

EXHIBIT B

1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF DELAWARE
 3
 4 ACCELERATION BAY LLC, : CA NO. 16-453-RGA,
 5 : 16-454-RGA, 16-455-RGA
 6 Plaintiff, :
 7 :
 8 v. : February 17, 2017
 9 :
 10 ACTIVISION BLIZZARD INC., et :
 11 al., :
 12 :
 13 Defendants, : 11:06 o'clock a.m.
 14:

15
 16
 17 TRANSCRIPT OF SCHEDULING CONFERENCE
 18 BEFORE THE HONORABLE RICHARD G. ANDREWS
 19 UNITED STATES DISTRICT JUDGE
 20
 21

22 APPEARANCES:
 23
 24 For Plaintiff: POTTER, ANDERSON & CORROON
 25 BY: PHILLIP A. ROVNER, ESQ

1 PROCEEDINGS

2
 3 (The proceedings occurred at 11:06 o'clock a.m. as
 4 follows:)
 5 THE COURT: All right.
 6 Good morning. Please be seated.
 7 So this is Acceleration Bay v. Activision, Civil Action
 8 No. 16-453, and also Electronics Arts, No. 15-454, and also
 9 Take-Two Interactive Software, No. 16-455.
 10 Mr. Rovner, good morning.
 11 MR. ROVNER: Good morning, your Honor.
 12 With me for plaintiff is Paul Andre and Aaron Frankel
 13 from Kramer Levin.
 14 MR. ANDRE: Good morning, your Honor.
 15 THE COURT: Good morning to you all.
 16 Mr. Blumenfeld?
 17 MR. BLUMENFELD: Good morning, your Honor.
 18 Jack Blumenfeld for all defendants along with David
 19 Enzminger and Mike Tomasulo from Winston & Strawn.
 20 THE COURT: All right.
 21 So, you know, Mr. Blumenfeld and Mr. Rovner have heard
 22 me many times start off by thanking counsel for their efforts to
 23 reach agreement and how much I appreciate it. I'm not going to
 24 say that today.
 25 But before we got to the Scheduling Order, I was just

1 -and-
 2 KRAMER LEVIN NAFTALIS & FRANKEL
 3 BY: PAUL J. ANDRE, ESQ
 4 BY: AARON M. FRANKEL, ESQ
 5
 6
 7 For Defendants: MORRIS, NICHOLS, ARSHT & TUNNELL
 8 BY: JACK B. BLUMENFELD, ESQ
 9 -and-
 10 WINSTON & STRAWN
 11 BY: DAVID P. ENZMINGER, ESQ
 12 BY: MICHAEL A. TOMASULO, ESQ
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1 wondering why, notwithstanding the fact that I referred
 2 everything to the Special Master here, I couldn't actually just
 3 resolve this, because it didn't seem like it was very difficult,
 4 so it might fall within my area of competence.
 5 What plaintiff proposed, as I understand it, is that
 6 simply because somebody worked on the IPR, which now it is
 7 represented you cannot change the claims on, does not in any way
 8 impede them from working on a going forward basis, is that
 9 right?
 10 MR. FRANKEL: Your Honor, the issue is that the -- we
 11 think the people who have been working on the IPRs should now be
 12 able to access source code because --
 13 THE COURT: Right, I get that, but, I mean, it's
 14 because the IPR is over.
 15 MR. ANDRE: It's not over, your Honor, but the point
 16 where you can amend is over.
 17 THE COURT: Right.
 18 MR. ANDRE: Yes.
 19 THE COURT: So is there something wrong with the theory
 20 that what you -- why you sometimes restrict people, because they
 21 have decision-making capabilities that could somehow, you know,
 22 impact the case, aren't we past that point?
 23 MR. ENZMINGER: We're not past that point. That's the



1 there's no certainty as to how the Patent Office is going as to
 2 handle it.
 3 THE COURT: Are the Motions to Amend still pending?
 4 MR. ANDRE: We filed the motions. All the oral
 11:09:27 5 argument is done. We can't do anything else. There's nothing
 6 else we can affect the decision. The amendment have already
 7 been made. The proposed amendments have been made to the claims
 8 and we can't change those.
 9 THE COURT: So is there a timetable for when somebody
 11:09:46 10 in the PTO, or I guess in the PTAB, or somewhere is going to
 11 rule on these?
 12 MR. ANDRE: March 2nd, I believe. Less than two weeks.
 13 The PTAB is statutorily required to come up with a
 14 decision on the IPRs by, I think, March 2nd or 3rd. You guys
 11:10:05 15 correct me if I'm wrong, but I think it's those dates.
 16 MR. TOMASULO: Mid-March. There are two sets of
 17 decisions.
 18 THE COURT: And, so, when the PTAB actually rules, what
 19 would your position be then?
 11:10:17 20 MR. ENZMINGER: It depends on how the PTAB rules.
 21 THE COURT: Let's say they -- why does their ruling
 22 make a difference?
 23 MR. ENZMINGER: Suppose they ask for additional
 24 briefing or something?
 11:10:30 25 MR. TOMASULO: Or they appeal?

1 THE COURT: All right.
 2 So here's the thing is, I'm perfectly willing to put
 3 this in the Protective Order, what you're asking for, but then
 4 you are stuck if, in fact, there is something down the road
 11:10:50 5 where people want to change.
 6 In other words upon the representation that there is
 7 absolutely nothing that we can do, or will do in the future that
 8 can, you know, risk inadvertent disclosure of the source code,
 9 I'm perfectly happy to let you proceed, but you kind of perhaps
 11:11:14 10 do it at your reason risk.
 11 MR. ANDRE: We're willing to take that risk, your
 12 Honor.
 13 THE COURT: All right.
 14 Well, so, if you submit the Protective Order without
 11:11:22 15 the little thing underlined, I will sign it.
 16 MR. ANDRE: Thank you, your Honor.
 17 THE COURT: All right.
 18 So on the Scheduling Order, where to begin?
 19 So I did look through it, and because there is so much
 11:11:40 20 disagreement, I didn't think it was actually necessarily
 21 particularly a good idea for me just to say, here's the final
 22 date. You all work it out. I don't have confidence you can.
 23 So let me just start going through the things that I

1 to tell me about?
 2 MR. ANDRE: Your Honor, I would just say this.
 3 If we get the trial date, then everything else kind of
 4 stems backwards from that. I think that's the biggest dispute.
 11:12:15 5 Once we have the trial date, frankly, the rest of the dates fall
 6 in line. I think we can reach agreement at that point.
 7 That's the biggest issue. Some of these other
 8 positions we have not reached agreement on. For example, the
 9 very first one here about the damages.
 11:12:28 10 THE COURT: Okay. So I appreciate what you say.
 11 So do you agree if I pick the end date, you can pick
 12 the intermediate dates?
 13 MR. ENZMINGER: Yes.
 14 THE COURT: Okay. All right.
 11:12:39 15 Well, we'll get to that.
 16 So let's go through the other things. There's this
 17 paragraph on Page 2 about what defendant's position is. And I
 18 thought that there were three different things in this one
 19 paragraph.
 11:12:56 20 One is, plaintiff shall not be entitled to seek damages
 21 for infringement prior to the date the Complaints were served in
 22 2015 cases.
 23 I take it that part you don't have a disagreement with?
 24 MR. ANDRE: I don't, your Honor. I made a
 11:13:10 25 representation to the Court and I'm fine with that.

1 THE COURT: Right.
 2 So then there's a second sentence, which is -- does not
 3 necessarily follow from the first sentence -- which is, absent a
 4 showing of good cause, follow-up discovery shall be limited to
 11:13:23 5 the period after these dates.
 6 Now, maybe if you meant follow-up damages discovery,
 7 possibly?
 8 But as I recall from other things, there's possibly,
 9 you know, development work, there may be, you know, things that
 11:13:45 10 occur before then -- probably not sales -- but there are things
 11 that could occur before then that are relevant to infringement
 12 issues, possibly invalidity issues, and possibly damages issues,
 13 right?
 14 MR. ENZMINGER: Right.
 11:14:03 15 THE COURT: So what are you trying to cut off?
 16 MR. ENZMINGER: Damages issues.
 17 And let me be specific.
 18 The very first sentence of this says that they intend
 19 to reinstate a Motion to Compel. That Motion to Compel, which
 11:14:17 20 they've advised us that they intend to reinstate, expressly
 21 seeks damages information 2009 to the present.
 22 THE COURT: That seems to me -- by the way, you are Mr.
 23 Enzminger, right?

1 appeals that, you know, among other things I haven't looked
 2 at -- or appeals isn't the right word -- objections to what the
 3 Special Master has ordered.
 4 And, so, it could be just as a hypothetical matter that
 11:14:56 5 because of the passage of time, and changes in positions, or
 6 whatever, that things the Special Master ordered besides
 7 whatever objections might still be good, that there are some
 8 things that have become moot.
 9 And I take it that's what you're saying is, the damages
 11:15:14 10 cut-off makes the damages information that the Special Master
 11 ordered for 2009 moot and irrelevant. Maybe that's true --
 12 MR. ENZMINGER: Didn't order it. They're seeking it
 13 now.
 14 THE COURT: Okay.
 11:15:29 15 Well, you know, it is -- you know, I'm not going to
 16 rule on that right now.
 17 Is there anything you want to say about that?
 18 MR. ANDRE: Yes, your Honor. I think that we can bring
 19 up the Special Master, not bother you with it, but the position
 11:15:52 20 obviously is, just because we only seeks damages from the point
 21 where we actually gave notice, the actual sales figures and
 22 things that go into growth, and the things that damages experts
 23 use before that are relevant.
 24 We can bring that up with the Special Master and let
 11:16:06 25 him decide it.

1 THE COURT: Well, and, so, you know, that's what I'm
 2 inclined to do is, I turn this over to the Special Master for
 3 multiple reasons, some of them even good reasons.
 4 I think that these are the -- these are discovery
 11:16:24 5 issues, not really scheduling issues, so my inclination is to
 6 just cross out the second sentence of defendant's position and,
 7 you know, leave the question of what discovery is relevant given
 8 what the damages time period is, and whatever else up for the
 9 Special Master to figure out, okay?
 11:16:50 10 MR. ENZMINGER: Okay.
 11 MR. TOMASULO: That's fine, your Honor.
 12 MR. ANDRE: That's fine, your Honor.
 13 THE COURT: And then there is the third sentence, which
 14 is, additional products may not be added in these cases without
 11:17:01 15 leave of the Court.
 16 Is that a hypothetical sentence or is that something
 17 where you are expecting right now that there is more products
 18 being added?
 19 MR. TOMASULO: They are adding more -- they have added
 11:17:17 20 2017 versions of products, and proposed a schedule that ends in
 21 no time at all. We don't have infringement contentions for
 22 those new products.
 23 MR. ENZMINGER: We actually don't have infringement

1 I'm going to set a schedule in the question of whether
 2 new products can be added. That is, again, something for the
 3 Special Master to figure out.
 4 I would just say that there comes a point, if you have
 11:17:46 5 a trial date, when you have to stop adding new products, so you
 6 can get a fixed target to try a case about. I don't know what
 7 that date is, because among other things, we don't have a trial
 8 date.
 9 And, again, I think the Special Master could probably
 11:18:02 10 help you reach a resolution on that.
 11 MR. TOMASULO: That's fine, your Honor.
 12 MR. ANDRE: And just to be clear, it's the same
 13 products with the new -- they update them every year. So it's
 14 the same product, just updated each year.
 11:18:15 15 THE COURT: So maybe that's all good things to talk to
 16 the Special Master about is, there's no burden, nothing really
 17 to do, change the -- I mean, okay -- so I'm going to cross that
 18 out, too.
 19 All right.
 11:18:29 20 So then we'll -- the let me skip to the next thing.
 21 So I think that means that pretty much all the
 22 disagreement on Page 3, above the discovery cutoff part, isn't
 23 that all stuff for the Special Master to figure out?
 24 MR. ANDRE: That's correct, your Honor.
 11:18:50 25 MR. ENZMINGER: That's fine, your Honor.

1 THE COURT: Okay.
 2 MR. ENZMINGER: So we're X'ing out everything above
 3 discovery cutoff, is that correct?
 4 THE COURT: I think so, yes.
 11:18:57 5 All right.
 6 So on Page 4 near the bottom there's talk about --
 7 practically begs to be crossed out, you know, e-mail custodians,
 8 search terms.
 9 Do you agree that I can just cross out that paragraph
 11:19:23 10 plus the defendants' paragraph at the top of the next page,
 11 okay?
 12 MR. ENZMINGER: Yes, your Honor.
 13 THE COURT: You're surprisingly more reasonable in
 14 person.
 11:19:36 15 All right.
 16 Let's move on.
 17 Oh, so have you all had disputes with the Special
 18 Master before about the length of time of depositions or is that
 19 --
 11:19:51 20 MR. ENZMINGER: No, your Honor.
 21 THE COURT: You haven't quite gotten that far yet.
 22 MR. ENZMINGER: We have not gotten that far.
 23 THE COURT: If you both want me to resolve the

1 Master, I would do that.
 2 Do you want me to resolve the issue is now?
 3 MR. ANDRE: I think so, your Honor.
 4 MR. ENZMINGER: That's fine. It would be one less
 11:20:22 5 issue.
 6 MR. TOMASULO: I think so, your Honor.
 7 THE COURT: Okay. All right.
 8 So the first thing is, plaintiff says the two days of
 9 deposition will be scheduled within a reasonable amount of time
 11:20:35 10 for each other to alleviate an undue burden on the inventors.
 11 You know, my main objection to that is, I'm not
 12 actually sure that that's enforceable. You know, I take it what
 13 you're saying is, you don't want inventor -- we're talking about
 14 inventors here, right?
 11:21:00 15 MR. ANDRE: Two inventors, yeah.
 16 THE COURT: Yeah, you don't want an inventor to be
 17 deposed for seven hours a few weeks from now and then seven
 18 hours again in early 2018?
 19 MR. ANDRE: Or conversely, seven hours on Tuesday and
 11:21:15 20 seven hours on Wednesday, because it's a bit exhausting for a
 21 layperson to go through two consecutive.
 22 THE COURT: I'm sure it is, but isn't this the kind of
 23 thing that you all, because, you know, maybe some inventor wants
 24 to do two days in a row? Isn't this the kind of thing that you
 11:21:30 25 all sort of worked out based on individual circumstances as you

1 go down the road?
 2 MR. FRANKEL: That's correct, your Honor.
 3 And this provision was in the first Scheduling Order in
 4 the previous cases. I just don't see the reasons to take it out
 11:21:44 5 here and I would also note that the inventors have already been
 6 deposed in the IPR proceedings, and we've incorporated those
 7 transcripts in this case.
 8 So it just seems strange to not take a reasonable
 9 approach here to minimize burden.
 11:21:58 10 THE COURT: Well, see, the thing is, I would like you
 11 all to take a reasonable approach, but I'm not sure -- you know,
 12 I would expect that if you said inventor A does not want to be
 13 deposed for seven hours on Tuesday and seven hours on Wednesday
 14 because it will exhaust him, her, or it, that that would be the
 11:22:30 15 kinds of things that the defendants would agree to?
 16 MR. TOMASULO: That's correct, your Honor.
 17 MR. ANDRE: You can take that sentence out. I mean, I
 18 get what you're saying.
 19 I think this is something that was a vestige from a
 11:22:40 20 previous order, and we just -- they wanted to take it out, and
 21 we wanted to leave it in for more guidance than enforceability.
 22 THE COURT: All right. All right.
 23 So the next thing was the business about counting

1 And here did this come up before?
 2 MR. TOMASULO: This is anticipatory. We learned that
 3 there's a lot of third-party discovery that will need be to
 4 taken because the patents are 20 years old, and there were, you
 11:23:21 5 know, efforts to commercialize them.
 6 There's just a lot of probably small depositions that
 7 need to be taken. And ten depositions isn't going to do it.
 8 So it's just a question of -- we thought this would be
 9 uncontroversial. We're not trying to game the system. We don't
 11:23:36 10 want to take -- it's just a question of how -- you know, if we
 11 take a third-party deposition of Boeing, or someone that Boeing
 12 offered their licensed patents to, we would like to be able to
 13 use that transcript in all three cases.
 14 THE COURT: Is there a time limit on how many hours, or
 11:23:53 15 was this always just ten depositions maximum?
 16 MR. TOMASULO: It was never -- it was -- what we said
 17 originally was that your original Order was that the -- Federal
 18 Rules of Civil Procedure would apply to all three cases, so it
 19 was never given more specificity than that.
 11:24:13 20 THE COURT: Okay.
 21 MR. FRANKEL: Your Honor, if we can make this provision
 22 go both ways?
 23 For example, if Acceleration Bay takes a deposition
 24 about prior art, that it wouldn't count as three depositions,
 11:24:25 25 because there's three different cases. If we can make it both

1 ways, I think we can agree that if we need some additional
 2 depositions given the third party issues, then we'd be fine.
 3 MR. TOMASULO: Of course we didn't intend it to be
 4 unilateral.
 11:24:44 5 THE COURT: Okay. So you all understand what you just
 6 said to each other?
 7 I think I barely do.
 8 But, basically, you've just resolved this one.
 9 MR. TOMASULO: I think that's correct. I think what --
 11:24:58 10 we would just leave in defendants' position with the
 11 understanding that it's bilateral.
 12 THE COURT: Okay. I can understand that, if you want
 13 to add in --
 14 MR. TOMASULO: We can modify it.
 11:25:10 15 THE COURT: Why don't you add a word or two to make it
 16 clear that that's the case?
 17 MR. TOMASULO: Okay.
 18 THE COURT: Okay. So, thank you for that suggestion,
 19 Mr. Frankel.
 11:25:20 20 All right.
 21 Then there was one more thing here, which I have to say
 22 seemed kind of reasonable to me, in terms of providing dates.
 23 MR. TOMASULO: That's fine with us, your Honor.

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