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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SEAN GILLILAND

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Appeal 2020-002125  
Application 15/198,282  
Technology Center 3700

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Before BRETT C. MARTIN, MICHAEL J. FITZPATRICK, and  
MICHAEL L. WOODS, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* MARTIN.

Opinion Dissenting filed by *Administrative Patent Judge* Fitzpatrick.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–20. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> 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 IGT. Appeal Br. 2.

We REVERSE.

### CLAIMED SUBJECT MATTER

The claims are directed to “distributed communication using real-time point-to-point streamed audio in a gaming system.” Spec. ¶2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of ad hoc distributed real-time communication for a plurality of electronic gaming machines (EGMs), each comprising a payment acceptor, in a gaming system, the method comprising:

under control of at least one processor and a memory comprising executable instructions that:

receive, at each one of the plurality of EGMs, via a communication network, as a streamed audio data comprising at least one audio file from a broadcast device that was transmitted to the broadcast device as an audio signal, wherein the streamed audio data is initiated using a voice command performed by a remotely located user to the plurality of EGMs and comprises voice data audibly captured as spoken by the user in real-time;

process the streamed audio data at the plurality of EGMs;  
broadcast the streamed audio data using a speaker on each one of the plurality of EGMs; and

dynamically adjust a volume of a plurality of audio sounds produced for a wagering game during the broadcast of the streamed audio data, wherein, during the broadcast of the streamed audio data, the volume of the plurality of audio sounds produced for the wagering game is incrementally reduced through the speaker on each of the plurality of EGMs while the volume of the streamed audio data through the speaker on each of the plurality of the EGMs during the broadcast of the streamed audio data is commensurately incrementally increased when a patron is engaging the wagering game and wherein the volume of the plurality of audio sounds produced for the wagering game is muted during an idle period in which the plurality of audio sounds produced for the

wagering game are being used to provide audio attraction messages to attract potential players.

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Walther	US 2012/0258792 A1	Oct. 11, 2012
Steil	US 2013/0231185 A1	Sept. 5, 2013
Vissa	US 2017/0155751 A1	June 1, 2017
Poornachandran	US 2017/0180067 A1	June 22, 2017

## REJECTIONS

Claims 1–5, 7, 8, 10–13, and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over Steil in view of Poornachandran. Final Act. 5.

Claims 6, 15, and 17–19 are rejected under 35 U.S.C. § 103 as being unpatentable over Steil, Poornachandran, and Vissa. Final Act. 16.

Claims 9 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Steil, Poornachandran, and Walther. Final Act. 24.

Claim 20 is rejected under 35 U.S.C. § 103 as being unpatentable over Steil, Poornachandran, Vissa, and Walther. Final Act. 25.

## OPINION

### *Obviousness*

#### Claims 1 and 10

Appellant argues that Steil’s “idle time” as asserted by the Examiner, cannot “be fairly interpreted as an idle period *in which the plurality of audio sounds produced for the wagering game are being used to provide audio attraction messages to potential players.*” Reply Br. 3. As Appellant points out, “Steil describes that *a player* is already interacting with the

gaming machine when the first audio content is muted,” thus preventing the player from being a potential player. *Id.* Claim 1 also contrasts this idle time versus a time when “a patron is engaging with the wagering game.”

The Examiner takes the position that the “specification fails to explicitly define ‘an idle period’ but does provide an example of ‘idle periods’ as “during non-wage game operations funded by a wager received via a payment acceptor.” Ans. 27 (citing Spec. ¶ 94). The Examiner further elaborates that Steil teaches the claimed idle time as being “when the player is interfacing with the second video content.” *Id.* at 28. Appellant has the better position.

Although it may be true that the Specification does not define an idle time, the claim itself makes clear that the idle time coincides with the production of audio attraction messages to potential players, as noted above by Appellant. Claim 1 also differentiates the idle time from a time when a patron is engaged with the wagering game. In this manner, switching to a different user interface is not an idle time as claimed because the period described in Steil involves a player who is already interacting with the game, which would fall into the first category of game and audio function.

Further, Appellant is correct that whatever sounds are produced in Steil during the pausing of play would not amount to attraction messages to attract potential players as claimed. The game system in Steil has no need to attempt to attract any players during its secondary audio because a player is already playing or interacting with the game system. The Dissent focuses on the content of the message and whether attraction of potential players is necessary, but does not address the contrast between the idle time versus a time when a patron is engaged with the wagering game. Thus, the idle time

is not just linked to the attraction message, but also to a time when a patron is not engaged with the wagering game. Accordingly, we do not sustain the Examiner's rejection of claims 1 and 10, nor the claims dependent therefrom. Neither of Poornachandran nor Walther cures this deficiency.

Claim 17

Although claim 17 also includes an idle time, it does not include the attraction messages of claim 1 and so the idle time in claim 17 is not the same as that of claim 1. Appellant argues that the Examiner's rejection is improper because the Examiner's use of Vissa fails to disclose pausing the the wagering game during broadcast of the streamed audio. Reply Br. 5. The Examiner uses Steil in the same manner as for claim 1 in that Steil reduces volume of a secondary message and increases volume of a primary message. The Examiner, however uses Vissa to teach pausing the wagering game as claimed because Vissa teaches pausing audio book content in order to allow a public announcement to be played. Ans. 29. The problem we see with the inclusion of Vissa is that it deals only with one aspect of the pausing of the wagering game as claimed. The wagering game has both an audio and a video component. Steil reasonably discloses lowering and raising respective audio content to give primacy to a public announcement, but is silent as to actually pausing the audio of the game itself. Vissa, however, does pause audio content, but because there is no video component, then there is no teaching of what is actually done with the video. In theory, the Examiner's combination could allow for audio of the game to be muted and/or paused while the broadcast message plays, but still allowing the user to continue to play the game without sound. Because Vissa does not deal with any aspect other than sound and Steil does not teach pausing the

game content, we do not agree that the combination teaches all of the claimed limitations.

Additionally, the Examiner asserts that Steil teaches the claimed service window application and points to paragraph 161 for support. Ans. 21–22. We agree with Appellant that we do not find any teaching that amounts to the claimed service window application in the cited portion of Steil and the Examiner provides no explanation other than quoting claim language and citing to the entirety of paragraph 161. Appellant is correct that “[t]he concept of a service window application was never addressed by the Examiner in the Examiner’s Answer.” Reply Br. 5. As such it is unclear as to what the Examiner asserts is the claimed service window application. Given these deficiencies, we do not sustain the Examiner’s rejection of claim 17 or its dependent claims.

#### CONCLUSION

The Examiner’s rejections are REVERSED.

More specifically,

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-5, 7-8, 10-13, 16	103	Steil, Poornachandran		1-5, 7, 8, 10-13, 16
6, 15, 17-19	103	Steil, Poornachandran, Vissa		6, 15, 17-19
9, 14	103	Steil, Poornachandran, Walther		9, 14
20	103	Steil, Poornachandran, Vissa, Walther		20
<b>Overall Outcome</b>				1-20

REVERSED



FITZPATRICK, *Administrative Patent Judge*.

I dissent from the majority's decision to reverse the Examiner's obviousness rejection.

The decision to reverse the rejection of, for example, claim 1 is premised on Steil allegedly failing to teach "wherein the volume of the plurality of audio sounds produced for the wagering game is muted during an idle period in which the plurality of audio sounds produced for the wagering game are being used to provide audio attraction messages to attract potential players." Appeal Br. 13 (claim 1).

The majority finds that the "second audio content" of Steil cannot be considered to an audio message to *potential* players because a player is already interacting with the Steil game when such audio content is outputted.

In my view, the majority does not apply the broadest reasonable construction of the claim language at issue. Per claim 1, the asserted second audio content of Steil must be "used to provide audio attraction messages to attract potential players." Appeal Br. 13 (claim 1). The method of claim 1, however, does not require that the "attraction messages" result in a potential player be sufficiently attracted that he or she starts playing the electronic gaming machine. The fact that a player is already occupying the Steil gaming machine does not speak to whether the second audio content constitutes an "attraction message." For example, such audio content might interest a potential player in playing the Steil gaming machine even though it is currently occupied.

I would find that Steil's disclosure that the second audio content may be "game sounds, music, sound effects, spoken word or the like" that is "associated" with "advertising, commercial programming, messaging

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including emergency messages, system provided games such as a community game or the like” satisfies the limitation at issue. Steil ¶154 (cited at Final Act. 8; Ans. 27).