

Analysis of “Product in question” and US Patent 11,452,944 B2

Abstract

This Note is a response to a request from the “Company in question” for Pennie & Edmonds' opinion as to whether implementations of the “Company in question”'s “Product in question” specification would infringe any claim of Activate Games Inc's [U.S. Patent No. 11,452,944 B2](#).

Status of this document

This analysis is published as a “Company in question” NOTE for the benefit of “Product in question” implementors. A list of current “Company in question” technical reports and publications, including Working Drafts and Notes, can be found at [“Please mention the link”](#).

Re: United States Patent No. 11,452,944 B2 to Schmidt et al.

Gentlemen:

This responds to your request for our opinion as to whether the “Product in question” would infringe any claim of Activate Games’ U.S. Patent No. 11,452,944. Hereinafter, “Activate Games Inc” has been referred to as “Activate Games” and “U.S. Patent No. 11,452,944” has been referred to as “’944 patent”. Further, a copy of the '944 patent is annexed as Exhibit A.

By way of summary, [REDACTED]

[REDACTED]

[REDACTED]

To accomplish this [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The patent filed by Activate Games in the Patent Office establishes that [REDACTED]

[REDACTED]

As a basis for our opinion, [REDACTED]

[REDACTED]

Importantly, we have *not* considered all potential defenses that might be asserted against the '944 patent since the non-infringement basis set forth above would, we believe, constitute a complete defense against any charge of infringement.

The sections that follow set forth the analyses underlying our opinion including: (i) an analysis of the '944 patent; and (ii) a comparison of "Product in question" to the '944 patent claims.

A. The '944 Patent Claims

While the body of the patent describes the communications system, the scope of Activate Games' ability to exclude others from practicing the described technology is determined by the patent's claims. The '944 patent has 27 claims. Three of these are independent: claims 1, 21,

and 26. Each of the remaining 24 claims depends from (*i.e.*, incorporates by reference, directly or indirectly) one of the independent claims.

Claim 1 is directed to an immersive gaming facility and its elements. Further, claim 21 is directed to a gaming facility, execution of a gaming session on the gaming facility, providing a replay option post the execution, collection of identifying information to create a profile, and displaying score locally and centrally based on the created profile. Furthermore, claim 26 is directed to a gaming facility, creating a profile for a user, and allowing or denying access based on a time block status of the created profile.

The table reproduced below highlights these relationships for the four independent claims:

	Claim 1	Claim 21	Claim 26
1	An immersive gaming facility comprising:	A gaming facility comprising:	A gaming facility comprising:
2	a plurality of game rooms that are each independently accessible from a common area of said facility		
3	and that each comprise: a respective interactive gaming space situated inside said game room and separated from said common area;	a plurality of interactive gaming spaces,	a plurality of interactive gaming spaces,
4	a respective entrance through which a waiting group of one or more participants are admissible to the respective interactive gaming space from said common area;		
5	a respective set of interactive game elements installed in the respective interactive gaming space for interaction therewith by said one or	each having associated therewith: a respective set of interactive game elements installed in said interactive gaming space for interaction	each having associated therewith: a respective set of interactive game elements installed in said interactive gaming space for interaction

	more participants once admitted thereto;	therewith by a group of one or more participants occupying the interactive gaming space;	therewith by a group of one or more participants occupying the interactive gaming space;
6	and a respective room control system comprising a respective admission control device that guides or facilitates admission to the interactive gaming space through the respective entrance,	and a respective game control system	and a respective game control system
7	said respective game control system being configured to: independently of an occupied or unoccupied status of any other one of the plurality of game rooms, control or guide admission of the waiting group of one or more participants into the interactive gaming space through said respective entrance,		
8	including changing said admission control device from an admission-denial state to an admission-allowance state to permit or guide entrance of said waiting group of one or more participants into the interactive gaming space through the respective entrance;		
9	and after said admission of said waiting group of one or more		

	participants, change said admission control device back into the admission-denial state		
10	and perform execution of a game session involving controlled operation of the interactive game elements and monitoring of participant interaction therewith.	configured to perform execution of a game session involving controlled operation of the interactive game elements and monitoring of participant interaction therewith;	configured to perform execution of a game session involving controlled operation of the interactive game elements and monitoring of participant interaction therewith;
11		<p>wherein the gaming facility is further characterized by at least one of the following features:</p> <p>configuration of the respective game control system of each interactive gaming space to, after termination of the game session, present to the group of one or more participants a selectable replay option, subject to confirmation that another group of one or more participants is not awaiting authorized admittance to the interactive gaming space;</p>	
12		for each game control system, inclusion of a respective sign-in station installed outside, but proximate, the respective interactive gaming space, and configuration of said sign-in station to, prior to execution of the game session, compile a game sign-in list composed of one or more members of the group of one or more participants by collecting identifying information from said one or more members via a sign-in	a respective sign-in station installed outside, but proximate, the respective interactive gaming space, and configured to, prior to execution of the game session, collect identifying information from said one or more participants via a scanner or reader of the sign-in station;

		scanner or reader of the sign-in station, and based on collection of said identifying information via said sign-in scanner or reader,	
13		adding identities of said one or more members to the game sign-in list;	
14		communicable connection of the respective game control system of each interactive gaming space with a management server that hosts, or is communicable with, a participant database in which participant profiles with respective scoring records are stored,	
15		and wherein: the respective game control system of each interactive gaming space is connected to the interactive game elements therein to control the interactive game elements in accordance with programmed gaming logic, and monitor participant interaction with said interactive game elements to derive game results therefrom;	
16		the management server is communicable with the respective game control system of each game room to update the scoring records in the participant profiles based on said game results;	
17		and the facility comprises at least one score-checking station that resides	

		separately of the sign-in stations, comprises a score-station scanner or reader, and is configured to retrieve the identifying information of any participant via said score-station scanner or reader, and communicate with the management server to query the scoring records of said participant profile and display score data therefrom to said participant;	
18		at least one scanner-equipped or reader-equipped participant registration station residing separately of the sign-in stations, and configured to scan or read the identifying information from each participant during an initial registration procedure prior to sign-in at any of the sign-in stations, and comprising a user-interface operable to receive sign-up or sign-in information from the participant	
19		and to create or retrieve a new or existing participant profile in the participant database, to which the participant registration station assigns the unique identifier.	
20			wherein the gaming facility is further characterized by use of the identifying information from the scanner or reader of the sign-in station to check a participant's time block status, and based thereon either authorize a participant's participation in the game session upon confirmation of an unexpired

			time block status, or deny a participant's participation in the game session upon confirmation of an expired time block status.
--	--	--	--

As shown in the table, claim 1 recites an immersive gaming facility having a plurality of game rooms that are each independently accessible from a common area (element 2). The claimed system includes a game control system for each of the plurality of game rooms that allows admission of a group of participants into the game room by changing the status of an admission control device to an admission-allowance state (elements 6-8). Upon admission of the waiting group of participants, the admission control device is configured to change back to an admission-denial state (element 9).

Further, claim 21 recites a gaming facility having a plurality of interactive gaming spaces, each having a game control system that performs the execution of a game session (elements 2, 6, and 10). Further, after termination of the game session, the game control system provides a selectable replay option to the one or more participants of the game session (element 11). Further, the game control system includes a sign-in station to make a sign-in list of the one or more participants by collecting identifying information from the one or more participants and adding identities of the one or more participants to the game sign-in list (elements 12 and 13). Further, the game control system is configured to a management server to access a participant database that has participant profiles with respective storing records and a score-checking station to show score the respective scores to the one or more participants (elements 14 and 17). Further, the sign-in stations include a user interface operable to receive sign-up or sign-in information from the participant and create or retrieve a new or existing participant profile in the participant database, to which the participant registration station assigns the unique identifier (elements 18 and 19).

Furthermore, elements of claim 26 correspond substantially to that of claim 21, including the game control system that is configured to check a participant's time block status and based thereon either authorize a participant's participation in the game session upon confirmation of an unexpired time block status, or deny a participant's participation in the game session upon confirmation of an expired time block status (elements 6 and 20).

B. "Product in question" Does Not Infringe Claim 1 of the Activate Games Patent

The “Product in question” of the “Company in question” includes a plurality of game rooms that are divided into two categories, a closed game room and an open game room. Each of the closed game rooms is independently accessible from a common area and may be separated from the common area via separators, such as walls, doors, or the like. Each of the open game rooms may not have any independent access and may be accessible directly from the common area, such that the game and one or more users in each of the open game rooms are visible from the common area. Further, the each of the game rooms includes an interactive gaming space having an interactive gaming element installed in it for interaction by the one or more users to play the game. Furthermore, each of the plurality of game rooms includes an entrance and a room control system to facilitate admission of the one or more users into the game room via the entrance. Upon entering the game room, the one or more users may access a button inside the game room to lock the entrance and start the game.

Hence “Product in question” does not include the plurality of game rooms of the ‘944 patent claim 1 for at least two fundamental reasons: (A) each of the plurality of game rooms of “Product in question” are not independently accessible from the common area since the open game rooms are directly accessible from the common area; (B) the interactive gaming space of the open game rooms is not separated from the common area but is in the common area and is visible from the common area for at least the entertainment of the one or more users waiting in the common area.

Additionally, “Product in question” does not include the room control system of the ‘944 patent claim 1 because of the reason: the room control system does not automatically enter an admission-denial state after allowing entry to the one or more users but the one or more users have to manually press a button to lock the entrance and start the game.

For these reasons, the “Product in question” of the “Company in question” does not literally infringe claim 1 of the ‘944 patent.

If an accused device does not infringe a claim literally, it may nevertheless infringe it under the doctrine of equivalents. Under that doctrine, a product or process will be held to infringe if there is "equivalence" between the elements of the accused product or process and those of the claim. Two elements are equivalent for that purpose if, in the context of the invention, substitution of the accused element for the claimed element constitutes merely an insubstantial change.

In our judgment, since the “plurality of rooms” and the “room control system” of the “Product in question” provide substantial changes over the “plurality of rooms” and the “room control system” of the claim 1 of the ‘944 patent, “Product in question” does not infringe claim 1 of the ‘944 patent under the doctrine of equivalents.

C. “Product in question” Does Not Infringe Claim 21 of the Activate Games Patent

The “Product in question” of the “Company in question” includes a plurality of interactive gaming spaces, each having a game control system to perform an execution of a game session. In order to get into the game session, firstly, one or more participants merely need to visit a user registration station and sign a liability waiver form to activate a wristband having a wristband ID. Secondly, the one or more participants with activated wristbands have to visit the room control system that checks whether the game room is unoccupied to allow the entry of the one or more participants into the game and display the wristband IDs associated with the one or more participants on a display screen inside the game room. Further, upon the termination of the game session, the one or more participants are facilitated to move out of the game room making the game room available for the next set of one or more participants.

Hence “Product in question” does not include the room control system of the ‘944 patent claim 21 because of the reasons: (A) the room control system does not provide a replay option to the one or more participants after the termination of the game session, but the one or more participants have to move out of the game room, thus making the game room available for next set of the one or more participants; (B) the game control system does not collect identifying information of the one or more participants for registering but only a liability waiver; (C) the room control system does not display the identities of the one or more participants on the display but the wristband ID’s; and (D) the room control system does not receive or store any of the one or more participant’s personal information and does not keep track of any scores.

For these reasons, the “Product in question” of the “Company in question” does not literally infringe claim 21 of the ‘944 patent.

In our judgment, since the “room control system” of the “Product in question” provide substantial changes over the “room control system” of claim 21 of the ‘944 patent, “Product in question” does not infringe claim 21 of the ‘944 patent under the doctrine of equivalents.

D. “Product in question” Does Not Infringe Claim 26 of the Activate Games Patent

The “Product in question” of the “Company in question” includes a plurality of interactive gaming spaces, each having a game control system to perform an execution of a game session. In order to get into the game session, firstly, one or more participants merely need to visit a user registration station and sign a liability waiver form to activate a wristband having a wristband ID for a specific time period. Secondly, the one or more participants with activated wristbands have to visit the room control system that checks whether the game room is unoccupied to allow the entry of the one or more participants into the game and display the wristband IDs associated with the one or more participants on a display screen inside the game room. Further, the room control system is also configured to check the time left on each of the one or more users’ wristband while providing access to the game room. When the time left on either of the one or more user’s wristband is zero, the room control system is configured to allow the entry to the one or more users but lowers the gaming experience, by way of displaying a message or an alarm sound associated with the expired time. During such types of entries, the associated one or more users need to visit the user registration station to add more time to the user's wristband to enjoy the uninterrupted gaming experience.

Hence “Product in question” does not include the room control system of the ‘944 patent claim 26 because of the reasons: (A) the game control system does not collect identifying information of the one or more participants for registering but only a liability waiver; and (B) |the room control system does not deny access to one or more participants in the game room if the time block of the associated wristband is expired but allows entry to the one or more participants with lowers gaming experience, by way of display a message or an alarm sound associated with the expired time.

For these reasons, the “Product in question” of the “Company in question” does not literally infringe claim 26 of the ‘944 patent.

In our judgment, since the “room control system” of the “Product in question” provide substantial changes over the “room control system” of claim 26 of the ‘944 patent, “Product in question” does not infringe claim 26 of the ‘944 patent under the doctrine of equivalents.

E. Conclusion

For the foregoing reasons, summarized in the second through the fourth paragraph of this opinion, we conclude, and it is our opinion and judgment, that the use of “Product in question” would not infringe any claim of the ‘944 patent.

Very truly yours,

Team LexAnalytico