast, in this case, the accused products use different network structures and infringement is based on EA's use of game logics to control connections between participants, as the parties already extensively briefed to the Court. D.I. 467 at 3-6. For example, EA's accused products use voice squelching and VoIP tunnels to limit each player to four voice-data connections, making the network m-regular and incomplete. *Id.* at 4-5.

Because the infringement issues in *Take-Two* and this case are different, the *Take-Two* summary judgment order is not a basis for the Court to hear reargument on summary judgment in this case.

III. There is No Reason to Reconsider Infringement Under the Doctrine of Equivalents

The Court should also deny EA's request for leave to present arguments on the doctrine of equivalents (DOE). EA raised DOE in its first 150+ pages of summary judgment briefing in this case. D.I. 426 at 29–31. And, as stated above, EA never moved for reconsideration once the Court issued its order denying summary judgment. Moreover, the Court's decision in *Take-Two* on DOE was based on its conclusion that the jury could not find Take Two's accused networks

[1] EA did move for clarification of two unrelated claim terms, demonstrating its willingness to avail itself of this procedure when it thought it had good reason to do so. D.I. 275.

equivalent to the claimed network. *Take-Two* Order at 19 ("a reasonable jury would have to conclude that the architecture of the NBA 2K network, which relies on a central relay server, is fundamentally different from the m-regular networks of the asserted claims, precluding a finding for Plaintiff under the doctrine of equivalents.").

Because the accused networks in this case are very different from the *Take-Two* networks, as described above, the DOE ruling in *Take-Two* does not control here, and the Court should deny EA's Motion as to DOE arguments.

CONCLUSION

For the reasons set forth above, the Court should deny EA's motion for leave to file a second supplemental summary judgment brief.

POTTER ANDERSON & CORROON LLP

By: */s/ Philip A. Rovner*
Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

Attorneys for Plaintiff
Acceleration Bay LLC

OF COUNSEL:

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

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

Dated: April 16, 2020
6661634