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Everi Games, Inc. Attn: Ms. Harper Ko, Chief Legal Officer - GC 206 Wild Basin Road South Building B, Suite 400 Austin, TX 78746			LEICHLITER, CHASE E	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN WATKINS

Appeal 2018-007063
Application 13/627,787
Technology Center 3700

Before JOHN C. KERINS, CHARLES N. GREENHUT, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28. Appeal Br. 6. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM, but designate our decision as including a new ground of rejection.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Everi Games, Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The “present invention relates to wagering games, gaming machines, gaming systems, program products for such gaming machines[,] and associated methods.” Spec. 2 (Field of the Invention). Claims 1, 7, and 12 are independent. Appeal Br. 10–17 (Claims App.). We reproduce claim 1, below, with emphases added to two particular limitations discussed in this decision:

1. A method for operating a reel-type wagering game using a gaming machine in which one of a number of distinct game symbol weighting sets is used to display a game result with a number of mechanical or video-generated reel strips, each reel strip having a number of different stop positions and populating at least one symbol location in a matrix of symbol locations with a respective game symbol for a respective game play, the method including:

(a) *randomly selecting the one game symbol weighting set from the number of distinct game symbol weighting sets using a game processor configured to present the game, each game symbol weighting set associated with a different target game symbol from a universe of game symbols included on the reel strips and wherein the one game symbol weighting set adjusts the probabilities of the reel strip stopping at particular stop positions such that a probability of landing at a stop position correlating to that target game symbol for the respective game symbol weighting set is relatively higher than a probability of landing at a stop position correlating to that game symbol in the other game symbol weighting sets;*

(b) *through a display system of a gaming machine, displaying a respective game symbol at each symbol location of the matrix of symbol locations, each respective symbol location displaying a symbol based on reel stop positions randomly selected with a weighted selection according to the selected game symbol weighting set;*

(c) evaluating the matrix of symbol locations and displayed game symbols for the presence of a winning symbol combination defined for the wagering game; and

(d) awarding a prize at the gaming machine for each winning symbol combination defined through the matrix of symbol locations.

Appeal Br. 10 (Claims App., emphases added).

REFERENCE

The prior art relied upon by the Examiner is U.S. Patent Number 5,102,137 to Ekiert, issued April 7, 1992. Final Act. 2.

REJECTION

The Examiner rejects claims 1, 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28 as anticipated under 35 U.S.C. § 102(b) by Ekiert. Final Act. 2.

OPINION

Appellant contests the rejection of claims 1, 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28 collectively. *See* Appeal Br. 6–9. We select claim 1 as representative, treating claims 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28 as standing or falling with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

I. Examiner's Rejection

The Examiner rejects claims 1, 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28 as anticipated by Ekiert. Final Act. 2. We reproduce Ekiert's Figure 1, below:

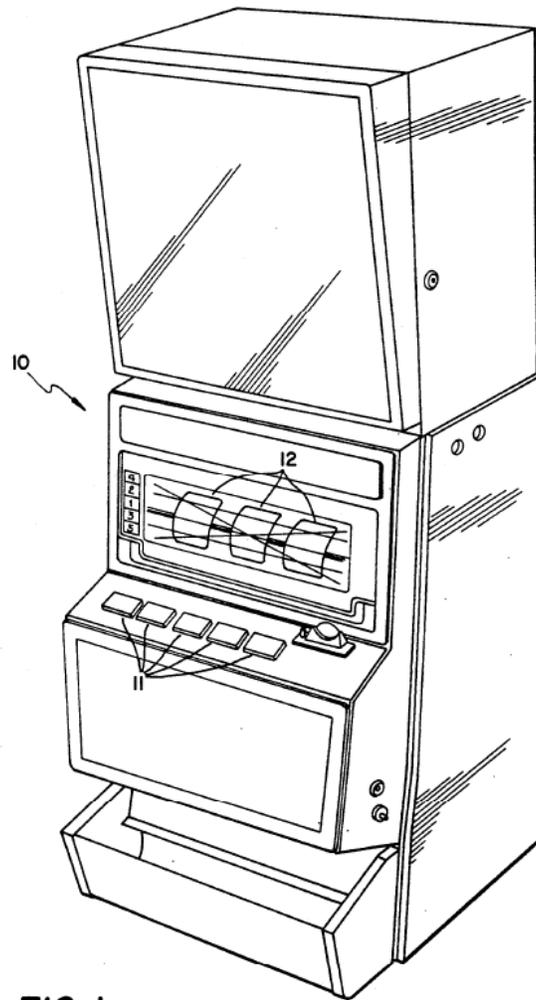


FIG. 1

Ekiert's Figure 1 depicts "a typical multi-line gaming machine." Ekiert, 3:18–19. In particular, Figure 1 depicts slot machine 10 of the spinning reel type, having three spinning reels 12. *Id.* at 3:34–37.

As to independent claim 1, the Examiner finds that Ekiert discloses the claimed method for operating a reel-type wagering game. Final Act. 2–3. Our decision focuses on two limitations that Appellant contends are not disclosed:

- (a) randomly selecting the one game symbol weighting set from the number of distinct game symbol weighting sets using a game processor configured to present the game, each game symbol weighting set associated with a different target

game symbol from a universe of game symbols included on the reel strips and wherein the one game symbol weighting set adjusts the probabilities of the reel strip stopping at particular stop positions such that a probability of landing at a stop position correlating to that target game symbol for the respective game symbol weighting set is relatively higher than a probability of landing at a stop position correlating to that game symbol in the other game symbol weighting sets;

(b) through a display system of a gaming machine, displaying a respective game symbol at each symbol location of the matrix of symbol locations, each respective symbol location displaying a symbol based on reel stop positions randomly selected with a weighted selection according to the selected game symbol weighting set;

Appeal Br. 6–8; *see also id.* at 10 (Claims App.)

In addressing limitation (a), the Examiner finds that the embodiments shown in Ekiert's Figures 3 and 6 disclose the claimed functions. *See* Final Act. 3 (citing also Ekiert 1:30–33, 3:61–67; 4:11–35; 5:26–43). We reproduce Ekiert's Figure 3, below:

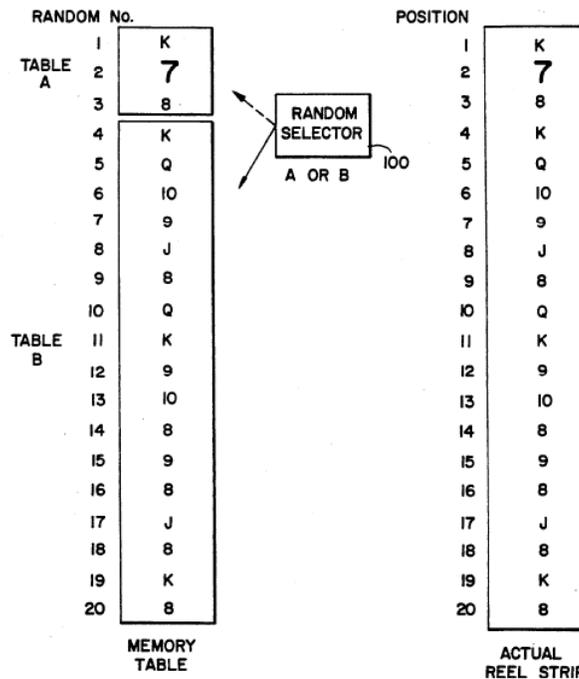


FIG. 3

Figure 3 depicts a “reel mapping arrangement in accordance with” Ekiert’s invention. Ekiert 3:22–23. Ekiert describes two subset tables (A and B) that correspond to the set of random numbers available for each reel 12. *See id.* at 3:41–43. The total table memory, which is divided into subset tables A and B (and shown on the left), equals the same number of random numbers as there are in the actual reel strip (shown on the right). *Id.* at 4:12–16. Ekiert further describes that one of the subset tables is selected for a particular game. *See id.* at 3:43–47; *id.* at 4:23–24. “The selection means chooses one of the subset tables and then a random number is chosen from the particular subset table which has been selected.” *Id.* at 4:18–21. As such, in the embodiment of Figure 3, if subset table A is selected, either a K (king), 7, or 8 will be chosen on the reel strip for that particular game. *See id.*

In addressing limitation (b), the Examiner interprets this limitation broadly such that the “game symbol weighting set associated with a different target game symbol” need only apply to one reel, and not all reels of the matrix. *See* Ans. 9 (“in context with the claim as a whole . . . [the limitation] does not specifically claim, ‘showing each group having weighting sets preferring a target symbol for all of the reels.’”). In applying Ekiert under this interpretation, the Examiner finds that “Ekiert does just this for reel 1 in Fig. 5 as described in Col. 4 Lines 38–48 and reel 1 in Col. 5 Lines 4-22.” Ans. 10.

II. Appellant’s Arguments

Appellant contends that Ekiert fails to disclose elements (a) and (b). *See* Appeal Br. 6–8.

As to limitation (a), Appellant argues that Ekiert’s “selection is specifically said to not be weighted” (*id.* at 6 (quoting Ekiert 4:65–67)) and the claimed invention, by contrast, “adjusts the probabilities of the reel strip stopping at particular stop positions” (*id.* at 7 (quoting limitation (a) of claim 1)).

As to limitation (b), Appellant argues that the Examiner misreads the claim (*see* Reply Br. 2) and that the limitation requires “displaying a respective game symbol at **each symbol location of the matrix of symbol locations,**” with “each respective symbol location displaying a symbol based on reel stop positions randomly selected with a weighted selection according to **the selected game symbol weighted set**” (*id.* at 4 (original emphasis kept)). Appellant contends that Ekiert does not disclose that a subset table selection is made *for all reels/reel strips*, and therefore does not display a

game symbol at a plurality of symbol locations, based on a common game symbol weighted step. *See id.* at 4 (“Because Ekiert discloses that a subset table selection is made for each reel and not for all reels/reel strips . . . Ekiert necessarily does not disclose . . .”) (citing Ekiert 4:36–48, 5:4–20).

III. Analysis

a. Argument #1, Limitation (a)

We find Appellant’s argument unpersuasive and adopt, as our own, the Examiner’s findings and analysis as to claim limitation (a).

We disagree with Appellant’s contention that Ekiert’s “selection is specifically said to not be weighted.” Appeal Br. 6. To the contrary, we find that Ekiert’s selection process is weighted. To illustrate our findings, we turn to Ekiert’s Figure 6, reproduced below:

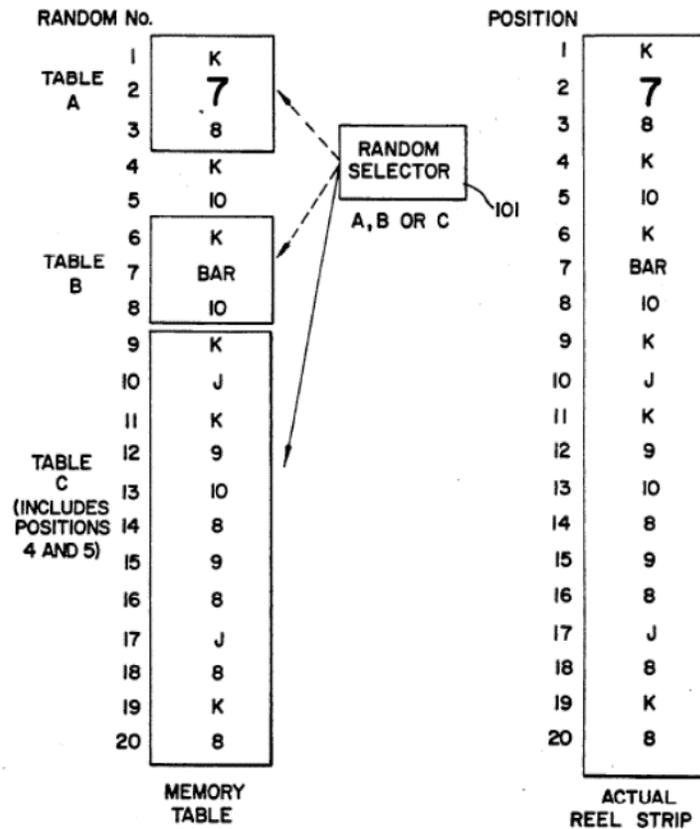


FIG. 6

In the embodiment of Figure 6, tables A and B include symbols 7 and BAR, respectively, which satisfy the claimed “different target game symbols” on the physical reel strip. Ekiert 5:31–34. When table A is selected, the player has a 1 in 3 chance of landing on “7” on that reel strip, despite the fact that there are 20 positions on the actual reel strip. *See id.* at Fig. 6. When table B is selected, the player has a 1 in 3 chance of landing on “BAR” on that reel strip. *Id.* When table C is selected, the player has zero chance of landing on 7 or BAR, but has a 4 in 12 (or 1 in 3) chance of landing on “8.”

We find that Ekiert selects one game symbol weighting set (one of tables A, B, and C) from the number of distinct game symbol weighting sets

(tables A, B, and C), and that each game symbol is associated with a different target game symbol (e.g., table A with “7,” table B with “BAR”). We further find that Ekiert’s selection of table subsets satisfies the claimed “wherein the one game symbol weighting set adjusts the probabilities of the reel strip stopping at particular stop positions such that a probability of landing at a stop position correlate[es] to that target game symbol.” For example, the probability of landing on the BAR symbol is increased to 1 in 3 when subset table B is selected. If table C is selected, on the other hand, there is zero chance that the player will land on BAR.

For the foregoing reasons, Appellant’s argument as to claim limitation (a) is not persuasive.

b. Argument #2, Limitation (b)

We find that the Examiner misconstrues claim limitation (b). *See, e.g.,* Ans. 10 (“claim 1 is not claimed in such a way as to convey that one game symbol weighting set is selected that adjusts the probability for *all reel strips or every reel strip.*”)

Limitation (b) recites, “displaying a respective game symbol at *each symbol location of the matrix* of symbol locations, *each respective symbol location displaying* a symbol based on reel stop positions randomly selected with a weighted selection according to the selected game symbol weighting set.” Appeal Br. 10 (Claims App., emphases added). Indeed, we find that a broad, but reasonable, construction of the claimed limitation requires that it is “each symbol location of the matrix”—and not merely a symbol location of only one reel of the matrix—that “display[] a symbol based on reel stop positions randomly selected with a weighted selection according to the

selected game symbol weighting set.” In other words, the second recitation of “each respective symbol location” is in reference to and qualifies the first recitation, which states, “each symbol location *of the matrix.*”

We find, however, that Ekiert meets the claimed limitation when construed in this manner. Specifically, Ekiert discloses, “*The indicia for each of the three reels 12 may be selected by this process. Alternatively, one or two of the reels may be driven by a normal prior art process and only one reel is driven in accordance with the present invention.*” Ekiert 3:56–60 (italicized emphasis added). The three sets of reels 12 disclosed in Ekiert make up the entire matrix of symbol locations. *See id.* at Fig. 1 (depicting three sets of reels 12). As such, even under our narrower construction, we find that Ekiert discloses the claimed limitation, in that Ekiert discloses that the symbols for each of the three reels (12) of its matrix may be selected by the process of selecting a game symbol weighting set (e.g., table B in Figure 6) and, when selected, increasing the probabilities that each symbol of each reel within the matrix lands on the target game symbol (e.g., the BAR symbol). In this example, the probability of landing on the winning combination of BAR-BAR-BAR (for the three reels) increases.

Accordingly, we affirm the rejection of claim 1, and each of claims 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28, which fall with representative claim 1, as anticipated by Ekiert.

Because our affirmance relies on a claim interpretation and findings not relied upon by the Examiner, however, we designate our affirmance as a new ground of rejection under 37 C.F.R. § 41.50(b).

CONCLUSION

The Examiner's rejection of claims 1, 3, 5, 7, 9, 11, 12, 14, 16, 18, and 21–28 is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference	Affirmed	Reversed	New Ground
1, 3, 5, 7, 9, 11, 12, 14, 16, 18, 21–28	102(b)	Ekiert	1, 3, 5, 7, 9, 11, 12, 14, 16, 18, 21–28		1, 3, 5, 7, 9, 11, 12, 14, 16, 18, 21–28
Overall Outcome			1, 3, 5, 7, 9, 11, 12, 14, 16, 18, 21–28		1, 3, 5, 7, 9, 11, 12, 14, 16, 18, 21–28

TIME PERIOD FOR RESPONSE

This Decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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

AFFIRMED; 37 C.F.R. § 41.50(b)