

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,

Plaintiff,

v.

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

Defendants.

Civil Action No. 16-455-RGA

MEMORANDUM OPINION

Philip A. Rovner and Jonathan A. Choa, POTTER ANDERSON & CORROON LLP, Wilmington, DE; Paul J. Andre, Lisa Kobialka, and James Hannah, KRAMER LEVIN NAFTALIS & FRANKEL LLP, Menlo Park, CA; Aaron M. Frankel and Marcus A. Colucci, KRAMER LEVIN NAFTALIS & FRANKEL LLP, New York, NY, attorneys for Plaintiff.

Jack B. Blumenfeld and Stephen J. Kraftschik, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, DE; Michael A. Tomasulo, Gino Cheng, David K. Lin, and Joe S. Netikosol, WINSTON & STRAWN LLP, Los Angeles, CA; David P. Enzminger and Louis L. Campbell, WINSTON & STRAWN LLP, Menlo Park, CA; Daniel K. Webb and Kathleen B. Barry, WINSTON & STRAWN LLP, Chicago, IL; Michael M. Murray, WINSTON & STRAWN LLP, New York, NY; Andrew R. Sommer, Paul N. Harold, and Joseph C. Masullo, WINSTON & STRAWN LLP, Washington, DC, attorneys for Defendants.

March 23, 2020

/s/ Richard G. Andrews

ANDREWS, U.S. DISTRICT JUDGE:

This is a patent case about three video games: Grand Theft Auto Online, NBA 2K15, and NBA 2K16. Currently before me is the Motion for Summary Judgment of Non-Infringement filed by Defendant Take-Two Interactive Software, Inc. and its subsidiaries, Defendants Rockstar Games, Inc. and 2K Sports, Inc. (D.I. 462). I have considered the parties' briefing (D.I. 463, 472, 477), and I heard oral argument on February 4, 2020 (D.I. 490). Because no reasonable jury could conclude Defendants infringed the asserted patents, it is "game over" for Plaintiff Acceleration Bay, LLC's infringement claims. The Motion for Summary Judgment is granted.

I. BACKGROUND

A. The Patents

Plaintiff alleges online features of the three accused video games infringe five patents: U.S. Patent Nos. 6,701,344 ('344 patent), 6,714,966 ('966 patent), 6,920,497 ('497 patent), 6,732,147 ('147 patent), and 6,910,069 ('069 patent). Plaintiff initially sued Defendants for infringing these patents in 2015. *Acceleration Bay LLC v. Take-Two Interactive Software Inc.*, No. 15-cv-311-RGA (D. Del.). I dismissed that case because Plaintiff lacked standing to assert the patents. No. 15-cv-311-RGA, D.I. 149. Plaintiff resolved the standing issue by reaching a new patent purchase agreement with the Boeing Company, which was the original owner of the patents. (D.I. 1 at 1). The parties agree Plaintiff cannot seek damages for any infringement that occurred before April 2015. (D.I. 463 at 43; D.I. 472 at 14).

Plaintiff asserts the following claims:

- '344: Claims 12, 13, 14, and 15;
- '966: Claims 12 and 13;
- '497: Claims 9 and 16;
- '147: Claim 1; and

- '069: Claims 1 and 11

(D.I. 489). The asserted claims of the '069 and '147 patents are method claims. The '069 claims recite methods for adding participants to a computer network, while the '147 claim recites a method for disconnecting participants from a computer network. The asserted claims of the remaining patents ('344, '966, and '497) recite types of computer networks, systems, services, or components.

The parties refer to the '344, '966, '069, and '147 patents as “topology” patents. The asserted claims of these patents are limited to networks that are “incomplete” and “m-regular.” I construed “m-regular” to mean “[a] state that the network is configured to maintain, where each computer is connected to exactly m neighbor [participants or computers].” (D.I. 256 at 5). Claim 13 of the '344 patent is illustrative:

A distributed game system comprising:

a plurality of broadcast channels, each broadcast channel for playing a game, each of the broadcast channels for providing game information related to said game to a plurality of participants, each participant having connections to at least three neighbor participants, wherein an originating participant sends data to the other participants by sending the data through each of its connections to its neighbor participants and wherein each participant sends data that it receives from a neighbor participant to its neighbor participants, further wherein the network is m-regular, where m is the exact number of neighbor participants of each participant and further wherein the number of participants is at least two greater than m thus resulting in a non-complete graph;
means for identifying a broadcast channel for a game of interest; and
means for connecting to the identified broadcast channel.

Claim 13 of the '966 patent is similar:

An information delivery service comprising:

a plurality of broadcast channels, each broadcast channel for distributing information relating to a topic, each of the broadcast channels for providing said information related to a topic to a plurality of participants, each participant having connections to at least three neighbor participants, wherein an originating participant sends data to the other participants by

sending the data through each of its connections to its neighbor participants and wherein each participant sends data that it receives from a neighbor participant to its neighbor participants, further wherein the network is m-regular, where m is the exact number of neighbor participants of each participant and further wherein the number of participants is at least two greater than m thus resulting in a non-complete graph;
means for identifying a broadcast channel for a topic of interest; and
means for connecting to the identified broadcast channel.

While the '069 and '147 patent claims describe methods, they are also limited to “incomplete” and “m-regular” networks.¹ For example, claim 1 of the '147 patent claims:

A method of disconnecting a first computer from a second computer, the first computer and the second computer being connected to a broadcast channel, said broadcast channel forming an m-regular graph where m is at least 3, the method comprising:

when the first computer decides to disconnect from the second computer, the first computer sends a disconnect message to the second computer, said disconnect message including a list of neighbors of the first computer; and
when the second computer receives the disconnect message from the first computer, the second computer broadcasts a connection port search message on the broadcast channel to find a third computer to which it can connect in order to maintain an m-regular graph, said third computer being one of the neighbors on said list of neighbors.

The '497 patent is the only asserted patent that is not limited to m-regular and incomplete networks. Instead, the asserted claims of the '497 patent recite a “component in a computer system” that uses a “port ordering algorithm” to identify a call-in port and to connect a computer to the network.

B. The Video Games

Take-Two is the parent company of Rockstar Games and 2K Sports. (D.I. 270 ¶ 8).

Rockstar Games publishes Grand Theft Auto V (GTA V), a video game which includes an online

¹ Although the asserted claim of the '069 patent does not explicitly require an “m-regular” or “incomplete” network, I construed the claim to include both limitations. (D.I. 345 at 12, 14-15).

mode called Grand Theft Auto Online (GTAO). (*Id.* ¶ 35). GTA V is an action-adventure game in which players inhabit the roles of characters in the criminal underbelly of Los Santos, a fictionalized version of Los Angeles. (D.I. 464, Ex. A-1, “Medvidović Report” ¶ 66). In GTA O, players can roam freely through Los Santos or they can compete with other players in defined games, such as heists, races, or shoot outs. (*Id.* ¶ 67). Acceleration Bay alleges both forms of online play infringe its patents. (*Id.*).

NBA 2K15 and NBA 2K16 are basketball games published by 2K Sports. Both games feature single-player and online multiplayer modes. (*Id.* ¶ 69). In the online modes, players can compete on a single court or on large shared locations with multiple courts. These online multicourt modes can include up to 100 players at a time (10 games of 5-on-5 players). (*Id.* ¶183). Although the multicourt modes have different names, such as “MyPark,” “ProAm,” and “Rec Hall,” Plaintiff alleges the underlying networks are the same and all infringe its patents. (D.I. 472 at 7 & n.4). Plaintiff does not accuse the single player or single-court multiplayer modes of infringement. (*Id.*).

II. LEGAL STANDARDS

A. Summary Judgment

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). The moving party has the initial burden of proving the absence of a genuinely disputed material fact relative to the claims in question. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). Material facts are those “that could affect the outcome” of the proceeding, and “a dispute about a material fact is ‘genuine’ if the evidence is sufficient to permit a reasonable jury to return a verdict for the nonmoving party.” *Lamont v. New Jersey*, 637 F.3d 177, 181 (3d Cir.

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