

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                        |   |                     |
|------------------------|---|---------------------|
| ACCELERATION BAY LLC,  | ) |                     |
| A Delaware Limited     | ) |                     |
| Liability Corporation, | ) |                     |
|                        | ) |                     |
| Plaintiff,             | ) | C.A. No. 16-453-RGA |
|                        | ) | 16-454-RGA          |
| v.                     | ) | 16-455-RGA          |
|                        | ) |                     |
| ACTIVISION BLIZZARD,   | ) |                     |
| INC., a Delaware       | ) |                     |
| Corporation,           | ) |                     |
|                        | ) |                     |
| Defendant.             | ) |                     |

Friday, June 16, 2017  
3:30 p.m.

BEFORE: SPECIAL MASTER ALLEN M. TERRELL, JR.

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP  
BY: PHILLIP A. ROVNER, ESQ.

-and-

KRAMER, LEVIN, NAFTALIS & FRANKEL, LLP  
BY: AARON FRANKEL, ESQ.

Counsel for the Plaintiff

Hawkins Reporting Service  
715 North King Street - Wilmington, Delaware 19801

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APPEARANCES CONTINUED:

WINSTON & STRAWN, LLP  
BY: KATHLEEN B. BARRY, ESQ.  
BY: MICHAEL A. TOMASULO, ESQ.

Counsel for the Defendant

1 MS. BARRY: Kathleen Barry with  
2 Winston & Strawn for Defendants.

3 MR. TOMASULO: Also on the line  
4 and with Kathleen is Mike Tomasulo. Good  
5 afternoon, Special Master.

6 SPECIAL MASTER: Good afternoon.

7 MR. ROVNER: Special Master, it's  
8 Phil Rovner from Potter Anderson. And I guess  
9 who else is on the line for Acceleration Bay?

10 MR. FRANKEL: Aaron Frankel.

11 SPECIAL MASTER: Well, good  
12 afternoon. I gather that is probably the group  
13 for today's hearing. Are we waiting for anybody  
14 else?

15 MR. ROVNER: Not from our side.

16 SPECIAL MASTER: Thank you for  
17 accommodating my schedule to start a little  
18 later this afternoon. I appreciate that. Why  
19 don't I, for the record, indicate this is an  
20 action, civil action number 454, 455 and if I'm  
21 not mistaken, it's not in civil action 453; is  
22 that correct?

23 MR. ROVNER: Well, Acceleration  
24 Bay has a motion to applies to all the

1 Defendants.

2 SPECIAL MASTER: All right. Let  
3 me do this. Let me, for the sake of the record  
4 and when I issue an order, it will be in all  
5 three actions. Civil action numbers 16-453,  
6 454, 455. There have been several motions filed  
7 on June 7th. There have been responsive briefs  
8 and as I've indicated to the parties, I've read  
9 them and I'm prepared to proceed. I think the  
10 most efficient way would be to hear from the  
11 moving party who would particularly focus  
12 comments on the response made by opposition to  
13 the motion. If there's any Plaintiff, would you  
14 like to proceed first with the first of your two  
15 motions?

16 MR. FRANKEL: I'm prepared to do  
17 so, Special Master.

18 SPECIAL MASTER: Go ahead, then.

19 MR. FRANKEL: Thank you. Aaron  
20 Frankel on behalf of Acceleration Bay. Special  
21 master, I'll start with the motion to compel  
22 discovery as to the updated versions of the  
23 accused products and I won't rehash what's in  
24 our moving papers other than to say that this is

1 a routine process in patent cases, over the  
2 passage of time often new versions of the  
3 accused products are released and it makes sense  
4 to include them in the case, otherwise the  
5 parties would need to engage in a series of  
6 lawsuits to resolve their dispute.

7 Now, so I'll turn to the arguments  
8 that Defendants raised in opposition. We've  
9 been up front since the start of the case that  
10 it was our understanding that these products  
11 were in the case. We served an identification  
12 of accused products on February 13th. The Court  
13 did not rule that these products would not be  
14 the subject of discovery referring any disputes  
15 instead to the Special Master. And the  
16 suggestion that this is something that we've  
17 sandbagged or stalled to the detriment of  
18 Defendants is just not supported by the record.  
19 If you look at Exhibit 5, which is the  
20 correspondence on this issue, the first time the  
21 Defendants definitively say that they're not  
22 going to provide discovery on these products is  
23 May 2nd. That's the e-mail at the top of the  
24 chain. But if you flip back through the

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