IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

JOINT CLAIM CONSTRUCTION BRIEF (PHASE 1) TERMS: 27, 39, 30-34, 38-40

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I.   INTRODUCTION[1]

A.   Plaintiff's Opening Introduction

Acceleration Bay proposes constructions for Terms 27, 29-34, and 38-40 that are consistent with their plain and ordinary meaning as understood by a person of ordinary skill in the art ("POSA") in the context of the Asserted Patents, including the claims, specification, and intrinsic record. The Court should adopt Acceleration Bay's constructions because they comport with well-established claim construction principles and are designed to make the asserted claims more readily accessible and understandable to the jury.

In contrast, Defendants propose unnecessarily complex constructions and improperly import limitations into the Terms. Defendants' argument that Plaintiff's constructions are inconsistent with "the inventions" is flawed and flips the claim construction process on its head. As the Federal Circuit has held, proper construction should focus on the language of the claims themselves. *Medtronic Inc. v. Boston Sci. Corp.*, 695 F.3d 1266, 1275 (Fed. Cir. 2012) (words of a patent claim are given their ordinary and customary meaning and a patentee is afforded the full, broad scope of a chosen term) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc)). Defendants' reliance on the prosecution history to import limitations fails because Defendants cannot satisfy their burden of showing the clear and unmistakable disclaimer required to depart from the language of the claims. In terms of importance, the plain meaning of claim terms should always be given substantially more weight than other sources of intrinsic evidence. The Court then considers the remainder of the specification for guidance, and, finally,

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[1] Pursuant to the Court's July 5, 2017 Order (D.I. 206, 16-cv-453) and Stipulation Regarding Supplemental Claim Construction Briefing (D.I. 215, 16-cv-453), the parties hereby submit the first of four Supplemental Joint Claim Construction Briefs, addressing the following terms: 27, 29-34, 38-40. *See* Ex. 2 (D.I. 236, 16-cv-453) (Supplemental Joint Claim Construction Chart)("JCCC").

the prosecution history, which "often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Phillips*, 415 F.3d at 1317.

B.   **Plaintiff's Statement of Facts**

Acceleration Bay incorporates by reference its Statement of Facts from the parties' prior joint claim construction brief. D.I. 186 (16-cv-453) at 3, 4.

In support of its constructions for terms 27, 29-34, and 38-40, Acceleration Bay offers the testimony of Professor Nenad Medvidović of the University of Southern California's Computer Science Department. As detailed below, Dr. Medvidović explains that a person of ordinary skill in the art (POSA) reading the claims in the context of the Asserted Patents would understand that the claims have a well understood meaning and the constructions proposed by Acceleration Bay are consistent with those meanings. Declaration of Nenad Medvidović in Support of Acceleration Bay's Supplemental Claim Construction Brief ("Medvidović Decl.") at ¶¶ 38, 43, 52, 56, 59, 60, 63, 64, 68, 69, 71, 76, and 80. Further, Dr. Medvidović explains that the Asserted Patents, including the intrinsic record, do not redefine or give the terms any specialized definitions beyond their conventional meaning. *Id.* at ¶¶ 39, 44, 53, 57, 58, 60, 65, 66, 70, 72, 77. Because Defendants propose constructions that improperly redefine the terms and fail to construe the claims in their proper context, Dr. Medvidović explains that POSA would disagree with Defendants' proposed constructions. *Id.*

C.   **Summary of Defendants' Positions**

Plaintiff offers claim constructions at odds with the claims, the specification, and the prosecution history. And they are directly contrary to what it argued to the Patent Office in related *inter partes* reviews and to this Court in earlier filings. The "computer readable medium" term (Term 27) includes transitory media as plaintiff itself contended earlier, which renders six asserted claims invalid under 35 U.S.C. § 101. The "maintaining an m-regular graph" terms

(Terms 29-34) require actually maintaining the claimed m-regular, incomplete network topology, where the degree of regularity (*m*) remains the same. Plaintiff's attempt to read these terms to cover conventional networks that allegedly infringe by occasional coincidence, and not by design, directly contradicts the applicant's arguments during prosecution to distinguish the claims from those prior art networks. Finally, the Flooding Terms (Terms 38-40) improperly include method steps in an apparatus claim, rendering six asserted claims invalid as indefinite.

II.   ARGUMENT: TERMS 27, 29-34, 38-40

A.   Term 27: Computer Readable Medium ('634/19, 22 and '147/11, 14, 15, 16)

Term	Plaintiff's Proposed Constructions	Defendants' Proposed Constructions
27 "computer readable medium"	a non-fleeting medium for storing instructions and data that a computer can read, such as hard disks, random access memory, read only memory, DVDs, USB drives.	any medium for storing or transporting computer readable instructions, including memory, storage devices, carrier waves and communications links.

1.   Plaintiff's Opening Statement

The term "computer readable medium" has a well understood plain and ordinary meaning. Ex. F, Medvidović Decl., at ¶¶ 38, 39. In the context of the claims and intrinsic record, a POSA would understand this term to mean "a non-fleeting medium for storing instructions and data that a computer can read, such as hard disks, random access memory, read only memory, DVDs, USB drives." *Id.* at ¶ 38. The claims, specifications and intrinsic record are consistent with this construction. *Id.* at ¶¶ 39, 40.

In contrast, Defendants propose a construction that is overly broad for the sole purpose of manufacturing an argument that computer readable medium covers unpatentable subject matter. In particular, Defendants argue that computer readable medium includes "any medium for storing *or transporting* computer readable instructions, including . . . carrier waves and communications links." D.I. 236 (16-cv-453), Ex. 2, JCCC at 70 (emphasis added). By adding

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