

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.)	

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

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I. EA Has Demonstrated That Summary Judgment of Collateral Estoppel of Non-Infringement Based on *Take-Two* Is Warranted

Acceleration’s opposition never addresses the central issue raised in EA’s motion: collateral estoppel of non-infringement is required because, both in *Take-Two* and here, Acceleration does not dispute that the accused network is a client-server network. Instead, Acceleration offers the same theories for why Acceleration’s supposed “application layer overlay network” is an m-regular and incomplete network.¹ Those theories failed in *Take-Two*, and they also fail here for the same reasons. Acceleration now offers three main counterarguments for why those theories are not barred by collateral estoppel: 1) proving collateral estoppel is a heavy burden, 2) EA focuses on the wrong layer, 3) EA’s games are different. These arguments all fail.

A. EA Satisfies the Collateral-Estoppel Standard

It does not matter that collateral estoppel imposes a high bar because EA has cleared it. The accused *Take-Two* NBA 2K game and all accused EA games use a client-server network, and for each, Acceleration contends that there is an “application layer overlay” network overlaid on the client-server network that is purportedly m-regular and incomplete. It is not true that there is an overlay network in either case, but that is beside the point. The “application overlay network” Acceleration conjures up did not meet the claim limitations in *Take Two*, and it does not here for indistinguishable reasons. In *Take-Two*, Acceleration’s expert said the relay server was a participant in the accused network. *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, No. 16-455-RGA, 2020 WL 1333131 (D. Del. Mar. 23, 2020) (“*Take-Two*”) at *9 (“Dr. Mitzenmacher, Plaintiff’s own expert, wrote that the relay servers ‘are participants’”). Here

¹ Despite its quibbling at the last status conference over whether the Court had granted summary judgment on the ’497 patent, Acceleration confirms it is not moving forward with that patent. D.I. 582 at 2, n1. Either way, the ’497 patent is out of this case. All that remains are Acceleration’s theories that EA infringed the ’344 and ’966 patents by internal testing of the NHL and PvZ games and that the accused games infringe the ’147 patent under the doctrine of equivalents.

too, Acceleration's expert has said that the server is a participant in the accused network for the FIFA, NHL and PvZ games:

- Participants: The participants are FIFA software application programs, running on player consoles (PC and Xbox), and EA's DirtyCast server. Poon Tr. 12:18-20, 15:9-11; EA0032813. See my discussion of Elements 344:12(a), 344:12(b), 344:12(e), 147:1(a).

- Participants: The participants are NHL software application programs, running on player consoles (PC and Xbox), and EA's DirtyCast server. O'Neill Tr. 105:11-106:11, 111:6-18, 127:7-19; Poon Tr. 12:18-20, 15:9-11; EA0032813. See my discussion of Elements 344:12(a), 344:12(b), 344:12(e), 147:1(a).

- Participants: The participants are PvZ software application programs, running on player consoles (PC and Xbox), and EA's DirtyCast server. O'Neill Tr. 105:11-106:11, 111:6-18, 127:7-19; Lo Tr. 19:18-21:3, 21:23-22:15, 23:12-20, 24:15-21; EA0032813. See my discussion of Elements 344:12(a), 344:12(b), 344:12(e), 147:1(a).

D.I. 428, Ex. A-1 (Medvidović opening report) ¶ 2 (highlighting added).

79. The participants in the FIFA game environments include FIFA software application programs running on players' consoles (PC or Xbox) and EA's DirtyCast server,

D.I. 428, Ex. A-1 (Medvidović opening report) ¶ 79 (highlighting added).

86. The participants in the NHL game environments include NHL software application programs running on players' consoles (XBox) and EA's DirtyCast server, which

D.I. 428, Ex. A-1 (Medvidović opening report) ¶ 86 (highlighting added).

93. The participants in the PvZ game environments include PvZ software application programs running on players' consoles (PC or Xbox) and EA's DirtyCast server, which includes

D.I. 428, Ex. A-1 (Medvidović opening report) ¶ 93 (highlighting added).

Q. So I'd like to go to Paragraph 79.

A. Of which exhibit?

Q. Of your opening report. Sorry.

A. Thank you.

Q. So we've looked at most of this already, but in the sixth line of that paragraph—actually, I'll start at the fifth line so it's a

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