

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-455 (RGA)
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	REDACTED –
INC., ROCKSTAR GAMES, INC. and)	PUBLIC VERSION
2K SPORTS, INC.,)	
)	
Defendants.)	

**OPENING BRIEF IN SUPPORT OF DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT OF NON-INFRINGEMENT**

OF COUNSEL:

Michael A. Tomasulo
Gino Cheng
David K. Lin
Joe S. Netikosol
WINSTON & STRAWN LLP
333 South Grand Avenue, 38th Floor
Los Angeles, CA 90071
(213) 615-1700

David P. Enzminger
Louis L. Campbell
WINSTON & STRAWN LLP
275 Middlefield Road, Suite 205
Menlo Park, CA 94025
(650) 858-6500

Daniel K. Webb
Kathleen B. Barry
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jack B. Blumenfeld (#1014)
Stephen J. Kraftschik (#5623)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
skraftschik@mnat.com

Attorneys for Defendant

Michael M. Murray
WINSTON & STRAWN LLP
200 Park Avenue,
New York, NY 10166
(212) 294-6700

Andrew R. Sommer
Paul N. Harold
Joseph C. Masullo
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, DC 20006
(202) 282-5000

Original Filing Date: April 26, 2019
Redacted Filing Date: May 14, 2019

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Table of Exhibits and Abbreviations	v
Nature and Stage of the Proceedings	1
Statement of Facts	1
Summary Of Arguments	2
Argument	3
I. Defendants’ Do Not Infringe The ’344, ’966 And ’497 Patents For The Same Reasons The Court Found No Infringement In <i>Activision</i> and <i>Electronic Arts</i>	3
A. Defendants Do Not “Make,” “Use,” “Sell,” or “Offer to Sell” any “Computer Network,” or “Broadcast Channel” and Thus Cannot Be Infringers of Any Asserted Claims of the ’344 and ’966 Patents.	4
1. Defendants Do Not “Make” the Claimed “Computer Networks” or “Broadcast Channels.”	4
2. Defendants Do Not “Sell” or “Offer to Sell” the Claimed “Computer Networks” or “Broadcast Channels.”	5
3. Defendants Do Not “Use” the Claimed “Computer Networks” or “Broadcast Channels” including through testing.	5
B. Defendants Do Not Make, Use, Sell, or Offer to Sell Any Hardware “Component” and Thus Cannot Be Infringers of Any Asserted Claims of the ’497 Patent.	6
C. Acceleration’s experts do not make a prima facie case that Defendants committed compensable acts of infringement during testing.	7
II. The Accused Games Do Not Infringe the M-regular and Incomplete Limitations of the Topology Patents.	8
A. GTA0 Does Not Literally Infringe the M-Regular Limitations of the Topology Patents.	9
1. Acceleration’s “drive the formation” arguments do not meet the Court’s claim construction.	10
2. Acceleration’s “Proximity Rules” theory does not meet the claim limitation.	13
3. Acceleration Has No Evidence That the Precise Arrangement of Avatars It Claims Causes an M-Regular and Incomplete Network to Form in GTA0 Has Ever Occurred.	16
4. Acceleration’s [REDACTED] does not meet the claim limitations.	22
B. Dr. Mitzenmacher Admits that NBA 2K Does Not Literally Infringe the M-Regular Limitations of the Topology Patents.	24

- 1. Dr. Mitzenmacher admits that single player and “single court” multi-player modes are not accused of infringement.24
- 2. The Accused “Multi-Court” Modes.25
- 3. Dr. Mitzenmacher Admits Multi-Court Modes Do Not Literally Infringe Because Each Of The “Player Participants” Is Connected at the Application Layer To The “Park Relay Server,” Which Both Experts Agree Is Also A “Participant.”27
- C. Defendants Cannot Show Infringement of the M-Regular and Incomplete Limitations Through the Doctrine of Equivalents.....30
 - 1. Prosecution History Estoppel Bars Acceleration’s DOE Allegations For the ’344, ’966, and ’147 patents.30
 - 2. For the ’069 patent, Acceleration has failed to provide any expert analysis in support of its assertion that the m-regular limitation, as construed, is infringed under the Doctrine of Equivalents.....32
- III. The Asserted Method Claims (’147/1 & ’069/1) Are Not Infringed.....33
 - A. A. For GTA0, Acceleration has no proof Defendants ever performed the claimed methods.....33
 - B. The Accused Games Do Not Literally Infringe The ’069 Patent Because Dr. Mitzenmacher Does Not Contend That They Practice The “Random Walk.”.....36
 - C. Defendants Cannot Show Infringement of this Limitation Through the Doctrine of Equivalents.....37
 - D. [REDACTED].....39
 - E. Defendants Cannot Show Infringement of the [REDACTED]
- IV. The ’497 (Port Ordering Algorithm) Patent Is Not Infringed.....42
 - A. NBA 2K: Summary Judgment of No Literal Or DOE Infringement Should Be Entered Because Acceleration Presents No Relevant or Admissible Evidence Showing Port Reordering of Claim Limitation 9(e).....42
 - B. GTA0 Does Not Literally Infringe Because A Port Ordering Algorithm Must Operate In A “Non-Random” Manner And Acceleration’s Expert Repeatedly Admitted [REDACTED].....45
 - C. A Random Port Ordering Algorithm Cannot Be the Equivalent of a Non-Random Port Ordering Algorithm As a Matter of Law.46
- V. Conclusion.49

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Acceleration Bay LLC v. Take-Two Interactive Software, Inc. et al.</i> , No. 15-311-RGA, D.I. 1	1
<i>Acceleration Bay v. Electronic Arts</i> , Case No. 16-cv-00454-RGA (D. Del 3/27/2019) D.I. 545	12
<i>Akamai Techs., Inc. v. Limelight Networks, Inc.</i> , 797 F.3d 1020 (Fed. Cir. 2015).....	35
<i>Brilliant Instruments, Inc. v. GuideTech, LLC</i> , 707 F.3d 1342 (Fed. Cir. 2013).....	47
<i>Centillion Data Sys., LLC v. Qwest Commc'ns Int'l Inc.</i> , 631 F.3d 1279 (Fed. Cir. 2011).....	5
<i>Cleveland v. Policy Mgmt. Sys. Corp.</i> , 526 U.S. 795	46
<i>Cross Med. Prods. v. Medtronic Sofamor Danek</i> , 480 F.3d 1335 (Fed. Cir. 2007).....	30, 32, 42
<i>Deere & Co. v. Bush Hog, LLC</i> , 703 F.3d 1349 (Fed. Cir. 2012).....	47
<i>Eagle Comtronics, Inc. v. Arrow Communication Labs, Inc.</i> , 305 F.3d 1303 (Fed. Cir. 2002).....	38
<i>Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.</i> , 535 U.S. 722 (2002).....	30, 38, 48, 49
<i>Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.</i> , 344 F.3d 1359 (Fed. Cir. 2003).....	30
<i>Implicit Networks Inc. v. F5 Networks Inc.</i> , No. C 10-4234 SI, 2013 WL 1007250 (N.D. Cal. Mar. 13, 2013)	44
<i>Joy Techs. Inc. v. Flakt, Inc.</i> , 6 F.3d 770 (Fed. Cir. 1993)	34
<i>L & W, Inc. v. Shertech, Inc.</i> , 471 F.3d 1311 (Fed. Cir. 2006).....	8
<i>Lockheed Martin Corp. v. Space Sys./Loral, Inc.</i> , 324 F.3d 1308 (Fed. Cir. 2003).....	47

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.