

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HIGH 5 GAMES, LLC,
Petitioner,

v.

KONAMI GAMING, INC.,
Patent Owner.

Case IPR2015-01935
Patent 8,096,869 B2

Before JOSIAH C. COCKS, MEREDITH C. PETRAVICK, and
MITCHELL G. WEATHERLY, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. §§ 42.4, 42.108

I. INTRODUCTION

A. BACKGROUND

High 5 Games, LLC (“High 5”) filed a petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 1–9, 11, 14, and 19–22 (the “challenged claims”) of U.S. Patent No. 8,096,869 B2 (Ex. 1001, “the ‘869 patent”). 35 U.S.C. § 311. Konami Gaming, Inc. (“Konami”) timely

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filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute when “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); 37 C.F.R. § 42.108. Based on our review of the record, we conclude that High 5 is not reasonably likely to prevail with respect to at least one of the challenged claims.

High 5 contends that the challenged claims are unpatentable under 35 U.S.C. § 103 based on the following grounds (Pet. 13–59):

References	Claims challenged
U.S. Patent Application No. 2003/0181240 A1 (Ex. 1003, “Nagao”) in view of U.S. Patent No. 8,246,047 B1 (Ex. 1004, “Sekine”)	1–9, 11, 14, and 19–22
U.S. Patent No. 6,159,096 (Ex. 1005, “Yoseloff”) in view of Sekine	1–9, 11, 14, and 19–22
Nagao in view of U.S. Patent No. 8,360,840 B2 (Ex. 1006, “Bennett”)	1–9, 11, 14, and 19–22
Yoseloff in view of Bennett	1–9, 11, 14, and 19–22

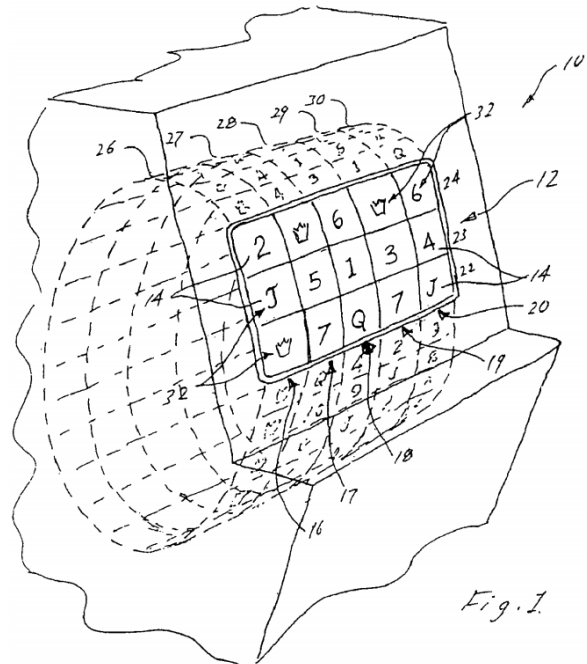
Generally, Konami contends that the Petition should be denied in its entirety. For the reasons described below, we decline to institute *inter partes* review of the challenged claims on any of the alleged grounds of unpatentability.

B. RELATED PROCEEDINGS

High 5 identified as a related proceeding the co-pending district court proceeding of *Konami Gaming, Inc. v. PTT, LLC, d/b/a High 5 Games*, Case No. 2:14-cv-01483-RFB-NJK (D. Nev.). Pet. 58. Konami identified the following additional matters as being related to this proceeding: *Konami Gaming, Inc. v. Marks Studios, LLC d/b/a Gimmie Games*, Case No. 2:15-cv-01485 (D. Nev.); IPR2015-01936 regarding related U.S. Patent No. 8,366,540 B2; IPR2015-01937 regarding related U.S. Patent No. 8,616,955 B2; and IPR2015-01939 regarding related U.S. Patent No. 8,622,810 B2. Paper 3, 2.

C. THE '869 PATENT

The '869 patent is titled "Gaming Machine with Runs of Consecutive Identical Symbols" and issued on Jan. 17, 2012, from an application filed on December 9, 2005. Ex. 1001, [22], [45], [54]. The '869 patent discloses a gaming machine for the playing of games of chance. *Id.* at 1:13–14. Figure 1 of the '869 patent, which depicts gaming machine 10, is reproduced at right. *Id.* at 4:14–16. Gaming machine 10 has display 12, which shows portions of adjoining simulated reels 26–30. *Id.* The simulated reels are divided into a number of elements 14, such as 256 elements, and each element displays one symbol 32. *Id.* at 4:16–23.



In one embodiment, the sequence of symbols in the element remains fixed except for, on the first or left-most reel, at least one run of identical symbols in each of a number of consecutive elements. *Id.* at 4:23–25, 4:33–46. Figure 2 of the '869 patent is reproduced below.

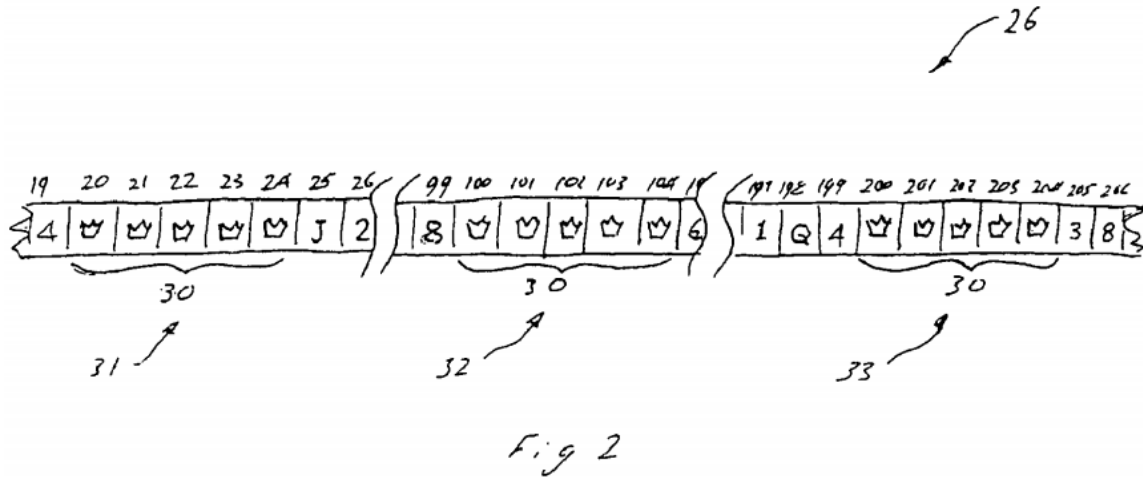


Figure 2 depicts a schematic representation of the symbols of simulated reel 26. Simulated reel 26 has three runs 31, 32, and 33 of five elements having identical crown symbols. *Id.* at 4:33–48. The selection of the identical symbol is made “through a notional rotation of an ‘inner reel,’” which “is in effect a look-up table and is not displayed.” *Id.* at 4:52–57. The selection of the identical symbol is performed anew for each new play of the game. *Id.* at 4:65–5:2. The identical symbol is selected from a subset of game symbols that appear on simulated reel 26 and each symbol in the subset is assigned a probability of selection. *Id.* at 4:58–61, 5:3–9; Fig. 3.

As the reels spin during a play of the games, a player will notice the runs of identical symbols passing through the display and have a heightened interest because the odds of a winning arrangement appearing on the display will increase. *Id.* at 5:10–16. In an alternative embodiment, simulated reels

27–30 of gaming machine 10 may also have at least one run of consecutive identical elements. *Id.* at 5:21–6:3.

The '869 patent has two independent claims. Independent claim 1 recites a gaming machine, Ex. 1001, 7:52, and independent claim 19 recites a “method for increasing probability of a winning outcome on a gaming machine,” *id.* at 8:64–65. Claim 1 is illustrative of the subject matter at issue and is reproduced below with line breaks inserted for clarity.

1. A gaming machine comprising:

a processor configured to execute a game displaying a matrix of symbol containing elements having a plurality of rows and a plurality of columns;

at least one column of said matrix comprising a portion of a simulated rotatable reel of a plurality of said symbol containing elements;

said simulated rotatable reel comprising sections of symbol containing elements displaying a plurality of symbols that are fixed for each game played on said gaming machine;

said simulated rotatable reel including at least one section in which a consecutive run of three or more of said symbol containing elements is populated by an identical symbol so that, as the simulated rotatable reel rotates, a consecutive string of said same identical symbol is sequentially displayed within said consecutive string of symbol containing elements; and

said identical symbol is randomly selected anew for each play of said game,

wherein said identical symbol is selected by virtually spinning a notional, non-visible, inner reel comprising a subset of said plurality of symbols.

Id. at 7:52–8:2.

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