

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)
)
Plaintiff,)
)
v.) C.A. No. 16-453 (WCB)
)
ACTIVISION BLIZZARD, INC.,)
)
Defendant.)

STIPULATION AND ORDER TO SUBSTITUTE EXPERT WITNESSES

WHEREAS, several years have passed since expert discovery was conducted in this case and, in the intervening years, there have been material professional and personal developments of Defendant Activision Blizzard, Inc.’s (“Activision”) original experts on the issue of non-infringement (*see* D.I. 771);

WHEREAS, Activision desires to substitute its original expert witnesses on issues of non-infringement for purposes of trial;

WHEREAS, Plaintiff Acceleration Bay LLC (“Acceleration Bay”) has agreed to substitution per the terms of this stipulation;

WHEREAS, in view of the above-described material developments, the parties stipulate and agree that there is good cause to substitute Drs. Kelly and Macedonia in this proceeding pursuant to the schedule and restrictions below:

1. Activision will substitute its previous technical experts—Dr. Michael R. Macedonia and Dr. John J. Kelly—with one new technical expert.

2. Activision shall identify to Acceleration Bay its substitute expert by no later than **May 26, 2023**. Activision’s substitute expert must be available to testify at the April 29, 2024, trial setting.

3. After clearing objections under the protective order, Activision's substitute expert shall identify, by report and paragraph number, adopted opinions by no later than **August 25, 2023**. Activision's substitute expert shall not offer new opinions, rely on new documents or exhibits, or provide supplemental reports without agreement by the parties.

4. Activision's substitute expert shall not adopt or offer opinions on invalidity.

5. After the substitute expert provides the identification of adopted opinions, Acceleration Bay will be allowed to take a one-day (7 hour) deposition of the substitute expert by **November 17, 2023**.

6. Activision will cover the cost of the court reporter and transcript for the deposition of the substitute expert.

7. Acceleration Bay may use the deposition transcripts of Drs. Macedonia and Kelly during cross-examination of the substitute expert on issues germane to adopted opinions. The parties will continue to confer on which portions of those depositions may be used during cross-examination given the narrowing of issues in this case since those depositions were taken.

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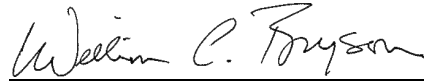
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May 22, 2023

SO ORDERED this 23rd day of May, 2023.



WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE