

# GAMING LEGAL NEWS



January 11, 2012 • Volume 5, Number 1  
GAMING LEGAL NEWS EDITORIAL BOARD

**Robert W. Stocker II**, Gaming Law  
517.487.4715 • rstocker@dickinsonwright.com

**Dennis J. Whittlesey**, Gaming Law/Indian Law  
202.659.6928 • dwhittlesey@dickinsonwright.com

**Michael D. Lipton, Q.C.**, Gaming Law  
416.866.2929 • mdliptonqc@dickinsonwright.com

**Peter H. Ellsworth**, Gaming Law/Indian Law  
517.487.4710 • pellsworth@dickinsonwright.com

**Peter J. Kulick**, Gaming Law/Taxation  
517.487.4729 • pkulick@dickinsonwright.com

## GAMING WEB SITES OF INTEREST

[www.indianz.com](http://www.indianz.com)  
[www.pechanga.net](http://www.pechanga.net)  
[www.indiangaming.org](http://www.indiangaming.org)  
[www.nigc.gov](http://www.nigc.gov)  
[www.michigan.gov/mgcb](http://www.michigan.gov/mgcb)  
[www.gaminglawmasters.com](http://www.gaminglawmasters.com)  
[www.casinoenterprisemanagement.com](http://www.casinoenterprisemanagement.com)  
[www.ggbmagazine.com](http://www.ggbmagazine.com)

*Disclaimer: Gaming Legal News is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the fields of gaming law and federal Indian law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in Gaming Legal News.*

## PATENT STRATEGIES FOR GAMING COMPANIES HELPED BY FASTER PATENT EXAMINATION OPTIONS

by John S. Artz\*

A successful patent procurement strategy can go a long way toward helping companies compete in the gaming industry. Obtaining a patent for a new invention, such as a game or casino-related equipment, can help the patent owner maintain market share by preventing competitors from utilizing the invention. The patent owner can also grant licenses under the invention for a royalty. Utilizing patents in this fashion can generate revenue and help a company stay healthy in the competitive gaming industry.

The implementation of a successful patent procurement strategy depends heavily on the ability to obtain patents covering new technologies within a reasonable period of time. Currently, a considerable backlog exists within the United States Patent and Trademark Office (PTO) that has significantly delayed the issuance of patents over the last decade. According to published PTO statistics, the average pendency time of a patent application from filing to issuance is about three years. (*United States Patent and Trademark Office, Performance and Accountability Report Fiscal Year 2011.*)

The pendency for patent applications involving certain technologies, including those that directly invoke the gaming industry, is higher than the overall average. This delay in obtaining patents is significant and has had the effect of diminishing their value and lessening the benefits they provide. This has created uproar from many U.S. companies who feel that their inability to obtain patents sooner in the U.S. has caused them to miss market opportunities as well as licensing opportunities.

In an effort to relieve some of this backlog and address the concerns of many companies, certain options are now available in the PTO for expedited examination and processing of patent applications. Indeed, these options allow for final disposition of a patent application within one year. To obtain this expedited examination, the PTO requires different things to accompany the patent application, depending upon the option chosen. The PTO is able to provide these expedited examination options by shifting some of the cost and burden of the process to the patent applicants.

One expedited examination option is known as “accelerated examination.” With this option, the patent applicant must submit certain information with its patent application to facilitate the patent

examiner's review of the patent application. This information includes (i) a prior art search report that identifies the areas (by classification) the applicant searched as well as the search criteria used and (ii) an examination support document (ESD) where the applicant compares the relevant prior art to the claims, identifies where certain elements of the claims can be found in the prior art, and identifies the patentable features of the invention not found in the prior art. This allows the examiner to evaluate the sufficiency of the prior art search and more easily evaluate the patentability of the invention. There is no additional PTO fee for this expedited examination option; however, the preparation cost to the applicant for this additional work and documentation is not trivial. According to accelerated examination statistics provided by the PTO, 2700 Accelerated Examination applications were filed in the fiscal year 2011. ([http://www.uspto.gov/patents/process/file/accelerated/ae\\_stats\\_v8\\_05jan2011.pdf](http://www.uspto.gov/patents/process/file/accelerated/ae_stats_v8_05jan2011.pdf)).

Another option for expediting the patent application process is referred to as "prioritized examination" or Track 1. Unlike the accelerated examination option above, this option does not require the applicant to perform any additional steps besides preparation of the patent application. However, the PTO requires a prioritized examination fee of \$2400 for small entities and \$4800 for large entities in addition to the regular application fee. According to PTO statistics, 852 Track 1 applications were filed for the fiscal year 2011. ([http://www.uspto.gov/aia\\_implementation/patents.jsp](http://www.uspto.gov/aia_implementation/patents.jsp)).

Both accelerated examination and prioritized examination can provide benefits to companies in the gaming industry who seek to obtain patents faster on their inventions. For example, the author of this article has successfully utilized each of these options on behalf of clients, including in the gaming industry, to receive granted patents in less than one year. While the benefits are significant, they do not come without some potential downsides, including the existence of a greater written record, which might be used to attack the patent in litigation. However, while the risks should not be discounted, if taken into account as part of the process, they can be readily managed. Accelerated examination is probably not necessary for every application; however, it has far greater applicability than utilized to date.

\*John S. Artz is a member in Dickinson Wright's Troy office. He can be reached at 248.433.7262 or [jsartz@dickinsonwright.com](mailto:jsartz@dickinsonwright.com). He has been practicing intellectual property law for almost twenty years and has represented companies from start-ups to Fortune 500s. He has also litigated intellectual property disputes for companies in courts throughout the United States, including in the U.S. Supreme Court.

## MICHIGAN GAMING REVENUES IMPROVE IN 2011: MICHIGAN GAMING CONTROL BOARD RELEASES CALENDAR YEAR 2011 AND DECEMBER 2011 REVENUE DATA

by Ryan M. Shannon\*

The Michigan Gaming Control Board ("MGCB") released both the December 2011 and the 2011 annual revenue and wagering tax data for the three Detroit, Michigan, commercial casinos. The aggregate annual revenue for the three Detroit casinos increased nearly 3.4%

in 2011 relative to 2010. The aggregate increase for 2011 continues a positive trend of upward revenues from the prior year, as 2010 revenue figures showed a 2.4% increase over those in 2009.

For December 2011, the three Detroit commercial casinos posted a collective 10.0% increase in gaming revenues compared to the same month in 2010. Aggregate gross gaming revenue for the Detroit commercial casinos also increased by approximately 7.5% compared to November 2011 revenue figures, continuing a trend of an increase in revenues from November to December in prior years.

MGM Grand Detroit posted positive gaming revenue results for December 2011 as compared to the same month in 2010, with gaming revenue increasing by nearly 6.5%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos and had total gaming revenue in December 2011 of slightly less than \$52.3 million. MotorCity Casino had monthly gaming revenue exceeding \$40.4 million and posted a 5.1% improvement in December 2011 over its December 2010 revenues. Greektown Casino had gaming revenue of approximately \$31.0 million, improving over its December 2010 revenues by more than 24.5%.

The revenue data released by the MGCB also includes the total wagering tax payments made by the casinos to the State of Michigan. The gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for December 2011 were:

| Casino            | Gaming Revenue   | State Wagering Tax Payments |
|-------------------|------------------|-----------------------------|
| MGM Grand Detroit | \$52,265,945.70  | \$4,233,541.60              |
| MotorCity Casino  | \$40,439,462.16  | \$3,275,596.43              |
| Greektown Casino  | \$31,016,472.83  | \$2,512,334.30              |
| Totals            | \$123,721,880.69 | \$10,021,472.33             |

The annual gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for 2011 were:

| Casino            | Gaming Revenue     | State Wagering Tax Payments |
|-------------------|--------------------|-----------------------------|
| MGM Grand Detroit | \$599,709,633.81   | \$48,576,480.34             |
| MotorCity Casino  | \$471,978,180.83   | \$38,230,232.64             |
| Greektown Casino  | \$352,757,646.43   | \$28,573,369.36             |
| Totals            | \$1,424,445,461.07 | \$115,380,082.34            |

\* Ryan Shannon is an associate in Dickinson Wright's Lansing office. He can be reached at 517.487.4719 or [rshannon@dickinsonwright.com](mailto:rshannon@dickinsonwright.com).