

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MGT GAMING, INC.

Plaintiff

v.

Civil Action No 3:13-cv-692-CWR-FKB

WMS GAMING, INC. and
MGM RESORTS INTERNATIONAL, INC.

Defendants

Second Amended Complaint for Patent Infringement

Plaintiff, MGT GAMING, INC. ("MGT") alleges as follows:

The parties

1. MGT is a Delaware corporation with its principal place of business at 500 Mamaroneck Avenue, Suite 204, Harrison, NY 10528.
2. Upon information and belief, defendant WMS GAMING, INC. ("WMS"), is a Delaware corporation with places of business in Waukegan, Illinois and Gulfport, Mississippi, and a registered agent in Jackson, Mississippi.
3. Upon information and belief, defendant MGM RESORTS INTERNATIONAL ("MGM"), is a Delaware corporation with places of business in Las Vegas, Nevada and Biloxi, Mississippi and a registered agent in Jackson, Mississippi.

Overview and nature of the action

4. MGT is the owner of United States Patent No. 7,892,088 ("the '088 patent"), and United States Patent No. 8,500,554 ("the '554 patent"). The '088 patent is directed to a gaming

system in which a second game is played on an interactive sign once a specific event occurs in a first game, *e.g.*, a slot machine, the second game being a competition between at least two players. The '554 patent is directed to a gaming system in which a second game is played on a shared sign once a specific event occurs in a first game, *e.g.*, a slot machine; the second game being an interactive game played between a player and another player, a dealer or a computer player. WMS manufactures, uses, sells or leases, and offers for sale or lease, gaming systems in violation of MGT's patent rights. MGM operates casinos that use such gaming systems and offers their use to its patrons.

Jurisdiction and venue

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

6. This Court has personal jurisdiction over WMS and MGM (collectively, "Defendants") in this state and district under 28 U.S.C. §§ 1391(b) and (c), FED.R.CIV.P. 4(k)(1), the long-arm statutes of the State of Mississippi, and the Due Process Clause of the Constitution since the Defendants regularly conduct business in this state and district, "reside" in this jurisdiction, and have committed acts of patent infringement in this jurisdiction and a substantial part of the events giving rise to this case occurred in this jurisdiction.

7. Venue is proper in this judicial district under Title 28, United States Code, §1391(b)(1) and (2) and (c), and 28 United States Code §1400(b) because, *inter alia*, the Defendants are subject to personal jurisdiction in this state and district and therefore "reside" in this state and district, a substantial part of the events giving rise to the claims asserted herein

arose in this state and district. Defendants also have a regular and established businesses in this district.

8. WMS conducts business in this judicial district, including distributing and/or selling gaming products, including those covered by the '088 patent and/or the '554 patent, and by providing technical assistance, instructions and other information regarding the use of such products, all in violation of plaintiff's patent rights. WMS is registered to do business in Mississippi, has a registered agent for service of process in Jackson, Mississippi, and has a sales and distribution office in Gulfport, Mississippi. WMS files corporate annual reports with the Mississippi Secretary of State, including as recently as April 3, 2012. WMS' infringing "Pirate Battle" game is located and played at the Grand Casino Biloxi, the Beau Rivage in Biloxi, Mississippi and at the Ameristar Casino in Vicksburg, as well as the Gold Strike Casino and Resorts Tunica in Tunica. WMS' infringing "Clue" game is located and played at the Grand Casino Biloxi, as well as at multiple casinos in Tunica. Other WMS' games have been played at the Grand Casino Biloxi and Beau Rivage in Biloxi, the Gold Strike and Horseshoe casinos in Tunica, the Treasure Bay Casino & Hotel in Biloxi and the Hard Rock Hotel & Casino in Biloxi. WMS also exhibited its various games at the Southern Gaming Summit in Biloxi on May 8-10, 2012.

9. MGM is registered to do business in Mississippi, has a registered agent for service of process in Jackson, Mississippi, and owns the Beau Rivage Resort and Grand Casino Hotel Biloxi, as well as the Gold Strike Tunica Resort, Casino and Hotel in Tunica. The infringing game "Pirate Battle" is played at both Biloxi casinos. The infringing game "Clue" is or has been played at the Grand Casino in Biloxi. On information and belief, other infringing and non-infringing games are also played at the Beau Rivage and Grand Casino in Biloxi. MGM files

corporate annual reports with the Mississippi Secretary of State, including as recently as February 8, 2012.

First claim for relief – infringement of the '088 patent

10. On February 22, 2011, the '088 patent, entitled "Gaming Device Having a Second Separate Bonusing Event," was duly and legally issued by the United States Patent and Trademark Office. The entire right, title and interest in the '088 patent has been assigned to MGT, including the right to recover for past damages for any infringement of the patent. A true copy of the '088 patent is attached as Exhibit A.

11. WMS has, jointly and severally, with MGM directly infringed and continues to infringe at least claims 1-3 and 6 of the '088 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. §271(a). WMS directly infringes by manufacturing, using, offering for sale or lease, and selling or leasing the products described and claimed in the '088 patent. MGM directly infringes the '088 patent by using the infringing products made, sold and/or leased to it by WMS and offering those products to its customers, often in concerted action with WMS.

12. The infringing products manufactured, distributed, used, sold and/or offered for sale and used jointly and severally by Defendants include at least those identified under the trade names: PIRATE BATTLE (WMS and MGM), CLUE (WMS and MGM), BATTLESHIP (WMS), STAR TREK BATTLE STATIONS (WMS), and CASTLE KING (WMS). On information and belief, other infringing WMS games besides PIRATE BATTLE and CLUE are played at MGM casinos.

13. Defendant WMS has intentionally, knowingly and actively induced the direct infringement by MGM by offering and providing it with infringing products, instructing it with

respect to those products, and jointly participating in the use of the infringing products with knowledge of and intent to infringe the '088 patent in violation of 35 U.S.C. §271(b) from at least August 22, 2011. On or about August 22, 2011, inventor Steven Brandstetter called Orin Edidin of WMS to discuss licensing the '088 patent. He was transferred to Michael Blankstein, in-house legal counsel at WMS, who requested the patent number which was provided to him. Mr. Blakenstein promised to call back, but didn't.

14. MGM has actively, knowingly and intentionally induced direct infringement by its patrons in violation of 35 U.S.C. §271(b) by providing them the infringing products, instructing them in the use of those products, and participating in that use with knowledge of and intent to infringe the '088 patent since at least November 2, 2012, the filing date of the original complaint in this case.

15. Defendants' acts of infringement have caused significant damage to MGT, which is entitled to recover damages adequate to compensate for the infringement in an amount to be proven at trial and to recover, in any event, a reasonable royalty from each defendant for its infringement, trebled, plus interest and costs as fixed by the court.

Second claim for relief – infringement of the '554 patent

16. On August 6, 2013, the '554 patent, entitled "Gaming Device Having a Second Separate Bonusing Event," was duly and legally issued by the United States Patent and Trademark Office. The entire right, title and interest in the '554 patent has been assigned to MGT, including the right to recover for past damages for any infringement of the patent. A true copy of the '554 patent is attached as Exhibit B.

17. The Defendants have jointly and severally infringed and continue to infringe at least claims 1-10, 13-16, and 18-24 of the '554 patent, either literally or under the doctrine of equivalents. WMS directly infringes by manufacturing, selling, using and offering for sale or lease the products described and claimed in the '554 patent. MGM directly infringes the '554 patent by using the infringing products and by offering them to their customers. WMS's infringement is joint and several with MGM.

18. The infringing products that have been manufactured, distributed, used, sold and/or offered for sale by WMS and used by MGM include at least those identified under the trade names: PIRATE BATTLE (WMS and MGM), CLUE (WMS and MGM), BATTLESHIP (WMS), STAR TREK BATTLE STATIONS (WMS), MONOPOLY BIGGER EVENT (WMS) and CASTLE KING (WMS). WMS and MGM are therefore liable, jointly and severally, for directly infringing the '554 patent, either literally or by equivalents, under 35 U.S.C. § 271(a).

19. Defendant WMS has intentionally, knowingly, and actively induced the direct infringement of MGM by offering and providing it with infringing products, instructing it with respect to those products, and jointly participating in the use of the infringing products with knowledge of, and intent to, infringe the '554 patent in violation of 35 U.S.C. §271(b) from at least September 6, 2013.

20. MGM has actively, knowingly and intentionally induced direct infringement by their patrons in violation of 35 U.S.C. §271(b) by providing them the infringing products, instructing them in the use of those products, and participating in that use with knowledge of and intent to infringe the '088 patent since at least September 6, 2013.

21. Defendants' acts of infringement have caused significant damage to MGT, which is entitled to recover damages adequate to compensate for the infringement in an amount to be proven at trial and to recover, in any event, a reasonable royalty from each defendant for its infringement, trebled, plus interest and costs as fixed by the court.

Prayer for judgment and relief

WHEREFORE, MGT prays for judgment and seeks relief against Defendants as follows:

- A. Preliminary and permanent injunctions against Defendants, their officers, agents, employees, subsidiaries, related individuals and entities, customers, representatives, dealers and distributors, and persons acting in concert therewith, enjoining them from any continued acts of patent infringement;
- B. An award of damages sustained by MGT as a result of Defendants' patent infringement including, at a minimum, a reasonable royalty, trebled;
- C. An award of MGT's attorneys fees and the costs of suit;
- D. Pre- and post-judgment interest; and
- E. Such other and further relief as the Court deems just and proper.

Jury Demand

MGT demands a trial by jury under FED.R.CIV.P. 38(b) and the Seventh Amendment to the U.S. Constitution of all issues triable as of right by jury in this action.

Respectfully submitted,

January 8, 2014

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Attorneys for Plaintiff MGT Gaming, Inc.

Certificate of Service

I certify that on January 8, 2014 I will electronically file this document and all attachments with the Clerk of Court using the CM/ECF system, which will then send a Notification of Electronic Filing (NEF) to all counsel of record.

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