

**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.,)	
)	
)	
Defendant.)	

AMENDED RULE 16 SCHEDULING ORDER

This 17th Day of February, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Initial Disclosures & Discovery.

a. Rule 26(a)(1) Initial Disclosures. The initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) served in the 2015 Cases¹ shall be deemed served in these cases. The obligation to supplement those disclosures is unchanged.

b. Disclosures made in the 2015 Cases according to Rules 3 and 4 of the Delaware Default Standard shall be deemed made in these cases.

Defendants' Position: Plaintiff shall not be entitled to seek damages for alleged infringement prior to the dates the Complaints were served in the 2015 Cases, namely: For Activision: March 12, 2015; For Electronic Arts: March 31, 2015, and for Take-Two, *et al.*: April 14, 2015. (*Acceleration Bay, LLC v. Activision/Blizzard, Inc., Electronic Arts Inc., and Take-Two Interactive Software, Inc., et al.*, C.A. Nos. 15-228, 15-282, and 15-311, 1/10/17 Transcript 21:22-23:19). Absent a showing of good cause, follow-up discovery shall be limited to the period after these dates, except that discovery related to asserted prior art or the conception and reduction to practice of the inventions claimed in any patent-in-suit shall not be so limited. Additional products may not be added to these cases without leave of Court.

2. Joinder of Other Parties and Amendment of Pleadings.

All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before [**Plaintiff:** April 7, 2017; **Defendants:** May 1, 2017].

3. Discovery.

The Parties request that the Court appoint Allan Terrell as Special Master in these Actions and deem the Orders appointing Special Master Terrell in the 2015 Cases filed in these actions. All Orders issued by the Special Master are deemed issued in these Actions.

¹ The "2015 Cases" are *Acceleration Bay, LLC v. Activision/Blizzard, Inc., Electronic Arts Inc., and Take-Two Interactive Software, Inc., et al.*, C.A. Nos. 15-228, 15-282, and 15-311.

Plaintiff's Position: Upon reappointment of the Special Master, Plaintiff will reinstate its May 27, 2016 motion to compel damages discovery, which is unrelated to the issue of the timeframe for which Plaintiff seeks damages.

Defendants' proposal for supplementation of Plaintiff's interrogatory responses goes well beyond the scope of the Special Master's Order No. 2 and the parties' subsequent agreements related thereto in the 2015 Cases.

Defendants' Position: In accordance with Special Master Order No. 2 dated April 19, 2016 entered in the 2015 Cases, Plaintiff shall supplement its responses to Defendants Common Interrogatories Nos. 5 and 9 on the schedule set forth below. Each individual accused method, network or broadcast channel shall be identified and charted separately.

- With respect to Activision's Call of Duty and World of Warcraft Accused Games: February 21, 2017.
- With respect to each of the Accused Games of Take Two and Electronic Arts: within 2 weeks of the taking of the contemplated Rule 30(b)(6) deposition on that Accused Game.

Regarding damages discovery and Plaintiff's May 27, 2016 Motion to compel damages discovery: Plaintiff shall limit its discovery in accordance with its representation that it is not seeking damages from before the filing of the complaints in the 2015 cases and shall meet and confer with Defendants before bringing additional motions seeking discovery related to damages.

a. Discovery Cut Off.

- All fact discovery in these cases shall be initiated so that it will be completed on or before [**Plaintiff:** June 30, 2017; **Defendants:** July 31, 2017].
- All expert discovery in this case shall be initiated so that it will be completed on or before [**Plaintiff:** October 20, 2017; **Defendants:** February 16, 2018].

b. Document Production.

- All document requests served in the 2015 Cases and all responses and documents including source code produced thereto shall be deemed served in the corresponding current actions designated under the Protective Order in these Cases in the same manner they were previously designated in the 2015 Cases.
- All pleadings, hearing transcripts and deposition transcripts from the 2015 Cases shall be deemed produced in the corresponding current action designated under the Protective Order in these Cases in the same manner they were previously designated in the 2015 Cases.
- All pleadings, hearing transcripts and deposition transcripts from the IPR Proceedings regarding the Patents in Suit filed to date shall be deemed produced in these cases designated under the Protective Order in these Cases in the same manner they were previously designated in the IPR Proceedings.
- Third Party Discovery: All documents produced by the following Third Parties in the 2015 Cases shall be deemed produced in these cases: Virgil Bourassa, Fred Holt and The Boeing Company.
- Document production shall be substantially complete by: [**Plaintiff:** March 1, 2017; **Defendants:** June 1, 2017].
- **Plaintiff's Position:** The parties exchanged lists of email custodians and proposed search terms in the 2015 Cases, which shall be deemed served in the corresponding current actions. The parties shall meet and confer regarding proposed search terms, and present any disputes regarding search terms to the Special Master by [**Plaintiff:** March 1, 2017]. The parties shall produce documents responsive to agreed-upon search terms by [**Plaintiff:** March 22, 2017].

- **Defendants' Position:** The Parties shall meet and confer on or before March 1, 2017 and shall promptly submit any disputes to the Special Master, including regarding the timing, volume and cost sharing (if any) regarding the production of ESI. Setting a deadline for completion of ESI production until the volume of ESI to be produced is known is impractical.

c. Requests for Admission.

A maximum of 35 requests for admission are permitted for each side in each of the three cases. Any requests and responses to those requests served in the 2015 Actions shall be deemed served in these Actions and shall count against the total. Requests for admission regarding the authenticity of a document do not count against this total.

d. Interrogatories.

Plaintiff may serve 15 common² interrogatories and 10 additional interrogatories to each Defendant Group. Defendants may serve 15 common interrogatories and 10 additional interrogatories per Defendant Group. Any interrogatory requests and responses to those requests served in the 2015 Actions shall be deemed served in these Actions and shall count against the total.

e. Depositions.

i. Limitation on Hours for Deposition Discovery.

The total number of depositions and time limits will be subject to the Federal Rules of Civil Procedure, and 30(b)(6) depositions will be considered independent of personal depositions for purposes of the time limits. Defendants may depose each named inventor for a maximum of 14 hours per inventor, not to exceed 7 hours of deposition time per day. The 14 hours of deposition

² For the purposes of this order "common" discovery requests mean that the Plaintiff propounds the same request to all Defendant Groups, who answer the request individually, and that Defendants propound one request to the Plaintiff who answers the request to all Defendants.

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