IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

PLAINTIFF ACCELERATION BAY'S SUPPLEMENTAL
MEANS-PLUS-FUNCTION CLAIM CONSTRUCTION BRIEF

I. INTRODUCTION

Pursuant to the Court's July 10 Order, Acceleration Bay provides this Supplemental Claim Construction Brief regarding the means-plus-function ("MPF") claim terms to address the new arguments Defendants raised at the *Markman* hearing. Ex. 1 (*Markman* Tr.) at 121:22-122:11.[1] This new round of briefing on the MPF terms is necessitated by Defendants' latest position on the proper structure that performs the function recited in the MPF terms. In the IPRs, Defendants advocated for a simple structure. Here, Defendants first argued that the terms are indefinite, and then, during the *Markman* hearing, changed their argument and advanced improperly complex structures for the MPF terms. D.I. 151 at 28-51 (MPF Terms 1-8); *see also* Ex. 1 (*Markman* Tr.) at 89:1-25. The end result is that the parties now agree that the structures for the MPF terms are disclosed in the patents, but disagree as to what they are.

In the parties' Joint Claim Construction Brief, Plaintiff proposed constructions for the eight MPF terms and identified the supporting structure for each function which are found in the following asserted Patents and Claims: '344 Patent, Claims 13 and 14; '966 Patent, Claim 13; '497 Patent, Claim 9 (*e.g.*, D.I. 151 at 28-51). These MPF claims describe how to build different networks than the other independent claims in the respective patents.[2] For example, Claim 1 of the '344 Patent describes how to build a scalable, redundant network at the application layer that overlays existing network protocols using an m-regular and incomplete network topology that was unavailable in prior networking systems. Ex. A-1 ('344 Patent), Abstract, 1:33-2:42; Claim 8 (describing underlying network connections as TCP/IP while overlay network topology is m-regular and incomplete); *see generally* Ex. B-1 ('344 File History) (File History having no

[1] Citations to Ex. 1 and Ex. 2 refer to exhibits attached to the Declaration of Marcus A. Colucci submitted herewith. Citations to Exs. A-1, A-2, and B-1 refer exhibits attached to the Joint Claim Construction Chart (D.I. 99-2, 99-3) (C.A. No. 16-0455-RGA).

[2] To be clear, as explained during the hearing, no claim of any of the asserted patents is representative because each of the independent claims teaches how to build different network topologies.

discussion of networks having the combination of incomplete, m-regular networking topologies while using underlying network protocols, such as TCP/IP). Claim 13, on the other hand, describes a different network that involves a network computer that is programmed to perform a specialized algorithm, namely one that is able to identify a broadcast channel using a channel type and channel instance, and connect to the broadcast channel using a specific connect routine. *See* Ex. B-1.

Defendants incorrectly argued that all of the MPF terms are indefinite because the asserted patents purportedly do not disclose the corresponding structures. At the hearing, Defendants abandoned this argument and conceded that at least Terms 1-4 are not indefinite because the patents include several figures with corresponding specifications that provide adequate disclosures to render the terms definite (and also tie the claims to structures for solving concrete and specific problems). (Defendants adopted Acceleration Bay's construction for Term 6 and concede it is not indefinite). Ex. 1 (*Markman* Tr.) at 88:12-19, 89:1-10. Defendants, instead, made the new argument that Plaintiff did not identify all of the relevant structures necessary to perform the claimed functions. *Id.* at 94:22-95:11. The Court invited the parties to address Defendants' new argument. As set forth below, Defendants seek to read into the construction for these MPF terms additional structural limitations from other functions (for example, conflating the steps to identify a network and then connect to the network). Defendants' approach is fundamentally flawed because the relevant disclosures and structure only need to describe the specified function for the particular MPF term, and do not need to include the structures for other functions.

II. ARGUMENT

The structures and algorithm Acceleration Bay identifies in the Joint Claim Construction Brief are sufficient to perform the specified functions for each of the MPF terms, rendering each

of these terms definite by teaching one of skill in the art how to build a network and provide a real solution to computer networking problems identified in the specifications. "[T]he patent need only disclose sufficient structure for a [POSA] to provide an operative software program for ***the specified function***." *See Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1385 (Fed. Cir. 2011) (emphasis added) (citation omitted); Declaration of Nenad Medvidovic in Support of Pltf. Opening Claim Construction Brief ("Medvidović Decl."), ¶¶ 49, 53, 56, 62, 65, 72, 77.

The following asserted claims include MPF terms, '344 Patent, Claims 13 and 14; '966 Patent, Claim 13, '497 Patent, Claim 9. Each of these claims includes more than one MPF term with different functions, for example, as shown in Claim 13 of the '344 Patent:

> 13. A distributed game system comprising:
>
> a plurality of broadcast channels, each broadcast channel for playing a game, each of the broadcast channels for providing game information related to said game to a plurality of participants, each participant having connections to at least three neighbor participants, wherein an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and wherein each participant sends data that it receives from a neighbor participant to its neighbor participants, further wherein the network is m-regular, where m is the exact number of neighbor participants of each participant and further wherein the number of participants is at least two greater than m thus resulting in a non-complete graph;
>
> ***means for identifying a broadcast channel for a game of interest***; and
>
> ***means for connecting to the identified broadcast channel.***

Ex. A-1 ('344 Patent) Claim 13 (emphasis added). Both sides agree that these MPF terms have separate functions of (1) identifying a broadcast channel for a game of interest and then (2) connecting to that broadcast channel. D.I. 151 (Joint Claim Construction Br.) at 32, 36; Ex. 1, (*Markman* Tr.) at 84:14-85:18.

1. "Means for connecting to the identified broadcast channel" (Term 4)

The bulk of the argument during the *Markman* hearing was directed to Term 4,

"connecting a [participant] to an identified broadcast channel." The parties agree that the function of this MPF element is focused on "connecting." D.I. 151 (Joint Claim Construction Br.) at 32-36. The structure for this function is a special purpose computer that is programed to perform the connect routine. Figure 8 (reproduced below) of the asserted patents is "a flow diagram illustrating the processing of the connect routine in one embodiment." Ex. A-2 ('966 Patent) at 3:7-8. The '966 Patent further describes Figure 8 at 18:3-19:19, including the specific steps that are performed. *Id.*; Medvidović Decl., ¶ 57. A POSA would understand that a processor programmed to perform at least one of the algorithms disclosed in steps 801 to 806 in Figure 8 is sufficient to perform the function of ***connecting*** a participant to a broadcast channel. Medvidović Decl., ¶¶ 57, 59. In particular, the flow diagram can proceed from block 801 to block 806 to "***Achieve connection***." In other words, at step 806 the participant has completed the function of connecting to the broadcast channel and has achieved a connection.

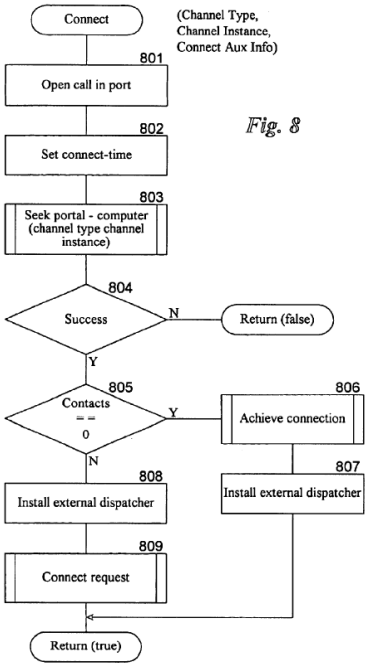

Fig. 8

Ex. A-2 ('966 Patent), Fig. 8.

Similarly, the '966 Patent includes Figs. 3A and 3B, which "illustrate the process of connecting a new computer Z to the broadcast channel" and the steps of this algorithm are

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