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On behalf of: **Junior Party Zynga Inc.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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).

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

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**SECOND DECLARATION OF CHARLES R. BERG**

Zynga Ex. 2015 Zynga v. IGT Interference 105,747 (RES)
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I, Charles R Berg, do hereby declare as follows:

1. My experience and qualifications are summarized in my first declaration. (Ex. 2001 at ¶¶ 1-9.) All of the information in those paragraphs is correct except that I am no longer a Lead Systems Engineer at Station Casinos. Instead, I currently own and operate a Business and Technology consulting business. My clients are primarily, but not exclusively, in the gaming industry. My services focus on software development and include team leadership, project management, software architecture and design, and coding.

2. I have been asked by counsel for Zynga to review relevant materials and render my expert opinion in connection with technical matters related to the following Zynga motions:

Zynga Motion 1 to substitute a new count;

Zynga Motion 2 to be accorded the benefit of the relied-upon priority applications for the Zynga application-in-interference; and

Zynga Motion 3 that the claims of IGT's patent-in-interference are invalid.

3. In order to render my opinions in these matters, I have reviewed the following materials:

Zynga's U.S. Patent Application 10/658,836 ("the Carlson '836 application" or simply "the '836 application") (Exs. 1002-1004), and its prosecution history (Exs. 2016-2031);

The relied-upon priority applications for the Carlson '836 application, including U.S. Patent 7,260,834 ("the Carlson '834 patent" or simply "the '834 patent") (Ex. 2005) and U.S. Provisional Patent Application 60/161,591 ("the Carlson '591 provisional application" or simply "the '591 provisional application") (Ex. 2002);

IGT's U.S. Patent 7,168,089 ("the Nguyen '089 patent" or simply "the '089 patent") (Ex. 1001), and its prosecution history (Exs. 2032-2034);

U.S. Patent 6,805,634 issued to Wells et al. ("the Wells '634 patent") (Ex. 1006), which was cited in the prosecution history of the Carlson '836

application and the Nguyen '089 patent;

U.S. Patent 5,643,086 issued to Alcorn et al. ("the Alcorn '086 patent") (Ex. 1007), which was cited in the prosecution history of the Carlson '836 application and the Nguyen '089 patent;

U.S. Patent 4,636,951 issued to Harlick ("the Harlick '951 patent") (Ex. 2014), which was cited in the prosecution history of the Carlson '836 application;

IGT's Motion 1 (no interference-in-fact) (Paper 25);

The Board's decision on IGT's Motion 1 (Paper 50); and

All other exhibits referred to in this declaration.

### **I. SUBSTITUTION OF A NEW COUNT**

4. I understand that Zynga is filing a motion to substitute a new count in this interference. Count 1 of this interference has been defined as the "subject matter of Claim 1 or Claim 28 or Claim 52 or Claim 65 of Claim 84 or Claim 103 or Claim 123 of Patent 7,168,089." (Paper 1 at 4.) In other words, Count 1 of the interference includes the subject matter of all of the independent claims of the Nguyen '089 patent. I understand that the new count being proposed by Zynga still includes the subject matter of all of the independent claims of the Nguyen '089 patent, if they are found to be patentable. However, the new count being proposed by Zynga also includes the subject matter of all of the independent claims of the Carlson '836 application. If the independent claims of the Nguyen '089 patent are found to be unpatentable (*see infra* at ¶¶ 169-255, regarding Zynga Motion 3), then I understand that they are to be excluded from the proposal for the new count. The following table defines the existing count and the Proposed Substitute Count:

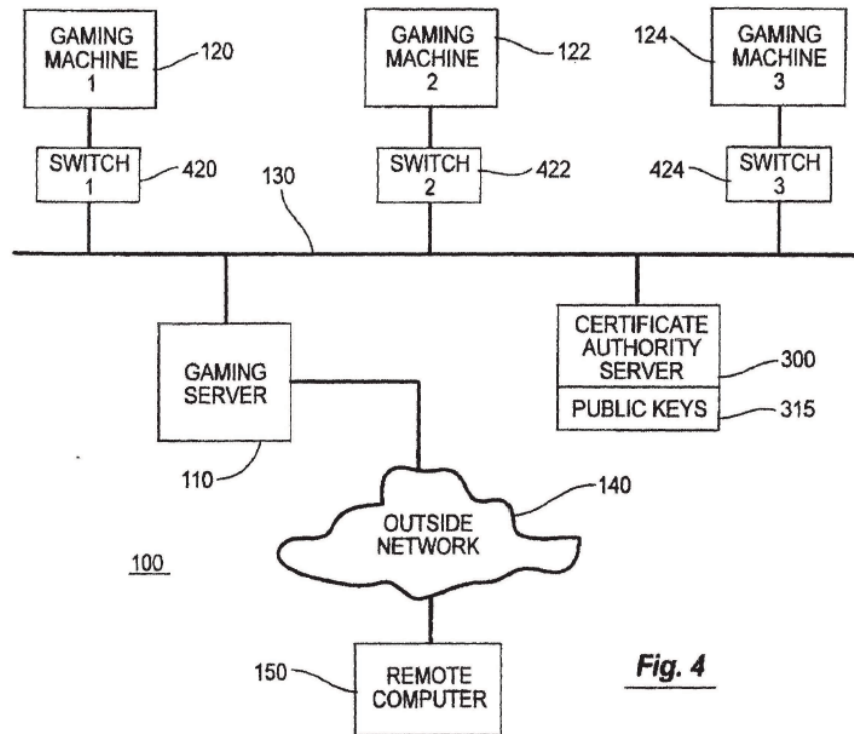
	<b>IGT Claims</b> (U.S. Pat. 7,168,089)	<b>Zynga Claims</b> (U.S. Pat. App. 10/658,836)
<b>Existing Count 1</b>	1, 28, 52, 65, 84, 103, 123	None
<b>Proposed Substitute Count</b> (If Zynga's Motion 3 is <i>Not</i> Granted)	1, 28, 52, 65, 84, 103, 123	29, 56, 93, 112, 131, 151, 165, 166
<b>Proposed Substitute Count</b> (If Zynga's Motion 3 is <i>is</i> Granted)	None	29, 56, 93, 112, 131, 151, 165, 166

5. I understand that the purpose of a count is to serve as a description of the interfering subject matter, and to define the scope of the proof which either party must present in order to establish its priority of invention in an interference. I further understand that a motion to substitute a broader count involves a discussion of the moving party's best proof to establish priority of invention, a showing that the best proof lies outside the scope of the existing count, and a showing that the substitute count is not unduly broad as compared to the best proof of priority. I understand that a substitute count must be shown to be patentable over the prior art. Finally, I understand that a substitute count must "interfere in fact" with at least one of the opposing party's claims, meaning that the substitute count anticipates or renders obvious at least one of the opposing party's involved claims, and vice versa.

**A. Zynga's Best Proof of Priority Relates to Its Remote Gameplay Embodiment**

6. Zynga's best proof for establishing priority of invention in this interference is related to the remote gameplay embodiment that is illustrated in, for example, Figure 4 of the Carlson '591 provisional application. The remote gameplay embodiment is also illustrated

and described substantively identically in the Carlson '834 patent and in the Carlson '836 application. A copy of this figure is reproduced below.



**Fig. 4**

7. Figure 4 illustrates a remote computer 150, a gaming machine 120, a gaming server 110, and a certificate authority server 300. Each of these devices is communicatively coupled to the others via networks 130 and 140. The system shown in Figure 4 can be used to enable a player using the remote computer 150 to connect to, and play, a specific gaming machine (e.g., 120-124) that is located in a casino. (See, e.g., Ex. 2002 at page 22, lines 4-20.)

8. In the remote gameplay embodiment, the remote computer 150 makes a request to the gaming server 110 to "connect to and play a specific gaming machine 120-124 that is located in a casino." (Ex. 2002 at page 22, lines 4-7.) If the gaming server 110 authorizes the request, the remote computer 150 connects to the gaming machine 120 for a gameplay

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