

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. BLANKSTEIN

Appeal No. 2005-0988
Application 09/878,592

ON BRIEF

Before FRANKFORT, PATE, and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 3 through 20, all of the claims remaining in the application at that time. Subsequent to the final rejection appellant filed two amendments after final, one on August 18, 2003 and one on October 1, 2003. The first of those amendments

Appeal No. 2005-0988
Application 09/878,592

made changes to the claims that overcame a rejection of claims 3 through 20 under 35 U.S.C. § 112, first paragraph, set forth on page 2 of the final rejection. See the advisory action mailed August 29, 2003. The second amendment directed cancellation of claims 9, 10, 18 and 19, and added new claims 21 and 22, which appellant characterizes as being re-presented dependent claims 10 and 19, respectively, in independent form. In the advisory action mailed October 9, 2003, the examiner approved entry of the second amendment after final and noted that claim 21 is rejected for the same reasons applied to claim 10, while claim 22 is rejected for the same reasons as claim 19. As a result of entry of this amendment claims 9, 10, 18 and 19 have been canceled and the appeal as to those claims is dismissed.

In the brief filed February 17, 2004, although appellant notes on page 2 that the appeal involves claims 3-8, 11-17 and 20-22, we observe, as the examiner has on page 2 of the answer mailed May 3, 2004, that appellant did not contest the rejection of claims 3 through 8 and 12 through 17. Instead, appellant indicates on page 4 of the brief that the only issue for consideration on appeal is "[w]hether claims 11, 20, 21 and 22 are patentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,047,963 to Pierce et al. in view of U.S. Patent No. 6,186,894

Appeal No. 2005-0988
Application 09/878,592

to Mayeroff and Plinko." Thus, like the examiner, we conclude that appellant is acquiescing in the rejection of claims 3 through 8 and 12 through 17, and therefore dismiss the appeal as to those claims also.

In the final analyses, the above actions leave only claims 11, 20, 21 and 22 for consideration on appeal.

Appellant's invention is directed to a gaming machine and method of conducting a game of chance on such a machine. On page 1 of the specification, it is noted that the invention is directed generally to gaming machines and, more particularly, to bonus games for a gaming machine having a game show theme. The specification goes on to note that, in the competitive gaming industry, there is a continuing need for manufacturers to produce new types of games, or enhancements to existing games, which will attract frequent play by enhancing the entertainment value and excitement associated with the game, and that one concept to achieve this result is the use of a "secondary" or "bonus" game that may be played in conjunction with a "basic" game. It is further indicated (specification, page 2) that the bonus game may comprise any type of game, either similar to or completely different from the basic game. On page 3 of the specification,

it is noted that Figure 1 of the application depicts a gaming machine (10) for executing a game of chance according to the present invention and that the game of chance includes

a basic game, such as slots, poker, blackjack, keno, or bingo, and one or more bonus games triggered by respective start-bonus outcomes in the basic game. The bonus games have a game show theme and preferably include randomly selected pricing indicia representing the price of one or more objects.

In new Figure 4 (formerly Fig. 42) of the application, a display associated with a preferred form of game show theme bonus game according to the present invention is illustrated. As noted on page 25 of the specification, play of the bonus game is a two-stage process: first, after a start-bonus outcome is triggered by play in the basic game, the number of chances a player has in the secondary event (bonus game) is determined (e.g., by correctly selecting pricing indicia (at 482) representing the price of one or more objects (480) and earning a game piece for each correct answer); and second, an award is determined using the game pieces won to randomly select payout indicia on a pachinko-type peg board (488) wherein the player is awarded the payout indicia associated with a payout slot (492) in which the game piece lands.

As indicated on page 4 of the brief, independent claim 21 has been selected by appellant as being representative of the subject matter on appeal, and claims 11, 20 and 22 grouped to stand or fall together with claim 21. Claim 21 reads as follows:

21. A gaming machine for conducting a game of chance, the gaming machine being controlled by a processor in response to a wager, comprising:

a selection stage for awarding a number of game pieces based on selections made by a player;

a pachinko-type stage for successively and randomly directing each awarded game piece down a pachinko-type peg board to one of plurality of payout indicia; and

a basic game including a plurality of possible outcomes, the plurality of possible outcomes including at least one start-bonus outcome for triggering a bonus game including the selection stage and the pachinko-type stage.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Pierce et al. (Pierce)	6,047,963	Apr. 11, 2000
Mayeroff	6,186,894	Feb. 13, 2001
"Plinko" pages 1 - 10,		1983.

Claims 11 and 20 through 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pierce in view of Mayeroff and "Plinko."

Appeal No. 2005-0988
Application 09/878,592

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the final rejection (mailed July 25, 2003) and the examiner's answer (mailed May 3, 2004) for the reasoning in support of the rejection, and to appellant's brief (filed February 17, 2004) and reply brief (filed July 2, 2004) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the evidence adduced by the examiner is sufficient to establish obviousness within the meaning of 35 U.S.C. § 103 of the subject matter of claims 11 and 20 through 22 on appeal, and that the examiner's rejection of those claims will accordingly be sustained. Our reasons for this determination follow.

Pierce notes (col. 1, lines 17-20) that slot machine bonusing features have become popular, and that examples of their success include WHEEL OF GOLD, WHEEL OF FORTUNE, JEOPARDY!, REEL 'EM IN, and many others. The invention in Pierce is to utilize the excitement and dynamic qualities of Pachinko as a bonus game for an underlying game of chance such as video poker, slot machines and the like. To that end, Pierce teaches a gaming machine (10) for conducting a game of chance controlled by a processor (430) in response to a wager. The machine shown in Figure 1 comprises a conventional slot machine (20) modified to include a Pachinko-type bonus game (30). As noted in column 3, lines 27-30, the slot machine (20) functions conventionally when taking wagers, making payments and being played, except that it has been modified to accommodate the Pachinko-type bonus game and payouts therefrom. In column 4, line 34, et seq., it is indicated that the bonus game becomes activated when an initiation condition occurs in the underlying basic game (30), and that any symbol or combination of symbols may be used to activate the bonus game. Once activated, the Pachinko-type bonus game allows for successively and randomly directing one or more of a plurality of awarded game pieces (col. 5, lines 4-10) down a Pachinko-type peg board and into one of a plurality of payout slots (230). From the disclosure in column 4, lines 46-51, it

Appeal No. 2005-0988
Application 09/878,592

appears that the launch of a ball or balls in the bonus game can occur either when the player pushes a button (28) to activate the firing mechanism (270), or automatically after the initiation condition or start-bonus outcome occurs in the underlying basic game.

Mayeroff discloses a slot machine including a secondary event or bonus game that is initiated by a preselected event or combination of symbols obtained in the underlying main game. In column 3, lines 1-30, Mayeroff discusses known types of secondary event games that are used in the slot machine market and specifically discloses a popular bonus game known as "WHEEL OF FORTUNE" that is based on the television game of the same name. Mayeroff also indicates that the popularity of WHEEL OF FORTUNE has spawned other secondary event games.

"Plinko" is a document discussing the popularity and play of the pricing game PLINKO as played on the television game show THE PRICE IS RIGHT, apparently since early in 1983. After a contestant is selected via an initial competitive price guessing round, the contestant gets the opportunity to play a secondary event game of PLINKO. The play of this relatively simple game is described in the first paragraph of the "Plinko" document applied

Appeal No. 2005-0988
Application 09/878,592

by the examiner and involves a selection stage used for awarding a number of game pieces based on the contestant correctly selecting pricing indicia representing the price of four small products or prizes. Each correct answer results in the winning of a game piece to be used in the next stage of the game, wherein the contestant drops the game pieces, one at a time, into a Pachinko-type peg board and allows them to ricochet downwardly through the pegs until the game piece lands in one of a plurality of different denomination pay slots at the bottom of the board. The contestant then wins, in addition to the prize in the initial price guessing stage, the cumulative amount of cash indicated after having dropped all of the game pieces through the Pachinko-type peg board.

In rejecting claims 11 and 20 through 22 under 35 U.S.C. § 103(a) the examiner recognizes that the gaming machine in Pierce lacks a bonus game like that specifically defined in, for example, claim 21 on appeal, but concludes based on the collective teachings of Pierce, Mayeroff and "Plinko" that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to substitute the popular "PLINKO" game as played on the long-running television game show "THE PRICE is RIGHT" for the Pachinko-type bonus game disclosed

in Pierce. On page 5 of the answer, the examiner sets forth the following as the "**Overall Motivation**" for this combination:

Branding is well known in the gaming machine industry. Branding is an attempt to attract players by associating the game with some easily recognizable and popular game or television show. Thus there are slot machines with bonus games based on MONOPOLY, BATTLESHIP, WHEEL OF FORTUNE, CLUE, JEOPARDY, and LET'S MAKE A DEAL. All of these games seek to capitalize on the popularity of well-known games or game shows in order to attract players. THE PRICE IS RIGHT is an extremely popular and long-running game show. The Plinko game is one of the most popular features on the show. It would have been obvious to one of ordinary skill in the art at the time of the invention to have adapted THE PRICE IS RIGHT's Plinko game to be a bonus game in a slot machine in order to capitalize on the tremendous popularity and name recognition of THE PRICE IS RIGHT in order to attract players.

Contrary to appellant's arguments in the brief and reply brief, we 1) find ample motivation and suggestion in the applied prior art references for the combination urged by the examiner, 2) do not believe that the proposed combination significantly changes the principle of operation of the Pierce reference, and 3) do not believe that the references "teach away" from the proposed combination. In that regard, we note that the discussions in the "Background of the Invention" portion of both Pierce and Mayeroff provide a strong suggestion of using a popular television game show game, such as, for example, WHEEL OF FORTUNE or JEOPARDY! as the basis for a bonus game to be played on an underlying casino gaming machine, such as a slot

machine or the like. Both Pierce and Mayeroff implicitly recognize that using such a bonus game will provide additional excitement to the play of a conventional casino game such as video poker or slot machines, enhance the entertainment value of such casino games, and encourage additional play of such gaming machines by devotees of the popular television game show selected as the bonus game. The "Plinko" document relied upon by the examiner highlights the immense popularity of PLINKO as played on the long-running television game show THE PRICE is RIGHT, apparently since early in 1983, by characterizing it as "by far the most celebrated and enjoyed pricing game ever played on THE PRICE is RIGHT."

Given the huge popularity of PLINKO as played on THE PRICE is RIGHT and the recognition in the competitive gaming machine industry of the need to produce new types of games, or enhancements to existing games, and to develop new features of bonus games that will enhance the entertainment value and excitement associated with a gaming machine and be attractive to both players and operators of such machines, we find ample suggestion and motivation for one of ordinary skill in the art at the time of appellant's invention to have substituted a popular television game show game such as "PLINKO" as a bonus game on a

Appeal No. 2005-0988
Application 09/878,592

gaming machine like that in Pierce so as satisfy the above-noted needs in the gaming machine industry and thereby capitalize on the tremendous popularity and name recognition of PLINKO and THE PRICE is RIGHT to attract players and operators to such gaming machines. We do not find anything in the applied prior art which affirmatively teaches away from the substitution proposed by the examiner, and we see no basis to conclude that such a substitution would significantly or fundamentally alter the principle of operation of the gaming machine in Pierce.

Appellant's underlying premise that none of the applied prior art teaches a three-stage game including 1) a base game for triggering a start-bonus outcome, 2) a selection stage for determining the number of chances a player will have in a later Pachinko-type stage, and 3) a Pachinko-type stage wherein the game pieces won in the selection stage are successively and randomly directed down a pachinko-type peg board to one of a plurality of payouts, is faulty. As we noted above in discussing the applied "Plinko" document, PLINKO as played on the television game show THE PRICE is RIGHT is a three-stage game, i.e., 1) a base game wherein a contestant is selected via an initial competitive price guessing round to play the secondary event or bonus game of PLINKO, 2) a selection stage used for awarding a

Appeal No. 2005-0988
Application 09/878,592

number of game pieces based on the contestant correctly selecting pricing indicia representing the price of four small products or prizes, and 3) a Pachinko-type stage wherein the contestant drops the game pieces, one at a time, into a Pachinko-type peg board and allows them to ricochet downwardly through the pegs until the game piece lands in one of a plurality of different denomination pay slots at the bottom of the board, with the contestant then winning, in addition to the prize in the initial price guessing stage, the cumulative amount of cash indicated after having dropped all of the game pieces through the Pachinko-type peg board. Thus, one modifying a gaming machine such as that in Pierce by providing a bonus game based on PLINKO as played on the television game show THE PRICE IS RIGHT (in place of the bonus Pachinko game of Pierce) would obtain a three stage game like that claimed by appellant and any advantages thereof that would naturally flow from following the suggestion of the prior art to make such a combination. In making the above determinations, we have presumed skill on the part of the artisan rather than the converse. See, In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

Appeal No. 2005-0988
Application 09/878,592

In light of the foregoing, the examiner's rejection of claim 21 under 35 U.S.C. § 103(a) is sustained. Given appellant's grouping of claims noted on page 4 of the brief, it follows that claims 11, 20 and 22 will fall with claim 21, and that the examiner's rejection of those claims under 35 U.S.C. § 103(a) is also sustained.

Thus, the decision of the examiner rejecting claims 11, 20, 21 and 22 of the present application is affirmed.

Appeal No. 2005-0988
Application 09/878,592

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

AFFIRMED

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Administrative Patent Judge)	
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Appeal No. 2005-0988
Application 09/878,592

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