

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.	)	

**OPENING BRIEF IN SUPPORT OF DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT OF  
NON-INFRINGEMENT BY COLLATERAL ESTOPPEL**

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## I. Nature and Stage of the Proceedings

Acceleration Bay originally asserted that EA, Take-Two, and Activision infringed claims from six patents (the '344, '966, '634, '147, '069, and '497 patents). D.I. 1; 455 D.I. 1; 453 D.I. 1.<sup>1</sup> Prior summary judgment rulings have left only the allegations that all accused games infringe '147 patent claim 1 and that the accused NHL and Plants vs. Zombies ("PvZ") games infringe the asserted claims of the '344 and '966 patents to the extent EA tests those games internally in the United States. *See Acceleration Bay LLC v. Activision Blizzard, Inc.*, 324 F.Supp.3d 470, 478-79, 485-87 (D. Del. 2018) ("Activision") (holding certain claims invalid); *Acceleration Bay LLC v. Electronic Arts Inc.*, No. 16-454-RGA, 2019 WL 1376036 (D. Del. Mar. 27, 2019) ("EA") (address claims not found invalid in *Activision*). After those decisions, the Court granted Take-Two's motion for summary judgment of non-infringement of all asserted patent claims. *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, No. 16-455-RGA, 2020 WL 1333131 (D. Del. Mar. 23, 2020) ("Take-Two"). Shortly thereafter, the Court *sua sponte* stayed this case pending the resolution of the appeal of *Take-Two*, noting that "the resolution of that appeal will likely simplify the remaining issues in this case and likely indicate whether any of my prior decisions need to be revisited." D.I. 561 (4/21/20 order). The Federal Circuit has now affirmed *Take-Two*. *Acceleration Bay LLC v. 2K Sports, Inc.*, 15 F.4th 1069 (Fed. Cir. 2021) ("Acceleration Bay"). In the wake of that affirmance, the Court granted EA's request for leave to file the present motion. D.I. 579 (11/4/21 hearing tr.) at 31:15-20.

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<sup>1</sup> "453 D.I." refers to the docket of *Acceleration Bay LLC v. Activision Blizzard, Inc.*, C.A. No. 16-453-RGA and "455 D.I." refers to the docket of *Acceleration Bay LLC v. Take-Two Interactive Software*, C.A. No. 16-455-RGA.

## II. Summary of the Argument

The only remaining patents in this case are the '344, '966, and '147 patents, each of which explicitly require that the accused network or broadcast channel be “m-regular.” Acceleration’s infringement arguments for the “m-regular” limitation are the same as those it fully litigated and lost in *Take-Two*. Acceleration chose not to appeal those key rulings. Those rulings have full collateral estoppel (or “issue preclusion”) effect in this case.

The Court has construed each asserted claim in this case to require the accused videogame networks to be configured to maintain m-regularity, meaning the default structure of the network is that every “participant” in the network must connect to exactly the same number of participants. As in *Take-Two*, Acceleration’s infringement theories for EA’s networks here, even if taken as true, cannot satisfy this Court’s claim constructions.

In *Take-Two*, Acceleration fully litigated three issues that, if given proper collateral estoppel effect here, establish non-infringement across all remaining claims.

**First Issue:** Where an incomplete network for an accused game includes a server that “transfers data back and forth between other network participants,” the network is not m-regular because the server participant will necessarily have more connections than the other participants. *Take-Two* at \*9. Here, as in *Take-Two*, Acceleration’s experts acknowledge that the accused networks include a server participant that is connected to and transfers data back and forth between every player participant. This makes m-regularity, and thus infringement, impossible, as the Court recognized in *Take-Two*. Collateral estoppel bars re-litigation of this issue.

**Second Issue:** A network is not “configured to maintain” m-regular connections where the network’s connections are determined by player decisions or where “rules and constraints ... cause the gameplay network to converge to the same number of connections for each participant.” *Take-Two* at \*7-8. Here, as in *Take-Two*, Acceleration has argued that the EA games were m-regular as



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