

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,

Plaintiff,

v.

ELECTRONIC ARTS INC.,

Defendant.

C.A. No. 16-454-RGA

MEMORANDUM OPINION

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October 7, 2022


ANDREWS, UNITED STATES DISTRICT JUDGE:

Before me is Defendant's motion for summary judgment of non-infringement by collateral estoppel. (D.I. 580). I have considered the parties' briefing. (D.I. 581, 582, 586). For the reasons set forth below, I will GRANT Defendant's motion.

I. BACKGROUND

On June 17, 2016, Plaintiff Acceleration Bay filed suit against Defendant Electronic Arts ("EA") alleging infringement of U.S. Patent Nos. 6,701,344 ('344 Patent), 6,714,966 ('966 Patent), 6,732,147 ('147 Patent), 6,829,634 ('634 Patent), 6,910,069 ('069 Patent), and 6,920,497 ('497 Patent). (D.I. 1 at ¶10).

After prior summary judgment rulings on infringement and on invalidity, two infringement allegations remain: (1) DOE infringement by all accused products of the '147 Patent, and (2) literal infringement by the accused NHL and Plants vs. Zombies ("PvZ") games of the '344 and '966 Patents when EA internally tests those games in the United States. (See D.I. 581 at 1 (citing *Acceleration Bay LLC v. Activision Blizzard, Inc.*, 324 F. Supp. 470, 478-59, 485-87 (D. Del. 2018) (summary judgment opinion addressing claim invalidity); *Acceleration Bay LLC v. Elec. Arts Inc.*, No. 16-454-RGA, 2019 WL 1376036 (D. Del. Mar. 27, 2019) (summary judgment opinion addressing noninfringement by Defendant)); D.I. 582 at 2 n.1 (confirming that Plaintiff "is narrowing its election of asserted claims to no longer include any claims from [the '497 Patent]")).

This case is related to *Acceleration Bay LLC v. Take-Two Interactive Software, Inc.*, No. 16-455-RGA ("Take-Two Case"), where Plaintiff accused online features of three video games—NBA 2K15 and NBA 2K16 (collectively, "NBA 2K"), and Grand Theft Auto Online ("GTAO")—of infringing the '344, '966, '147, '069, and '497 Patents. See *Take-Two Case*, 2020 WL 1333131, at *1 (D. Del. Mar. 23, 2020) ("Take-Two SJ Opinion"), *appeal dismissed sub*

nom. Acceleration Bay LLC v. 2K Sports, Inc., 2020 WL 9459373 (Fed. Cir. Oct. 2, 2020) (dismissing cross-appeal), and *aff'd in part, dismissed in part sub nom. Acceleration Bay LLC v. 2K Sports, Inc.*, 15 F.4th 1069 (Fed. Cir. 2021) (“*Take-Two Appeal*”). In the *Take-Two* Case, the defendants moved for summary judgment of non-infringement, which I granted in a detailed opinion. *See Take-Two* SJ Opinion. Plaintiff appealed. *See Take-Two Appeal*.

On April 21, 2020, I stayed this case pending resolution of Plaintiff’s appeal of my summary judgment ruling in the *Take-Two* Case. (*See* D.I. 561). The Court of Appeals for the Federal Circuit issued a decision on that appeal on October 4, 2021. *See Take-Two Appeal* (affirming-in-part the *Take-Two* SJ opinion and dismissing-in-part Plaintiff’s appeal on mootness grounds). With the *Take-Two* Case’s appeal resolved, Defendant now moves for summary judgment of noninfringement, arguing that Plaintiff is collaterally estopped from relitigating infringement issues it lost in the *Take-Two* Case.

In this case, each remaining asserted claim requires a network that is “m-regular.” I construed “m-regular” to mean “[a] state that the network is configured to maintain, where each [participant or computer] is connected to exactly m neighbor [participants or computers].” (D.I. 260 at 5). This construction also applied in the *Take-Two* Case, and Defendant did not appeal this construction. *See Take-Two Appeal*.

I held a hearing on this motion on September 30, 2022. (*See* D.I. 588).

II. LEGAL STANDARD

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those “that could affect the outcome” of the proceeding, and “a dispute about a material fact is genuine if the evidence is sufficient to permit a reasonable jury to

return a verdict for the nonmoving party.” *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir. 2011) (cleaned up). In deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party’s favor. *See Scott v. Harris*, 550 U.S. 372, 380 (2007); *Wishkin v. Potter*, 476 F.3d 180, 184 (3d Cir. 2007).

Collateral estoppel, also known as issue preclusion, bars parties from relitigating matters that they previously had a full and fair opportunity to litigate. *See Montana v. United States*, 440 U.S. 147, 153 (1979). This “protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Id.* at 153-54.

In a patent case, the law of the regional circuit applies to collateral estoppel generally and Federal Circuit precedent applies where the determination of collateral estoppel involves substantive issues of patent law. *See Ohio Willow Wood Co. v. Alps South, LLC*, 735 F.3d 1333, 1342 (Fed. Cir. 2013). Under Third Circuit law, collateral estoppel applies when “(1) the issue sought to be precluded is the same as that involved in the prior action; (2) that issue was actually litigated; (3) it was determined by a final and valid judgment; and (4) the determination was essential to the prior judgment.” *Burlington N. R. Co. v. Hyundai Merch. Marine Co.*, 63 F.3d 1227, 1231-32 (3d Cir. 1995) (cleaned up). The “essential to the prior judgment” element can be satisfied when the prior judgment was reached through alternative findings. *Jean Alexander Cosms, Inc. v. L’Oreal USA, Inc.*, 458 F.3d 244, 255 (3d Cir. 2006) (“we will follow the traditional view that independently sufficient alternative findings should be given preclusive effect”). Whether the “basic requirements for issue preclusion are satisfied” is a question of law. *Id.* at

248; *see also Ohio Willow Wood*, 735 F.3d at 1341 (*de novo* review of the application of collateral estoppel).

As is particular to patent law, “an infringement claim in a second suit is the same claim as in an earlier infringement suit if the accused products in the two suits are essentially the same.” *Phil-Insul Corp. v. Airlite Plastics Co.*, 854 F.3d 1344, 1353 (Fed. Cir. 2017) (cleaned up). “Accused devices are essentially the same where the differences between them are merely colorable or unrelated to the limitations in the claim of the patent.” *Id.* (cleaned up). The accused device in a second suit need not be produced by the same company as that considered in a first suit. *See Aspex Eyewear, Inc. v. Zenzi Optical Inc.*, 713 F.3d 1377, 1380 (Fed. Cir. 2013) (in holding that “[c]ollateral estoppel precludes a plaintiff from relitigating identical issues by merely switching adversaries[.]” affirming “that [a second defendant’s] accused rimless magnetic clip-on sunglasses are materially indistinguishable from [a first defendant’s] rimless magnetic clip-on sunglasses”) (cleaned up). The alleged infringer “bears the burden of showing that the accused devices are essentially the same as those in the prior litigation.” *ArcelorMittal Atlantique et Lorraine v. AK Steel Corp.*, 908 F.3d 1267, 1274 (Fed. Cir. 2018).

III. DISCUSSION

A. Issues Previously Adjudicated in the *Take-Two* Case

The Parties’ dispute centers around three noninfringement issues I decided in the *Take-Two* SJ Opinion. (*See* D.I. 581 at 2-3).

First, for GTAO, I considered the player movement issue. Plaintiff argued that GTAO infringes the m-regular limitation because the players’ avatars “share more data when they are near each other” thus causing an m-regular network to “arise naturally as the players are moving throughout the game.” *Take-Two* SJ Opinion at *8 (cleaned up). In rejecting this argument, I

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