IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

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

Public Version Dated: August 2, 2017

Defendants conceded during the *Markman* hearing that the Asserted Patents disclose structures for the means-plus-function ("MPF") claim terms at issue. Indeed, it was Defendants' new position that prompted the Court to order this additional briefing on these terms. Defendants now, however, try to claw back their concession. Regardless of Defendants' changing positions, as explained in its Opening Brief, Plaintiff identified the relevant structures proving the claims are not indefinite. In addition, while Defendants identify additional functions in figures 8, 9, 11, and 13, describing how the m-regular network is configured, each MPF terms discloses a different function and not every structure is necessary to support the respective MPF terms. Accordingly, the Court should reject Defendants' overly narrow construction.

I.   The Cited Structures Disclose the Steps for Performing the Recited Functions and are Not Mere "Black Boxes"

Plaintiff identified the structures that perform the relevant functions, and does not rely on mere "Black Boxes." As explained at the *Markman* hearing, Figure 8, including boxes 801 to 806, illustrate the connecting function. The corresponding structures are further described in the specifications at 18:3-19:19, including the specific steps that are performed to configure the network. D.I. 226-1, Colucci Decl., Ex. 1 (*Markman* Tr.) at 78:5-79:23; Ex. A-2; D.I. 191, Ex. F ("Medvidović Decl."), ¶ 57. [1] Based on the entirety of these disclosures—and not just the "Boxes"—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 the identified broadcast channel. Medvidović Decl., ¶¶ 57, 59.

Defendants improperly include unnecessary structures associated with different functions. Specifically, Defendants seek to import the structure associated with Figure 9 into Box 803. Defendants argue "*[s]eeking*, and then *finding* a portal computer is unquestionably

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[1] Unless otherwise indicated, all docket citations are to C.A. No. 16-453-RGA. Exhibits A-E are attached to the parties' Joint Claim Construction Chart (D.I. 117-124). Exhibits F-L are attached to the parties June 21, 2017 Joint Claim Construction Brief (D.I. 191).

integral to the process of *connecting* a new participant." The correct function for Term 4, however, is connecting — seeking and identifying are functions associated with different claims elements. Specifically, those functions are associated with MPF Terms 1-3 (identifying broadcast channel/game) and MPF Terms 5-7 (identifying the portal computer/call-in port). As Defendants acknowledge (Opp. at 2) the analysis for determining the proper structure must begin with understanding the correct function.[2] Here, Defendants conflate the function in Term 4 with other upstream functions. Thus, the additional structures Defendants identify to perform these upstream functions (*seeking* and *finding*) should not be included.

Defendants incorrectly argue (Opp. at 4) that the structure in Figure 13 should be included with Box 806 because the structure associated with Figure 13 performs the function of connecting to the identified channel. The specification explains, however, the structure and function of Figure 13 "*sets the state* of this process to fully connected to the broadcast channel and invokes a callback routine *to notify* the application program that the process is now fully connected to the requested broadcast channel" Ex. A-2 at 21:47-51 (emphasis added). In other words, the connection occurs using structures associated with box 806, and Figure 13 illustrates the downstream process of setting the correct state and *notifying* the application that the connection is complete. *Id.* While part of the overall process, the structure associated with Figure 13 is not necessary for the function at issue–*connecting* to the broadcast channel.

Defendants rely heavily on incomplete testimony of inventor Bourassa as purportedly supporting their construction of Term 4. However, Defendants omitted Mr. Bourassa's clarification that the testimony upon which they rely was directed to the operation of software he

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[2] Defendants' arguments regarding Plaintiff's use of "an" rather than "the" is a red herring. Plaintiff acknowledged at the *Markman* hearing that the function should refer to *the* identified broadcast channel. D.I. 226-1, Colucci Decl., Ex. 1 (*Markman* Tr.) at 106:9-12. This (non-existent) dispute has no impact on the structures for connecting to the identified channel, and Defendants fail to explain how "an" impacts the relevant structure.

developed based on his invention (████████████████ and not to how the claims here should be construed. Colucci Reply Decl., Ex. 1 (7/18/17 Bourassa Tr.) at 261:6-262:23.

Moreover, Mr. Bourassa testified that ████████████████████████████

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██████████. Thus, to the extent the Court considers inventor testimony, it confirms that the

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████████████████████████████, thereby undermining Defendants' argument that the Court

should incorporate additional routines into the structures for these terms.

II.   Defendants Exclude Embodiments in the Partially Connected State

Defendants incorrectly argue that Plaintiff conflates a partially connected participant (the seeking computer) "with the state of the portal computer through which the seeking computer will join (*which will always be fully* connected)." Opp. at 9 (emphasis added). Defendants' argument hinges on their false assumption that the portal computer *will always be fully connected.* The specification discloses embodiments where the network is forming and the portal computers are not *always fully connected.* Ex. A-2 ('966 Patent) at 12:63-13:15, 13:13-19 ("two disjoint broadcast channels are formed because a seeking computer cannot locate a fully connected port computer"). These embodiments, ignored by Defendants, confirm that the additional functions identified by Defendants in Figure 11 (where there is a fully connected port computer) may not be required in other embodiments (where it is only partially connected).

III.   Terms 1-3 Are Not Indefinite

As discussed in Plaintiff's opening brief, Defendants' *Markman* slides confirm that, at a minimum, the Asserted Patents disclose the structure for MPF Terms 1-3. D.I. 225 at 8-10.

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