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17 *Attorneys for Plaintiff Konami Gaming, Inc*

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 KONAMI GAMING, INC., a Nevada
21 corporation,

22 Plaintiff,

23 v.

24 PTT, LLC d/b/a High 5 Games, a Delaware
25 limited liability company,

26 Defendant.

27 PTT, LLC d/b/a High 5 Games, a Delaware
28 limited liability company,

Counterclaim-Plaintiff,

v.

KONAMI GAMING, INC., a Nevada
corporation,

Counterclaim-Defendant.

Case No.: 2:14-CV-01483-RFB-NJK

**KONAMI GAMING, INC.'S
DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT
CONTENTIONS**

[D. Nev. L.R. 16.1-6]

1 **KONAMI GAMING, INC.'S DISCLOSURE OF ASSERTED CLAIMS AND**
2 **INFRINGEMENT CONTENTIONS**

3 Pursuant to Local Rule 16.1-6, Plaintiff, Konami Gaming, Inc. ("Konami"), by and
4 through its attorneys of record, the law firm of Howard & Howard Attorneys PLLC, hereby
5 serve their Disclosure Asserted Claims and Infringement Contentions on Defendant PTT, LLC
6 d/b/a High 5 Games ("High 5").
7

8 This disclosure is made solely for the purpose of this action. Discovery in this matter
9 is ongoing. Konami's investigation regarding infringement and additional potential grounds
10 for infringement is ongoing. This disclosure is therefore based upon limited public
11 information available to Konami at the present time, together with Konami's good faith beliefs
12 regarding the Accused Instrumentalities,¹ and is given without prejudice to Konami's right to
13 supplement or amend its disclosure as additional facts are ascertained, analysis is made,
14 research is completed and claims are construed.
15

16 This disclosure is based at least in part upon Konami's present understanding of the
17 meaning and scope of the claims of the asserted patents in the absence of claim construction
18 proceedings. Konami reserves the right to supplement or amend this disclosure if its
19 understanding of the claims changes, including after the Court's Claim Construction.
20

21 Konami also reserves the right to amend and/or supplement its infringement
22 contentions as additional details, including technical documents pertaining to the design of
23 the Accused Instrumentalities, are made available. In the absence of detailed information
24 relating to the documentation of the internal workings of the Accused Instrumentalities, these
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28 ¹ "Accused Instrumentalities" are the games that include "Super Stack" made, used, sold, offered for sale, or sold
by the Defendant in this action.

1 infringement contentions are presently made, on information and belief, based on publicly
2 available information.

3 Additionally, Konami reserves the right to expand, add, change, or otherwise amend
4 its infringement contentions consistent with the Federal Rules of Civil Procedure and the
5 Local Rules of the District of Nevada based on its continued investigation, fact discovery and
6 expert discovery. Konami also reserves the right to amend its infringement contentions based
7 on Defendant's document production.
8

9 (a) LOCAL RULE 16.1-6(a)

10 Konami asserts that at least the following claims of U.S. Patent No. 8,096,869 (the
11 '869 patent), are infringed by the use of the Accused Instrumentalities: Claims 1-9, 11, 14,
12 and 19-22 of the '869 patent. Specifically, upon information and belief, Defendant has made,
13 used, sold and offered to sell an infringing gaming machine and also has made, used, sold,
14 and offered for sale an infringing method as represented by the Accused Instrumentalities
15 under 35 U.S.C. §271(a). More specifically, upon information and belief, Defendant has
16 infringed these claims by using the Accused Instrumentalities in and/or on gaming machines
17 for testing, approval, demonstrations, and offers for sale and, in addition, the Accused
18 Instrumentalities, as used, perform the claimed methods, as further detailed in Attachment A
19 to this disclosure.
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22 Defendant also has induced infringement of and contributorily infringed claims 1-9,
23 11, 14, and 19-22 under 35 U.S.C. §§271(b) and (c) by making, using, selling and offering to
24 sell the Accused Instrumentalities, with knowledge of the '869 patent, to manufacturers or
25 distributors or users of gaming machines. Based on facts known to date, Defendant has
26 performed such actions knowing that it will use the Accused Instrumentalities in branded
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1 gaming machines and, as such, will use the gaming machines in an infringing manner;
2 knowing that the Accused Instrumentalities are a material part of the invention claimed in the
3 '869 patent; knowing that the Accused Instrumentalities are especially made or especially
4 adapted for use in an infringement of the '869 patent; and knowing that the Accused
5 Instrumentalities are not staple articles or commodities of commerce that are suitable for
6 substantial non-infringing use. Examples of such gaming machines include, Bah Humbug,
7 Black Widow, Bollywood Brides, Brazilia, Cherry Mischief, Cirque Chinois, Dangerous
8 Beauty, Desert Rose, Diamonds of Athens, The Dream, Golden Goddess, Golden Tower,
9 Haunted Hearts, Island Eyes, Jaguar Princess, Shadow of the Panther, Prince of Lightning,
10 and The Royal Promise.² Some of these gaming machines are playable at various properties
11 in Clark County, Nevada, including, but not limited to, the Silverton Casino and Paris Las
12 Vegas Hotel and Casino, and others are available via Youtube videos.

15 Konami asserts that at least the following claims of U.S. Patent No. 8,366,540 (the
16 '540 patent), are infringed by the Defendant's Accused Instrumentalities: Claims 1-11, 13, 16
17 and 21-26 of the '540 patent. Specifically, upon information and belief, Defendant has made,
18 used, sold and offered to sell an infringing gaming machine and has made, used, sold, and
19 offered for sale an infringing method as represented by Defendant's Accused Instrumentalities
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23 ² No documentation or games were found for two game titles originally listed in the Complaint: Might Panther
24 or Dynamite Blast/White Swan, which were originally found at the Paris Hotel & Casino in June of 2015, but are
25 no longer there and no longer listed on High 5's website. Of note: High 5 has continued to add or delete games
26 that include "Super Stack" as evidenced by the website: [http://www.high5games.com/games/game-](http://www.high5games.com/games/game-library/#?filters=features-super-stacks)
27 [library/#?filters=features-super-stacks](http://www.high5games.com/games/game-library/#?filters=features-super-stacks), and as such, Konami intends to supplement the Accused Instrumentalities
28 as additional facts are ascertained to determine which actually games High 5 has made, used, sold, offered for
sale, or sold.

1 under 35 U.S.C. §271(a). More specifically, upon information and belief, Defendant has
2 infringed these claims by using the Accused Instrumentalities in and/or on gaming machines
3 for testing, approval, demonstrations, and offers for sale and, in addition, the Accused
4 Instrumentalities, as used, perform the claimed methods, as further detailed in Attachment A
5 to this disclosure.

6
7 Defendant also has induced infringement of and contributorily infringed claims 1-11,
8 13, 16 and 21-26 under 35 U.S.C. §§271(b) and (c) by making, using, selling and offering to
9 sell the Accused Instrumentalities, with knowledge of the '540 patent, to manufacturers or
10 distributors or users of gaming machines. Based on facts known to date, Defendant has
11 performed such actions knowing that it will use the Accused Instrumentalities in branded
12 gaming machines and, as such, will use the gaming machines in an infringing manner;
13 knowing that the Accused Instrumentalities are a material part of the invention claimed in the
14 '540 patent; knowing that the Accused Instrumentalities are especially made or especially
15 adapted for use in an infringement of the '540 patent; and knowing that the Accused
16 Instrumentalities are not staple articles or commodities of commerce that are suitable for
17 substantial non-infringing use. Examples of such gaming machines include, Bah Humbug,
18 Black Widow, Bollywood Brides, Brazilia, Cherry Mischief, Cirque Chinois, Dangerous
19 Beauty, Desert Rose, Diamonds of Athens, The Dream, Golden Goddess, Golden Tower,
20 Haunted Hearts, Island Eyes, Jaguar Princess, Shadow of the Panther, Prince of Lightning,
21 and The Royal Promise.³ Some of these gaming machines are playable at various properties
22 in Clark County, Nevada, including, but not limited to, the Silverton Casino and Paris Las
23 Vegas Hotel and Casino, and others are available via Youtube videos.
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³See Footnote 2.

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