

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

**SPECIAL MASTER ORDER NO. 5 AS TO
PLAINTIFF'S REQUEST FOR RECONSIDERATION**

On June 28, 2017, Plaintiff filed a brief with exhibits requesting reconsideration of Special Master Order No. 4, as to the denial of Plaintiff's motion to compel discovery on "updated versions".

On June 30, 2017, Defendants filed their responsive brief with exhibits.

This is Special Master Order No. 5 addressing Plaintiff's request for reconsideration.

Plaintiff's two page brief supporting its request for reconsideration argues that the relevant portion of Special Master Order No. 4, denying Plaintiff's motion to compel discovery of updated versions, relied on a representation of Defendants' counsel at the hearing on June 16, 2017. Plaintiff contends that a June 22, 2017 deposition, taken after the Special Master Order No. 4 was issued, directly contradicts Defendants' counsel. That deposition testimony regarded the Frostbite engine and whether it changed the online multi-player functionality.

Defendants' responsive brief thoroughly addresses Plaintiff's argument. Defendants explained that Plaintiff has taken Defendants' statement at the June 16, 2017 hearing out of context. Their brief had extensive exhibits, including citations to other depositions regarding the use of the Frostbite engine, and satisfactorily supported the statements of Defendants' counsel at the June 16, 2017 hearing.

At the heart of the dispute between the parties, is the issue as to the adequacy or not of Plaintiff's infringement contentions. Those infringement contentions appear to cover more than the simple multi-player network. Plaintiff could be seen as arguing that the source code that is not actually used by a game can infringe simply because the unused code remains on the disk sold to customers. Prior orders of this Special Master have cited deficiencies in Plaintiff's infringement contentions. Since further infringement contention interrogatory responses are due from Plaintiff later this month, it is not timely for the Special Master to specifically address that issue. However, it is worth noting that without clarity as to Plaintiff's infringement contentions, it is difficult for Defendants to know what aspects and differences in the accused games are relevant to Plaintiff's infringement theories.

Defendants also remind the Special Master that there were additional reasons in Special Master Order No. 4 to deny Plaintiff's motion to compel discovery as to alleged updated versions. Special Master Order No. 4 found that Plaintiff had delayed in bringing its motion and that the discovery that would be relevant, if the motion had been granted, would be extensive.

PLAINTIFF'S REQUEST FOR RECONSIDERATION OF SPECIAL MASTER ORDER NO. 4 IS DENIED.

Dated: July 6, 2017

/s/ Allen M. Terrell, Jr.
Allen M. Terrell, Jr., Special Master