

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)	
)	
Plaintiff,)	C.A. No. 16-453 (RGA)
)	
v.)	PUBLIC VERSION
)	
ACTIVISION BLIZZARD, INC.,)	
)	
Defendant.)	
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ACCELERATION BAY LLC,)	
)	
Plaintiff,)	C.A. No. 16-454 (RGA)
)	
v.)	
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
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ACCELERATION BAY LLC,)	
)	
Plaintiff,)	C.A. No. 16-455 (RGA)
)	
v.)	
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	
INC., ROCKSTAR GAMES, INC., and 2K)	
SPORTS, INC.,)	
)	
Defendants.)	

**PLAINTIFF ACCELERATION BAY LLC'S
OBJECTIONS TO SPECIAL MASTER ORDER NO. 3**

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I. INTRODUCTION

Pursuant to Rule 53(f)(2) of the Federal Rules of Civil Procedure, Plaintiff Acceleration Bay respectfully objects, in part, to the Special Master's May 19, 2017 Order No. 3 (Ex. A, No. 16-453, D.I. 155, the "Order"), which granted, in part, Defendants' motions to compel supplemental response to various interrogatories.¹ As set forth below, Acceleration Bay served supplemental interrogatory responses that it believes comply with the Order. However, because portions of the Order are somewhat unclear, Acceleration Bay objects to the Order to the extent Defendants claim it requires further supplementation. Such supplementation would require information that is not in Acceleration Bay's possession, premature disclosure of expert reports (rather than underlying facts), and extensive discovery into hundreds of video games that are not accused of infringement, are not relevant to any claim or defense in these actions and for which Acceleration Bay has not had any discovery.

II. NATURE AND STAGE OF THE PROCEEDINGS

Fact discovery closes in these actions on July 31, 2017 and opening expert reports are due September 22, 2017. D.I. 62 at §§ 3(a), 10(a). After a May 10, 2017 hearing, the Special Master issued the Order, granting various motions to compel filed by the parties on May 19, 2017. Ex. A. On June 2, 2017, Acceleration Bay complied with the Order by serving supplemental responses to Defendants' individual interrogatories 1, 2 and 4, subject to the objections set forth herein. Ex. B. As further directed by the Special Master, by June 19, 2017, Acceleration Bay will provide supplemental responses to Activision's interrogatories 7 and 9. Ex. A, Order at 6.

¹ All docket citations are to C.A. No. 16-453-RGA, and are representative of filings in the related cases.

III. OBJECTIONS

The Court reviews the Special Master's Order *de novo*. Fed. R. Civ. P. 53(f).² Acceleration Bay objects to the Order to the extent Defendants claim it requires Acceleration Bay to:

(1) Further supplement Interrogatory 1 to further disclose Acceleration Bay's damages claims, including the specific royalty base and amount, because Defendants have not yet produced the information necessary to make this calculation and because this is the subject of expert discovery;

(2) Further supplement Interrogatory 2 to compare Defendants' accused products to dozens of unaccused products which are not at issue in this case and have not been the subject of discovery;

(3) Further supplement Interrogatory 4 to identify which of the hundreds of third-party Sony PlayStation games infringe, when those products are not at issue in this case, Acceleration Bay has not had any discovery into any of these products and it would be a tremendously burdensome task to analyze infringement for these games, which is not proportional to the discovery needs of this case; and

(4) Further supplement Interrogatories 7 and 9 to further disclose Acceleration Bay's infringement allegations as to Activision by effectively requiring full infringement expert reports months before they are to be provided under the Scheduling Order and in the midst of fact discovery.

² Acceleration Bay submits these objections pursuant to the Order Appointing Special Master. C.A. No. 15-228-RGA, D.I. 94 at ¶ 6. In accordance with that Order, Acceleration Bay submits herewith an Appendix containing the transcript from the hearing before the Special Master and the materials submitted by the parties in connection with the hearing.

A. Acceleration Bay Fully Responded to Defendants' Interrogatory No. 1 Given the Current State of Discovery

Defendants' Interrogatory 1 sought information on a wide variety of damages topics. Ex. B (Supp. Resp.) at 1-2. Acceleration Bay's initial responses identified the forms of damages Acceleration Bay is pursuing and identified additional discovery that Acceleration Bay is seeking to develop its damages case. *Id.* at 2-4. In response to the Order, Acceleration Bay provided detailed supplemental responses, identifying (1) the forms of damages Acceleration Bay seeks, (2) the damages theories Acceleration Bay is pursuing, (3) an identification of the benefits of the Asserted Patents relevant to the damages case, (4) relevant evidence Acceleration Bay is seeking in discovery, (5) documents and deposition testimony Acceleration Bay has already obtained in discovery that will support its damages claim, (6) upcoming depositions that Acceleration Bay anticipates will be relevant to the damages case, (7) the need for updated financial information from Defendants and discovery into the financial data for new versions of the accused products that Acceleration Bay accused of infringement but for which Defendants have withheld discovery, (8) the royalty bases Acceleration Bay may pursue, (9) Acceleration Bay's contention as to the applicable royalty rate (without the benefit of expert analysis), (10) Plaintiff's contentions as to why it is entitled to more than a reasonable royalty, (11) the largest amount of damages Plaintiff will seek from the jury, based on discovery to date, for infringement through 2016, and (12) the participants in the reasonable royalty hypothetical negotiation. *Id.*

Plaintiff also explained that, because discovery is ongoing and Defendants have withheld financial data for 2016 and 2017 sales and products, it cannot calculate the royalty base or total royalty amount at this time. Plaintiff further explained that the apportionment of the royalty base will be the subject of expert analysis. Plaintiff thus fully complied with the Order.

While Acceleration Bay understands the Order to only require the disclosure of the facts

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