From: Khan, Naim <Naim.Khan@IGT.com>
Sent: June-29-17 2:31 PM
To: Pharand, Josée (IC)
Subject: MOPOP chapter 12 consultation

Dear Josee Pharand,

I am concerned that MOPOP chapter 12 revision includes the highlighted section:

12.03.09 Games

A manner of playing a game or sport does not solve a practical problem, and a method for playing a game is therefore non-statutory. This is so whether the claimed method is distinguished on the basis of specific rules governing play Footnote22 or in terms of actions to be taken to achieve specific game-related results.
Tools made use of in the playing of a game may themselves be patentable (e.g., a specifically designed table or playing piece or a game board with a particular mechanical function, or combination of such that is patentable on its own merits).

The progressive games decision (**Progressive Games, Inc. v. Canada (Commissioner of Patents), 2000 CanLII 16577 (FCA)**) below clearly outlines (see highlighted in Pink below) that games *may be* patentable. At best the decision is neutral on whether games are patentable.

https://www.canlii.org/en/ca/fca/doc/2000/2000canlii16577/2000canlii16577.html?autocompleteStr=progressive%20games&autocompletePos=1

SEXTON J.A.

[1] We are not persuaded that Mr. Justice Denault erred in his decision (reported at (1999), 1999 CanLII 8921 (FC), 3 C.P.R. (4th) 517) that the appellant's game of poker constituted something which is not patentable. He concluded that the Appellant's changes in the method of playing poker did not amount to a contribution or addition to the cumulative wisdom on the subject of the game. These changes merely amounted to a change in the way an existing and well-known game is played. These changes do not substantially modify the poker game as it is generally known. The Appellant's suggested game uses the standard deck of playing cards and the conventional rules of poker with a slight variation. We do not believe this amounts to a new and innovative method of applying skill or knowledge within the meaning given to those words in *Shell Oil Company v. The Commissioner of Patents* 1982 CanLII 207 (SCC), [1982] 2 S.C.R. 536. We should add that we do not want to be taken as deciding that more substantial changes in the existing game would have changed the result.

"J. Edgar Sexton"

J.A.

As CIPO does not have the privilege of making laws where guidance does not exist (from the Parliamentary legislation or Courts) so including a definitive section like this will be highly improper at this time until we have further guidance. The process in United States for Alice related subject matter issues is continually updated by USPTO based on the guidance of newly given court decisions (not USPTO preferences) and games are still patentable subject to some language inclusiveness. It would be wise if CIPO for now removes the section 12.03.09 Games from this MOPOP update until guidance is available from Courts or Legislation.

Kind regards,
Naim Khan

Naim Khan
Director-Intellectual Property

IGT

tel: 506.878.6201
mob: 506.232.1239

Naim.Khan@igt.com

error, please delete this message from your system. Any unauthorized reading, distribution, copying, or other use of this message or its attachments is strictly prohibited.