

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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

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**DECLARATION OF MARCUS COLUCCI IN SUPPORT OF PLAINTIFF  
ACCELERATION BAY LLC'S OPPOSITION TO TAKE-TWO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT**

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*Attorneys for Plaintiff*  
ACCELERATION BAY LLC

Dated: June 24, 2019  
Public version dated: July 3, 2019

I, Marcus A. Colucci, hereby declare as follows:

1. I am an attorney with the law firm Kramer Levin Naftalis & Frankel LLP, counsel of record for Plaintiff Acceleration Bay LLC (“Acceleration Bay”). I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts. I submit this declaration in support of Acceleration Bay’s Opposition to Take-Two Defendants’ Motion for Summary Judgment of Non-Infringement.

2. Attached hereto as Exhibit 1 is a true and correct copy of pages 77-81 from the Expert Report of Dr. Michael R. Macedonia Regarding Non-Infringement of U.S. Patent Nos. 6,732,147 and 6,910,069 and Certain Other Matters, served on March 20, 2018, in the present action.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Expert Report of Patrick Conlin Regarding Testing of Take-Two Interactive Software Accused Products, served on October 10, 2017, in the present action.

4. Attached hereto as Exhibit 3 is a true and correct copy of an online wiki entitled “Deathmatches in GTA Online,” available at [https://gta.fandom.com/wiki/Deathmatches\\_in\\_GTA\\_Online?file=Deathmatch-GTAO.jpg](https://gta.fandom.com/wiki/Deathmatches_in_GTA_Online?file=Deathmatch-GTAO.jpg), accessed on June 21, 2019.

5. Attached hereto as Exhibit 4 is a true and correct copy of U.S. Patent No. 6,701,344 entitled “Distributed Game Environment,” issued on March 2, 2004, produced by Acceleration Bay bearing production numbers AB-TT 000001-56.

6. Attached hereto as Exhibit 5 is a true and correct copy of the box art design of Grand Theft Auto Five for Xbox 360, produced by Take-Two Interactive Software, Inc. (“Take-Two”), bearing production number TTWO0024487.

7. Attached hereto as Exhibit 6 is a true and correct copy of the box art design of Grand Theft Auto Five for Xbox One, produced by Take-Two, bearing production number TTWO0025277.

8. Attached hereto as Exhibit 7 is a true and correct copy of the box art design of Grand Theft Auto Five for PC, produced by Take-Two, bearing production number TTWO0025282.

9. Attached hereto as Exhibit 8 is a true and correct copy of a Rockstar Games webpage entitled “Terms of Service” dated October 1, 2013, available at <http://www.rockstargames.com/legal>, produced by Take-Two, bearing production numbers TTWO0023903-10.

10. Attached hereto as Exhibit 9 is a true and correct copy of a webpage entitled “Terms of Use,” available at <http://gta-5.com/terms-and-conditions/>, accessed on October 9, 2017, produced by Acceleration Bay, bearing production numbers AB-TT 007718-20.

11. Attached hereto as Exhibit 10 is a true and correct copy of a brochure entitled “NBA 2K16 for XBOX One,” produced by Take-Two, bearing production numbers TTWO0022674-86.

12. Attached hereto as Exhibit 11 is a true and correct copy of Defendants Take-Two Interactive Software, Inc., Rockstar Games, Inc., and 2K Sports, Inc. July 31, 2017 Supplemental Responses to Acceleration Bay LLC’s First Set of Common Interrogatories (No. 3) and Second Set of Common Interrogatories (No. 6), served on July 31, 2017.

13. Attached hereto as Exhibit 12 is a true and correct copy of a webpage entitled “NBA 2K15 Update: 2K Release Major Patch 4 for Xbox One, PS4, PC; NBA 2k16 October Release Confirmed?”, available at <https://www.crossmap.com/news/nba-2k15-update-2k->

[released-major-patch-4-for-xbox-one-ps4-pc-nba-2k16-october-release-confirmed.html](#), accessed on June 21, 2019.

14. Attached hereto as Exhibit 13 is a true and correct copy of an online wiki entitled “NBA 2K16 Official Patches,” available at [https://www.nba-live.com/nbalivewiki/index.php/NBA\\_2K16\\_Official\\_Patches](https://www.nba-live.com/nbalivewiki/index.php/NBA_2K16_Official_Patches), accessed on June 21, 2019.

15. Attached hereto as Exhibit 14 is a true and correct copy of a Rockstar Games webpage entitled “GTA V Title Update 1.28 Notes (PS4/Xbox One/PS3/Xbox 360/PC),” available at <https://support.rockstargames.com/articles/206137368/GTAV-Title-Update-1-28-Notes-PS4-Xbox-One-PS3-Xbox-360-PC>, dated October 19, 2017.

16. Attached hereto as Exhibit 15 is a true and correct copy of a Rockstar Games webpage entitled “GTA V Title Update 1.27 Notes (PS4/Xbox One/PS3/Xbox 360/PC),” available at <https://support.rockstargames.com/articles/205705358/GTAV-Title-Update-1-27-Notes-PS4-Xbox-One-PS3-Xbox-360-PC>, dated October 19, 2017.

17. Attached hereto as Exhibit 16 is a true and correct copy of a Rockstar Games webpage entitled “GTA V Title Update 1.36 Notes (PS4/Xbox One/PC),” available at <https://support.rockstargames.com/articles/228742727/GTAV-Title-Update-1-36-Notes-PS4-Xbox-One-PC>, dated May 23, 2017.

18. Attached hereto as Exhibit 17 is a true and correct copy of a Kotaku article entitled “Quality Assured: What It’s Really Like to Test Games for a Living,” by Jason Schreler, available at <https://kotaku.com/quality-assured-what-it-s-really-like-to-play-games-fo-1720053842>, dated January 18, 2017.

19. Attached hereto as Exhibit 18 is a true and correct copy of a Rockstar Games webpage entitled “Rockstar Games Careers – Technical QA,” available at <https://www.rockstargames.com/careers/openings/position/308e4204>, accessed on June 21, 2019.

20. Attached hereto as Exhibit 19 is a true and correct copy of U.S. Patent 6,714,966 entitled “Information Delivery Service,” issued on March 30, 2004, produced by Acceleration Bay, bearing production numbers AB-TT 000291-348.

21. Attached hereto as Exhibit 20 is a true and correct copy of page 83 from the transcript of the deposition of Michael Macedonia, taken on July 30, 2018.

22. Attached hereto as Exhibit 21 is a true and correct copy of U.S. Patent 6,732,147 entitled “Leaving a Broadcast Channel,” issued on May 4, 2004, produced by Acceleration Bay, bearing production numbers AB-TT 000779-836.

23. Attached hereto as Exhibit 22 is a true and correct copy of U.S. Patent 6,910,069 entitled “Joining a Broadcast Channel,” issued on June 21, 2005, produced by Acceleration Bay, bearing production numbers AB-TT 001392-448.

24. Attached hereto as Exhibit 23 is a true and correct copy of pages 235-236 from the transcript of the deposition of Michael Mitzenmacher, taken on July 27, 2018.

25. Attached hereto as Exhibit 24 is a true and correct copy of a Wikipedia webpage entitled “Teredo tunneling”, available at [https://en.wikipedia.org/wiki/Teredo\\_tunneling](https://en.wikipedia.org/wiki/Teredo_tunneling), accessed on June 23, 2019.

26. Attached hereto as Exhibit 25 is a true and correct copy of a Microsoft Presentation entitled “Teredo @ Microsoft – Present and Future,” by Christopher Palmer, produced by Acceleration Bay, bearing production numbers AB-TT 002681-97.

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