

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY INTERACTIVE ENTERTAINMENT LLC,
Petitioner,

v.

BOT M8, LLC,
Patent Owner.

IPR2020-00963
Patent 7,338,363 B2

Before, KALYAN K. DESHPANDE, JAMES A. TARTAL, and
AMBER L. HAGY, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Sony Interactive Entertainment LLC (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 requesting an *inter partes* review of claims 1–27 (“the Challenged Claims”) of U.S. Patent No. 7,338,363 B2 (Ex. 1001, “the ’363 patent”). Paper 1 (“Pet.”). Bot M8, LLC (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). With our prior authorization, Petitioner filed a Reply to the Patent Owner Preliminary Response (Paper 7, “Pet. Reply”) and Patent Owner filed a Sur-reply (Paper 8, “PO Sur-reply”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b) (2018); 37 C.F.R. § 42.4(a) (2019). An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Upon consideration of the Petition, the Preliminary Response, Petitioner’s Reply, Patent Owner’s Sur-reply, and the evidence of record, we conclude that the information presented does not show a reasonable likelihood that Petitioner would prevail in showing the unpatentability of at least one of the Challenged Claims. Accordingly, we do not authorize an *inter partes* review to be instituted as to the Challenged Claims of the ’363 patent on the ground raised in the Petition. The Petition is denied.

II. BACKGROUND

A. *The ’363 Patent*

The ’363 patent, titled “Gaming Machine, Server, and Program,” issued March 4, 2008, from an application filed on October 17, 2003, that asserts priority to a foreign application date of October 18, 2002. Ex. 1001,

codes (21), (22), (30), (45), (54). The '363 patent is directed to “a gaming machine, a server, and a program.” *Id.* at 1:14–15. The '363 patent explains that in conventional gaming machines “the big-hit shift probability, the payout, and the payout rate” are fixed, “do not vary during each game,” and “cannot vary by the game player himself.” *Id.* at 1:36–52. The '363 patent also notes that a certain foreign application describes “a gaming machine with which plural specification values of the big-hit shift probability and the payout can be varied by the game player himself,” but states that “the game player could not feel a benefit or fun caused by changes in the specification values if the game player does not play the game under a game condition that a setting-variation effect discernibly appears.” *Id.* at 1:53–66.

To purportedly improve the benefit or fun of a game player, the '363 patent describes a gaming machine “with at least one specification value based on the total result obtained by totalizing a game result achieved by a first gaming machine and a game result achieved by a second gaming machine.” *Id.* at 2:6–11. A specification value is set “as a control condition for game control.” *Id.* at 2:14–31; *see also id.* at 5:10–13 (stating that “the specification value comprises a big-hit shift probability, a payout, a payout rate, or a combination thereof”). The '363 patent further explains that “the specification value may be improved even if the game result of the game player is bad since the game result of the another game player could be good.” Ex. 1001, at 2:45–47. As summarized by Petitioner, the '363 patent describes that “multiple gaming machines send game results to a server, which server determines a total result from the game results of multiple gaming machines and sends the total result back to the multiple gaming machines.” Pet. 1 (citing Ex. 1001, 2:36–45).

Additionally, the '363 patent states that “‘game result’ refers to a result after a game is carried out,” and “may contain not only the number of game media which have been paid out, but a combination of symbols after rotation, a result of a sub game carried out on a display device, the number of games having been played, and so on.” *Id.* at 5:27–32. The '363 patent also states that “‘total result’ refers to a result obtained by adding or totalizing the game results of plural game players or plural gaming machines.” *Id.* at 5:33–35.

Figure 21 of the '363 patent is reproduced below.

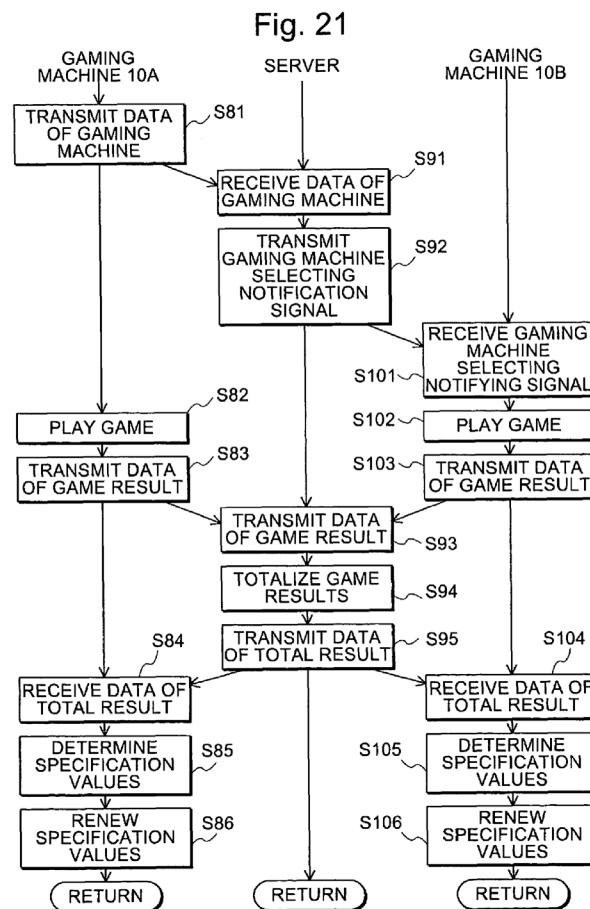


Figure 21 “is a flowchart of data communications between a server and two slot machines.” *Id.* at 6:31–32. The '363 patent provides a detailed explanation of each of the steps shown in Figure 21, which include that

gaming machine 10A and gaming machine 10B both transmit “the data of the game result” to the server, the server “totalizes the game results” and transmits the total result data to each gaming machine. *Id.* at 20:13–22:27. Each gaming machine determines the specification values on the basis of the total result data received by “referring to the specification value determining table” and “renews the specification values,” which are “the probability data, the payout data and the payout rate data.” *Id.*

B. Illustrative Claim

Petitioner challenges claims 1–27 of the ’363 patent. Pet. 1. Claims 1, 4, 8, 11, 15, and 16 are independent. Ex. 1001, 23:61–28:11. Claims 2, 3, 7, and 14 depend from claim 1, claims 5 and 6 depend from claim 4, claims 9 and 10 depend from claim 8, claims 12 and 13 depend from claim 11, and claims 17–26 depend from claim 16. *Id.* at 13:26–46, 14:25–49. Claim 1 is illustrative of the claimed subject matter and is reproduced below.

1. A first gaming machine for transmitting/receiving data to/from a server, comprising:
 - a specification value setting device for setting at least one specification value as a control condition for game control;
 - a transmitting device for transmitting data of a game result to the server;
 - a gaming machine determining device for determining a second gaming machine operated by a co-player;
 - a total result data receiving device for receiving from the server data of a total game result achieved by the first gaming machine and the second gaming machine based on the data of the game result transmitted by the transmitting device;

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