

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONY INTERACTIVE ENTERTAINMENT LLC,  
Petitioner,

v.

BOT M8, LLC,  
Patent Owner.

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IPR2020-00726  
Patent 8,112,670 B2

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Before KALYAN K. DESHPANDE, LYNNE E. PETTIGREW, and  
AMBER L. HAGY, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining All Challenged Claims Unpatentable

35 U.S.C. § 318(a)

Denying Patent Owner's Motion to Exclude Evidence

37 C.F.R. § 42.64

## I. INTRODUCTION

### A. Background

Sony Interactive Entertainment LLC (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–5 of U.S. Patent No. 8,112,670 B2 (Ex. 1001, “the ’670 patent”). Paper 1 (“Pet.”). Bot M8, LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). With our authorization, Petitioner thereafter filed a Reply (Paper 11 (“Reply”)) and Patent Owner filed a Sur-reply (Paper 12 (“Sur-reply”)) to address issues involving 35 U.S.C. § 325(d).

On October 6, 2020, we instituted *inter partes* review of claims 1–5 of the ’670 patent. Paper 13 (“Dec.”). After institution, Patent Owner filed a Patent Owner’s Response. Paper 17 (“PO Resp.”). In response, Petitioner filed Petitioner’s Reply to Patent Owner’s Response. Paper 20 (“Pet. Reply”). Patent Owner filed a Sur-Reply to Petitioner’s Reply to Patent Owner’s Response. Paper 22 (“PO Sur-reply”).

The parties requested oral argument (Papers 23, 24), which we held by video on July 13, 2021. Paper 35 (“Tr.”).

The Board has jurisdiction under 35 U.S.C. § 6. In this Final Written Decision, after reviewing all relevant evidence and arguments, we determine Petitioner has met its burden of showing, by a preponderance of the evidence, that claims 1–5 of the ’670 patent are unpatentable.

### B. Related Matters

Petitioner and Patent Owner indicate that the ’670 patent was the subject of a patent litigation *BOT M8, LLC v. Sony Corporation of America et al.*, No. 1: 19-cv-07529 (SDNY), which was transferred to the Northern District of California (No. 3:19-cv-07027). Pet. 73; Paper 5, 1. Petitioner

indicates that this case has been dismissed with respect to the '670 patent. Paper 8, 1.

We note a related *inter partes* review pending between the parties, *Sony Interactive Entertainment LLC v. Bot M8, LLC*, IPR2020-01288, that was instituted on February 16, 2021. IPR2020-01288 relates to U.S. Patent No. 7,664,988 (“the '988 patent”), which issued from the parent application (U.S. Serial No. 11/205,121) of the '670 patent. PO Resp. 23.

### C. The '670 Patent

The '670 patent discloses “an information process device in which it can be guaranteed that a fault inspection program properly operates even if a fault occurs in a memory device which is inspected through the fault inspection program.” Ex. 1001, 1:36–40. Figure 1 shows an information process device according to an embodiment of the invention.

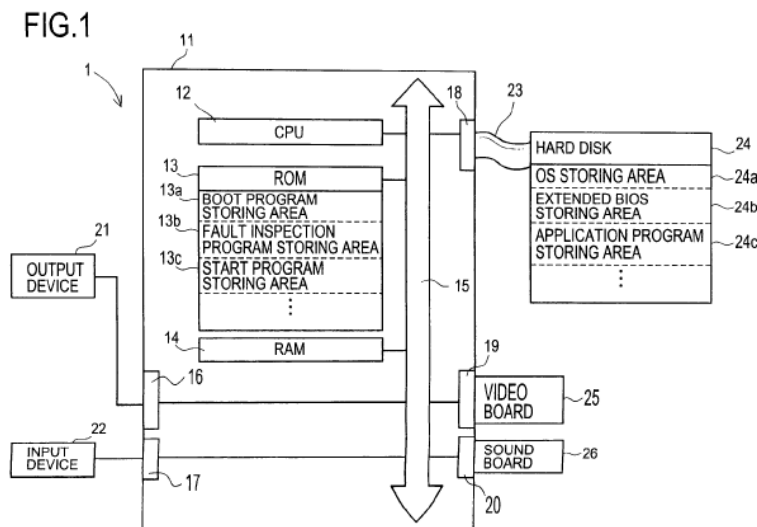


Figure 1 “is a block diagram of an information process device according to the embodiment.” *Id.* at 2:15–16.

As depicted in Figure 1, information process device 1 includes central processing unit (CPU) 12, read-only memory (ROM) 13, and random access memory (RAM) 14 on motherboard 11. *Id.* at 2:36–39. CPU 12 controls

information process device 1 and executes various programs, and therefore, “CPU 12 corresponds to a control device.” *Id.* at 2:40–42. ROM 13 is a non-volatile memory that stores various control programs, including a boot program, a fault inspection program, and a start program. *Id.* at 2:43–51. Hard disk 24 is connected to motherboard 11 at port 18 through cable 23 and stores an operating system (OS), Basic Input Output System (BIOS), and an application program. *Id.* at 1:21–26, 3:19–25.

Information process device 1 begins to operate when CPU 12 executes the start program and, in turn, the boot program. *Id.* at 3:53–58. The boot program initializes the BIOS and the operating system. *Id.* at 3:59–64. The operating system is then loaded into RAM 14 and starts to operate. *Id.* at 3:65–66. Next, the fault inspection program begins to inspect “whether or not a damage occurs in the hard disk 24 or whether or not change or falsification of the program stored in the hard disk 24 is conducted.” *Id.* at 4:1–9. If there is no fault in hard disk 24, the application program is loaded into RAM 14 and begins to execute. *Id.* at 4:15–19. Otherwise, if there is a fault in hard disk 24, an error is displayed on output device 21. *Id.* at 4:19–23. Here, because the fault inspection program is stored in ROM 13, independent from hard disk 24, “even if a fault occurs in the hard disk 24 . . . , it can be guaranteed that the fault inspection program properly operates.” *Id.* at 4:25–31.

#### *D. Illustrative Claims*

Petitioner challenges claims 1–5 of the ’670 patent. Pet. 4–72. Independent claims 1 and 4 are illustrative of the challenged claims and are reproduced below:

1. A gaming device configured to execute a game, the gaming device comprising:

a mother board on which a first memory device is provided;

a second memory device configured to store a game application program, the second memory device being connected to the mother board; and

a control device for executing a fault inspection program for the second memory device to inspect whether or not a fault occurs in the second memory device;

wherein the fault inspection program is stored in the first memory device, and the control device completes the execution of the fault inspection program before the game is started.

Ex. 1001, 4:61–5:7.

4. A gaming device configured to execute a game, the gaming device comprising:

a ROM configured to store a fault inspection program;

a memory device which is electrically rewritable a game application program stored therein;

a control device configured to execute the fault inspection program to inspect whether or not a fault occurs in the game application program stored in the memory device;

wherein the control device executes the fault inspection program when the gaming device is started to operate and completes the execution of the fault inspection program before the game is started.

*Id.* at 5:15–6:10.

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