

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

IGT AND IGT CANADA SOLUTIONS  
ULC,

Plaintiffs

v.

ZYNGA INC.,

Defendant.

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NO. 6:21-cv-00331-ADA

JURY TRIAL DEMANDED

**DEFENDANT’S PRELIMINARY INVALIDITY CONTENTIONS**

Pursuant to the agreed date in the Joint Motion for Entry of Disputed Scheduling Order (Dkt. No. 20, Appendix A and B), as modified by agreement of the parties, Defendant Zynga, Inc. (“Zynga”) hereby serves its Preliminary Invalidity Contentions (the “Invalidity Contentions”) for U.S. Patent Nos. 8,708,791; 7,168,089; 9,159,189; 7,303,473; 8,795,064; and 8,266,212 (collectively, the “Asserted Patents”). Zynga is also producing on this date each of the prior art references identified in these Preliminary Invalidity Contentions. In addition, under an Outside Counsels’ Eyes’ Only designation pursuant to the Court’s interim Protective Order, Zynga is producing technical documents sufficient to show the operation of the accused products. Finally, following entry of a suitable Source Code Protective Order, Zynga is prepared to produce source code sufficient to show the operation of the accused products.

**I. INTRODUCTORY STATEMENT**

Zynga understands that Plaintiffs IGT and IGT Canada Solutions ULC (collectively, “Plaintiffs” or “IGT”) have asserted the following claims, which are collectively referred to herein as the “Asserted Claims”:

Asserted Patent	Asserted Claims
8,708,791 (the '791 Patent)	1, 4, 5, 7, 8, and 13
9,159,189 (the '189 Patent)	1, 4-8, 10, and 13-17
7,168,089 (the '089 Patent)	28-29, 31-33, 47-50, 84-86, 89-92, 99, and 100
7,303,473 (the '473 Patent)	1-4, 6-12, 14-18, 20-24, and 26-37
8,795,064 (the '064 Patent)	9-13, 15, and 17-18
8,266,212 (the '212 Patent)	24, 27-29, 31, and 34-36

The Preliminary Infringement Contentions (the “Infringement Contentions”) served by IGT on June 30, 2021, are vague and incomplete, and do not provide the specificity necessary to allow Zynga to adequately respond. For example, the Court’s Order Governing Proceeding for Patent Cases required Plaintiffs to “serve[] preliminary infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found.” IGT has failed to do so. IGT’s Infringement Contentions provide inadequate explanation for its infringement allegations and fail to fairly apprise Zynga of IGT’s infringement theories or what is alleged to infringe. An exemplary list of the claim elements for which IGT’s Infringement Contentions are deficient is set forth below:

- '791 Patent
  - “analyzing, by the at least one game server, the game play data to determine individual players’ typical gaming styles and times of deviation from the typical gaming styles” (claim 1)
  - “comparing, by the at least one game server, times of deviation from players’ typical gaming styles to determine instances of probable collusion between players” (claim 1)

With respect to the first element cited above, IGT cites no evidence and offers only conclusory allegations that in games like Zynga Poker, Zynga’s servers determine individual players’ times of deviation. IGT also fails to identify “to determine ... times of deviation from the typical gaming styles” in Zynga Poker or any other game which makes it impossible to

determine how IGT is reading this limitation on the accused products. With respect to the second element cited above, IGT fails to identify “deviation from players’ typical gaming styles” and “comparing ... deviation from players’ typical game styles” in Zynga Poker or any other game which makes it impossible to determine how IGT is reading these limitations on the accused products. IGT also cites no evidence and offers only conclusory allegations that in games like Zynga Poker, Zynga’s servers compare times of deviation from players’ typical gaming styles. IGT also cites unreliable evidence in its contentions that does not come from Zynga.

- ’189 Patent
  - “carrying out the game by the gaming terminal, including determining a final outcome of the game and any award for the outcome” (claim 1)
  - “transmitting signals from the gaming terminal to the mobile gaming device identifying the final outcome of the game and the award” (claim 1)
  - “extending the game animation for the game by the mobile gaming device during the communications link failure beyond a typical time for the game until the communications link has been re-established” (claim 1)
  - “The method of claim 1 wherein the step of displaying game animation comprises displaying game animation stored in a memory of the mobile gaming device prior to the game being initiated” (claim 6).

First, with respect to the first two elements cited above from claim 1, IGT cites no evidence and offers only conclusory allegations that in games like Mustang Money, Zynga’s servers determine a final outcome of the game and any award for the outcome and transmit to the user a final outcome of the game and any award for the outcome. Second, with respect to the third element of claim 1 identified above, IGT fails to identify the “typical time for the game” in Mustang Money or any other game which makes it impossible to determine how IGT is reading this limitation on the accused products. Third, with respect to claim 6, IGT does not explain how or when game animation is stored on a user’s device “prior to the game being initiated.”

- '089 Patent

- “sending an authorization message to the first gaming device wherein the authorization message includes information indicating whether the first gaming device is authorized to transfer the gaming software to a second gaming device and wherein the first gaming device and the second gaming device are separate from the software authorization agent” (claim 28)
- “receiving an approval of the gaming software transaction request from the gaming software authorization agent” (claim 85)

First, with respect to claim 28 and the claims that depend therefrom, IGT has not identified a software authorization “separate from” the first and second gaming devices, which renders its contentions vague and incomplete. Second, with respect to dependent claim 85 IGT cites to the same evidence it cited for independent claim 84 making it impossible to ascertain IGT’s views on what additional limitations have been added by dependent claim 85 and how those limitations are met in the accused products.

- '473 Patent

- “a website server that is capable of being operatively coupled via the Internet to said remote player devices, said website server capable of being operatively coupled to said first and second gaming servers, said website server comprising: a controller that comprises a processor and a memory” (claim 1)
- “wherein said memory of said first gaming server stores image data representing an image of at least five playing cards if said first game comprises poker, wherein said memory of said first gaming server stores image data representing an image of a plurality of simulated slot machine reels if said first game comprises slots, wherein said memory of said first gaming server stores image data representing an image of a plurality of playing cards if said first game comprises blackjack” (claim 2)
- “said controller of one of said gaming servers is programmed to encrypt data transmitted to said website server and wherein said controller of said website server is programmed to decrypt data received by said website server from one of said gaming servers” (claim 6)
- “one of said controllers of one of said gaming servers is programmed to determine whether a data communication received by said one gaming server was transmitted by an authorized sender” (claim 7)
- “said first game may be played exclusively via said first gaming server, . . . said second game may be played exclusively via said second gaming server . . . .” (claim 8)

- “said data communication being conducted through said website computing apparatus” (claim 27)
- “at said website computing apparatus, initiating the retrieval of game display data from said first/second gaming apparatus” (claim 29)
- “receiving at said website computing apparatus wager data from said remote player device via the Internet” (claim 29)
- “transmitting first/second game display data from said gaming apparatus to a website computing apparatus . . . receiving wager data from said website computing apparatus . . . transmitting outcome data from said gaming apparatus to said website computing apparatus . . . .” (claim 33)

First, IGT’s contentions rely “on information and belief” 64 times without meaningful accompanying allegations. *See generally* Infringement Contentions Ex. D. Such heavy reliance on information and belief does not put Zynga on adequate notice as to how IGT’s contends that Zynga infringes every element of each Asserted Claim of the ’473 patent. Second, IGT alleges that a Facebook platform comprises a website server. *Id.* at 15, 19–20. IGT does not explain how that constitutes infringement by Zynga. Third, IGT’s contentions merely show an image comprising five playing cards being displayed. *Id.* at 30. This does not show that “said first gaming server stores image data representing an image of at least five playing cards” as required by claim 2. Similar deficiencies exist with respect to claim elements 2(b)–2(c). *See id.* at 31–33. Fourth, claim 6 requires “said controller of one of said gaming servers is programmed to encrypt data transmitted to said website server and wherein said controller of said website server is programmed to decrypt data received by said website server from one of said gaming servers.” IGT’s contentions merely show a screenshot titled “Security of Your Information.” *Id.* at 38. This falls short of showing any encryption or decryption performed at the alleged servers as required by the claim. Fifth, claim 7 requires “determin[ing] whether a data communication received by said one gaming server was transmitted by an authorized sender.” IGT alleges that Zynga “‘proactively’ takes steps to counteract unauthorized actions affecting its games.” *Id.* at 39. IGT fails to explain, however, how taking such steps satisfies the claim limitation. Sixth,

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