

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

| | | |
|---|---|-------------------------|
| ACCELERATION BAY, LLC, a |) | |
| Delaware Limited Liability Corporation, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 22-904-RGA-SRF |
| |) | |
| v. |) | PUBLIC VERSION |
| |) | |
| AMAZON WEB SERVICES, INC., a |) | |
| Delaware Corporation, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFF ACCELERATION BAY, LLC’S
OPENING SUMMARY JUDGMENT AND DAUBERT BRIEF**

OF COUNSEL:

Paul J. Andre
 Lisa Kobialka
 James Hannah
 Kristopher Kastens
 Michael Lee
 Christina M. Finn
 KRAMER LEVIN NAFTALIS
 & FRANKEL LLP
 333 Twin Dolphin Drive, Suite 700
 Redwood Shores, CA 94065
 (650) 752-1700

Philip A. Rovner (#3215)
 POTTER ANDERSON & CORROON LLP
 Hercules Plaza
 P.O. Box 951
 Wilmington, DE 19899
 (302) 984-6000
 provner@potteranderson.com

*Attorneys for Plaintiff
Acceleration Bay, LLC*

Aaron M. Frankel
 Marcus A. Colucci
 Cristina Martinez
 Pooja P. Parekh
 KRAMER LEVIN NAFTALIS
 & FRANKEL LLP
 1177 Avenue of the Americas
 New York, NY 10036
 (212) 715-9100

Date: May 31, 2024
Public version dated: June 7, 2024

TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| I. NATURE AND STAGE OF THE CASE..... | 1 |
| II. SUMMARY OF ARGUMENT | 1 |
| III. ARGUMENT..... | 2 |
| A. AWS’ Transit Gateway is M-Regular and Incomplete..... | 2 |
| 1. Overview: Transit Gateway is Critical to AWS’ Ability to Provide Scalable Computer Services | 3 |
| 2. Transit Gateway is M-Regular and Incomplete..... | 6 |
| (a) [REDACTED] is Configured to Be M-Regular and Incomplete..... | 7 |
| (b) Health Layer is Configured to Be M-Regular and Incomplete..... | 9 |
| (c) Multicast is Configured to Be M-Regular and Incomplete..... | 10 |
| 3. AWS Has Not Established any Genuine Factual Disputes..... | 10 |
| B. Mr. Greene’s Deficient Invalidity Opinions Should Be Excluded and Summary Judgment of Validity Should Be Granted | 12 |
| 1. Summary Judgment of No Anticipation is Warranted Because Mr. Greene Does Not Offer Any Specific Anticipation Opinion | 13 |
| 2. Mr. Greene’s Unsupported Reliance on Inherency for Every Claim Element Should Be Excluded as Unreliable | 15 |
| 3. Summary Judgment of No Obviousness and Exclusion of Mr. Greene’s Obviousness Opinions is Warranted Because He Relies on Improper Hindsight..... | 17 |
| C. The Opinions of AWS’ Experts on Non-Infringing Alternatives Should Be Excluded and Summary Judgment Should Be Granted That There are No Non-Infringing Alternatives..... | 22 |
| 1. Ms. Sultanik’s Opinions on Non-Infringing Alternatives are Unsupported and Unreliable | 22 |
| 2. Ms. Kindler’s NIA Opinion Depends on Ms. Sultanik’s Deficient Opinion and Lacks Any Independent Analysis | 26 |

| | | |
|-----|---|----|
| D. | Ms. Kindler’s Unreliable Damages Opinions Should Be Excluded | 28 |
| 1. | Ms. Kindler’s Damages Opinions Are Arbitrary and Untethered to the Facts of the Case | 28 |
| 2. | Ms. Kindler’s Damages Opinions Fail to Assume Infringement..... | 35 |
| IV. | CONCLUSION..... | 38 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
| Cases | |
| <i>ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.</i> , 694 F.3d 1312 (Fed. Cir. 2012)..... | 18, 21 |
| <i>Adasa Inc. v. Avery Dennison Corp.</i> , No. 6:17-cv-01685-MK, 2020 WL 5518184 (D. Or. Sept. 14, 2020), <i>aff’d in part, rev’d in part</i> on other grounds, 55 F.4th 900 (Fed. Cir. 2022) | 21 |
| <i>Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys.</i> , 101 F. Supp. 2d 1257 (N.D. Cal. 1999) | 19, 21 |
| <i>ATD Corp. v. Lydall, Inc.</i> , 159 F.3d 534 (Fed. Cir. 1998)..... | 19 |
| <i>Bowling v. Hasbro, Inc.</i> , No. 05-229S, 2008 WL 717741 (D.R.I. Mar. 17, 2008)..... | 26 |
| <i>Conceptus, Inc. v. Hologic, Inc.</i> , 771 F. Supp. 2d 1164 (N.D. Cal. 2010) | 23 |
| <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579 (1993)..... | 1, 26, 28 |
| <i>Elder v. Tanner</i> , 205 F.R.D. 190 (E.D. Tex. 2001)..... | 15 |
| <i>Endo Pharms. Sols., Inc. v. Custopharm Inc.</i> , 894 F.3d 1374 (Fed. Cir. 2018)..... | 16 |
| <i>Extang Corp. v. Truck Accessories Grp., LLC</i> , No. CV 19-923 (KAJ), 2022 WL 610451 (D. Del. Feb. 18, 2022) | 13 |
| <i>Fortinet, Inc. v. Sophos, Inc.</i> , No. 13-cv-05831-EMC, 2015 WL 6513655 (N.D. Cal. Oct. 28, 2015) | 3 |
| <i>Gen. Elec. Co. v. Joiner</i> , 118 S. Ct. 512 (1997)..... | 16 |
| <i>GPNE Corp. v. Apple, Inc.</i> , No. 12-cv-02885-LHK, 2014 WL 1494247 (N.D. Cal. Apr. 16, 2014) | 25, 30 |
| <i>Grain-Processing Corp. v. Am. Maize-Prod. Co.</i> , 185 F.3d 1341 (Fed. Cir. 1999)..... | 23 |

Hitkansut LLC v. United States,
130 Fed. Cl. 353 (2017), *aff'd*, 721 F. App'x 992 (Fed. Cir. 2018)19

Innogenetics, N.V. v. Abbott Lab'ys,
512 F.3d 1363 (Fed. Cir. 2008).....21

Integra Lifesciences Corp. v. HyperBranch Med. Tech., Inc.,
No. CV 15-819-LPS-CJB, 2018 WL 1785033 (D. Del. Apr. 4, 2018).....16

InTouch Techs., Inc. v. VGO Commc'ns, Inc.,
751 F.3d 1327 (Fed. Cir. 2014).....20

Izumi Prods. Co. v. Koninklijke Philips Elecs. N.V.,
140 F. App'x 236 (Fed. Cir. 2005)12

Juniper Networks, Inc. v. Palo Alto Networks, Inc.,
15 F. Supp. 3d 499 (D. Del. 2014).....3

Koito Mfg. Co. v. Turn-Key-Tech, LLC,
381 F.3d 1142 (Fed. Cir. 2004).....14, 22

Kumho Tire Co. v. Carmichael,
526 U.S. 137 (1999).....26

LaserDynamics, Inc. v. Quanta Comput., Inc.,
No. 2:06-CV-348, 2011 WL 197869 (E.D. Tex. Jan. 20, 2011)23

Lucent Techs. Inc. v. Gateway, Inc.,
580 F.3d 1301 (Fed. Cir. 2009).....35

Mars, Inc. v. Coin Acceptors, Inc.,
527 F.3d 1359 (Fed. Cir. 2008).....28

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986).....3

Microsoft Corp. v. i4i Ltd.,
131 S.Ct. 2238 (2011).....13

NXP USA, Inc. v. Impinj, Inc.,
No. 2:20-cv-01503-JHC, 2023 WL 3933877 (W.D. Wash. June 8, 2023),
reconsideration denied, No. 2:20-cv-01503-JHC, 2023 WL 4052338 (W.D.
Wash. June 16, 2023).....27

Open Text S.A. v. Box, Inc.,
No. 13-cv-04910-JD, 2015 WL 349197 (N.D. Cal. Jan. 23, 2015).....30, 35

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.