

PTAB Axes Slot Machine IP, Says Challenge Not Time-Barred

By **Matthew Bultman**

Law360 (July 29, 2019, 8:52 PM EDT) -- The Patent Trial and Appeal Board on Monday found that a High 5 Games LLC slot machine patent was invalid, rejecting arguments that rival casino game maker Aristocrat Technologies was too late in requesting inter partes review.

The board, in a final decision, said Australia-based Aristocrat had shown in inter partes review that each of the patent's claims are invalid because they would have been obvious based on earlier slot machine inventions.

The America Invents Act gives a company one year to challenge a patent in IPR after it is served with a complaint alleging infringement.

High 5, which has been tangled with Aristocrat in litigation for years, argued that the clock started ticking when it emailed Aristocrat a proposed amended complaint that included infringement allegations. Aristocrat asked the PTAB to review the patent 13 months after the message.

Ruling Monday, the board said the emailed complaint didn't trigger the time bar.

"We disagree with patent owner that emailing a proposed amended complaint amounts to 'service with a complaint,'" the PTAB wrote.

Based in Mahwah, New Jersey, High 5 has created a number of slot machine games and other casino games. The company in 2013 filed a trade secrets and unfair competition suit against Gimmie Games, an Aristocrat company and slot machine designer.

Gimmie, whose founder and CEO is the former general counsel at High 5, is accused of using confidential information and incorporating popular High 5 features into its own games. This includes a "Super Stacks" feature, where slot symbols are stacked to make games more exciting.

High 5 emailed Aristocrat a proposed amended complaint in December 2016 that included infringement allegations related to the patent at the PTAB. The amended complaint was filed with the court the following month. Aristocrat petitioned the PTAB for IPR in January 2018.

In previous cases, the PTAB has said the delivery of a proposed amended complaint before the district court allowed the complaint to be filed was not "service of a complaint." The board on Monday rejected

High 5's argument that those cases imposed limits not found in the AIA.

"The emailing of a document styled as a proposed amended complaint was not 'service,' i.e., 'the formal delivery of a writ, summons, or other legal process' under the plain meaning and general legal understanding of that term," the board wrote.

"We disagree with patent owner," the PTAB said later, "that we are adding language to the statute because we find that patent owner's emailing of the proposed amended complaint does not meet the plain meaning of the statute."

With respect to validity, Aristocrat argued it was obvious to modify slot machine reels in a way exemplified by the Super Stacks feature. Someone would have recognized that doing so would "make the game more exciting for the player by increasing the chances of significant wins," it said.

"We determine that, on this record, petitioner has provided adequate reasoning with rational underpinning to account for why a person of ordinary skill would have been motivated to modify" the prior art, the PTAB wrote Monday.

Attorneys for Aristocrat and High 5 could not immediately be reached for comment.

The patent at issue is U.S. Patent No. 9,022,852.

Aristocrat is represented by David Garr and Peter Chen of Covington & Burling LLP.

High 5 is represented by Joshua Goldberg and Luke McCammon of Finnegan Henderson Farabow Garrett & Dunner LLP.

The case is Aristocrat Technologies Inc. v. High 5 Games LLC, case number IPR2018-00529, at the Patent Trial and Appeal Board.

--Editing by Aaron Pelc.