

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

ACCELERATION BAY LLC, a Delaware)	
Limited Liability Corporation,)	
)	
Plaintiff,)	C.A. No.
)	
v.)	DEMAND FOR JURY TRIAL
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	
INC., ROCKSTAR GAMES, INC., and 2K)	
SPORTS, INC., Delaware Corporations,)	
)	
Defendants.)	

COMPLAINT FOR PATENT INFRINGEMENT

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Acceleration Bay LLC (“Acceleration Bay”) files this Complaint for Patent Infringement and Jury Demand against Defendants Take-Two Interactive Software, Inc. (“Take-Two”), Rockstar Games, Inc. (“Rockstar”), and 2K Sports, Inc. (“2K”) (collectively, “Defendants”) and alleges as follows:

BACKGROUND

1. This Complaint alleges Defendants infringed and continue to infringe the same Acceleration Bay Patents (defined below) at issue in *Acceleration Bay LLC v. Take-Two Interactive Software Inc.*, 1:15-cv-00311-RGA (D. Del.), filed on April 13, 2015. The Acceleration Bay Patents asserted here and in the previous case were assigned by the Boeing Company to Acceleration Bay. On June 3, 2016, the District Court issued an Order in the previous case finding that Acceleration Bay lacked prudential standing. 1:15-cv-00311-RGA, D.I. 145. Subsequent to that Order, Acceleration Bay and the Boeing Company entered into an Amended and Restated Patent Purchase Agreement resolving all of the issues identified by the District Court in its June 3, 2016 Order.

THE PARTIES

2. Acceleration Bay is a Delaware limited liability corporation, with its principal place of business at 370 Bridge Parkway, Redwood City, California 94065.

3. Acceleration Bay is an incubator for next generation businesses, in particular companies that focus on delivering information and content in real-time. Acceleration Bay focuses on investing in and supporting companies that further the dissemination of technological advancements.

4. Acceleration Bay also collaborates with inventors and research institutions to

analyze and identify important technological problems, generate new solutions to these problems, and bring those solutions to market through its partnerships with existing companies and startups.

5. Acceleration Bay is informed and believes that Take-Two is a Delaware corporation with its principal place of business at 622 Broadway in New York, NY 10012.

6. Acceleration Bay is informed and believes that Rockstar is a Delaware corporation with its principal place of business at 622 Broadway in New York, NY 10012.

7. Acceleration Bay is informed and believes that 2K is a Delaware corporation with its principal place of business at 10 Hamilton Landing in Novato, CA 94949.

8. Acceleration Bay is informed and believes that Take-Two wholly owns the multiplayer or multisystem game publishing labels Rockstar and 2K. Acceleration Bay is informed and believes that Take-Two publishes the Grand Theft Auto online multiplayer game series through its wholly owned subsidiary, Rockstar. Acceleration Bay is informed and believes that Take-Two publishes the NBA 2K online multiplayer game series through its wholly owned subsidiary 2K.

9. Acceleration Bay is informed and believes that Take-Two exercises complete control over its wholly owned subsidiaries, Rockstar and 2K, and directs these subsidiaries, as its publishing labels and agents, to make, use, sell, offer for sale, and/or import the Grand Theft Auto and NBA 2K products and services as alleged herein. Acceleration Bay is further informed and believes that Take-Two's direction and control over Rockstar and 2K is evidenced by statements in its public websites and documents such as Take-Two's SEC filings. *See, e.g.*, Take-Two's Fiscal Third Quarter 2015 Report, pp. 1-2 ("We [Take-Two] successfully launched one of the most diverse holiday lineups in the [Take-Two]'s history, led by Grand Theft Auto

V... [and] NBA 2K15...”; *see also* Take-Two’s 2014 Form 10-K, pp. 1, 3-4 (discussing Rockstar and 2K products and services as “internally developed software titles” and stating: “We develop and publish products through our two wholly-owned labels Rockstar Games and 2K... Our business consists of our wholly-owned labels Rockstar Games and 2K.”); *id.* at p. 10 (“We are dependent on the future success of our Grand Theft Auto products and we must continue to publish ‘hit’ titles or sequels...to compete successfully in our industry.”); *id.* at p. 32, 41 (showing game sales published with Rockstar and 2K reported as revenue for Take-Two); <http://www.rockstargames.com/#/?lb=corpinfo> (“The Rockstar logo is a registered trademark of Take-Two Interactive Software, Inc.”); <https://www.2k.com/nba2k15preorder/entercode.html> (“2K, the 2K logo, and Take-Two Interactive Software are all trademarks and/or registered trademarks of Take-Two Interactive Software, Inc.”); <http://phoenix.corporate-ir.net/phoenix.zhtml?c=86428&p=irol-newsArticle&ID=1974730> (2014 Take-Two press-release showing 2K as a publishing label of Take-Two); <http://phoenix.corporate-ir.net/phoenix.zhtml?c=86428&p=irol-newsArticle&ID=1990614> (2014 Take-Two press release showing Rockstar and 2K as wholly owned labels of 2K); <http://ir.take2games.com/phoenix.zhtml?c=86428&p=irol-irhome> (“The Company [Take-Two] develops and publishes products through its two wholly-owned labels Rockstar Games and 2K.”).

10. Acceleration Bay is informed and believes that Defendants make, use, sell, offer for sale, and/or import into the United States and this District products and services that utilize multiplayer or multisystem network technology as claimed in the Acceleration Bay Patents.

11. Acceleration Bay is informed and believes that Take-Two, through its subsidiary Rockstar, makes, uses, sells, offers for sale, and/or imports the Grand Theft Auto online

multiplayer game series (including but not limited to its Open World, Jobs, Social Club, Crews, Heists, Team Death-match, Come Out to Play, Hasta la Vista, and Siege Mentality modes).

12. Acceleration Bay is informed and believes that Take-Two through its subsidiary 2K, makes, uses, sells, offers for sale, and/or imports NBA 2K online multiplayer game series (including but not limited to its Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes).

JURISDICTION AND VENUE

13. This action arises under the Patent Act, 35 U.S.C. § 101 *et seq.* This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331 and 1338.

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b).

15. This Court has personal jurisdiction over Defendants. Upon information and belief, Defendants do business in this District and have, and continue to, infringe in this District. On information and belief, Defendants are incorporated in the State of Delaware. In addition, the Court has personal jurisdiction over Defendants because they have established minimum contacts with this forum and the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

THE PATENTS-IN-SUIT

16. Acceleration Bay owns U.S. Patent No. 6,701,344; U.S. Patent No. 6,714,966; U.S. Patent No. 6,732,147; U.S. Patent No. 6,829,634; U.S. Patent No. 6,910,069; and U.S. Patent No. 6,920,497 (collectively referred to as the “Acceleration Bay Patents”).

17. On March 2, 2004, U.S. Patent No. 6,701,344 (“the ‘344 Patent”), entitled DISTRIBUTED GAME ENVIRONMENT, was issued to Fred B. Holt and Virgil E. Bourassa. A true and correct copy of the ‘344 Patent is attached to this Complaint as Exhibit 1 and is

incorporated by reference herein.

18. All rights, title, and interest in the '344 Patent have been assigned to Acceleration Bay, which is the sole owner of the '344 Patent.

19. The '344 Patent is generally directed towards systems for an effective broadcast technique in a game environment using a regular network. By implementing such a broadcast technique, the system is able to provide a broadcast channel using an underlying network system that sends messages on a point-to-point basis, providing efficiency and reliability to a gaming environment.

20. On March 30, 2004, U.S. Patent No. 6,714,966 ("the '966 Patent"), entitled INFORMATION DELIVERY SERVICE, was issued to Fred B. Holt and Virgil E. Bourassa. A true and correct copy of the '966 Patent is attached to this Complaint as Exhibit 2 and is incorporated by reference herein.

21. All rights, title, and interest in the '966 Patent have been assigned to Acceleration Bay, who is the sole owner of the '966 Patent.

22. The '966 Patent is generally directed towards systems for providing an information delivery service using a regular network. One of the ways this is accomplished is by sending data through neighbor participants.

23. On May 4, 2004, U.S. Patent No. 6,732,147 ("the '147 Patent"), entitled LEAVING A BROADCAST CHANNEL, was issued to Fred B. Holt and Virgil E. Bourassa. A true and correct copy of the '147 Patent is attached to this Complaint as Exhibit 3 and is incorporated by reference herein.

24. All rights, title, and interest in the '147 Patent have been assigned to Acceleration Bay, who is the sole owner of the '147 Patent.

25. The '147 Patent is generally directed towards methods and systems for leaving a broadcast channel. One of the ways this is accomplished is by sending messages to a second computer, so that the second computer can connect to a third computer to maintain a regular network.

26. On December 7, 2004, U.S. Patent No. 6,829,634 ("the '634 Patent"), entitled BROADCASTING NETWORK, was issued to Fred B. Holt and Virgil E. Bourassa. A true and correct copy of the '634 Patent is attached to this Complaint as Exhibit 4 and is incorporated by reference herein.

27. All rights, title, and interest in the '634 Patent have been assigned to Acceleration Bay, who is the sole owner of the '634 Patent.

28. The '634 Patent is generally directed towards systems for broadcasting data across a regular network. One of the ways this is accomplished is by sending data received from neighbor participants to other neighbor participants. This creates reliability in the regular network.

29. On June 21, 2005, U.S. Patent No. 6,910,069 ("the '069 Patent"), entitled JOINING A BROADCAST CHANNEL, was issued to Fred B. Holt and Virgil E. Bourassa. A true and correct copy of the '069 Patent is attached to this Complaint as Exhibit 5 and is incorporated by reference herein.

30. All rights, title, and interest in the '069 Patent have been assigned to Acceleration Bay, who is the sole owner of the '069 Patent.

31. The '069 Patent is generally directed towards methods for adding a participant to a network without placing a high overhead on the underlying network. One of the ways this is accomplished is by identifying a pair of participants that are connected to the network,

disconnecting the identified pair from each other, and then connecting a seeking participant to the identified pair.

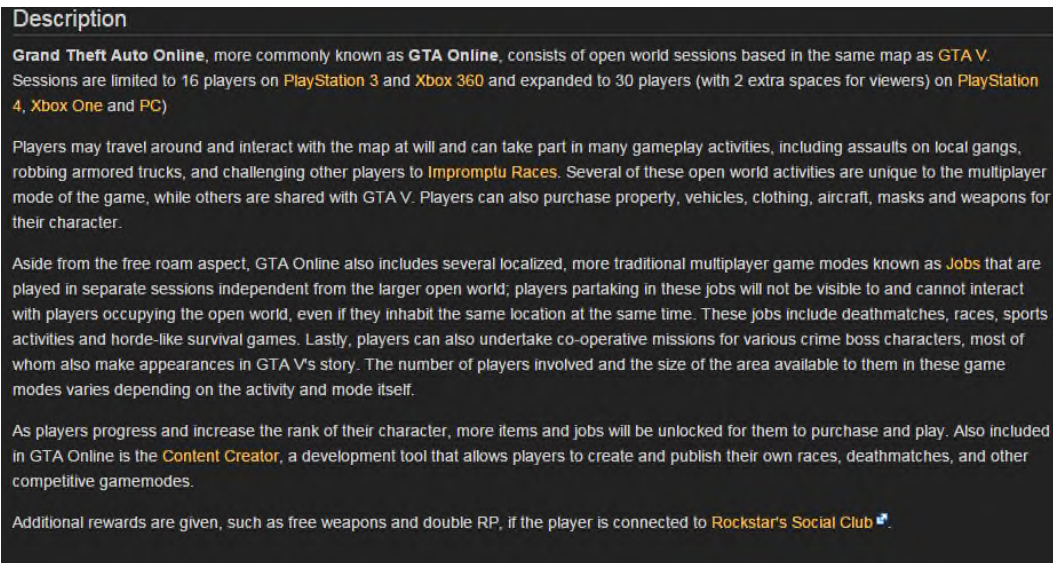
32. On July 19, 2005, U.S. Patent No. 6,920,497 (“the ‘497 Patent”), entitled CONTACTING A BROADCAST CHANNEL, was issued to Fred B. Holt and Virgil E. Bourassa. A true and correct copy of the ‘497 Patent is attached to this Complaint as Exhibit 6 and is incorporated by reference herein.

33. All rights, title, and interest in the ‘497 Patent have been assigned to Acceleration Bay, who is the sole owner of the ‘497 Patent.

34. The ‘497 Patent is generally directed towards methods and systems for contacting a broadcast channel. One of the ways this is accomplished is by the seeking computer using a selected call-in port to request that the portal computer coordinate the connection of the seeking computer.

THE ACCUSED PRODUCTS

35. **Grand Theft Auto (“GTA”)**: Acceleration Bay is informed and believes that Take-Two, through its label, Rockstar, publishes the multiplayer or multisystem games Grand Theft Auto Online (“GTA-O”) and Grand Theft Auto V (“GTA-V”) (together, “GTA”). Acceleration Bay is informed and believes that GTA products and related services utilize the network technology claimed in the Acceleration Bay Patents to offer a multiplayer or multisystem gaming environment to its players. Acceleration Bay is informed and believes that the multiplayer modes of the GTA products support up to 30 individual players.



http://gta.wikia.com/Grand_Theft_Auto_Online.

36. Open World: Acceleration Bay is informed and believes that the GTA products allow players to “freely roam” within the GTA-V gaming environment (also known as the “map” or “open world”), and to interact with that gaming environment or “open world,” as well as with other individual players within that gaming environment, in a manner that infringes the Acceleration Bay Patents.

37. Acceleration Bay is informed and believes that GTA products and services utilize the network technology claimed in the Acceleration Bay Patents to perform many functionalities within its gaming environment.

38. Jobs: By way of example and not limitation, aside from the “free roam” or “open world” play, individual players can engage in localized multiplayer game modes known as “Jobs” that are played in separate sessions, independent from the larger, open gaming environment. Acceleration Bay is informed and believes that these “Jobs” include, but are not limited to, “deathmatches, races, sports activities and horde-like survival games . . . players can also undertake co-operative missions for various crime boss characters . . . The number of

players involved and the size of the area available to them in these game modes varies depending on the activity and mode itself.” http://gta.wikia.com/Grand_Theft_Auto_Online.

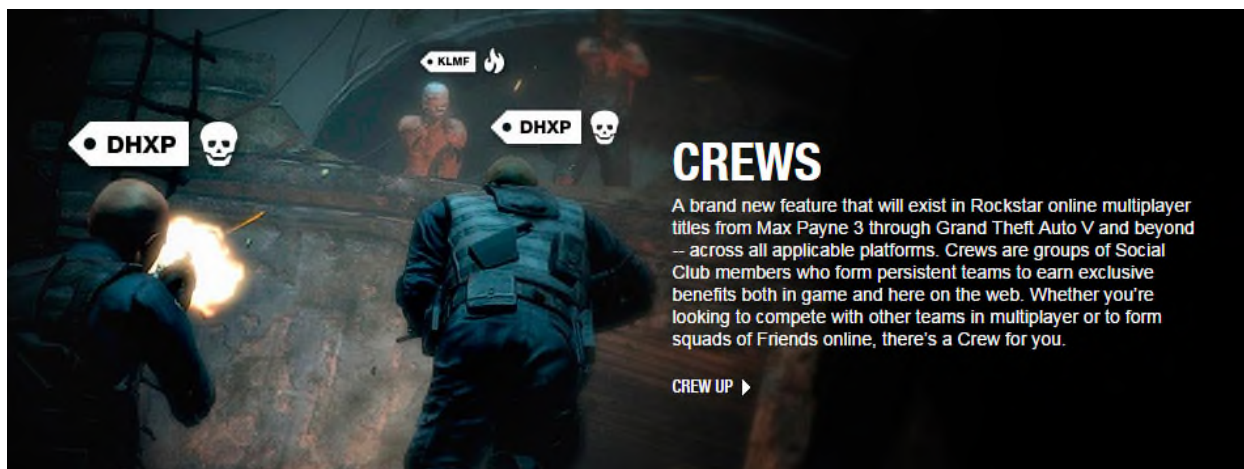
Acceleration Bay is informed and believes that GTA products and services utilize the network technology claimed in the Acceleration Bay Patents to perform many other functionalities within its gaming environment, including but not limited to “Social Club,” “Crews,” “Heists,” and “Team Death-match,” as well as adversary modes such as “Come Out to Play,” “Hasta la Vista,” and “Siege Mentality.”

39. Social Club: Acceleration Bay is informed and believes that Take-Two and Rockstar provide Social Club, a digital rights management, multiplayer gaming, and communications service, for use with their latest generation of games. Acceleration Bay is informed and believes that when consumers purchase GTA products, they gain full access to GTA products’ designated Social Club features, both inside the game and on the associated website.



<http://socialclub.rockstargames.com/about>

40. Crews: Acceleration Bay is informed and believes that GTA products offer a functionality called “Crews,” wherein groups of their individual Social Club members may form teams of up to 1,000 members at a time within its online multiplayer gaming environments.



<http://socialclub.rockstargames.com/about>.

41. Acceleration Bay is informed and believes that the Crews functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

42. Team Death Match: Acceleration Bay is informed and believes that GTA products allow individual players to compete against up to 16 other players in a high-intensity, winner takes all shootout. Acceleration Bay is informed and believes that players can place virtual bets on the match, with the winner awarded in virtual cash prizes. Each death match occurs in its own, unique multiplayer location on the GTA-V “map” with which the players can interact.



<https://www.youtube.com/watch?v=wXW5V3tjdI>

43. Acceleration Bay is informed and believes that the Team Death Match functionality allows individual players to communicate and interact with unique gaming environments in a manner that infringes the Acceleration Bay Patents.

44. Heists: Acceleration Bay is informed and believes that GTA products offer a functionality called “Heists,” which allows individual players to “team up to take down big scores” within its online multiplayer gaming environments.



Next week, Heists will deliver a brand new gameplay experience to GTA Online, offering players the chance to team up to take down big scores. Alongside this massive new addition comes a range of new features and enhancements to make the entire GTA Online experience bigger and deeper. Adversary Modes bring three new kinds of competition to GTA Online while new Daily Objectives and other Freemode activities bring new life to the hectic streets of Los Santos and Blaine County. Here's a rundown of just some of the new features and additions launching next week alongside Heists that will continue to expand and augment the world of Grand Theft Auto Online.

<http://www.rockstargames.com/newswire/article/52397/adversary-modes-daily-objectives-and-more-new-updates-also>

45. Acceleration Bay is informed and believes that the Heists functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

46. Come Out To Play: Acceleration Bay is informed and believes that GTA products' Come Out to Play mode allows multiple online players to play against each other by choosing either a team of Hunters or Runners.



<http://www.rockstargames.com/newswire/article/52397/adversary-modes-daily-objectives-and-more-new-updates-also>

47. Acceleration Bay is informed and believes that the Come Out to Play functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

48. Siege Mentality: Acceleration Bay is informed and believes that GTA products' Siege Mentality mode allows up to four players to fight to survive against up to six determined attackers in a location defense mode.



[http://www.rockstargames.com/newswire/article/52397/adversary-modes-daily-objectives-and-more-new-updates-also.](http://www.rockstargames.com/newswire/article/52397/adversary-modes-daily-objectives-and-more-new-updates-also)

49. Acceleration Bay is informed and believes that the Siege Mentality functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

50. Hasta La Vista: Acceleration Bay is informed and believes that GTA products' Hasta La Vista mode allows multiple players to play against each other by choosing to join either a team of Truckers or a team of Cyclists.



<http://www.rockstargames.com/newswire/article/52397/adversary-modes-daily-objectives-and-more-new-updates-also>.

51. Acceleration Bay is informed and believes that the Hasta La Vista functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

52. Acceleration Bay is informed and believes that GTA products and services include peer-to-peer technologies that allow individual players or systems to interact with each other inside the gaming environment, and interact with the gaming environment itself, in a manner that infringes the Acceleration Bay Patents.



<https://twitter.com/RockstarSupport/status/206974346923737088>

53. Acceleration Bay is also informed and believes that the GTA products and services use the network technology claimed in the Acceleration Bay Patents to allow players to leave the gaming environment without negatively affecting the gameplay experience of other players. *See, e.g.,*



<https://www.youtube.com/watch?v=wXW5V3tjdI> (showing message that player has left).

54. **NBA 2K:** Acceleration Bay is informed and believes that Take-Two, through its subsidiary, 2K publishes the multiplayer or multisystem game series NBA 2K, including but not limited to the multiplayer or multisystem games NBA 2K15 and NBA 2K16 (collectively, “NBA 2K”). Acceleration Bay is informed and believes that NBA 2K products and related services utilize the network technology claimed in the Acceleration Bay Patents to offer a multiplayer or

multisystem gaming environment to its players, primarily related to the sport of basketball. NBA 2K products contain several infringing functionalities, including but not limited to, Online Leagues, MyPARK, Rec Hall, Stage, and Crew.

55. Online Leagues: Acceleration Bay is informed and believes that NBA 2K's Online Leagues game mode allows multiple players online to take over control of an NBA team and compete against other users.

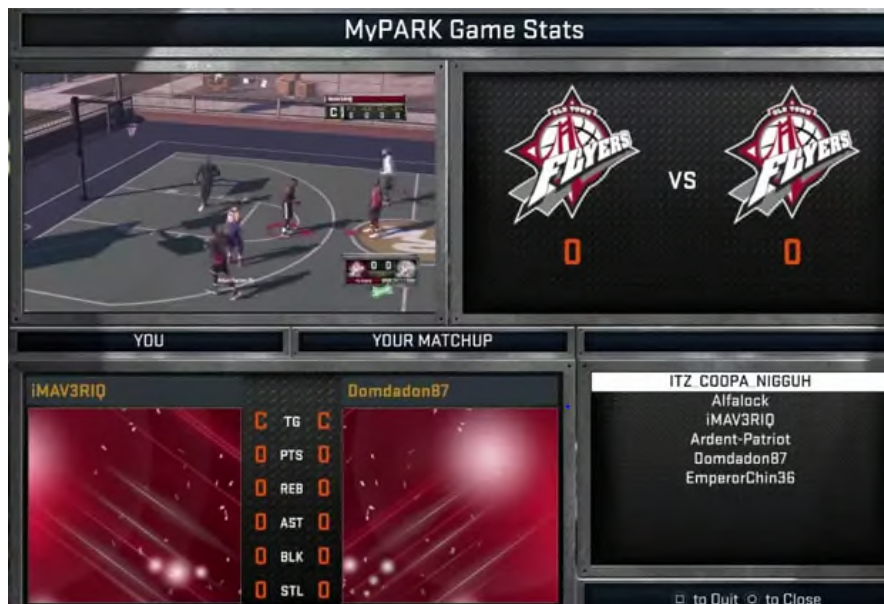


<https://www.youtube.com/watch?v=uXE5aR8arUY>

56. Acceleration Bay is informed and believes that the Online Leagues functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

57. MyPARK: Acceleration Bay is informed and believes that NBA 2K's MyPARK mode, which is accessible from its MyCAREER Mode, lets an individual player take a MyPLAYER character online and join one of three MyPARK communities: Rivet City, Old Town and Sunset Beach. Joining a community allows a player to compete against other communities on Rival days, as well as to play with other individual players in 2-on-2, 3-on-3, or

5-on-5 basketball games. Acceleration Bay is informed and believes that players may also “squad up” under the MyPARK functionality, to play with other friends as well as introduce teammate grades to the park that allow a player to be graded on his or her performance and “rank up” through NBA 2K’s rep system.



https://www.youtube.com/watch?v=kmIW1yI_zPE

58. Acceleration Bay is informed and believes that the MyPARK functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

59. Rec Hall: Acceleration Bay is informed and believes that NBA 2K’s Rec Hall mode allows players to compete in 4-quarter, NBA simulation games with referees and NBA rules “in the most competitive 5-on-5 games with your MyPLAYER” profiles. Individual players may also “squad up” in the Rec Hall mode.



<https://www.youtube.com/watch?v=iVMgE3NqgUI>

60. Stage: Acceleration Bay is informed and believes that NBA 2K's Stage mode allows individual players to enter the Stage from the MyCAREER menu and ante up against other individual players online to place virtual currency wagers on gaming matches.



<https://www.youtube.com/watch?v=-ckFbQmdQMI>



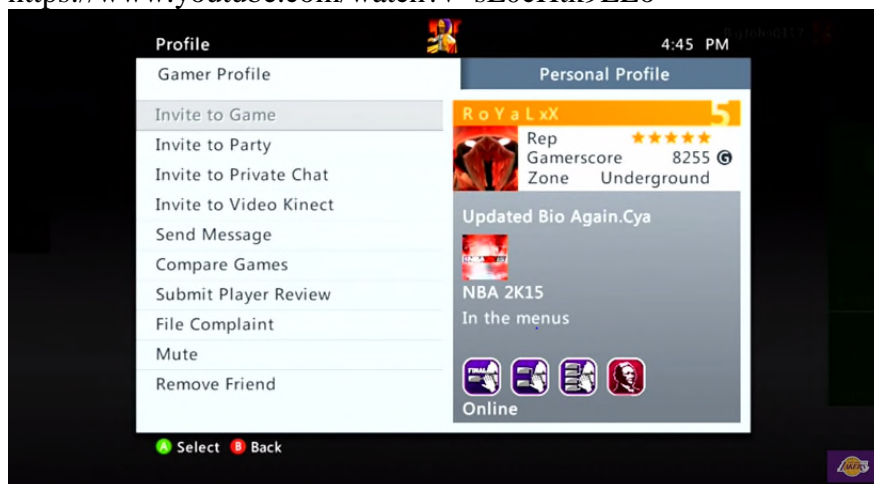
<https://www.youtube.com/watch?v=rdJTSUlvUC8>

61. Acceleration Bay is informed and believes that the Stage functionality allows individual players to communicate and interact with the gaming environment and each other in a manner that infringes the Acceleration Bay Patents.

62. Crew: Acceleration Bay is informed and believes that NBA 2K's Crew mode allows a player to take his or her MyPLAYER character and form a Crew and play games against other players. This mode allows players to unlock playable NBA stars in exchange for virtual currency.



<https://www.youtube.com/watch?v=sL0cHtk9LLo>



<https://www.youtube.com/watch?v=mb3TZ62cV4Q>



<https://www.youtube.com/watch?v=mb3TZ62cV4Q>

63. Acceleration Bay is informed and believes that the NBA 2K products and services include peer-to-peer technologies that allow individual players or systems to interact with each other inside the gaming environment, and interact with the gaming environment itself, in a manner that infringes the Acceleration Bay Patents.

64. Acceleration Bay is also informed and believes that the NBA 2K products use the network technology claimed in the Acceleration Bay Patents to allow players to leave the gaming environment without negatively affecting the gameplay experience of other players. *See, e.g.,*



<https://www.youtube.com/watch?v=e2LMrXVHdwI> (showing message that player has left);



<https://www.youtube.com/watch?v=uXE5aR8arUY> (showing message that player has left).

DEFENDANTS' INFRINGEMENT OF ACCELERATION BAY PATENTS

65. Defendants have been and are now infringing the Acceleration Bay Patents (i.e., the '344 Patent, '966 Patent, '147 Patent, '634 Patent, '069 Patent, and '497 Patent) in this judicial District, and elsewhere in the United States by, among other things, making, using, importing, selling, and/or offering for sale the claimed system and methods related to the GTA products, NBA 2K series products, and their related services.

COUNT I

(Direct Infringement of the '344 Patent pursuant to 35 U.S.C. § 271(a))

66. Acceleration Bay repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

67. Defendants have infringed and continue to infringe one or more claims of the '344 Patent in violation of 35 U.S.C. § 271(a).

68. Defendants' infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

69. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing products and services have been without the permission, consent, authorization, or license of Acceleration Bay.

70. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including, but not limited to, GTA and NBA 2K products, which embody the patented invention of the '344 Patent.

71. The GTA products infringe the '344 Patent through, at minimum, their Open World, Jobs, Social Club, Crews, Heists, Team Death Match, Come Out to Play, Hasta la Vista, and Siege Mentality modes, which allow individual players from different locations to communicate and interact with each other using a broadcast technique in which a broadcast

channel uses an underlying network system to send messages on a point-to-point basis. By way of example, and not limitation, a claim chart further describing how the GTA products infringe at least one claim of the '344 Patent is attached hereto as Exhibit 7 and incorporated by reference.

72. The NBA 2K products infringe the '344 Patent through, at minimum, their Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes, which allow individual players from different locations to communicate and interact with each other using a broadcast technique in which a broadcast channel uses an underlying network system to send messages on a point-to-point basis. By way of example, and not limitation, a claim chart further describing how the NBA 2K products infringe at least one claim of the '344 Patent is attached hereto as Exhibit 8 and incorporated by reference.

73. As a result of Defendants' unlawful activities, Acceleration Bay has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Acceleration Bay is entitled to preliminary and/or permanent injunctive relief.

74. Defendants' infringement of the '344 Patent has injured and continues to injure Acceleration Bay in an amount to be proven at trial.

75. Defendants' infringement of the '344 Patent is willful, as Defendants have been fully aware of the '344 Patent, and the fact that their products infringe the '344 Patent, for more than one year. On April 13, 2015, Acceleration Bay filed a complaint against Defendants alleging, *inter alia*, that the GTA products and the NBA 2K products infringe the '344 Patent. *Acceleration Bay LLC v. Take-Two Interactive Software Inc.*, 1:15-cv-00311-RGA, Dkt. No. 1. Moreover, Acceleration Bay served an Identification of Accused Products and Patents on Defendants on November 2, 2015, and claim charts detailing the manner in which the accused products infringe the '344 Patent on March 2, 2016. Despite this knowledge of the '344 Patent

and of their infringement, Defendants continue to manufacture, use, sale, import and/or offer for sale their GTA and NBA 2K products. As such, Defendants have acted recklessly and continue to willfully, wantonly, and deliberately engage in acts of infringement of the '344 Patent, warranting an award to Acceleration Bay of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT II

(Direct Infringement of the '966 Patent pursuant to 35 U.S.C. § 271(a))

76. Acceleration Bay repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

77. Defendants have infringed and continue to infringe one or more claims of the '966 Patent in violation of 35 U.S.C. § 271(a).

78. Defendants' infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

79. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing products and services have been without the permission, consent, authorization, or license of Acceleration Bay.

80. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including but not limited to, GTA and NBA 2K products, which embody the patented invention of the '966 Patent.

81. The GTA products infringe the '966 Patent through, at minimum, their Open World, Jobs, Social Club, Crews, Heists, Team Death Match, Come Out to Play, Hasta la Vista, and Siege Mentality modes, which allow individual players from different locations to interact and communicate with each other over a computer network for providing an information delivery service for a plurality of participants, whereby information is sent on a point-to-point

basis. By way of example, and not limitation, a claim chart further describing how the GTA products infringe at least one claim of the '966 Patent is attached hereto as Exhibit 7 and incorporated by reference.

82. The NBA 2K products infringe the '966 Patent through, at minimum, their Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes, which allow individual players from different locations to interact and communicate with each other over a computer network for providing an information delivery service for a plurality of participants, whereby information is sent on a point-to-point basis. By way of example, and not limitation, a claim chart further describing how the NBA 2K products infringe at least one claim of the '966 Patent is attached hereto as Exhibit 8 and incorporated by reference.

83. As a result of Defendants' unlawful activities, Acceleration Bay has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Acceleration Bay is entitled to preliminary and/or permanent injunctive relief.

84. Defendants' infringement of the '966 Patent has injured and continues to injure Acceleration Bay in an amount to be proven at trial.

85. Defendants' infringement of the '966 Patent is willful, as Defendants have been fully aware of the '966 Patent, and the fact that their products infringe the '966 Patent, for more than one year. On April 13, 2015, Acceleration Bay filed a complaint against Defendants alleging, *inter alia*, that the GTA products and the NBA 2K products infringe the '966 Patent. *Acceleration Bay LLC v. Take-Two Interactive Software Inc.*, 1:15-cv-00311-RGA, Dkt. No. 1. Moreover, Acceleration Bay served an Identification of Accused Products and Patents on Defendants on November 2, 2015, and claim charts detailing the manner in which the accused products infringe the '966 Patent on March 2, 2016. Despite this knowledge of the '966 Patent

and their infringement, Defendants continue to manufacture, use, sale, import and/or offer for sale their GTA and NBA 2K products. As such, Defendants have acted recklessly and continue to willfully, wantonly, and deliberately engage in acts of infringement of the '966 Patent, warranting an award to Acceleration Bay of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT III

(Direct Infringement of the '147 Patent pursuant to 35 U.S.C. § 271(a))

86. Acceleration Bay repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

87. Defendants have infringed and continue to infringe one or more claims of the '147 Patent in violation of 35 U.S.C. § 271(a).

88. Defendants' infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

89. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing products and services have been without the permission, consent, authorization or license of Acceleration Bay.

90. Defendants' infringement of one or more method claims of the '147 Patent is a result of Defendants' own actions separately, jointly, and/or their actions in combination with the actions of users, developers, and/or customers to perform the steps of the claimed methods.

91. Defendants direct or control users' performance of the steps of claimed methods as evident from and through the End User License Agreement (EULA) and Terms of Service for its products and services that users must agree to prior to use of Defendants' products or services (examples attached hereto as Exhibits 9-12). Defendants maintain control at all times over the operation and dissemination of content by users of Defendants' products and services, and the

users are contractually required to use only Defendants' software to access Defendants' online services and features. The EULA and Terms of Service for Defendants' products and services state that Defendants maintain direct control over all player-contributed content, including through gameplay or any other contribution generated through the use of Defendants' software, and that a player's use of the software grants Defendants the right to use the player's contributions in any way and for any purpose including the rights to reproduce, broadcast, use, adapt, and transmit content appearing or generated from Defendants' products or services. (*See, e.g.*, Ex. 9 [Take-Two's Terms of Service] at 3 ("Limited License by the Company") and 4 ("License to the Company"); Ex. 10 [Take-Two Interactive Software EULA] at 2 ("User Created Content"); Ex. 11 (Rockstar Games Terms of Service) at 1-2 ("Limited License by the Company" and "License to the Company"); Ex. 12 (Rockstar Games EULA) at 1-2 ("User Created Content").

92. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including but not limited to, GTA and NBA 2K products, which embody the patented invention of the '147 Patent.

93. The GTA products infringe the '147 Patent through, at minimum, their Open World, Jobs, Social Club, Crews, Heists, Team Death Match, Come Out to Play, Hasta la Vista, and Siege Mentality modes, which allow individual players from different locations to interact and communicate with each other over a multi-cast computer network, and where individual players can leave the computer network by sending messages to a second computer so that the second computer can connect to a third computer to maintain a regular network. By way of example, and not limitation, a claim chart further describing how the GTA products infringe at least one claim of the '147 Patent is attached hereto as Exhibit 7 and incorporated by reference.

94. The NBA 2K products infringe the '147 Patent through, at minimum, their Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes, which allow individual players from different locations to interact and communicate with each other over a multi-cast computer network, and where individual players can leave the computer network by sending messages to a second computer so that the second computer can connect to a third computer to maintain a regular network. By way of example, and not limitation, a claim chart further describing how the NBA 2K products infringe at least one claim of the '147 Patent is attached hereto as Exhibit 8 and incorporated by reference.

95. As a result of Defendants' unlawful activities, Acceleration Bay has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Acceleration Bay is entitled to preliminary and/or permanent injunctive relief.

96. Defendants' infringement of the '147 Patent has injured and continues to injure Acceleration Bay in an amount to be proven at trial.

97. Defendants' infringement of the '147 Patent is willful, as Defendants have been fully aware of the '147 Patent, and the fact that their products infringe the '147 Patent, for more than one year. On April 13, 2015, Acceleration Bay filed a complaint against Defendants alleging, *inter alia*, that the GTA products and the NBA 2K products infringe the '147 Patent. *Acceleration Bay LLC v. Take-Two Interactive Software Inc.*, 1:15-cv-00311-RGA, Dkt. No. 1. Moreover, Acceleration Bay served an Identification of Accused Products and Patents on Defendants on November 2, 2015, and claim charts detailing the manner in which the accused products infringe the '147 Patent on March 2, 2016. Despite this knowledge of the '147 Patent and their infringement, Defendants continue to manufacture, use, sale, import and/or offer for sale their GTA and NBA 2K products. As such, Defendants have acted recklessly and continue

to willfully, wantonly, and deliberately engage in acts of infringement of the '147 Patent, warranting an award to Acceleration Bay of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT IV

(Direct Infringement of the '634 Patent pursuant to 35 U.S.C. § 271(a))

98. Acceleration Bay repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

99. Defendants have infringed and continue to infringe one or more claims of the '634 Patent in violation of 35 U.S.C. § 271(a).

100. Defendants' infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

101. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing products and services have been without the permission, consent, authorization, or license of Acceleration Bay.

102. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including but not limited to, GTA and NBA 2K products, which embody the patented invention of the '634 Patent.

103. The GTA products infringe the '634 Patent through, at minimum, their Open World, Jobs, Social Club, Crews, Heists, Team Death Match, Come Out to Play, Hasta la Vista, and Siege Mentality modes, which allow individual players from different locations to communicate and interact with each other by sending data received from other neighboring players to other neighboring players, thereby creating reliability in the network. By way of example, and not limitation, a claim chart further describing how the GTA products infringe at least one claim of the '634 Patent is attached hereto as Exhibit 7 and incorporated by reference.

104. The NBA 2K products infringe the '634 Patent through, at minimum, their Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes, which allow individual players from different locations to communicate and interact with each other by sending data received from other neighboring players to other neighboring players, thereby creating reliability in the network. By way of example, and not limitation, a claim chart further describing how the NBA 2K products infringe at least one claim of the '634 Patent is attached hereto as Exhibit 8 and incorporated by reference.

105. As a result of Defendants' unlawful activities, Acceleration Bay has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Acceleration Bay is entitled to preliminary and/or permanent injunctive relief.

106. Defendants' infringement of the '634 Patent has injured and continues to injure Acceleration Bay in an amount to be proven at trial.

107. Defendants' infringement of the '634 Patent is willful, as Defendants have been fully aware of the '634 Patent, and the fact that their products infringe the '634 Patent, for more than one year. On April 13, 2015, Acceleration Bay filed a complaint against Defendants alleging, *inter alia*, that the GTA products and the NBA 2K products infringe the '634 Patent. *Acceleration Bay LLC v. Take-Two Interactive Software Inc.*, 1:15-cv-00311-RGA, Dkt. No. 1. Moreover, Acceleration Bay served an Identification of Accused Products and Patents on Defendants on November 2, 2015, and claim charts detailing the manner in which the accused products infringe the '634 Patent on March 2, 2016. Despite this knowledge of the '634 Patent and their infringement, Defendants continue to manufacture, use, sale, import and/or offer for sale their GTA and NBA 2K products. As such, Defendants have acted recklessly and continue to willfully, wantonly, and deliberately engage in acts of infringement of the '634 Patent,

warranting an award to Acceleration Bay of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT V

(Direct Infringement of the '069 Patent pursuant to 35 U.S.C. § 271(a))

108. Acceleration Bay repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

109. Defendants have infringed and continue to infringe one or more claims of the '069 Patent in violation of 35 U.S.C. § 271(a).

110. Defendants' infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

111. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing products and services have been without the permission, consent, authorization or license of Acceleration Bay.

112. Defendants' infringement of one or more method claims of the '069 Patent is a result of Defendants' own actions separately, jointly, and/or its actions in combination with the actions of users, developers, and/or customers to perform the steps of the claimed methods.

113. Defendants have direction or control over users' performance of the steps of claimed methods as evident from and through the End User License Agreement (EULA) and Terms of Service for its products and service that users must agree to prior to use of Defendants' products or services (examples attached hereto as Exhibits 9-12).

114. Defendants maintain control at all times over the operation and dissemination of content by users of Defendants' products and services, and the users are contractually required to use only Defendants' software to access Defendants' online services and features. EULA and Terms of Service for Defendants' products and services (examples attached hereto as Exhibits 9-

12) state that Defendants maintain direct control over all player-contributed content, including through gameplay or any other contribution generated through the use of Defendants' software, and that a player's use of the software grants Defendants the right to use the player's contributions in any way and for any purpose including the rights to reproduce, broadcast, use, adapt, and transmit content appearing or generated from Defendants' products or services. (*See, e.g.*, Ex. 9 [Take-Two's Terms of Service] at 3 ("Limited License by the Company") and 4 ("License to the Company"); Ex. 10 [Take-Two Interactive Software EULA] at 2 ("User Created Content"); Ex. 11 (Rockstar Games Terms of Service) at 1-2 ("Limited License by the Company" and "License to the Company"); Ex. 12 (Rockstar Games EULA) at 1-2 ("User Created Content").

115. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including but not limited to, GTA and NBA 2K products, which embody the patented invention of the '069 Patent.

116. The GTA products infringe the '069 Patent through, at minimum, their Open World, Jobs, Social Club, Crews, Heists, Team Death Match, Come Out to Play, Hasta la Vista, and Siege Mentality modes, which allow individual players from different locations to interact and communicate with each other over a multi-cast computer network, and where individual participants can be added to the network by, for example and not by way of limitation, identifying a pair of participants that are connected to the network, disconnecting the identified pair from each other, and then connecting a seeking participant to the identified pair. By way of example, and not limitation, a claim chart further describing how the GTA products infringe at least one claim of the '069 Patent is attached hereto as Exhibit 7 and incorporated by reference.

117. The NBA 2K products infringe the '069 Patent through, at minimum, their Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes, which allow individual players from different locations to interact and communicate with each other over a multi-cast computer network, and where individual participants can be added to the network by, for example and not by way of limitation, identifying a pair of participants that are connected to the network, disconnecting the identified pair from each other, and then connecting a seeking participant to the identified pair. By way of example, and not limitation, a claim chart further describing how the NBA 2K products infringe at least one claim of the '069 Patent is attached hereto as Exhibit 8 and incorporated by reference.

118. As a result of Defendants' unlawful activities, Acceleration Bay has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

Accordingly, Acceleration Bay is entitled to preliminary and/or permanent injunctive relief.

119. Defendants' infringement of the '069 Patent has injured and continues to injure Acceleration Bay in an amount to be proven at trial.

120. Defendants' infringement of the '069 Patent is willful, as Defendants have been fully aware of the '069 Patent, and the fact that their products infringe the '069 Patent, for more than one year. On April 13, 2015, Acceleration Bay filed a complaint against Defendants alleging, *inter alia*, that the GTA products and the NBA 2K products infringe the '069 Patent. Dkt. No. 1. Moreover, Acceleration Bay served an Identification of Accused Products and Patents on Defendants on November 2, 2015, and claim charts detailing the manner in which the accused products infringe the '069 Patent on March 2, 2016. Despite this knowledge of the '069 Patent and their infringement, Defendants continue to manufacture, use, sale, import and/or offer for sale their GTA and NBA 2K products. As such, Defendants have acted recklessly and

continue to willfully, wantonly, and deliberately engage in acts of infringement of the '069 Patent, warranting an award to Acceleration Bay of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT VI

(Direct Infringement of the '497 Patent pursuant to 35 U.S.C. § 271(a))

121. Acceleration Bay repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

122. Defendants have infringed and continue to infringe one or more claims of the '497 Patent in violation of 35 U.S.C. § 271(a).

123. Defendants' infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

124. Defendants' acts of making, using, importing, selling, and/or offering for sale infringing products and services have been without the permission, consent, authorization or license of Acceleration Bay.

125. Defendants' infringement of one or more method claims of the '497 Patent is a result of Defendants' own actions separately, jointly, and/or its actions in combination with the actions of users, developers, and/or customers to perform the steps of the claimed methods.

126. Defendants have direction or control over users' performance of the steps of claimed methods as evident from and through the End User License Agreement (EULA) and Terms of Service for its products and service that users must agree to prior to use of Defendants' products or services (examples attached hereto as Exhibits 9-12). Defendants maintain control at all times over the operation and dissemination of content by users of Defendants' products and services, and the users are contractually required to use only Defendants' software to access Defendants' online services and features. The EULA and Terms of Service for Defendants'

products and services state that Defendants maintain direct control over all player-contributed content, including through gameplay or any other contribution generated through the use of Defendants' software, and that a player's use of the software grants Defendants the right to use the player's contributions in any way and for any purpose including the rights to reproduce, broadcast, use, adapt, and transmit content appearing or generated from Defendants' products or services. (*See, e.g.*, Ex. 9 [Take-Two's Terms of Service] at 3 ("Limited License by the Company") and 4 ("License to the Company"); Ex. 10 [Take-Two Interactive Software EULA] at 2 ("User Created Content"); Ex. 11 (Rockstar Games Terms of Service) at 1-2 ("Limited License by the Company" and "License to the Company"); Ex. 12 (Rockstar Games EULA) at 1-2 ("User Created Content").

127. Defendants' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of Defendants' products and services, including, but not limited to, GTA and NBA 2K products, which embody the patented invention of the '497 Patent.

128. The GTA products infringe the '497 Patent through, at minimum, their Open World, Jobs, Social Club, Crews, Heists, Team Death Match, Come Out to Play, Hasta la Vista, and Siege Mentality modes, which allow individual players from different locations to interact and communicate with each other over a computer network through a portal computer. By way of example, and not limitation, a claim chart further describing how the GTA products infringe at least one claim of the '497 Patent is attached hereto as Exhibit 7 and incorporated by reference.

129. The NBA 2K products infringe the '497 Patent through, at minimum, their Online Leagues, MyPARK, Rec Hall, Stage, and Crew modes, which allow individual players from different locations to interact and communicate with each other over a computer network through a portal computer. By way of example, and not limitation, a claim chart further describing how

the NBA 2K products infringe at least one claim of the '497 Patent is attached hereto as Exhibit 8 and incorporated by reference.

130. As a result of Defendants' unlawful activities, Acceleration Bay has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

Accordingly, Acceleration Bay is entitled to preliminary and/or permanent injunctive relief.

131. Defendants' infringement of the '497 Patent has injured and continues to injure Acceleration Bay in an amount to be proven at trial.

132. Defendants' infringement of the '497 Patent is willful, as Defendants have been fully aware of the '497 Patent, and the fact that their products infringe the '497 Patent, for more than one year. On April 13, 2015, Acceleration Bay filed a complaint against Defendants alleging, *inter alia*, that the GTA products and the NBA 2K products infringe the '497 Patent. Dkt. No. 1. Moreover, Acceleration Bay served an Identification of Accused Products and Patents on Defendants on November 2, 2015, and claim charts detailing the manner in which the accused products infringe the '497 Patent on March 2, 2016. Despite this knowledge of the '497 Patent and their infringement, Defendants continue to manufacture, use, sale, import and/or offer for sale their GTA and NBA 2K products. As such, Defendants have acted recklessly and continue to willfully, wantonly, and deliberately engage in acts of infringement of the '497 Patent, warranting an award to Acceleration Bay of enhanced damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Acceleration Bay prays for judgment and relief as follows:

A. An entry of judgment holding Defendants have infringed and are infringing the '344 Patent, '966 Patent, '147 Patent, '634 Patent, '069 Patent, and '497 Patent;

B. A determination that Defendants' infringement has been willful, wanton, and deliberate, at least as of April 13, 2015;

C. An award to Acceleration Bay of such damages as it shall prove at trial against Defendants that are adequate to fully compensate Acceleration Bay for Defendants' infringement of the '344 Patent, '966 Patent, '147 Patent, '634 Patent, '069 Patent, and '497 Patent, said damages to be no less than a reasonable royalty;

D. An award of treble damages under 35 U.S.C. § 284;

E. A finding that this case is "exceptional," and an award to Acceleration Bay of its costs and reasonable attorney's fees, as provided by 35 U.S.C. § 285;

F. An accounting of all infringing sales and revenues, together with post-judgment interest and pre-judgment interest from the first date of infringement of the '344 Patent, '966 Patent, '147 Patent, '634 Patent, '069 Patent, and '497 Patent; and

G. Such further and other relief as the Court may deem proper and just.

DEMAND FOR JURY TRIAL

Acceleration Bay demands a jury trial on all issues so triable.

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