

PTAB Sheds Light on Video Game Patent

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The Patent Trial and Appeal Board (PTAB) recently upheld the patentability of a video game-related patent, [ruling](#) the computer graphics features were not obvious over the prior art. The patent (US Patent 7,061,488) address techniques for rendering lighting and shadows in computer graphic simulations where there are at least 2 virtual light sources. The claims were alleged to be obvious because the high level concepts were allegedly known in the art as evidenced by various prior art references. However, the PTAB disagreed stating that there was no evidence that it would have been obvious to combine the prior art features. This case shows that even if general concepts are known, improvements to those concepts and/or a unique combination of concepts can be patentable.

In part, the alleged obviousness was based on the characterization of some of the claim features as mere design choices. However, the PTAB found that the specific algorithm, which is alleged to be the design choice(s), is exactly the problem the invention alleges to solve, and the motivation for the purported design choices, i.e., that the choices were made in service of specifically improving upon the prior art algorithm, militates against those choices being considered mere design choices. Additionally, it noted that the design choice concept was not intended to encompass making extensive modifications to a reference. Given that the PTAB found the features recited in claim 1 would result in a difference in function as compared to the structural configuration of the prior art.

The PTAB also address the overall test for obviousness. It stated: “an invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.... Instead, a determination of unpatentability on a ground of obviousness must include articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” It added that the obviousness evaluation “should be made explicit,” and it “can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” Here, the PTAB found that the Petitioner’s contentions were deficient, in particular, because Petitioner did not explain persuasively how or why one having ordinary skill in the art would have made each of the combinations and modifications set forth in its particular alleged design choice.

Despite some of the recent uncertainty on the scope of eligible patents, many video game patents are being granted and upheld when enforced.

National Law Review, Volumess VII, Number 296

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