

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CASE NO.....TBD
U.S. PATENT NO 8,096,869
PATENT ISSUE DATE Jan. 17, 2012
PATENT FILING DATE.....Dec. 9, 2005
FIRST NAMED INVENTOR..... Osamu Yoshimi
TITLE“Gaming Machine with Runs of Consecutive Identical Symbols”

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**DECLARATION OF DR. WILLIAM BERTRAM IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 8,096,869**

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I. INTRODUCTION AND SUMMARY OF MY OPINIONS

1. I, William Bertram, have been retained as an expert in this matter by counsel for Petitioner, High 5 Games, LLC (“Petitioner”). I understand that Konami Gaming, Inc., (“Patent Owner”) has asserted U.S. Patent No. 8,096,869, entitled Gaming Machine with Runs of Consecutive Identical Symbols (“the ‘869 Patent”) against Petitioner in Case No. 2:14-CV-01483-RFB-NJK. I also understand that Petitioner has submitted the ‘869 Patent for *Inter Partes* Review at the United States Patent Office’s Patent Trial and Appeal Board (“PTAB”).

2. I have been asked by counsel for Petitioner to consider whether it would be obvious to combine certain prior art and whether, alone or in combination, those prior art references invalidate claims 1-9, 11, 14, and 19-22 (“the Challenged Claims”) in the ‘869 Patent.

3. After reviewing these claims, the ‘869 Patent specification and file history, the four pieces of prior art—Nagao, Sekine, Yoseloff, and Bennett—and other information referenced herein, in my opinion, it would be obvious to make at least four different combinations of the prior art, and each of those combinations would render the ‘869 Patent obvious.

4. The opinions provided herein are my own and are based on my research in this matter and the education, experience, training, and skill I have accumulated in the gaming industry. Between now and such time that I may be asked to testify at

trial, I expect to continue my review, evaluation, and analysis of information submitted by the parties, as well as the relevant evidence presented at trial.

5. I also expect to review all submissions related to this Petition and expressly reserve the right to amend or supplement this report, as appropriate. I also expressly reserve the right to amend or supplement this Declaration in response to additional evidence that may come to light as a result of continuing investigation.

6. My opinions have also been guided by how a person of ordinary skill in the art (“POSITA”) would have understood the claims of the ‘869 Patent at the time of the alleged invention, which I have been asked to assume is February 14, 2005, the earliest filing date of an application that supports the ‘869 Patent claims. Based on my experience and background, I consider myself to be a POSITA relevant to the alleged inventions claimed in the ‘869 Patent. My opinions are also based on accepting as correct the proposed construction of the claim terms “randomly selected anew,” “notional, non-visible, inner reel,” “virtual rotation,” “subset of a said plurality of symbols,” “fixed for each game played,” “identical symbol,” and “probability of selection,” as set forth below in Section VII.

7. I am over 18 years of age. I have personal knowledge of the facts stated in this Declaration and could testify competently to them if asked to do so. My testimony in this Declaration, and any offered in these proceedings, is given from the perspective of a POSITA at the time of the filing of the ‘869 Patent—February 14, 2005.

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