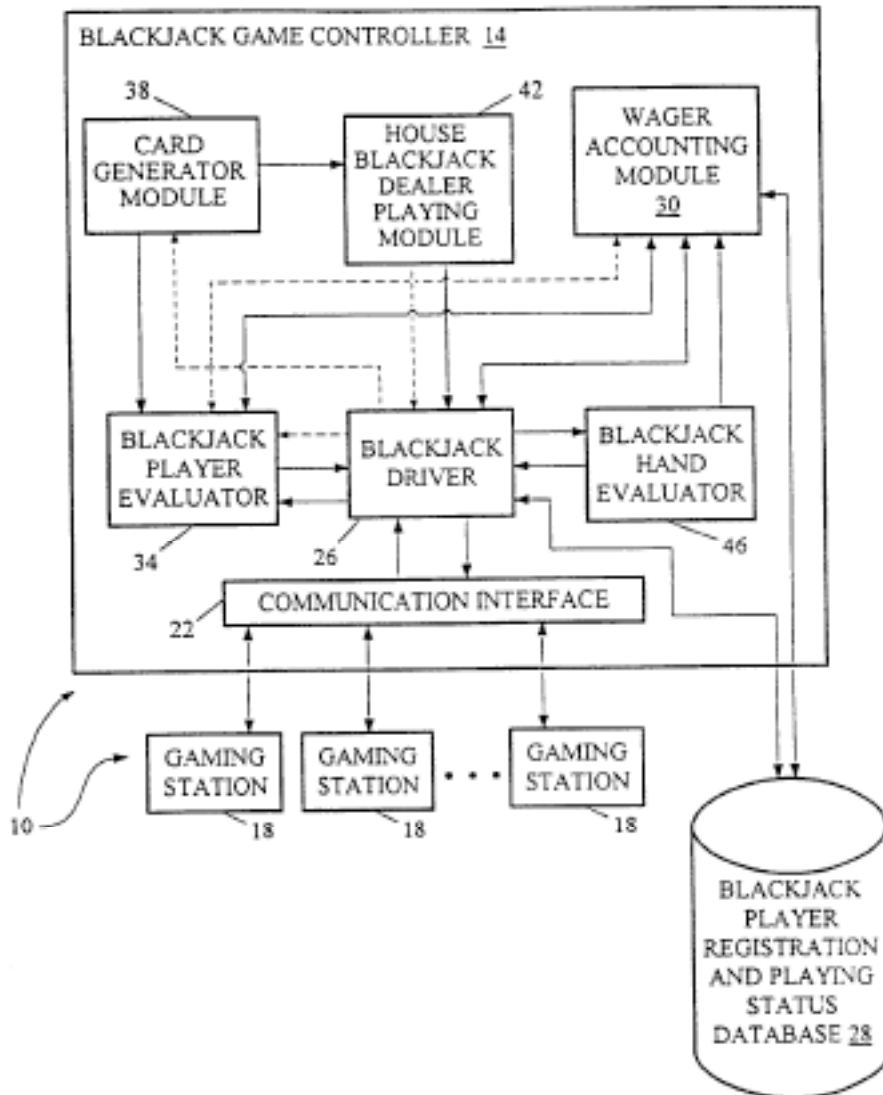**The Goldberg Patent on Online Game Play**
U.S. Patent No. 6,264,560

Latest Date That Material Can Qualify for Prior Art: **January 19, 1996**

I.   General Description of the Invention

The Goldberg Patent claims to cover a variety of multi-player "tournament-style" games, including those played online. These games consist of multiple players competing with each other, with the winners continuing on to later rounds and the losers going home.

The primary example used in the patent is online blackjack:

However, parts of the patent claim to cover all forms of tournament play, not just card games and not necessarily limited to online play.

The patent contains over 100 distinct claims. However, we are most interested at this point in busting only five key ones (1, 2, 16, 18, 20, and 92). We believe that if these six fall, it will have a significant impact on the enforceability of the remaining claims and thus the patentee's ability to threaten online gaming sites.

II.   The Claims At Issue

A. Claim 1

Claim 1 covers a method for conducting any tournament game (online *or* offline) where players are split into different groups for an initial round and then the winners of each round are paired up in subsequent rounds to face off. Each new round also requires a modification of one of the game rules, such as how much one can bet per round. The method also requires each "round" of the overall tournament be defined either by a specific number of games played or a specific amount of time lapsing.

In Claim 1, one conducts a tournament as follows:

   a) Identifying players to be included in the tournament;
   b) Dividing the selected players into groups where they play against each other;
   c) Playing either a specified number of instances of the game (e.g., hands of blackjack), or playing for a specified amount of time;
   d) Determining a winner from each group;
   e) Creating a modified version of the game by changing one of the rules of the game (e.g. whether you can "double-down" with a 10 or 11);
   f) Combining the winning players from different groups into one or more new groups to play against each other with the newly modified rule from step (d); and
   g) Again, playing either a specific number of instances of the game or playing for a set amount of time.

B. Claim 2

Claim 2 limited the tournament from Claim 1 to one played online. All of the elements are the same as Claim 1, with the additional constraint that at least some of the steps of the tournament involve the player interacting with a "game playing node" (i.e., a server) on a communications network.

C. Claim 16

Claim 16 covers a method of presenting clickable advertisements over a communications network to players participating in games as described in Claim 1. For each player on the network, the following steps are performed:

   a) A player transmits a request over a network to a game-playing node (e.g., network server) to play a game as described in Claim 1.
   b) The game playing node responds to the player's request with interactive game presentations (e.g. pictures of playing cards) sent to the player's computer;

c) The gamer playing node also presents the player with multiple advertisements about products and services. These advertisements displayed on the player's screen concurrently with the interactive game presentations; and

d) The game-playing node receives information about the player's response to advertising, such as recording clicks on the advertisements.

D. Claim 18

Claim 18 covers the same advertising method as Claim 16, except that the communications network used is limited to the Internet as opposed to a more generic network such as a LAN.

E. Claim 20

Claim 20 covers a method for having a computer program simultaneously play a card game over a network with at least two different users using different sets of cards for each game. Specifically, the method includes the following steps:

a) Allowing multiple players to log into a card game played over a communications network;

b) Retrieving identification information (e.g. a username or log-in ID) for the players prior to starting the game and using the information to look up the player's game playing history (e.g. record of wins and losses);

c) Playing a game between a first user and a "substantially electronic playing module" (e.g. computer opponent) where the playing module is dealt a hand of cards as part of the game (e.g. the computer is not just a dealer but an actual player as well, as in blackjack); and

d) Playing a game between a second user and the game playing module that overlaps in time with the first user's game (i.e. the computer opponent is playing both games simultaneously) where the computer-dealer's two hands differ by at least one card (i.e., the two human-user players are not sitting at the same "table").

F. Claim 92

Claim 92 covers a method for communicating and displaying real-time player rankings, where the rankings are based on accomplishments in a network game (e.g. wins and loses, experience points, etc.). In this method, rankings are displayed to players currently online and updated regularly to reflect new accomplishments as they happen. Specifically, the method includes the following steps:

a) Having multiple players log into a game playing node (i.e. server) to play the game at overlapping times;

b) Transmitting "game plays" (e.g. actions, movements, card deals, etc.) from the game server to a player's computer;

c) During the first user's game, transmitting a "ranking" of a second user to the first user's computer, the ranking reflecting a "proficiency" of the second user in the game (e.g., a win-loss record, experience points, or skill level); and

d) Updating the ranking information for the second user on the first user's computer while the first user continues to play her game.

III. Description of the Prior Art Needed to Bust This Patent

The Goldberg patent is based on an early application that was filed on January 19, 1996. Thus, in order to bust the Goldberg patent, EFF needs to locate prior art that was publicly available before that date. Some of the claims were amended as late as October 28, 1999, however, so a particularly relevant piece of prior art dated even that late could be helpful. Prior art can be in the form of a published patent, a printed publication (e.g. web page, newsgroup post, conference presentation, magazine article, technical paper), or a product manual or literature related to a product or its sale. Publicly available software that was distributed before the critical date and demonstrates the functionalities described in the patent may also be used as prior art.

In order to bust the Goldberg patent, we must find prior art that covers all the elements of at least one of the six claims listed above. Technically, we need to bust every single claim in the patent in order to invalidate the entire patent; however, invalidating any claim helps narrow the patent and make it less detrimental.

Below is a claim-by-claim description of the prior art we are looking for:

Claim 1

Model prior art for Claim 1 would be a description of either an online or offline tournament game, possibly in a trade publication or user manual, which describes the architecture of the tournament. The description must mention that there are a certain number of rounds in the tournament, or that there is a time limit. Additionally, at least one rule of the game must change from round to round. For example, in a role-playing game, a character's "powers" might change or the number of points for completing a specific task might increase or be multiplied in higher rounds. The game "Federation," a multiplayer space fantasy game, is of particular interest and any documentation about the game is desired.

Specifically, prior art to bust Claim 1 must describe or perform the following:

a) Identifying specific players who want to play in a tournament;
b) Dividing the players into groups that will play against each other;
c) Determining a winner from each group;
d) Creating a modified version of the game by changing at least one of the game rules (e.g. extra lives, different options, etc.); AND
e) Combining the winners from the previous groups into one or more new groups to continue playing against each other with the modified rules.

Claim 2

Claim 2 limits the tournament structure described in Claim 1 to a tournament played over a communications network. The ideal prior art for this claim would likely be an article or online manual that describes tournaments like those in Claim 1 held on a pre-World Wide Web BBS

system or OSP network (e.g., The ImagiNation Network/Sierra, CompuServe, AOL/ Q-Link, Leisure-Link, etc.)

Claim 16

Model prior art for Claim 16 would be a description of clickable (or in some other way, interactive) advertisements being presented during networked computer game play. Claim 16 covers any type of computer networking, so advertisements served on mainframe computer systems, private networked kiosks, and even internal networks in casinos would fall under Claim 16 and could provide evidence to invalidate the claim if the advertisements displayed concurrently with electronic games.

Claim 18

Claim 18 merely presents a smaller subset of Claim 16 whereby the game player's computer transmits and receives the game data over the Internet. Early game networks like the ImagiNation Network/Sierra did not feature advertising, but other networks such as CompuServe, Prodigy, and Genie were known to serve up advertisements. America Online was in operation for several years before the patent's critical date, and likely included advertisements with their online games. Any published information describing the combination of advertisements with interactive online activities would provide the necessary prior art for this claim.

Claim 20

Model prior art for Claim 20 would be a description of a network game where a computer game server plays cards against two or more users at the same time with different hands. The casino games found in old versions of The ImagiNation Network included all of these features and any documentation about them is requested. While most online (BBS, OSP, etc.) card games would meet all of these criteria, the needed prior art would have to explicitly mention all the elements listed below:

   a) Electronic representations (e.g. visual images) of playing cards;
   b) Using player usernames and/or log-ins to track and look up player histories; and
   c) The ability to have the game server play multiple separate games against users who are logged in at the same time using different decks of cards (i.e., the computer can host multiple "tables" for playing the game).

UPDATE: EFF has identified several network card game programs that should have prevented the Patent Office from granting Claim 20. **GTE Main Street**, an incarnation of interactive television, had a blackjack game that appears to meet all the elements of Claim 20. However, we are still trying to locate explicit documentation of all these features including evidence specifically showing that GTE Main Street stored user information and then called up this information after login. The casino games found in the old versions of the **ImagiNation Network** (formerly the Sierra Network) also included all the features of Claim 20 and, thus, documentation of the Network's blackjack game would also help. Other helpful information would include documentation on **AOL's RabbitJack Casino** and **GE's Genie**.

<u>Claim 92</u>

This claim is simpler than it might seem at first glance. Prior art for this claim should describe a system that allows multiple users to log in separately, but simultaneously, such that a user's ability to log on is not prevented by having one other user already in the system. The game play is transmitted from a central system to each user separately. This is basic network architecture that any multi-user online system would have. In a prior art reference, this capability might be implied by reference to lists of other players already logged on, etc.

More importantly, however, a user must be able to receive updated rankings of another player while the user is still playing the game. The claim requires that the rankings of users simultaneously logged into the system be updated and visible to other members. The game **Shadow of Yserbius** originally found on The ImagiNation Network is believed to have included all these features, but further documentation is needed. The game "Netrek" is also of particular interest. It was one of the earliest interactive multiplayer games to use a game server over a network. Specifically, valid prior art must describe the following:

a) The ability to have multiple players log in and play the game at the same time;
b) The ability to transmit game information from a central game server to multiple user clients; and
c) The ability to transmit other player's rankings, update them, and display them while each user is in the middle of a game.

Where to send information on prior art: priorart@eff.org or
http://www.eff.org/patent/wanted/prior.php?p=sheldon

For more information on this patent:
http://www.eff.org/patent/wanted/patent.php?p=sheldon