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November 10, 2017

The Honorable Richard G. Andrews   *VIA ELECTRONIC FILING*
United States District Court
  for the District of Delaware
844 North King Street
Wilmington, DE 19801

Re: *Acceleration Bay LLC*, C.A. Nos. 16-453 (RGA); 16-454 (RGA); and 16-455 (RGA)

Dear Judge Andrews:

The subsequent authority identified by Plaintiff in its November 8 letter (C.A. No. 16-453, D.I. 349) does not change anything. That case—*MasterMine Software, Inc. v. Microsoft Corp.*, No. 2016-2465, 2017 WL 4872706 (Fed. Cir. Oct. 30, 2017)—merely applies a 12-year-old legal principle to a patent that bears no material similarity to the patents in this case.

As Defendants argued during claim construction, Terms 38, 39 and 40 are sequential method steps that render the claims in which they appear indefinite under *IPXL Holdings, LLC v. Amazon.com, Inc.*, 430 F.3d 1377 (Fed. Cir. 2005). (C.A. 16-453, D.I. 281) (C.A. 16-454, D.I. 254) (C.A. 16-455, D.I. 250). *IPXL Holdings* held that a claim is indefinite if it "cover[s] both an apparatus and a method of use of that apparatus." 430 F.3d at 1384. *MasterMine* reaffirms *IPXL Holdings*, while stating that "'apparatus claims are not necessarily indefinite for using functional language.'" 2017 WL 4872706, at *5 (quoting *Microprocessor Enhancement Corp. v. Tex. Instruments Inc. (MEC)*, 520 F.3d 1367, 1375 (Fed. Cir. 2008)). This unremarkable proposition does not help Plaintiff, as the claims it asserts do not merely "us[e] functional language," but also recite method steps. *Id.*

Indeed, *MasterMine* confirms that the claims are indefinite. The Federal Circuit determined that the claims there "merely use[d] permissible functional language," because the limitations "focus[ed] on the capabilities of the system" (as an apparatus claim would), not on "the specific actions performed by the user" (as a method claim would). *Id.* at *7. Unlike the claims in *MasterMine*, and like the claims held invalid in *IPXL Holdings*, Terms 38, 39, and 40 do "focus on the specific actions performed by the user," namely the sequential steps that (1) "an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants" and (2) "each participant sends data that it receives from

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a neighbor participant to its other neighbor participants." '966 Patent, Claim 1. And indeed, the Plaintiff itself told the PTAB that the claims "***require*** that the entire plurality of network participants, upon receiving data, must each send that data to all of their respective neighbor participants." (C.A. 16-453, D.I. 281 at 68–70 (quoting D-1 at 43)) (emphasis added). That is not a capability of the system, but a required method step. The claims are thus indefinite.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB:ncf

cc: Clerk of Court (Via Hand Delivery)
        All Counsel of Record (Via Electronic Mail)