IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC, Plaintiff, v. ACTIVISION BLIZZARD, INC. Defendant.	Civil Action No. 16-453-RGA
ACCELERATION BAY LLC, Plaintiff, v. ELECTRONIC ARTS INC. Defendant.	Civil Action No. 16-454-RGA
ACCELERATION BAY LLC, Plaintiff, v. TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., AND 2K SPORTS, INC. Defendants.	Civil Action No. 16-455-RGA

MEMORANDUM OPINION

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August 28, 2018

ANDREWS, U.S. DISTRICT JUDGE:

Presently before the Court are Plaintiff's Motion for Summary Judgment of Infringement and Validity and Motion to Exclude Expert Testimony of Catharine M. Lawton (No. 16-453, D.I. 439; D.I. 16-454, D.I. 388; D.I. 16-455, D.I. 386)[1] and related briefing (D.I. 448, 474, 503); Plaintiff's Motion to Correct Claim 19 of the '634 patent (D.I. 438) and related briefing (D.I. 438, 472, 473); Defendant Activision Blizzard Inc.'s ("Activision") Motion for Summary Judgment (D.I. 440) and related briefing (D.I. 442, 475, 505); and Activision's Motion to Exclude Expert Opinions of Dr. Nenad Medvidovic, Dr. Michael Mitzenmacher, Dr. Christine Meyer, Dr. Harry Bims, and Dr. Ricardo Valerdi (D.I. 441) and related briefing (D.I. 442, 475, 505). I held oral argument on May 17, 2018. (D.I. 560 ("Tr.")). At that time, I ordered additional briefing and letter briefing, which the parties completed on June 6, 2018. (D.I. 561, 562, 563, 564, 565, 570, 572).

For the reasons that follow, the Court will **DENY** Plaintiff's Motion for Summary Judgment of Infringement and Validity and Motion to Exclude Expert Testimony of Catharine M. Lawton (D.I. 439); **DENY** Plaintiff's Motion to Correct Claim 19 of the '634 patent (D.I. 438); **GRANT** Activision's Motion for Summary Judgment (D.I. 440), as to the invalidity of all asserted claims of U.S. Patent No. 6,829,634 and claims 11, 15, and 16 of U.S. Patent No. 6,732,147, and as to non-infringement of U.S. Patent Nos. 6,701,344, 6,714,966, and 6,920,497, limited to the accused CoD and Destiny games, and otherwise **DENY** that Motion; and **GRANT** in part and **DENY** in part Activision's Motion to Exclude Expert Opinions of Dr. Nenad

[1] Hereinafter, all citations to the docket are to the docket in No. 16-453, unless otherwise noted. Plaintiff's Motion for Summary Judgment is only against Activision, as to infringement and the exclusion of expert testimony, and is against all three Defendants, as to validity. (D.I. 439). Consequently, all Defendants joined the opposition to Plaintiff's motion, as to validity. (No. 16-454, D.I. 407; No. 16-455, D.I. 405). All Defendants joined Activision's Motion for Summary Judgment, as to invalidity. (No. 16-454, D.I. 389, 418; No. 16-455, D.I. 387, 412).

Medvidovic, Dr. Michael Mitzenmacher, Dr. Christine Meyer, Dr. Harry Bims, and Dr. Ricardo Valerdi (D.I. 441).

I. BACKGROUND

Plaintiff brought this suit against Activision on June 17, 2016, alleging that Activision infringes United States Patent Nos. 6,701,344 ("the '344 patent"), 6,714,966 ("the '966 patent"), 6,829,634 ("the '634 patent"), 6,910,069 ("the '069 patent"), 6,732,147 ("the '147 patent"), and 6,920,497 ("the '497 patent") (collectively, the "Asserted Patents") by making, using, selling, offering for sale, and/or importing into the United States and this District four video games: World of Warcraft ("WoW"), Call of Duty: Advanced Warfare and Call of Duty: Black Ops III (collectively, "CoD"), and Destiny. (D.I. 1). The asserted claims are claims 12, 13, 14, and 15 of the '344 patent; claims 12 and 13 of the '966 patent; claims 19 and 22 of the '634 patent; claims 1 and 11 of the '069 patent; claims 1, 11, 15, and 16 of the '147 patent; and claims 9 and 16 of the '497 patent. (D.I. 442-1, Exh. D-1).

II. LEGAL STANDARD

a. Summary Judgment

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the initial burden of proving the absence of a genuinely disputed material fact relative to the claims in question. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). Material facts are those "that could affect the outcome" of the proceeding, and "a dispute about a material fact is 'genuine' if the evidence is sufficient to permit a reasonable jury to return a verdict for the nonmoving party." *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). When determining

whether a genuine issue of material fact exists, the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Wishkin v. Potter*, 476 F.3d 180, 184 (3d Cir. 2007).

b. *Daubert*

Federal Rule of Evidence 702 sets out the requirements for expert witness testimony and states:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. The Third Circuit has explained:

> Rule 702 embodies a trilogy of restrictions on expert testimony: qualification, reliability and fit. Qualification refers to the requirement that the witness possess specialized expertise. We have interpreted this requirement liberally, holding that "a broad range of knowledge, skills, and training qualify an expert." Secondly, the testimony must be reliable; it "must be based on the 'methods and procedures of science' rather than on 'subjective belief or unsupported speculation'; the expert must have 'good grounds' for his o[r] her belief. In sum, *Daubert* holds that an inquiry into the reliability of scientific evidence under Rule 702 requires a determination as to its scientific validity." Finally, Rule 702 requires that the expert testimony must fit the issues in the case. In other words, the expert's testimony must be relevant for the purposes of the case and must assist the trier of fact. The Supreme Court explained in *Daubert* that "Rule 702's 'helpfulness' standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility."
>
> By means of a so-called "*Daubert* hearing," the district court acts as a gatekeeper, preventing opinion testimony that does not meet the requirements of qualification, reliability and fit from reaching the jury. *See Daubert* ("Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset,

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