

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-453 (RGA)

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.)

**DEFENDANTS' REPLY CLAIM
CONSTRUCTION BRIEF ADDRESSING TERM 4**

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I. Plaintiff Points to No Substantive *Difference* Between Figs. 3A,B and Fig. 8

Plaintiff argues that the alleged “First and Second Embodiments are substantively different” and then proceeds to identify only *additional* disclosure associated with Fig. 8, but nothing at all that is *inconsistent* with or different between Figs. 3A,B and Fig. 8. Acceleration Bay’s Opposition Brief. (“Opp. Br.”) at 2. For example, Plaintiff argues (correctly) that the example shown in Figs. 3A,B is a “large regime” example whereas Fig. 8 addresses both large and small regime cases. *Id.* at 4-5. This is unremarkable given that Fig. 8 (along with its related figures) is the *only* algorithm disclosed for performing the connecting process, so it must, of course, apply to any value of m , in both the large or small regime. This does not mean that Figs. 3A,B and Fig. 8 are directed to different embodiments. As Defendants explained, Figs. 3A,B introduce the basic process to be performed when adding a node to the m -regular network (using an example with $m=4$ in the large regime), without providing any of the details necessary to actually accomplish the “connecting” of Term 4. Fig. 8 and its related figures naturally, and necessarily, include more information, namely the actual algorithms used to perform the connecting operation for any value of m .

Plaintiff has been unable to point to a single *inconsistency* between Figs. 3A,B and Fig. 8 because there is none. Far from being alternative embodiments, Fig. 8 provides the algorithm necessary to achieve the “connecting” introduced early in the specification when addressing Figs. 3A,B. *See* Defendants’ Supplemental Claim Construction Brief Addressing Term 4 (“Defs. Br.”) at 2-4. Plaintiff’s analogy of the “nail” and the “barbed nail” underscores the fallacy of its position. Opp. Br. at 7. A plain nail (without barbs) and a barbed nail are inconsistent *alternatives* to each other and are thus different embodiments. As shown in the figure below, a plain nail has a smooth surface whereas a barbed nail has barbs, making them alternative embodiments.



In contrast, there is nothing *alternative* about Figs. 3A,B and Fig. 8. A more apt analogy would be a description early in a patent specification that generally says two pieces of wood are to be attached, and then a later description that explains that the wood pieces will be attached using a barbed nail. In such an example, there are no alternative embodiments, simply additional details of the same embodiment provided later in the specification. Here, the description associated with Figs. 3A,B similarly just says that “each of” the identified “computers then cooperates with the seeking computer to effect the connecting of the seeking computer to the broadcast channel” without providing an algorithm for how this “cooperation” is accomplished. Ex. A-1 at 5:45-48. Fig. 8 and its related figures then provides the algorithm to effect this “cooperation” and achieve the “connecting” of Term 4. *Id.* at 17:65-18:56.

II. Figs 3A and 3B Do Not Provide an Independent Algorithm for “Connecting”

To try and fashion an algorithm out of the disclosure associated with Figs. 3A,B, Plaintiff argues that the disclosed process includes three steps: “[1] locating the broadcast channel, [2] identifying the neighbors for the connecting computer, and then [3] connecting to the identified neighbor.” Opp. Br. at 3. But Term 4 is a “means for connecting,” *not* a “means for locating” or a “means for identifying.” A-1 at 30:25. As Defendants have explained, the disclosure associated with Figs. 3A,B does not even arguably constitute an algorithm for *connecting* to the broadcast channel. Defs. Br. at 5-6. Incredibly, after arguing that “identifying the neighbors” is part of the “connecting” process Plaintiff, later in the same brief, criticizes Defendants for “point[ing] to functions that are not required by Term 4” such as “how pairs of computers [i.e., the neighbors] are

identified.” *See* Opp. Br. at 3, 10. Thus, Plaintiff both holds up the identification of neighbors as being part of the alleged algorithm for Figs. 3A,B (*id.* at 3) and then argues that identifying neighbors (which are pairs of computers) is “not required by Term 4” (*id.* at 10).¹

Plaintiff is correct at page 10 of its brief (and wrong at page 3) that functions such as locating the broadcast channel and identifying the neighbors are *not* required by Term 4, which is why it should not have relied on these functions to try and show an algorithm associated with Figs. 3A,B. *Id.* at 3. As Defendants pointed out, all the specification says with respect to the *connecting* function in connection with Figs 3A,B is that “each of the [identified neighbor] ... computers then *cooperates* with the seeking computer *to effect the connecting* of the seeking computer to the broadcast channel.” Defs. Br., chart at 6 (citing ‘344 patent at 5:45-48). “Cooperating” to “effect the connecting” is not an algorithm. *Id.*

Furthermore, even if Plaintiff were correct at page 3 of its brief (and wrong at page 10) that “locating the broadcast channel” and “identifying the neighbors” are properly viewed as being part of the overall connecting process, the description associated with Figs. 3A,B nevertheless does not provide an algorithm; it is nothing more than a series of “black box” functions with no algorithm for actually accomplishing the recited functions. *See* Defs. Br. at 5-6 (chart showing that the “locating,” “identifying,” and “connecting” descriptions in col. 5 do not contain algorithms for accomplishing the connecting function of Term 4).

Finally, Plaintiff’s reliance on Dr. Kelly’s May 19, 2017 Declaration (D.I. 191-4, Ex. H) (“Kelly Decl.”) is unavailing. Dr. Kelly merely referenced the disclosure in the specifications at col. 5 as an overview of the process for a new node joining the broadcast channel, but said nothing about the col. 5 disclosure disclosing an algorithm for the “means for connecting” term. And, in

¹ Defendants never argued that these additional functions are part of Term 4, but rather were simply addressing the portions of the specifications relied upon by Plaintiff as relating to Figs. 3A,B. *See* Defs. Br. at 5-6.

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