

**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 REPLY IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT AND DAUBERT MOTION**

OF COUNSEL:

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

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

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*

Dated: June 28, 2024
 Public version dated: July 11, 2024

TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| I. There is No Genuine Dispute That AWS’ Transit Gateway is M-Regular and Incomplete..... | 1 |
| A. ██████████ Forwarding is M-Regular and Incomplete | 1 |
| B. Transit Gateway’s ██████████ is M-Regular and Incomplete | 4 |
| C. Multicast on Hyperplane is M-Regular and Incomplete..... | 5 |
| D. AWS Arguments on Apportionment are Irrelevant to Infringement..... | 7 |
| II. Summary Judgment of No Invalidity is Required Because AWS Does Not Have Any Admissible Evidence to Support its Defense..... | 7 |
| A. AWS Abandoned its Anticipation Defense | 7 |
| B. Mr. Greene’s Unexplained Inherency Opinions Should Be Excluded | 7 |
| C. Mr. Greene’s Obviousness Analysis is Insufficient as a Matter of Law | 9 |
| III. AWS’ Non-Infringing Alternative Opinions Should be Excluded and Summary Judgment Granted That There are No Non-Infringing Alternatives..... | 12 |
| A. Ms. Sultanik’s Opinions on Alleged Alternatives are Unsupported and Unreliable..... | 12 |
| B. Ms. Kindler’s NIA Opinions Fall With Ms. Sultanik’s Unreliable Opinions..... | 14 |
| C. Summary Judgment of No Non-Infringing Alternatives is Appropriate | 15 |
| IV. Ms. Kindler’s Damages Opinions Should Be Excluded..... | 16 |
| A. Ms. Kindler’s Methodology is Unsound..... | 16 |
| B. Ms. Kindler Failed to Assume Infringement | 18 |
| V. CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Cases | |
| <i>ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.</i> , 694 F.3d 1312 (Fed. Cir. 2012)..... | 10 |
| <i>Conceptus, Inc. v. Hologic, Inc.</i> , 771 F. Supp. 2d 1164, 1179 (N.D. Cal. 2010) | 12 |
| <i>Dali Wireless, Inc. v. CommScope Techs. LLC</i> , No. 19-952 (MN), 2022 WL 19830016, at *3 (D. Del. Jan. 28, 2022) | 14 |
| <i>GPNE Corp. v. Apple, Inc.</i> , No. 12-cv-02885-LHK, 2014 WL 1494247, at *4-6 (N.D. Cal. Apr. 16, 2014) | 14 |
| <i>Innogenetics, N.V. v. Abbott Lab'ys</i> , 512 F.3d 1363 (Fed. Cir. 2008)..... | 10 |
| <i>InTouch Techs., Inc. v. VGO Commc'ns, Inc.</i> , 751 F.3d 1327 (Fed. Cir. 2014)..... | 10 |
| <i>KSR Int'l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007)..... | 9, 10 |
| <i>Mars, Inc. v. Coin Acceptors, Inc.</i> , 527 F.3d 1359, 1372-73 (Fed. Cir. 2008) | 15 |
| <i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574, 585-87 & n.10 (1986) | 4 |
| <i>Meyer Intellectual Properties Ltd. v. Bodum, Inc.</i> , 690 F.3d 1354 (Fed. Cir. 2012)..... | 11 |
| <i>MobileMedia Ideas, LLC v. Apple Inc.</i> , 209 F. Supp. 3d 756, 766 (D. Del. 2016)..... | 13 |
| <i>NXP USA, Inc. v. Impinj, Inc.</i> , No. 2:20-cv-01503-JHC, 2023 WL 3933877 (W.D. Wash. June 8, 2023)..... | 15 |
| <i>Open Text S.A. v. Box, Inc.</i> , No. 13-cv-04910-JD, 2015 WL 349197, at *3, *6 (N.D. Cal. Jan. 23, 2015)..... | 17 |
| <i>PAR Pharm., Inc. v. TWI Pharms., Inc.</i> , 773 F.3d 1186, 1195-96 (Fed. Cir. 2014) | 7, 8 |

Persawvere, Inc. v. Milwaukee Elec. Tool Corp.,
No. 21-400-GBW, 2023 WL 8019085, at *10 (D. Del. Nov. 20, 2023)17

TQ Delta, LLC v. Cisco Sys., Inc.,
942 F.3d 1352, 1360 (Fed. Cir. 2019).....9, 10

Other Authorities

Fed. R. Civ. P. 26.....11

Fed. R. Evid. 7028, 11, 13, 14

I. There is No Genuine Dispute That AWS' Transit Gateway is M-Regular and Incomplete

Acceleration Bay ("AB") established that AWS' Transit Gateway uses infringing m-regular and incomplete networks through (1) [REDACTED], (2) [REDACTED], and (3) Multicast. D.I. 151 ("Br.") at 2-12. AWS denies infringement, but its Opposition (D.I. 159, "Opp.") fails to come forward with any evidence to create a genuine dispute as to this limitation. As shown below, AWS does not offer any affirmative explanation for how Transit Gateway's networks are structured, attacks strawman arguments that AB is not making, and relies on non-existent claim limitations and unsupported attorney argument.

A. [REDACTED] is M-Regular and Incomplete

AB provided un rebutted evidence that Transit Gateway's core [REDACTED] functionality is implemented with networks that are m-regular and incomplete. Br. at 7-9. As shown with AWS' technical documents, engineer testimony, and Dr. Medvidović's expert analysis, each participant in [REDACTED] has the same number of connections (m-regular) but does not connect to [REDACTED] (incomplete). *Id.*

For example, Dr. Medvidović explains that AWS' documentation depicting [REDACTED] [REDACTED] shows that "[e]ach of the [REDACTED] are connected to [REDACTED], making the network [REDACTED]-regular and incomplete." AB MSJ Ex. 1¹, Medvidović Rpt. at ¶ 318 (citing AB MSJ Ex. 6, AMZ_AB_000124568). AWS does not dispute that this document shows [REDACTED], with each connected to [REDACTED], and that this is an m-regular, incomplete network. *See Opp.* at 6-7. Similarly, AWS concedes the [REDACTED] network is incomplete because of "shuffle sharding," which means that not every [REDACTED] is connected to every [REDACTED]. *Id.*

¹ "AB MSJ Ex." refers to exhibits attached to the Declaration of Christina M. Finn in support of AB's Motion for Summary Judgment and *Daubert* Motion. D.I. 152.

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.