

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT**

Pursuant to Federal Rule of Civil Procedure 56, Defendants Take-Two Interactive Software, Inc., Rockstar Games, Inc., and 2K Sports, Inc. (collectively, "Defendants") move for summary judgment of noninfringement. The grounds for this motion are set forth in Defendants' opening brief and supporting papers filed contemporaneously herewith, namely:

- 1) Defendants do not directly infringe the '344, '966 and '497 patents for the same reasons the Court found no direct infringement in the *Activision* and *EA* cases, namely, that Defendants do not make, use, sell or offer to sell the claimed inventions, including through testing.
- 2) For the four Topology Patents ('344, '966, '069, '147 patents), GTA0 and NBA 2K do not meet the m-regular and incomplete limitations, either literally or under the doctrine of equivalents.
- 3) For the method claims ('069, '147 patents), there is no infringement because:
  - a. For GTA0, Acceleration has not shown that the accused methods have ever been performed. For the '069 patent because, neither game practices the "random walk" limitation.
  - b. For the '147 patent, a list of *all of the participants in the game* is not the claimed "list of neighbors of the first computer."
  - c. There is no infringement by equivalents as a matter of law.
- 4) For the '497 patent, there is no infringement because:

- a. For NBA 2K, Acceleration relies only on inadmissible and irrelevant Microsoft documents for the “port ordering” algorithm element.
- b. For GTA0: Acceleration’s expert repeatedly stated that the accused algorithm generates a list of ports in a “random” manner, which does not meet the claim limitation that the list of ports be generated in a “non-random manner,” nor does the law permit the Court to accept Acceleration’s new argument that “random” is equivalent to “non-random.”

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*/s/ Stephen J. Kraftschik*

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April 26, 2019

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TAKE-TWO INTERACTIVE SOFTWARE,	)	
INC., ROCKSTAR GAMES, INC. and	)	
2K SPORTS, INC.,	)	
	)	
Defendants.	)	

**[PROPOSED] ORDER**

WHEREAS, the Court, having consider Defendants’ Motion for Summary Judgment of Non-Infringement;

IT IS HEREBY ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, that Defendants’ Motion is GRANTED as to the following:<sup>1</sup>

- 5) Defendants do not directly infringe the ’344, ’966 and ’497 patents for the same reasons the Court found no direct infringement in the *Activision* and *EA* cases, namely, that Defendants do not make, use, sell or offer to sell the claimed inventions, including through testing.
- 6) For the four Topology Patents (’344, ’966, ’069, ’147 patents), GTA0 and NBA 2K do not meet the m-regular and incomplete limitations, either literally or under the doctrine of equivalents.
- 7) For the method claims (’069, ’147 patents), there is no infringement because:
  - a. For GTA0, Acceleration has not shown that the accused methods have ever been performed. For the ’069 patent because, neither game practices the “random walk” limitation.
  - b. For the ’147 patent, a list of *all of the participants in the game* is not the claimed “list of neighbors of the first computer.”

<sup>1</sup> Acceleration is asserting the following claims: (a) claims 12, 13, 14, 15 from the ’344 patent; (b) claims 12 and 13 from the ’966 patent; (c) claim 1 from the ’147 patent; (d) claims 9 and 16 from the ’497 patent; and (e) claims 1 and 11 from the ’069 patent.

- c. There is no infringement by equivalents as a matter of law.
- 8) For the '497 patent, there is no infringement because:
- a. For NBA 2K, Acceleration relies only on inadmissible and irrelevant Microsoft documents for the “port ordering” algorithm element.
  - b. For GTA0: Acceleration’s expert repeatedly stated that the accused algorithm generates a list of ports in a “random” manner, which does not meet the claim limitation that the list of ports be generated in a “non-random manner,” nor does the law permit the Court to accept Acceleration’s new argument that “random” is equivalent to “non-random.”

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Judge Richard G. Andrews

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