

UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT TRIAL AND APPEAL BOARD

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Patent Interference No. 105,747 (RES)  
(Technology Center 2400)

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Zynga Inc.,  
Junior Party  
(Application 10/658,836;  
Inventors: Rolf E. Carlson and Michael W. Saunders),

v.

IGT,  
Senior Party  
(Patent 7,168,089;  
Inventors: Binh T. Nguyen, Michael M. Oberberger and  
Gregory Hopkins Parrott).

Before: FRED E. McKELVEY, RICHARD E. SCHAFER, and  
RICHARD TORCZON, *Administrative Patent Judges*.

Opinion for the Board filed by SCHAFER, *Administrative Patent Judge*.

Dubitante opinion filed by TORCZON, *Administrative Patent Judge*.

Concurring opinion filed by McKELVEY, *Administrative Patent Judge*.

DECISION - MOTIONS - 37 CFR § 41.125(a)

- 1 I.  
2 The interference is before a motions panel for consideration of non-priority  
3 motions.  
4 There was no oral argument.

1 Four substantive motions are currently pending:

2 1. IGT Motion 2<sup>1</sup> (Paper 94) for a judgment that Zynga's involved  
3 claims lack sufficient written descriptive support under 35 U.S.C. § 112, ¶ 1  
4 (2010);

5 2. Zynga's Substantive Motion 1 (Paper 89) to substitute a new count  
6 and designate all of the parties' currently involved claims as corresponding to the  
7 new count;

8 3. Zynga's contingent Motion 2 (Paper 90) for the benefit of the filing  
9 dates of Applications 09/698,507 and 60/161,591 as to the proposed new count;  
10 and

11 4. Zynga's Substantive Motion 3 (Paper 91) for a judgment that IGT's  
12 involved claims are unpatentable over prior art.

13 We grant IGT's Motion 2. Because we find that Zynga's specification does  
14 not provide written descriptive support for its involved claims, it is inappropriate  
15 and unfair to allow this interference to continue based upon the unsupported  
16 claims. We therefore terminate this interference with a judgment against Zynga  
17 and dismiss Zynga's motions as moot. See 37 CFR §41.201 (definition of  
18 threshold issue).

19 II.

20 This interference is between Zynga's Application 10/658,836 and IGT's  
21 Patent 7,168,089. The interference was declared on March 5, 2010, between Legal  
22 iGaming, Inc. and IGT. Zynga is the successor-in-interest to Legal iGaming. The  
23 interference was suspended due to Legal iGaming's bankruptcy proceeding. *In re*  
24 *Legal iGaming, Inc.*, Case No. 11-12771-BTB (Bankr. E.D. Nev). During the

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<sup>1</sup> IGT Substantive Motion 1 (Paper 25), asserting no interference-in-fact between the parties' claimed subject matter, was previously denied in a panel decision. Paper 50.

1 bankruptcy, Legal iGaming’s intellectual property rights were sold to Atwater  
2 Ventures, Ltd. which subsequently assigned its interests to Zynga.<sup>2</sup> The  
3 bankruptcy was terminated on April 5, 2013.

4 III.

5 The subject matter claimed relates to the authorization of electronic transfers  
6 between networked computer gaming machines or devices, particularly casino-type  
7 gaming machines. The parties employ an “authorization agent” or “gaming  
8 server” that determines whether to allow the transfer. In Zynga’s claims the agent  
9 approves the transfer of “gaming information.” In IGT’s claims the agent approves  
10 the transfer of “gaming software.” We reproduce Zynga’s Claim 29 and IGT’s  
11 Claim 1 below with paragraphing, bracketing, strikethrough, and emphasis added:

12 Zynga Claim 29

13 29. In an *authorization agent*, a method of generating a  
14 gaming transaction record used to facilitate a *transfer of gaming*  
15 *information* between two gaming devices, the method  
16 comprising:  
17 receiving a *gaming transaction request* from a first  
18 gaming device;  
19 authenticating an identity of the first gaming device;  
20 generating a gaming transaction record comprising  
21 gaming transaction information;  
22 and sending a message to the first gaming device wherein  
23 the message includes information authorizing the first gaming  
24 device to *transfer the gaming information to the* [a<sup>3</sup>] second  
25 gaming device wherein the first gaming device and the second  
26 gaming device are separate from the *authorization agent*,  
27 whereby the first gaming device transfers the gaming  
28 information to the second gaming device in response to the  
29 message;

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<sup>2</sup> Legal iGaming, Atwater, and Zynga will collectively be referred to as “Zynga.”

<sup>3</sup> As presented by Zynga, there is no antecedent in Claim 29 for “the second gaming device”.

1                    wherein the *gaming information* is for a game of  
2 chance played on a gaming machine.

3 IGT Claim 1

4                    1. In a *software authorization agent*, a method of  
5 generating a gaming software transaction record used to  
6 facilitate a *transfer of gaming software* between two gaming  
7 devices, the method comprising:  
8                    receiving a *gaming software transaction request* from a  
9 first gaming device;  
10                    authenticating an identity of the first gaming device;  
11                    generating a *gaming software transaction record*  
12 comprising gaming software transaction information that is  
13 used to approve or reject the transfer of gaming software from a  
14 second gaming device to the first gaming device  
15                    sending an authorization message to the first gaming  
16 device  
17                    wherein the authorization message includes information  
18 indicating whether the first gaming device is *authorized to*  
19 *transfer the gaming software* to the second gaming device and  
20                    wherein the first gaming device and the second gaming  
21 device are separate from the *software authorization agent*;  
22                    wherein the gaming software is for at least one of a) a  
23 game of chance played on a gaming machine, b) a bonus game  
24 of chance played on a gaming machine, c) a device driver for a  
25 device installed on a gaming machine, d) a player tracking  
26 service on a gaming machine and e) an operating system  
27 installed on the gaming machine.

28 Legal iGaming’s Clean Copy of Claims, Paper 14, p. 2; IGT Clean Copy of  
29 Claims, Paper 9, p. 2.

30 IV.

31 IGT Substantive Motion 2 (Paper 94) argues, inter alia, that the concept of  
32 using an “authorization agent” in Zynga’s claims is not described in Zynga’s  
33 specification: Paper 94, pp. 12-17.

34 A.

1 Relying on *Robertson v. Timmermans*, 603 F.3d 1309, 1312, (Fed. Cir.  
2 2010) and *In re Spina*, 975 F.2d 854, 856 (Fed. Cir. 1992), IGT argues that because  
3 Zynga copied the claims from IGT’s published application, “authorization agent”  
4 should be construed in light of IGT’s specification. Paper 94, pp. 3-4.

5 Zynga disagrees arguing that the claims are not copies of IGT’s claims.  
6 Paper 118, p. 2. For example, Zynga argues that there are several differences,  
7 including that its claims generically specify the use of an “authorizing agent” while  
8 IGT’s claims specify a “software authorizing agent.” We also observe that  
9 Zynga’s claims require the authorization agent control the transfer of “gaming  
10 information,” while IGT’s claims require that the authorization agent control the  
11 transfer of “gaming software.” Because of the differences, Zynga argues, the  
12 claims are not copies and cases holding that the originating disclosure provides the  
13 meaning of the pertinent claim language do not compel that its claims be  
14 interpreted in light of IGT’s disclosure. Paper 118, p. 2.

15 IGT does not contest that there are differences between its claims and  
16 Zynga’s. However, it argues that Zynga’s claims are “essentially copied” and  
17 remain closer in substance to IGT’s claims than to any of the Zynga’s original  
18 claims. Paper 135, p. 2, ll. 3-8.

19 B.

20 A review of the prosecution history of Zynga’s involved application shows  
21 that Zynga submitted claims copied from IGT’s published application (U.S. Patent  
22 Application Publication 2002/0116616 (Aug. 22, 2002) (Ex. 1010).  
23 Application 10/658,836, Transmittal letter filed August 21, 2003 (Ex 2010, Board  
24 page 1209). As originally copied from IGT’s published application, Zynga  
25 included claims that that were identical to claims in IGT’s involved application.  
26 Application 10/658,836, Amendment filed August 21, 2003 (Ex 2010, starting at  
27 Board page 1265). Thus, Zynga’s copied claims required the use of a software

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