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April 13, 2017

BY CM/ECF & HAND DELIVERY

The Honorable Richard G. Andrews
U.S. District Court for the District of Delaware
U.S. Courthouse
844 North King Street
Wilmington, DE 19801

Re: *Acceleration Bay LLC v. Activision Blizzard, Inc. et al.*
D. Del., C.A. No. 16-453-RGA, 16-454-RGA, 16-454-RGA

Dear Judge Andrews:

Acceleration Bay writes in response to Defendants' April 11, 2017 letter regarding Acceleration Bay's Amended Preliminary Election of Asserted Claims ("Amended Election"). As set forth below, Acceleration Bay's amendments are based on recent developments in the case, are intended to conserve the resources of the parties and the Court, do not prejudice Defendants and do not require modification of the claim construction, or case, schedule.

Acceleration Bay updated its *Preliminary* Election based on recent developments in the *inter partes* review proceedings (IPRs) for several of the Asserted Patents. In late March 2017, the Patent Trial and Appeal Board (PTAB) issued written decisions in several IPRs, finding certain claims in Acceleration Bay's patents valid and finding other claims unpatentable. The PTAB further amended certain claims, finding them patentable. In response, Acceleration Bay promptly served its Amended Election on April 5, 2017, adding two claims confirmed valid during the IPR proceedings, withdrawing the asserted claims found unpatentable by the PTAB, and notifying defendants that Acceleration Bay intends to assert the amended versions of three previously asserted claims – each narrowed through amendment during the IPR proceedings.¹

¹ These amended claims include amended elected claim 7 (listed in the IPR as claim 21) of U.S. Patent No. 6,701,344, amended elected claim 7 (listed in the IPR as claim 19) of U.S. Patent No. 6,714,966 and amended elected claim 5 (listed in the IPR as claim 25) of U.S. Patent No. 6,829,634.

The Honorable Richard G. Andrews

April 13, 2017

Page 2

Acceleration Bay's Amended Election remains under the limit of no more than ten claims per asserted patent and not more than a total of 32 claims.

Both sides reserved the right to update their *preliminary* elections as the case progressed. Specifically, pursuant to the Scheduling Order, Acceleration Bay provided Preliminary Elections of Asserted Claims on March 25, 2016. Acceleration Bay reserved "the right to amend or modify [its] Preliminary Election of Asserted Claims as it obtains additional information over the course of discovery." Similarly, Defendants' Initial Invalidity Contentions (containing their corresponding preliminary election of prior art) stated that, "Defendants reserve their right to supplement or amend the disclosures made herein as new, additional, or different information is learned or discovered."

Defendants fail to identify any prejudice from Acceleration Bay's election of claim 12 of the '344 Patent and claim 10 of the '634 Patent. Nor could they. Fact discovery does not close until July 31, 2017, Defendants have yet to take a single deposition of Acceleration Bay, and the first trial in these actions is not scheduled until April 2018. Defendants concede that claim 12 of the '344 Patent — which depends from formerly asserted Claim 1 — does not raise any new claim construction issues. Defendants contend that claim 10 of the '634 patent includes several new terms that require construction, but fail to identify any such terms. Acceleration Bay does not agree, but Defendants have ample time to identify such terms and propose constructions. Indeed, Acceleration Bay provided its Amended Election on April 5, 2017, more than three weeks before Acceleration Bay's opening claim construction brief is due and well in advance of Defendants' May 19, 2017 answering brief. Acceleration Bay also informed Defendants that it will promptly provide infringement contentions for the additional claims, and will allow Defendants a reasonable opportunity to provide updated invalidity contentions, if necessary, to address them.

Acceleration Bay's inclusion of the amended claims at this time is intended to conserve the resources of the parties and the Court. The amended claims are narrowed versions of claims already asserted against Defendants. Given the substantial overlap in subject matter between the amended claims and the other asserted claims, including the amended claims in discovery in these actions is more efficient than continuing to assert the unamended claims, waiting until all appeals from the IPRs are exhausted, and then filing new suits against Defendants.

Accordingly, the case should proceed under the current schedule based on Acceleration Bay's Amended Preliminary Election of Asserted Claims.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

cc: All Counsel of Record (Via ECF Filing, Electronic Mail)