

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IGT,)
)
 Plaintiff,)
)
 v.) Civ. No. 06-282-SLR
)
 BALLY GAMING INTERNATIONAL)
 INC., et al.,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 28th day of April, 2009, having heard oral argument on, and having reviewed the papers submitted in connection with, the parties' proposed claim construction;

IT IS ORDERED that the disputed claim language of the patents in suit, U.S. Patent Nos. RE 38,812 ("the '812 patent"), RE 37,885 ("the '885 patent"), and 6,431,983 ("the '983 patent"), as identified by the above referenced parties, shall be construed consistent with the tenets of claim construction set forth by the United States Court of Appeals for the Federal Circuit in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), as follows:

1. **"Bonus."** A bonus is a reward or payment in addition to any payout specified by the normal gaming device pay table. A bonus may be awarded to a player whether the outcome on the gaming device is a win, loss, or no outcome at all. See col. 36, ll. 37- 46 of the '885 patent. Given the patents' explanation of the mystery jackpot, the

court disagrees that a player must win a jackpot in order to win a bonus.

2. “**Bonus play period**” shall be construed as the period during which the bonus promotion is active. See col. 37, ll. 5-48 of the ‘885 patent. The issue is whether there has to be a “specified portion of time” during which the promotion is active. The specification indicates that a bonus can play until the “bonus payout exceeds the bonus pool,” which explanation does not indicate a specified period of time.

3. “**Command**” means a reconfiguration command. A reconfiguration command is a command that rearranges the previous configuration of the gaming device so that the gaming device pays out extra money it would not have paid in its previous configuration. There are virtually no commands described in the patents that are not related to reconfiguration which is, ultimately, the crux of the invention.

4. “**Message**” shall be construed as a reconfiguration message that includes a reconfiguration command.

5. Issuing a “**command**” “**responsive to a predetermined event**” means issuing a command in reply or reaction to the occurrence of one or more conditions chosen in advance. There is no requirement that the command or message be issued immediately following the condition, absent any intervening events, so long as it is issued in reaction to the condition. (See, e.g., ‘885 patent, col. 26, ll. 32-35 (using term “after”))

6. Issuing a “**command**” or “**message**” “**responsive to a predefined event**” means issuing a command or message in reply or reaction to an occurrence based on a criterion or criteria defined in advance. There is no requirement that the command or

message be issued immediately following the occurrence, absent any intervening events, so long as it is issued in reaction to the occurrence. (*Id.*)

7. “[I]ssuing a command over the network to each of said preselected gaming devices responsive to initiation of the bonus play period” (claims 1 and 22) means issuing a command over the network to each of said preselected gaming devices in reply or reaction to the start of the bonus play period.

8. Paying “in accordance with” the “command” or “message.” The command or message makes the bonus available. The claims do not require that the bonus is paid “automatically” or without any subsequent withdrawal steps upon receipt of the pay command.

9. “[I]ssuing a command over the network including data establishing criteria to cause a bonus to be paid via one of said selected gaming devices upon the occurrence of a predetermined event.” The bonus is paid upon the occurrence of one or more conditions chosen in advance.

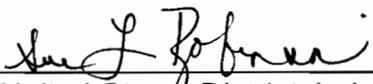
10. “[G]enerating a message including data establishing criteria to cause a bonus to be paid via one of said selected gaming devices upon the occurrence of a predetermined event.” The bonus is paid upon an occurrence based on a criterion or criteria defined in advance.

11. “[T]ransmitting a pay command from the controller to the gaming device upon the occurrence of the predetermined event” means transmitting an instruction related to payment from the controller to the gaming device in response or reply to the occurrence of one or more conditions chosen in advance. A “pay

command,” an instruction related to payment, need not cause payment to be effected “automatically.”

12. “[P]aying the bonus via the gaming device responsive to the receipt of the pay command” means paying the bonus via the gaming device in reply or reaction to the receipt of an instruction relating to payment. Payment need not be effected “automatically” or without any withdrawal steps, so long as it is effectuated by the predetermined event.

13. “[T]ransferring promotional credit in the account to the gaming device.” Applying the promotional credit in the player account to a credit meter on the gaming device in response to the insertion of a player card alone or with a wager.


United States District Judge