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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
12/113.134 04/30/2008 Joshua D. Larsen 110384.640 1443

66880 7590 12/09/2016
Seed IP Law Group LLP/Scientific Games
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SUITE 5400
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EXAMINER

WEATHERFORD, SYVILA

ART UNIT PAPER NUMBER

3717

NOTIFICATION DATE DELIVERY MODE

12/09/2016

ELECTRONIC

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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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*Ex parte* JOSHUA D. LARSEN, CHRISTOPHER D. BARTON,  
NATHAN K. HARVEY, and METTU R. REDDY

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Appeal 2015-001475  
Application 12/113,134  
Technology Center 3700

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Before BENJAMIN D. M. WOOD, WILLIAM A. CAPP, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1–21 as unpatentable under 35 U.S.C. § 103(a) over Lee (US 2006/0160622 A1, pub. July 20, 2006) and Choi (US 2007/0094694 A1, pub. Apr. 26, 2007) and the rejection of claim 21 over Lee, Choi, and Jhang (US 2007/0233750 A1, pub. Oct. 4, 2007). We have jurisdiction under 35 U.S.C. § 6(b).<sup>1</sup>

We AFFIRM.

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<sup>1</sup> This appeal is related to Appeal No. 2015-001455, which is an appeal of Non-Provisional Application No. 12/113,128.

## THE INVENTION

Appellants' invention relates to gaming machines. Spec. ¶ 1.  
Claim 1, reproduced below with disputed claim language highlighted, is illustrative of the subject matter on appeal.

1. A system for downloading gaming related data in a casino gaming environment, from a server to a gaming machine, the system comprising:

a server interconnected to a gaming network;

one or more gaming machines connected to the server via the gaming network, wherein each gaming machine includes a buffer, RAM, storage media, and a gaming processor; and

a download throttling system, wherein the download throttling system enables download of gaming related data to a gaming machine in a background operation while a gaming application on the gaming machine is available for use;

wherein the download throttling system enables variation in configurable download speed of the gaming related data in response to game events when downloading in the background operation, wherein there are more than one configurable download speeds, wherein a fastest configurable download speed is employed when a gaming machine is idle, and *wherein a slowest configurable download speed is employed, in anticipation of game play commencing, when there is a money transaction that inputs money into the gaming machine or money remains in the gaming machine;*

wherein the download throttling system identifies game events that are used to determine configurable download speed, wherein the download throttling system establishes the configurable download speed based on the identified game events; and

wherein the download throttling system manages the downloading of gaming related data to a gaming machine in a background operation while a gaming application on the gaming machine is available for use at the established configurable download speed.

OPINION

*Unpatentability of Claims 1–21  
over Lee and Choi*

*Claims 1–20*

Appellants argue claims 1–20 as a group. Appeal Br. 4–7. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

The Examiner finds that Lee discloses all of the elements of claim 1 except for the limitations directed to buffering and variation in configurable download speed depending on whether the machine is idle or money is input into the machine. Non-Final Action 3–4. The Examiner finds that Lee teaches tangible machine-readable media for receiving game content. *Id.* at 4. The Examiner finds that a buffer is commonly known to be holding section of memory, temporarily holding in-coming and out-going data. *Id.* The Examiner relies on Choi as disclosing dynamic control of download speed. *Id.* at 4–5 (citing Choi ¶¶ 10, 54, 58, Figs. 4A–4B). According to the Examiner:

It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Lee as using a buffer in moving data from the network to its storage area, since it is a common practice. Also, to modify Lee with the teachings of Choi to categorize the optimum times for downloading software in relation to what application is being operated on the gaming machine; realizing that CPU and/or memory usage may be predetermined based upon operation of certain applications (or pre-identified game events). Subsequently, once a particular application is initiated, it is identified for controlling (or varying) the download speed to a rate appropriate for that application to operate on the gaming machine, the speeds can be adjusted depending on whether gaming machine is executing a high usage level video game or sitting idle. This allows the variation of download speed to be dynamically performed according to Choi [page 1, para 0010]. Such changes to Lee

would make the download operation transparent to the user of the gaming machine.

*Id.* at 5.

Appellants traverse the Examiner's rejection by arguing that the prior art does not teach or suggest slowing down the configurable download speed of the gaming machine when there is money in the gaming machine. Appeal Br. 6. Appellants characterize the act of depositing money in the gaming machine as triggering an anticipation that system resource usage will increase imminently. *Id.* According to Appellants, their claimed system is "not surprised" by a rapid increase in system resource usage. *Id.*

Appellants attempt to distinguish Choi by arguing that Choi dynamically sets download speed based on what type of application is currently operating, not what type of application is going to be operating in the future. *Id.* at 7. According to Appellants, "Choi in particular is limited to what can be done during game play [] not in anticipation thereof." *Id.* at 8.

In response, the Examiner states that Choi determines the download speed according to the type of application operating on a device and altering the download speed accordingly. Ans. 7. The Examiner observes that one of the applications that may be used to determine the download speed is playing a game. *Id.* (citing Choi ¶¶ 8, 49). The Examiner states that Choi is a secondary reference that is used to modify Lee, which teaches coin operated gaming devices. *Id.* The Examiner reasons and further states that it is well-known that insertion of money into a coin-operated gaming device starts the play of a game on that gaming device. *Id.* Therefore, according to the Examiner, insertion of money into the gaming device can indicate the

start of playing a game such that insertion of money can be used as the type of application determining the download speed. *Id.*

The Examiner further responds to Appellants' argument that Choi only monitors current applications and, therefore, does not anticipate what type of application is going to be operating in the future. *Id.* at 8. The Examiner states that Appellants' position is predicated on the assumption that insertion of money into a gaming device is an act that is separate and apart from playing a game on the gaming device. *Id.* The Examiner takes the position that, in view of Choi, insertion of money can be set in advance as the indication of the type of application that will be used to alter the download speed. *Id.*

In reply, Appellants challenge the Examiner's statement that it is well-known that insertion of money into coin operated gaming devices starts the play of a game. Reply Br. 2. According to Appellants, gaming machines do not begin to operate upon insertion of money, rather, they begin upon pressing a button, such as "spin" or "deal," after a wager has been made. *Id.* at 3. Appellants argue that making a wager is a separate event from inserting money into a machine. *Id.* Appellants argue a gaming machine accounts for money that is input into the gaming machine, for example, by crediting a credit meter, but asserts that "the gaming machine remains idle until a game has been activated and is operation or running." *Id.* Appellants reiterate the argument from their Appeal Brief that Choi determines download speed according to the application that is currently running, which Appellants distinguish from varying down speed "in anticipation of game play commencing when there is a money transaction inputting money into the gaming machine," as recited in claim 1. *Id.*

Lee discloses a gaming system that includes a coin/credit detector 340 that monitors receipt of payment for game play through coins, bills, cash-value cards, or credit cards. Lee ¶¶ 44, 45. Lee discloses that software can be downloaded to a gaming device 430 in a background operation while an application, such as a gaming application, runs in the foreground on the gaming device. *Id.* ¶¶ 47, 57.

Choi discloses a method of controlling the download speed of a broadcast receiving device. Choi, Abstract. In the embodiment disclosed in Figure 6, at steps S220 and S230, download is performed at a controlled download speed. *Id.*, ¶ 68, Fig. 6.

the download speed is dynamically increased or decreased according to the processing resources consumed in operating the application. As described above, the download speed is decreased or set as “0” (i.e. stopped downloading data) as the processing resources consumption of the broadcast receiving device **100** increases. If the processing-resource consumption of the broadcast receiving device **100** decreases, the download speed may be increased. At this time, the stopped download may be restarted.

*Id.* ¶ 70. Choi further explains that information on the type of application that triggers a certain download speed may be set in advance and the system may decrease the download speed if the set application is operated.

As another exemplary embodiment for controlling the download speed, when the monitoring module **220** monitors what type of application is operating, the control module **230** may lower the download speed to less than a certain level or stop the download if a predetermined type of application is operating. A number of processing resources are needed to play a moving picture or a game, so the download speed may be set as “0” when the application for playing a moving picture or a game is operating. *Information on the type of application may be set in advance, thereby decreasing the download speed*

*if the set application is operated.* The information may be stored in the storage module **240**.

*Id.* ¶ 58 (emphasis added).

The Examiner’s proposed combination of Lee and Choi discloses a gaming device that receives money and then dynamically sets a download speed for downloading that occurs in the background while gaming takes place in the foreground. *See* Lee ¶¶ 44, 45, 47, 57; Choi ¶¶ 68, 70. As taught by Choi, information on the type of application that triggers a reduced download speed may be “set in advance,” thereby anticipating future systems resource usage. Choi ¶ 58; Non-Final Action 6. In such a combination, the input of money, as taught by Lee, may be identified as the type of application that triggers a reduced download speed, as taught by Choi.

Appellants’ point that Choi slows the download speed in response to an application that is currently running instead of anticipating a future event is well-taken. Moreover, we do not necessarily agree with the Examiner that inputting money “starts” the game, as such a construction reads “*in anticipation of game play commencing*” out of the claim. That does not mean, however, that the Examiner erred in rejecting the claim. The Examiner’s rejection reasons that, “once a particular application [or “pre-identified game event[.]”] is initiated, it is identified for controlling (or varying) the download speed to a rate appropriate for that application to operate on the gaming machine, the speeds can be adjusted depending on whether gaming machine is executing a high usage level video game or sitting idle. This allows the variation of download speed to be dynamically performed according to Choi.” Non-Final Action 5. Choi varies download speed based on the occurrence of an event, which may be identified in

advance. Choi ¶ 58. Assuming, for sake of argument, that there is distinction between putting money into a machine and starting a game on the machine as two separate and identifiable “events,” Appellants do not explain or provide evidence as to why the selection of one event (money input) opposed to the other (game commencement) rises to the level of patentable invention.

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

*KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

In the instant case, the sole aspect of Appellants’ invention that is relied on for patentability over Lee and Choi is slowing the download speed upon the event of putting money into the gaming machine. We are not persuaded that such rises to the level of patentable invention. The input of money is one of only a finite number of identifiable events that occur between a gaming machine being idle and the commencement of game play. Moreover, it is reasonably foreseeable that commencement of game play is likely to follow soon after putting money into the machine. *See* Appeal Br. 6 (“system resource usage will increase imminently”). In our opinion, merely triggering the slowing of download speed upon the event of putting money into the gaming machine, instead of commencement of game play, is the product not of invention, but of ordinary skill and common sense. *Id.*

In view of the foregoing discussion, we determine the Examiner’s findings of fact are supported by a preponderance of the evidence and that

the Examiner's legal conclusion of unpatentability is well-founded. Accordingly, we sustain the Examiner's unpatentability rejection of claims 1–20.

*Claim 21*

In view of our disposition of the Examiner's rejection of claim 21 under Lee, Choi, and Jhang below, we do not reach the Examiner's rejection of claim 21 under Lee and Choi.

*Unpatentability of Claim 21  
under Lee, Choi, and Jhang*

Claim 21 is an independent claim. Claims App. The Examiner finds, and Appellants do not dispute, that Jhang discloses the use of a processor to write data blocks from a buffer memory unit into a main memory unit. Non-Final Action 10. The Examiner concludes that it would have been obvious to combine the teachings of Jhang with those of Lee and Choi and to achieve the claimed invention. *Id.* at 11. In traversing the Examiner's rejection, Appellants rely solely on arguments regarding whether Choi identifies game events associated with CPU usage that are used to vary download speed, which we previously considered and found unpersuasive with respect to claim 1 and are equally unpersuasive here. Appeal Br. 8–9.

We sustain the Examiner's unpatentability rejection of claim 21 over Lee, Choi, and Jhang.

DECISION

The decision of the Examiner to reject claims 1–21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED