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E-FILED on 5/25/10

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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ARISTOCRAT TECHNOLOGIES,  
AUSTRALIA PTY LIMITED and  
ARISTOCRAT TECHNOLOGIES, INC.,

No. C-06-03717 RMW

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Plaintiffs,

ORDER GRANTING PLAINTIFFS'  
REQUEST TO WITHDRAW MOTION

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v.

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INTERNATIONAL GAME TECHNOLOGY  
and IGT,

**[Re Docket No. 686]**

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Defendants.

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Plaintiffs Aristocrat Technologies, et al. (collectively "Aristocrat") have requested the court's permission to withdraw its motion for leave to file a Second Amended Complaint ("SAC") without prejudice. The court has discretion to allow a party to withdraw a motion. *See* Civ. L. R. 7-7(e) (if request to withdraw is not made within 7 days of service of an opposition, "the Court *may* proceed to decide the motion") (emphasis added).

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Aristocrat originally sought leave to add a new party and new claims of patent infringement based on a recently issued patent in its SAC. Defendants International Game Technology and IGT (collectively "IGT") oppose Aristocrat's motion for leave to amend, alleging prejudice, undue delay, bad faith, futility, and lack of judicial economy. In opposing the motion, IGT argued that: (1)

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1 Aristocrat could request that discovery in this case be used in future litigation between the parties,  
2 and (2) if IGT prevails in its motion for summary judgment on the existing claims, there would be  
3 no need for trial in this case, and thus "no efficiency [] would result from going to trial on a single  
4 patent based on discovery directed entirely at two other patents that are no longer part of the case."  
5 Dkt. No. 732 at 20-21.

6 On May 13, 2010, the court granted IGT's motion for summary judgment on the existing  
7 claims. Consequently, the issues that remain in dispute are unique to the new claims that Aristocrat  
8 originally sought to add in a SAC. These issues may take some time to resolve, and whether  
9 Aristocrat has viable claims may depend on what action the Patent and Trademark Office takes or  
10 declines to take. As IGT pointed out in its opposition to Aristocrat's motion seeking leave to amend,  
11 no judicial economy would be gained from determining issues unique to the new claims when  
12 summary judgment has already been granted on the existing claims. In fact, allowing Aristocrat to  
13 bring new claims in a separate complaint, if it wishes to do so, would likely simplify the issues for  
14 adjudication. There does not appear to be any good reason for delaying an appeal of the issues that  
15 dispose of the case as it now exists, if Aristocrat wishes to do so.

16 For the foregoing reasons, the court grants Aristocrat's request to withdraw its motion for  
17 leave to file a SAC without prejudice to asserting the new claims in a separate complaint, if it wishes  
18 to do so.

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DATED: 5/25/10

  
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RONALD M. WHYTE  
United States District Judge

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**Dated:** 5/25/10

CCL  
**Chambers of Judge Whyte**