IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

PLAINTIFF ACCELERATION BAY LLC'S
OPENING SUMMARY JUDGMENT AND *DAUBERT* BRIEF

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
POTTER ANDERSON & CORROON LLP
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

Attorneys for Plaintiff
ACCELERATION BAY LLC

OF COUNSEL:

Paul J. Andre
Lisa Kobialka
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
990 Marsh Road
Menlo Park, CA 94025
(650) 752-1700
pandre@kramerlevin.com
lkobialka@kramerlevin.com

Aaron M. Frankel
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100
afrankel@kramerlevin.com

Dated: February 2, 2018
Public version dated: February 9, 2018

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF CONTENTS

Page

SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. The Asserted Claims Are Valid Over Defendants' Asserted Prior Art 2

A. IPR Estoppel Bars Various of Defendants' Invalidity Challenges to the Asserted Claims of the '344 and '966 Patents 4

1. Defendants are estopped from asserting DirectPlay against Claim 12 of the '344 and '966 Patents 4

B. The PTAB Already Rejected Several of Defendants' Invalidity Arguments 7

1. The PTAB Already Found That Obraczka Thesis, Shoubridge and Denes Do Not Render Obvious Claims 1 and 11 of the '069 Patent. 7

2. The PTAB Already Found That Shoubridge Does Not Render Obvious Claim 12 of the '344 and '966 Patents 9

3. The PTAB Already Found That Shoubridge in View of Denes and Rufino Does Not Render Obvious Claims 1, 11, 15 and 16 of the '147 Patent 10

4. The PTAB Already Found That Neither DirectPlay in View of Shoubridge Nor Obraczka in View of Shoubridge and Obraczka Thesis Renders Obvious Claims 19 and 22 of the '634 Patent 10

C. Defendants' Prior Art Fails to Disclose an Incomplete, M-regular Network 11

1. Alagar does not teach an incomplete, m-regular network 11

2. AoE in View of Alagar Does Not Teach a Non-Complete, M-Regular Network 13

3. DirectPlay in View of Alagar Does Not Teach a Non-Complete, M-Regular Network 13

D. Kegel and ActiveNet Do Not Invalidate the Asserted Claims of the '497 Patent 14

1. Kegel Was Not Available Until After the Filing Date of the '497 Patent 14

2. ActiveNet Was Not Publicly Available Until After the Filing Date of the '497 Patent 16

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

II. The Accused Products infringe Claim 12 of the '344 Patent....17

A. Destiny Infringes Claim 12 of the '344 Patent....18

1. Destiny Provides "A computer network for providing a game environment for a plurality of participants"....19

2. In Destiny, "each participant ha[s] connections to at least three neighbor participants"....19

3. In Destiny, "an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and … participant sends data that it receives from a neighbor participant to its other neighbor participants,"....20

4. The Destiny Network "is m-regular, where m is the exact number of neighbor participants of each participant" and "the number of participants is at least two greater than m thus resulting in a non-complete graph"....22

5. In Destiny, "the interconnections of participants form a broadcast channel for a game of interest."....24

B. Call of Duty Infringes Claim 12 of the '344 Patent....24

1. CoD provides "A computer network for providing a game environment for a plurality of participants"....24

2. In CoD, "each participant ha[s] connections to at least three neighbor participants"....25

3. In CoD, "an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and … participant sends data that it receives from a neighbor participant to its other neighbor participants,"....26

4. The CoD "network is m-regular, where m is the exact number of neighbor participants of each participant"....27

5. For CoD, "the number of participants is at least two greater than m thus resulting in a non-complete graph"....27

6. In CoD, "the interconnections of participants form a broadcast channel for a game of interest."....28

C. World of Warcraft Infringes Claim 12 of the '344 Patent....28

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

1. WoW provides "A computer network for providing a game environment for a plurality of participants" 29

2. In WoW, "each participant ha[s] connections to at least three neighbor participants" 29

3. In WoW, "an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and … participant sends data that it receives from a neighbor participant to its other neighbor participants," 30

4. The WoW "network is m-regular, where m is the exact number of neighbor participants of each participant" and "the number of participants is at least two greater than *m* thus resulting in a non-complete graph" 30

5. In WoW, "the interconnections of participants form a broadcast channel for a game of interest." 32

III. Ms. Lawton's Opinions Should Be Excluded 32

A. Ms. Lawton's Damages Opinions Should be Excluded as Arbitrary, Unsupported by the Facts of this Case and Unreliable 32

1. Ms. Lawton's Reasonable Royalty Opinion Necessarily Rests on Speculation 32

2. Ms. Lawton's Damages Opinion Relies Upon the [redacted] License, For Which She Assumes Comparability Without Any Analysis 38

3. Ms. Lawton's Opinion as to the Date For the Hypothetical Negotiation is Unsupported and Arbitrary 43

B. Ms. Lawton is Not Qualified to Offer Technical Opinions Regarding Non-Infringing Alternatives 46

C. Ms. Lawton's Separate Opinion Responding to Acceleration Bay's Technical Validity Expert Is Unreliable 48

CONCLUSION 50

DOCKET ALARM

Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.