REMARKS

The Applicant respectfully requests reconsideration of this application. Prior to entry of this response, the application included claims 1-34. Independent claims 1, 12, 18, 22 and 29, and dependent claims 3, 10, 17 and 31 are amended herein. Claim 35 is newly added. Hence, after entry of this amendment, claims 1-35 remain pending for examination.

The amendments to independent claims 1, 12, 18, 22 and 29 are supported by, for example, paragraphs (¶¶) [0008], [0010], [0034], [0081] and [0083], and Fig. 7, of the published application (US 2018/0225918). The amendments to dependent claim 3 are supported by, for example, ¶¶ [0034], [0053], [0062], [0068] and [0079] of the published application. New claim 35 is supported by, for example, ¶¶ [0068] and [0079] of the published application. No new matter has been added.

REJECTIONS UNDER 35 U.S.C. § 101

Claims 1-34 are rejected under 35 U.S.C. § 101 as being directed to an abstract idea without significantly more. The Office Action alleged that claims 1-34 are directed to processes that fall within the categories of abstract ideas of "Certain Methods of Organizing Human Activity" (fundamental economic principles or practices, and managing personal behavior of following rules or instructions), without significantly more. The rejection is respectfully traversed.

Without conceding that the pending claims, as amended, fail under Step 1 of the 2019 Revised Patent Subject Matter Eligibility Guidance ("Guidance"),[1] Applicant respectfully submits that the amended claims meet the requirements of **Steps 2A and 2B** of the Guidance.

The issue can be stated as whether, when considered as a whole, amended claim 1, for example, focuses on a specific means or method that improves the relevant technology or is directed to a result or effect that itself is the abstract idea and merely invoke generic processes or machinery. *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). The *McRO* decision characterized the claims at issue as automating 3D animation tasks using unconventional rules to produce realistic speech in animations. *Id.* The claimed invention addressed in *McRO* improved upon prior art animation methods yielding unrealistic speech

[1] https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf

patterns from the perspective of the viewer, where "an animator would have to subjectively identify the problematic sequence and manually fix it by adding an appropriate keyframe." *Id.* McRO's "invention [] uses rules to automatically set a keyframe at the correct point to depict more realistic speech, achieving results similar to those previously achieved manually by animators." *Id.* The Federal Circuit held that claim 1 of McRO's '567 patent did not merely use rules to apply an abstract idea and thus preempt rule-based approaches to lip synching, but instead was "limited to rules with specific characteristics . . . allow[ing] for the improvement realized by the invention." *Id.*

Similarly, amended claim 1 applies unconventional rules according to the claimed systems and methods. Specifically, with respect to claim 1, for instance, a received baseline skill distribution for interactive electronic games dictates the setting of an initial payout amount for the game that is selected. The player(s) select desired skill levels and objectives for the selected game. Based on those selections, and further based on an updated skill distribution for the interactive electronic gaming session according to live game statistics, a variable payout amount is generated. A winner of the interactive electronic gaming session receives an adjusted payout which accounts for the updated skill distribution along with a minimum payout requirement over a period of time, a pooled liquidity model, and/or a reward model of a casino or other rewards system. The claimed skill distribution update, and the payout adjustment based thereon, occur during the interactive gaming session to ensure the ultimate payout to a game winner reflects the current state of affairs with integrity for the benefit of both players and the hosts of the electronic games, in much the same way as the Applicant's rules and algorithms applied for collusion detection. *See, e.g.*, ¶¶ [0030], [0066], [0069], [0070] and [0083] of the published application; *see also* instant claims 3, 8, 17, 33 and 35. .

As in *McRO*, amended claim 1 does not merely recite an abstract idea, but rather is directed to application of narrowly defined rules in a particularly recited set of intertwined processing steps requiring specific data flows for accomplishing an improvement to an existing technological process. *Id.*; *see also Thales Visionix, Inc. v. U.S.*, No. 2015-5150, 2017 WL 914618, at *5 (Fed. Cir. Mar. 8, 2017). As explained in the instant application, prior art electronic gaming systems and methods were deficient in providing certain technological features to attract and retain new players, while also providing flexible participation with safeguards for the integrity of game play. *See, e.g.*, ¶¶ [0003]-[0006] of the published application. The invention of amended

claim 1 provides technical features that provide technical improvements to the prior contributions to the electronic gaming field, in which those features are largely absent. For instance, at least some conventional gaming platforms were intimidating to players. With increased demand for increased gaming options that are more convenient and more flexible as to options for participation, electronic gaming operators sought to overcome impediments to participation. *Id.*

The claimed invention represents a technical advance in the field that enhances electronic gaming operations and user experiences from the perspectives of both players and game hosts. Participation flexibility and enjoyment of players is increased as compared to known systems and methods by, for example, allowing players to custom select electronic interactive games and their level of participation according to skill levels and game objectives. Operators and hosts benefit from setting and adjusting a variable payout that is based on the player selected skill levels and objectives. Moreover, players are assured that potential payouts for winning the game are reflective of skill distributions currently existing for the game.

The aforementioned problems and the solutions provided by the claimed invention relate to, and are rooted in, the use of technology in the form of networked computing devices and software, as provided in the description of the instant application (e.g., "customized electronic devices built for interactive game play. . . . running specialized software", ¶ [0045] of the published application). These problems tended to inhibit new player participation and retention despite increased demand for such services. Many such systems provide for participation by numerous players, each located at different locations remote from the host computer system. In that case, the claimed invention receives skill distribution data that is updated during the game for the variable payout adjustment based on information from terminals other than the player in the selected electronic interactive game. Although the claimed invention is narrowly tailored to providing a specific improvement to the electronic gaming field, it is applicable in a variety of contexts where that technology is used, as desired by players and game hosts. *E.g.*, ¶¶ [0003], [0005], [0006], [0028], [0029], [0045], [0069], [0070], [0083], [0086] and [0093], and Fig.7, of the published application.

As with *McRO*, where the technical solution provided an enhanced, outward facing result to a viewer of an animation as well as operational efficiencies for animators, so too does the claimed invention provide not only an improvement to the functioning of communication and computing equipment for electronic gaming, but also an enhanced user experience resulting in

various outward facing, tangible effects for players and game hosts. Express and implied examples of the improvements enabled by the claimed invention in the practical application of electronic gaming systems and methods include:

- Skill level selection by players enables higher payouts for achieving objective at higher skill levels, and further facilitates setting a baseline skill level that may be collected and applied over time in various useful ways. ¶¶ [0070] and [0083].
- Modification to the variable payout may be made with updated interactive electronic game skill level distributions. ¶ [0083].
- Gaming terminals provide players the ability to select and engage in an interactive electronic game selected from a listing of multiple such games and according to desired skill level and objectives, where payout amounts displayed to player(s) may change according to player selections made. ¶¶ [0086] and [0093].

These examples, among others, are enabled by the claimed limitations considered in the context of the pending claims as a whole. The claimed limitations provide a specific implementation of the alleged abstract ideas into a practical application addressing the problems as described in the specification to thereby improve the technological field of electronic gaming. The claims are necessarily rooted in advanced computer technology in order to solve the problems discussed above in electronic gaming systems. The nexus between the claimed features (in the context of amended claim 1 as a whole) and the improvement to the technical field is both clear and sufficient under the Guidance to establish the integration of the alleged abstract ideas into a concrete practical application. As such, the invention, as claimed, is not an attempt to monopolize or preempt any and all improvements to electronic gaming technology and so does not upset the balance of policy interests explained by the Supreme Court in *Alice*.

"It is [therefore] the incorporation of the claimed rules, not the use of the computer, that improve[s] the existing technological process by allowing the automation of further tasks." *McRO,* 837 F.3d (internal citations omitted). As amended, claim 1 now requires that the baseline skill distribution be used to set an initial payout and updated skill level data be used for adjusting the payout to a winning player, which, along with the additional limitations of amended claim 1, provides a narrowly-defined, yet substantial, improvement in the technological field of, and practical application to, electronic gaming field. In particular, the recitations of claim 1 accomplish

the non-abstract end result of paying out winnings that are reflective of current game skill distributions along with a minimum payout requirement over a period of time, a pooled liquidity model, and/or a reward model of a casino or other rewards system. *McRO,* 837 F.3d. Amended claim 1, considered in its entirety, is "directed to 'a specific means or method' for improving technology" and not merely to a set of rules "to an abstract end-result" of any of the categories of abstract ideas alleged in the Office Action which could, but for being performed on what are alleged to generic computing devices, be performed entirely mentally. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). To maintain otherwise would be to describe "the claims at [such] . . . a high level of abstraction and untethered from the language of the claims [to] all but ensure[] that the exceptions to § 101 swallow the rule." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016).

The "inquiry often turns on whether the claims focus on "the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335–36. The above-emphasized and discussed elements of amended claim 15 are not simply linking the purported judicial exception to a particular technological environment, but are enabling specific processes and systems to solve problems with traditional solutions in the electronic gaming field. The above-cited passages of the published application describe the extant problems and how the claimed invention uniquely addresses them. As the amended claims more particularly recite <u>how</u> the above-discussed practical application, and improvement, to the technological field of electronic interactive gaming systems is achieved, amended claim 1 provides significantly more than any of the abstract ideas alleged in the Office Action. In the manner now claimed, the present invention addresses various known problems with conventional systems and method in the technological field of electronic interactive gaming systems. The amended claims thus provide a unique, and purely technical, solution to such technical problems. As a result, the features of amended claim 1 and the other claims, when taken as an ordered combination, provide an unconventional process notwithstanding that at least some of those steps may be performed using generic computing devices in a networked environment. Amended claim 1 not only includes features that provide significantly more than the alleged abstract idea, but confines it to a particular useful system and application, without attempting to preempt an entire technological endeavor. The claim amendments in the present response are intended to highlight that and, as such, Applicant

respectfully submits that the amended claim 1 meets the requirements of both Steps 2A and 2B of the subject matter eligibility analysis mandated by the Guidance.

Amended independent claims 12, 18, 22 and 29 now recite features similar to those emphasized and discussed above with reference to amended claim 1. For at least the reasons discussed above for amended claim 1, amended claims 12, 18, 22 and 29 are likewise patent eligible according to the Guidance.

Accordingly, withdrawal of the 35 U.S.C. § 101 rejections of claims 1-34, and allowance of claims 1-35, as amended, are respectfully requested.

DEPENDENT CLAIMS

In view of the above remarks, a specific discussion of each dependent claim is considered to be unnecessary. Therefore, the Applicant's silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

RESERVATION OF RIGHTS

For the sake of conciseness and clarity, the Applicant may not have addressed every assertion or rejection made in the Office Action, particularly where the Applicant has presented amendments or arguments that the Applicant believes render such assertions/rejections moot. Therefore, the Applicant's silence regarding any such assertions or rejections does not constitute an admission or acquiescence regarding such assertions/rejections or a waiver of any argument relating to such assertions/rejections. The Applicant reserves the right to challenge at a later time any rejection or any factual or legal assertion made by the Office in relation to the present application. The Applicant does not admit that any of the references cited in the Office Action are prior art. The Applicant reserves the right to swear behind any cited reference at a later date, to the extent permitted by law.

NO DISCLAIMERS OR DISAVOWALS

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this

application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

The Applicant respectfully submits that the amendments and remarks have overcome the rejections and that the pending claims are in condition for allowance. Accordingly, the Applicant requests that the rejections be withdrawn and that a Notice of Allowance be issued.

The Applicant believes no fees are due for this response. Should the Office determine fees are necessary, however, the Office is hereby requested to contact the undersigned to arrange for payment.

REQUEST FOR A TELEPHONE INTERVIEW

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned.

Respectfully submitted,

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