

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-453 (RGA)
)	
ACTIVISION BLIZZARD, INC.)	
)	
Defendant.)	
<hr/>		
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-454 (RGA)
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
<hr/>		
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-455 (RGA)
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	
INC., ROCKSTAR GAMES, INC. and)	
2K SPORTS, INC.,)	
)	
Defendants.)	
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**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS,
STAY, OR TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
I. Introduction.....	1
II. The California Actions Are First-Filed—The California Court Was The First Court To Acquire Subject Matter Jurisdiction.....	1
III. The Later Delaware Actions Do Not “Relate Back” To The Dismissed Actions	2
IV. Acceleration Bay Never Explains Why Or How The California Actions Fall Within The Anticipatory Filing Exception Of The First-Filed Rule	5
V. There Was No Forum Shopping—California Is Everyone’s “Home Turf”	6
VI. The Court Should Focus On The Forums’ <i>Current</i> Comparative Convenience	6
VII. The Northern District Of California Is The Most Convenient Forum	7
VIII. Judicial Economy Does Not Favor Keeping The Actions In Delaware	9
IX. Conclusion	10

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Adobe Sys. Inc. v. Bargain Software Shop, LLC</i> , No. 14-cv-3721-EMC, 2014 WL 6982515 (N.D. Cal. Dec. 8, 2014).....	4, 5
<i>Alps South, LLC v. Ohio Willow Wood Co.</i> , 787 F.3d 1379 (Fed. Cir. 2015).....	3
<i>ASUSTeK Computer Inc. v. AFTG-TG LLC</i> , No. 5:CV 11-0192, 2011 WL 6845791 (N.D. Cal. Dec. 29, 2011)	4
<i>Audatex N. Am., Inc. v. Mitchell Int’l, Inc.</i> , No. 12-CV-139-GMS, 2013 WL 3293611 (D. Del. June 28, 2013).....	9
<i>Barnes & Noble, Inc.</i> , 823 F. Supp. 2d 980, 987 (N.D. Cal. 2011)	4
<i>Collectis S.A. v. Precision Biosciences, Inc.</i> , 881 F. Supp. 2d 609 (D. Del. 2012).....	6
<i>Diablo Techs., Inc. v. Netlist, Inc.</i> , No. 13-cv-3901, 2013 WL 5609321 (N.D. Cal. Oct. 11, 2013)	6
<i>E.E.O.C. v. Univ. of Penn.</i> , 850 F.2d 969 (3d Cir. 1988).....	1
<i>Electronics for Imaging, Inc. v. Coyle</i> , 394 F.3d 1341 (Fed. Cir. 2005).....	6
<i>Enzo APA & Son, Inc. v. Geapag A.G.</i> , 134 F.3d 1090 (Fed. Cir. 1998).....	3
<i>Finjan, Inc. v. Sophos Inc.</i> , No. 14-cv-01197, 2014 WL 2854490 (N.D. Cal. June 20, 2014).....	7, 9
<i>Genentech, Inc. v. Eli Lilly & Co.</i> , 998 F.2d 931 (Fed. Cir. 1993).....	6
<i>Hilton v. Apple, Inc.</i> , No. C-13-2167, 2013 WL 5487317 (N.D. Cal. 2013)	4
<i>Linex Techs., Inc. v. Hewlett-Packard Co.</i> , No. 11-400-GMS, 2013 WL 105323 (D. Del. Jan. 7, 2013)	7

Mentor H/S, Inc. v. Med. Device Alliance, Inc.,
240 F.3d 1016 (Fed. Cir. 2001).....2

Schering Corp. v. Amgen Inc.,
969 F. Supp. 258 (D. Del. 1997).....3, 4

Semcon Tech, LLC v. Intel Corp.,
No. 12-531-RGA, 2013 WL 126421 (D. Del. Jan. 8, 2013).....9

Signal Tech, LLC v. Analog Devices, Inc.,
No. 11-1073-RGA, 2012 WL 1134723 (D. Del. April 3, 2012).....8

Smith v. McIver,
22 U.S. 532 (1824).....1

Software Rights Archive, LLC v. Facebook, Inc.,
2013 WL 5225522 (N.D. Cal. Sept. 17, 2013)5

In re Telebrands Corp.,
No. 2016-106, 2016 WL 3033331 (Fed. Cir. Feb. 24, 2016)5

Vygon v. RyMed Techs., Inc.,
No. 08-172-GMS, 2009 WL 856469 (D. Del. March 31, 2009)6

Wacoh Co. v. Kionix Inc.,
845 F.Supp.2d 597 (D. Del. 2012).....8, 9

Wallerstein v. Dole Fresh Vegetables, Inc.,
967 F. Supp. 2d 1289 (N.D. Cal. 2013)1, 4

Other Authorities

F.R.C.P. 15(c)3

F.R.C.P. 213

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