

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LEGO SYSTEMS, INC. and  
WARNER BROS. HOME ENTERTAINMENT INC.,  
Petitioner,

v.

FIGUREFUN LLC,  
Patent Owner.

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Case IPR2018-00755  
Patent 7,338,377 B2

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Before HYUN J. JUNG, GEORGE R. HOSKINS, and  
KEVIN W. CHERRY, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining Some Claims Unpatentable  
35 U.S.C. § 318(a)

## I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1, 3, 5, 7, 10, and 25, but not claim 8, of U.S. Patent No. 7,338,377 B2 are unpatentable.

### A. *Procedural History*

LEGO Systems, Inc. and Warner Bros. Home Entertainment Inc. (collectively, “Petitioner”) filed a Petition (Paper 3, “Pet.”) requesting institution of an *inter partes* review of claims 1, 3, 5, 7, 8, 10, and 25 of U.S. Patent No. 7,338,377 B2 (Ex. 1001, “the ’377 patent”). FigureFun LLC (“Patent Owner”) filed a Preliminary Response (Paper 7). Pursuant to 35 U.S.C. § 314, we instituted an *inter partes* review. Paper 8 (“Dec. to Inst.”). In particular, we instituted review of claims 1, 3, 5, 7, 8, 10, and 25 on all presented challenges. Dec. to Inst. 2, 20.

After institution, Patent Owner filed a Response (Paper 12, “PO Resp.”), to which Petitioner filed a Reply (Paper 17, “Pet. Reply”), and Patent Owner thereafter filed a Sur-Reply (Paper 18, “PO Sur-Reply”). An oral hearing in this proceeding was held on June 24, 2019; a transcript of the hearing is included in the record (Paper 27, “Tr.”).

### B. *Related Proceedings*

The parties indicate that the ’377 patent is the subject of *FigureFun LLC v. LEGO Systems, Inc.*, Case No. 1:17-cv-01516-LPS-CJB (D. Del.) and *FigureFun LLC v. LEGO Systems, Inc.*, Case No. 2:17-cv-00182-JRG (E.D. Tex.). Pet. 1; Paper 5, 1–2.

*C. Evidence Relied Upon*

Petitioner identifies the following references as prior art in its asserted grounds of unpatentability:

(1) U.S. Patent No. 5,190,285, issued March 2, 1993 (Ex. 1003, “Levy”);

(2) GB 2 365 796 A, published February 27, 2002 (Ex. 1005, “Katoh”);

(3) U.S. Patent No. 6,460,851 B1, issued October 8, 2002 (Ex. 1004, “Lee”); and

(4) U.S. Patent No. 7,081,033 B1, issued July 25, 2006 (Ex. 1006, “Mawle”).

In support of its proposed grounds, Petitioner relies on a Declaration of Garry Kitchen (Ex. 1002). Patent Owner proffers a Declaration of Stacy Friedman (Ex. 2001) and a Supplemental Declaration of Stacy Friedman (Ex. 2004). No deposition transcripts were filed for Mr. Kitchen or Mr. Friedman.

*D. Grounds of Unpatentability at Issue*

We instituted *inter partes* review of claims 1, 3, 5, 7, 8, 10, and 25 of the ’377 patent on the following grounds:

| Claims Challenged         | Statutory Basis | References    |
|---------------------------|-----------------|---------------|
| 1, 3, 5, 7, 8, 10, and 25 | § 103(a)        | Levy and Lee  |
| 1, 3, 5, 7, 8, 10, and 25 | § 103(a)        | Katoh and Lee |
| 1, 3, 5, 7, 8, 10, and 25 | § 103(a)        | Mawle and Lee |

Dec. to Inst. 2, 20.

### E. The '377 Patent (Ex. 1001)

The '377 patent issued March 4, 2008, from an application filed August 20, 2003, and claims the benefit of priority from a foreign application filed August 20, 2002. Ex. 1001, code (22), code (30), code (45), 1:6–8.

The '377 patent “relates to a token with built-in [integrated circuit (“IC”)] chip that is used for a gaming machine that utilizes a token.” *Id.* at 1:19–20. The gaming machine preferably provides a strategic simulation game, wherein characters controlled by players appear in a provided virtual environment. *Id.* at 10:58–11:1, 11:4–6. A token that incorporates an IC chip, referred to as a token with built-in IC chip, is used preferably with the gaming machine to supply the strategic simulation game. *Id.* at 3:4–5, 11:1–3. Figures 1C and 2 of the '377 patent are reproduced below.

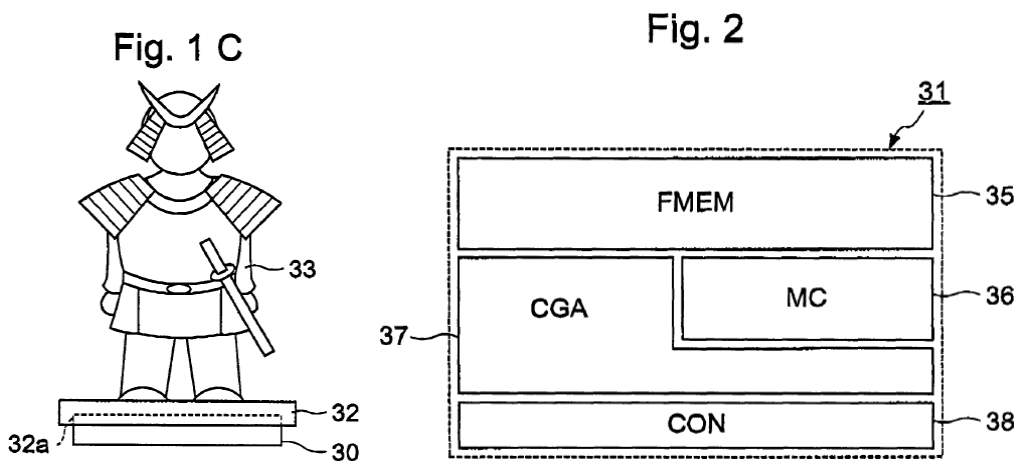


Figure 1C is a front view of a token with built-in IC chip, and Figure 2 is a block diagram showing the internal structure of the token with built-in IC chip. *Id.* at 11:61–63, 12:1–3. IC chip 31 is embedded inside token 30 to form the token with built-in IC chip. *Id.* at 12:34–35, 12:41–42. The token with built-in IC chip includes a storage section, such as flash memory, that

stores game initial data. *Id.* at 3:14–16, 3:20–22, 3:32–34, 4:21–23, 4:29–32, 5:7–9, 12:43–44, 13:10–11.

A three-dimensional shape or action figure is integral with or detachable from the token with built-in IC chip. *Id.* at 10:11–15, 10:24–25, 12:52–54, 12:66–67. The action figure resembles a character in the game. *Id.* at 10:14–16, 12:67–13:3. The token with built-in IC chip stores a data set concerning the game character. *Id.* at 10:34–35. Figure 3 of the '377 patent is reproduced below.

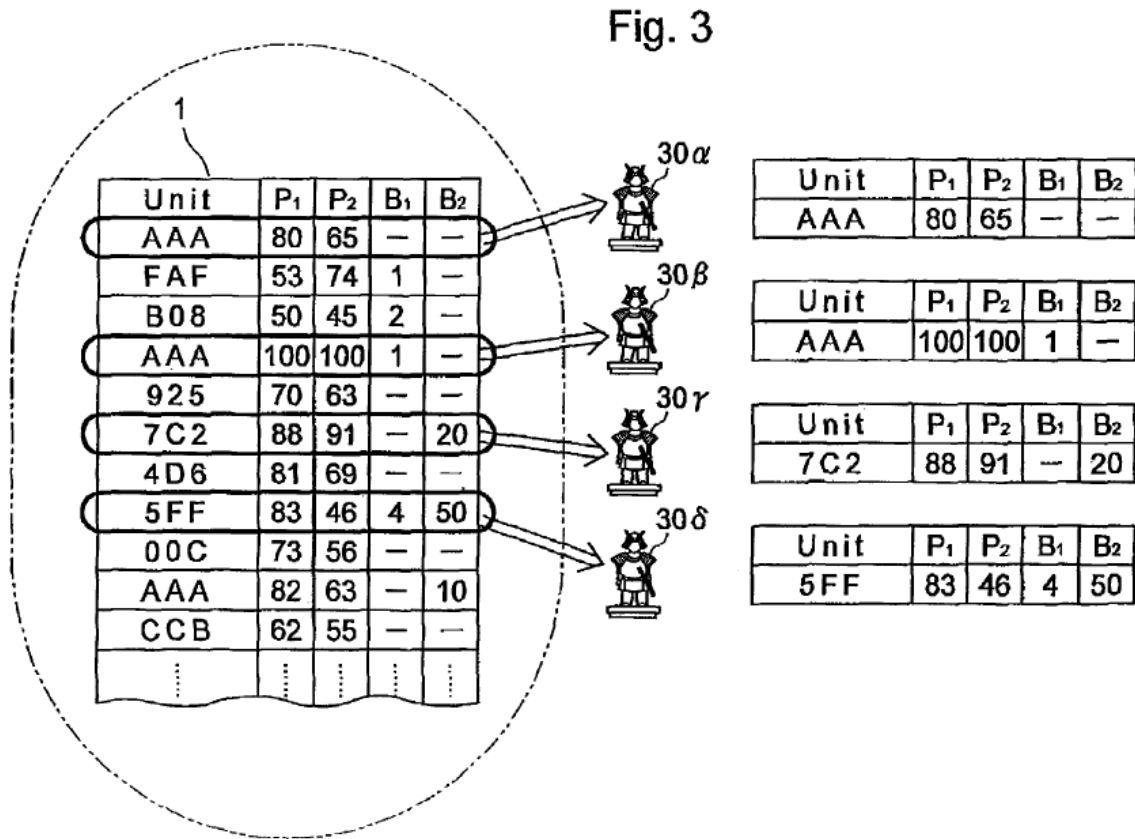


Figure 3 is a diagram showing a game initial data set stored in the token with built-in IC chip. *Id.* at 12:4–6. The game initial data set includes data indicating unit type, capability values (P<sub>1</sub>, P<sub>2</sub>), and bonus data sets (B<sub>1</sub>, B<sub>2</sub>). *Id.* at 13:50–14:10. One of a plurality of game initial data is stored on

one of the tokens with built-in IC chip 30 $\alpha$ , 30 $\beta$ , 30 $\gamma$ , 30 $\delta$ . *Id.* at 13:42–45, 14:35–15:8. For example, when token with built-in IC chip 30 $\delta$  is used with a gaming machine, a screen of the gaming machine shows a particular character with “Leadership” corresponding to P<sub>1</sub> or 83, “Mind” corresponding to P<sub>2</sub> or 46, a personal effect or special ability based on B<sub>1</sub>, and “CREDIT” corresponding to B<sub>2</sub> or 50. *Id.* at 22:35–23:12.

*C. Illustrative Claim*

The ’377 patent has 26 claims, of which Petitioner challenges claims 1, 3, 5, 7, 8, 10, and 25. Of the challenged claims, claims 1 and 25 are independent, and claim 1 is reproduced below.

1. A token for a gaming machine on which a player plays a game by controlling a character, comprising:

an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters;

wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine, and

has a bonus data set providing a predetermined profit in a game.

Ex. 1001, 23:58–24:2.

II. CHALLENGES UNDER 35 U.S.C. § 103

To prevail in its challenges under 35 U.S.C. § 103(a), Petitioner must prove unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

For all challenges, the parties’ disputes are related to the teachings of the asserted references and the reason for combining the asserted references. The parties do not direct us to any objective evidence of nonobviousness.

After reviewing the complete record, we conclude that Petitioner has shown by a preponderance of the evidence that the asserted references teach or suggest each limitation of challenged claims 1, 3, 5, 7, 10, and 25 and that a person of ordinary skill in the art would have had a reason to combine the asserted references with a reasonable expectation of success. We also conclude that Petitioner has not shown by a preponderance of the evidence that the asserted references teach or suggest the limitations of claim 8.

*A. Level of Ordinary Skill in the Art*

The Petition does not assert a particular level of ordinary skill in the art. Petitioner’s declarant, however, opines that a person of ordinary skill in the art “would have had the equivalent of a bachelor’s degree in electrical engineering, computer science, or similar field and one to two years of experience in the design of interactive entertainment products, such as

electronic toys or video games.” Ex. 1002 ¶ 12. Petitioner’s declarant also states that “[r]elevant professional or practical experience or degrees in other subject areas where a person would gain experience of this type may also suffice to qualify a person as skilled in the art.” *Id.*

Patent Owner’s declarant opines that “a person having ordinary skill in the technical art most relevant to Claims 1, 3, 5, 7, 8, 10, and 25 of the ’377 Patent at the time of invention most pertinent to the ’377 Patent would have at least a Bachelor’s Degree in Computer Science with courses and experience in relevant mathematics and three to five years of experience with designing and developing coin-operated electronic gaming devices with electronic displays (such as slot machines).” Ex. 2001 ¶ 19.

The parties’ declarants agree that one of ordinary skill in the art would have had at least a bachelor’s degree in computer science. Ex. 1002 ¶ 12; Ex. 2001 ¶ 19. The parties’ declarants also agree that one of ordinary skill in the art would have had experience in similar areas, particularly “the design of interactive entertainment products, such as electronic toys or video games” (Ex. 1002 ¶ 12) or in “designing and developing coin-operated electronic gaming devices with electronic displays (such as slot machines)” (Ex. 2001 ¶ 19). The parties’ declarants disagree as to the number of years of experience required. Ex. 1002 ¶ 12; Ex. 2001 ¶ 19; *see also* Tr. 67:7–18 (Petitioner’s counsel indicating that there was generally no disagreement on level of ordinary skill).

We find Patent Owner’s proposal consistent with the level of ordinary skill in the art reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978). We,

therefore, find that a person of ordinary skill in the art “would have at least a Bachelor’s Degree in Computer Science with courses and experience in relevant mathematics and three to five years of experience with designing and developing coin-operated electronic gaming devices with electronic displays (such as slot machines).” Ex. 2001 ¶ 19. Any differences regarding additional experience in the parties’ competing proposals for the level of ordinary skill does not affect our analysis of Petitioner’s challenges.

*B. Claim Interpretation*

In the present *inter partes* review, claim terms in the ’377 patent, which is unexpired, are interpreted according to their broadest reasonable construction in light of the Specification of the ’377 patent. 37 C.F.R. § 42.100(b) (2017); *Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard).<sup>1</sup>

In the Decision to Institute, we determined that no express interpretation was required for any claim term at that stage of the proceeding. Dec. to Inst. 8.

*1. “token”*

Petitioner proposes interpreting “token” as a “game piece,” citing portions of the ’377 patent. Pet. 12–13 (citing Ex. 1001, 1:14–17, 3:1–3,

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<sup>1</sup> On October 11, 2018, the Office revised its rules to harmonize the Board’s claim construction standard with that used in civil actions under 35 U.S.C. § 282(b) in federal district court. Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b) effective November 13, 2018). This rule change does not apply here. See Paper 4 (according a filing date of March 9, 2018 to the Petition).

5:49–54, 6:3–6, 6:29–31, 10:19–26). Patent Owner proposes interpreting “token” to mean “a disk-like shaped item required to begin play of a game,” citing portions of the ’377 patent and declarant testimony. PO Resp. 11–12 (citing Ex. 1001, 2:14–17, 6:58–61, 7:13–15, 10:24–26, 12:34–35, 14:57–64, 20:40–41; Ex. 2001 ¶ 52). Patent Owner also contends that the prosecution history of a related patent provides support for its proposed interpretation. *Id.* at 13 (citing Ex. 2006, 2).

Patent Owner additionally argues that Petitioner’s proposed interpretation is “unreasonably broad and improperly disregards the specification” and is without any particularly identified support. *Id.* (citing Pet. 12–13). According to Patent Owner, the ’377 patent does not describe a token as a game piece, and Petitioner’s proposed interpretation would encompass other claim terms, such as the figure. *Id.* at 13–14. Patent Owner also contends that Petitioner’s declarant testimony provides no further explanation for interpreting token as a game piece and is unsupported. *Id.* at 14 (citing Ex. 1002 ¶¶ 36–38).

Petitioner replies that Patent Owner’s proposed interpretation is different than the one offered in the Preliminary Response and is not the broadest reasonable interpretation. Pet. Reply 1–2 (citing PO Resp. 11–12). Petitioner notes that “‘token’ is in the preamble” and argues that it “should not limit the claim.” *Id.* at 2. Petitioner also argues that the “body of the claims defines a structurally complete invention” and the preamble states “a name (‘token’)” and “purpose or intended use.” *Id.* at 3. According to Petitioner, “Patent Owner is attempting to add an even more detailed statement of use . . . into the token that is defined in the body of the claim” that “provides no structure whatsoever to the claimed token,” and Petitioner

contends this is “improper and clearly not the broadest reasonable construction.” *Id.*

Petitioner also contends that Patent Owner’s proposed interpretation improperly “limit[s] token to a particular shape” that is not supported by the Specification and not the broadest reasonable construction. *Id.* at 3–4 (citing Ex. 1001, 5:48–65, 7:48–54). Petitioner contrasts claims 1 and 25 with claims 17 and 26 and refers to claim 20 to argue that Patent Owner’s proposed interpretation is not the broadest reasonable interpretation. *Id.* at 4–5. Petitioner, thus, argues that Patent Owner improperly reads in limitations regarding functional use and shape from the Specification into the preamble. *Id.* at 5.

Patent Owner replies that its proposed interpretation “accurately captures the disclosed invention and is based on the [S]pecification’s description of a token.” PO Sur-Reply 2 (citing Ex. 1001, 6:58–61). Patent Owner argues that it is “not reading limitations from the [S]pecification into the claims,” but rather is “construing the term according to its definition and usage in the patent.” *Id.* at 3. Patent Owner contends that “there is no rule against using functional language to describe the capabilities of a structure.” *Id.* at 4.

Patent Owner also contends that Petitioner does not identify any support in the intrinsic and extrinsic record for Petitioner’s proposed interpretation. Patent Owner argues Petitioner’s declarant testimony also does not identify any evidentiary support. *Id.* at 3 (citing Ex. 1002 ¶¶ 36–38). According to Patent Owner, “token” in the preamble provides antecedent support for the term used in the body, the preamble provides a

necessary limitation, and the term “token” is integral to the challenged claims. *Id.* at 3.

First turning to the claims, independent claims 1 and 25 recite a “token for a gaming machine” that comprises an integrated circuit chip (claim 1) or a storage section (claim 25) being “detachable from a figure.” Ex. 1001, 23:58–62, 26:9–13. Dependent claims 7 and 10 further recite how the token is attached or secured to the figure. *Id.* at 24:26–28, 24:36–38. The claims do not require “token” to be “a disk-like shaped item required to begin play of a game.” The claims, thus, do not expressly support Patent Owner’s proposed interpretation.

Turning to the Specification, it states that a “shape of the above-mentioned token with built-in IC chip is not limited” and that “it is preferably disk-shaped like an ordinary token.” Ex. 1001, 7:48–50. The Specification, thus, does not support Patent Owner’s proposed interpretation.

The Specification also indicates that a “token” is not the same as an “action figure.” *See, e.g., id.* at 10:21–24 (“Here, it is not necessary that the token with built-in IC chip is configured so integrally with the action figure that the action figure may be fixed firmly and cannot be removed from the token.”), 10:24–25 (“The action figure may be configured so as to be detachable from the token, which is disk-shaped.”). As discussed above, the claims require a “token for a gaming machine” that comprises an integrated circuit chip or a storage section being “detachable from a figure.” *Id.* at 23:58–62, 26:9–13. The Specification also describes figures with integrated tokens with built-in IC chips (*id.* at 5:49–54), but the claims are directed by their express terms to embodiments of tokens with detachable figures. We,

thus, agree with Patent Owner that “token” does not include a “figure.”

Thus, the term “token” cannot include within its scope a “figure.”

To resolve the parties’ dispute regarding patentability, we need only determine that the term “token” does not include an “figure.” *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (construing only those claim terms in controversy and only to the extent necessary to resolve the controversy); *see also Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (applying *Vivid Techs.* in the context of an *inter partes* review). Any further express interpretation is not required for our analysis. *Vivid Techs.*, 200 F.3d at 803.

## 2. Other Proposed Interpretations

The parties also dispute the meaning of “game initial data” and “bonus data set providing a predetermined profit.” Pet. 13–16; PO Resp. 15–20; Pet. Reply 6–11. Patent Owner further proposes an interpretation for “attachable to and detachable from.” PO Resp. 21–22.

We need not interpret these phrases to resolve the parties’ dispute regarding patentability. *Vivid Techs.*, 200 F.3d at 803. As discussed below, even under Patent Owner’s proposed interpretations for these phrases, we determine that Petitioner shows by a preponderance of the evidence that claims 1, 3, 5, 7, 10, and 25 are unpatentable. Also, as discussed below for claim 8, the deficiencies are not related to issues of claim interpretation.

## C. Scope and Content of the Prior Art

### 1. Levy (Ex. 1003)

Levy “relates . . . to an electronic game for simulating a sport.” Ex. 1003, 1:6–8. It includes at least one “intelligent” game piece containing

a re-programmable semiconductor memory device. *Id.* at 1:44–47. Figure 1 of Levy is reproduced below.

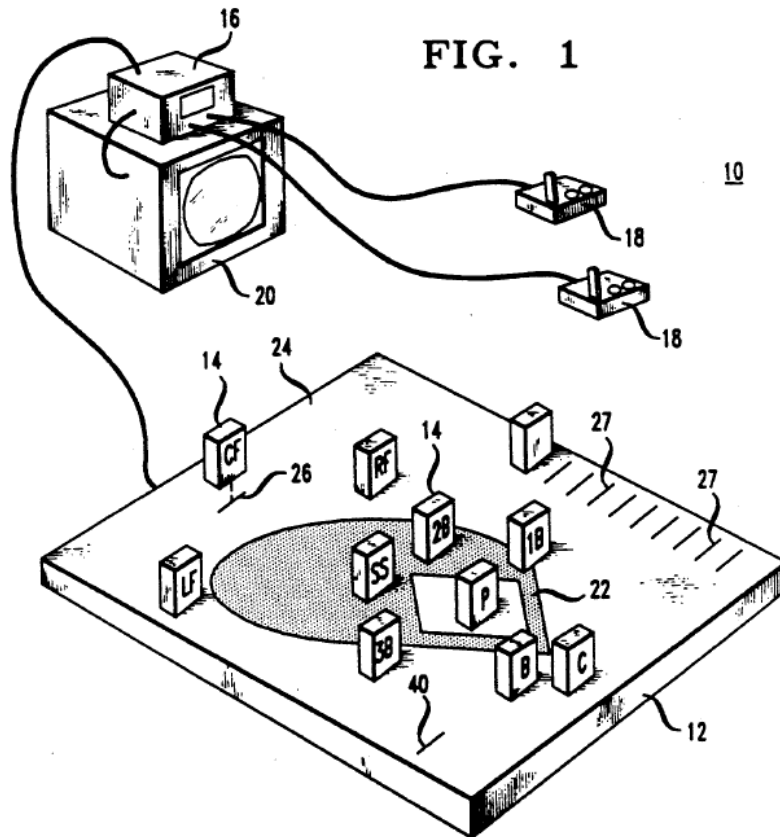


Figure 1 is a “block diagram of an electronic game.” *Id.* at 2:23–24. Game 10 includes game board 12, at least one game piece 14, and display device 20. *Id.* at 2:45–53. A processor reads each game piece. *Id.* at 2:6–7. If the game is baseball, “each game piece 14 represents an individual baseball player . . . whose statistics are electronically stored in the game piece.” *Id.* at 2:60–3:4; *see also id.* at 8:54–9:16 (describing the simulation of a pitch being thrown). A reader can read game piece 14 when it is placed in slot 40 so that data stored in memory can be transferred. *Id.* at 4:24–28, 7:64–68, 8:4–5. “Whether the batting game piece 14 hit[s] the thrown pitch, and the type of hit, would be established by the processor 80 of FIG. 6 using

the batting statistics stored by the batting game piece.” *Id.* at 9:12–16, Fig. 6.

Game piece 14 can take the form of figurine 64. *Id.* at 5:27–32, Fig. 5. “[F]igurine 64 is attached at its base to a lid 66 which overlies the opening of a nonferromagnetic enclosure 68” and “[s]eated within the enclosure 68 is a re-programmable memory device 70 (i.e., an EEPROM chip or the like) which stores statistics about the player represented by the figurine 64.” *Id.* at 5:32–38, Fig. 5

## 2. Lee (*Ex. 1004*)

Lee “relates to interface devices that enable games, toys, activity centers and other amusement devices to directly interact with a personal computer.” *Ex. 1004*, 1:18–20. Lee can adapt transducer identification technology to identify electronically play objects. *Id.* at 6:25–36. Figure 2 of Lee is reproduced below.

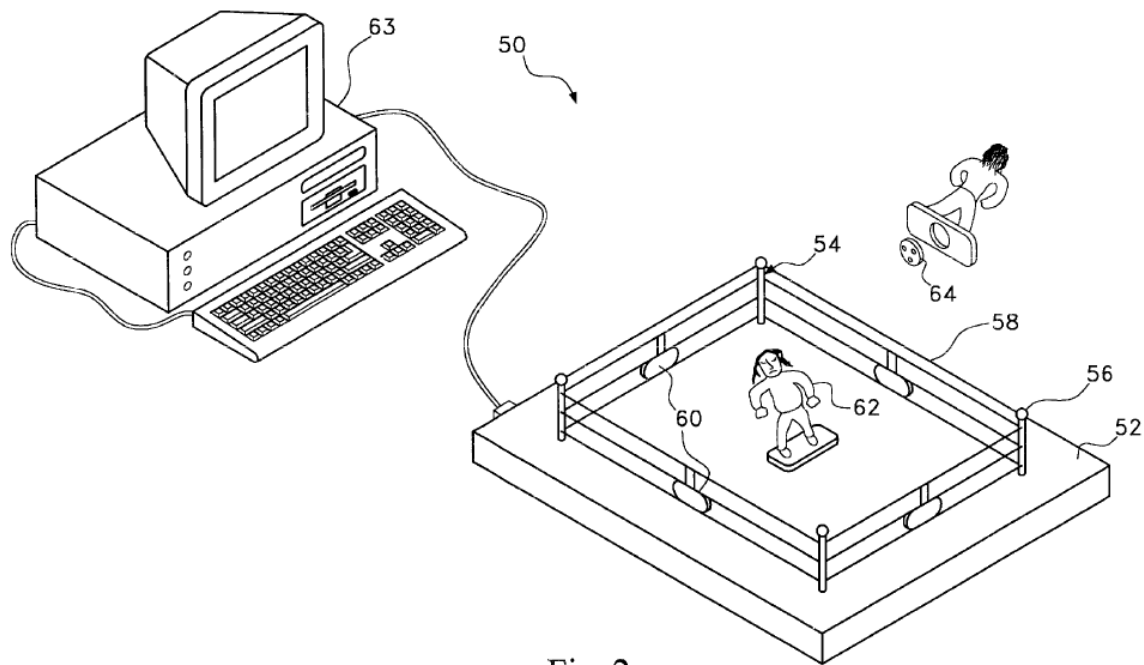


Fig. 2

Figure 2 is a perspective view of an embodiment of the computer interface device. *Id.* at 3:11–13. In the embodiment of Figure 2, “transducers 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures.” *Id.* at 6:48–50. “If transducers 64 are added to preexisting figures, the figure associated with a particular transducer is read into the computer 63,” and thus, “computer 63 is then able to identify the figure when it is used.” *Id.* at 6:52–55. Interface assembly 50 “identifies the location and orientation of all prop objects and action objects,” which are then read to computer 63 so that computer 63 can monitor and interact with play. *Id.* at 6:57–61.

### 3. Katoh (*Ex. 1005*)

Katoh “relates to a game system using a toy, and to a storage medium storing a game program to be read and executed in the game system, and the like.” *Ex. 1005*, 1. Figure 1 of Katoh is reproduced below.

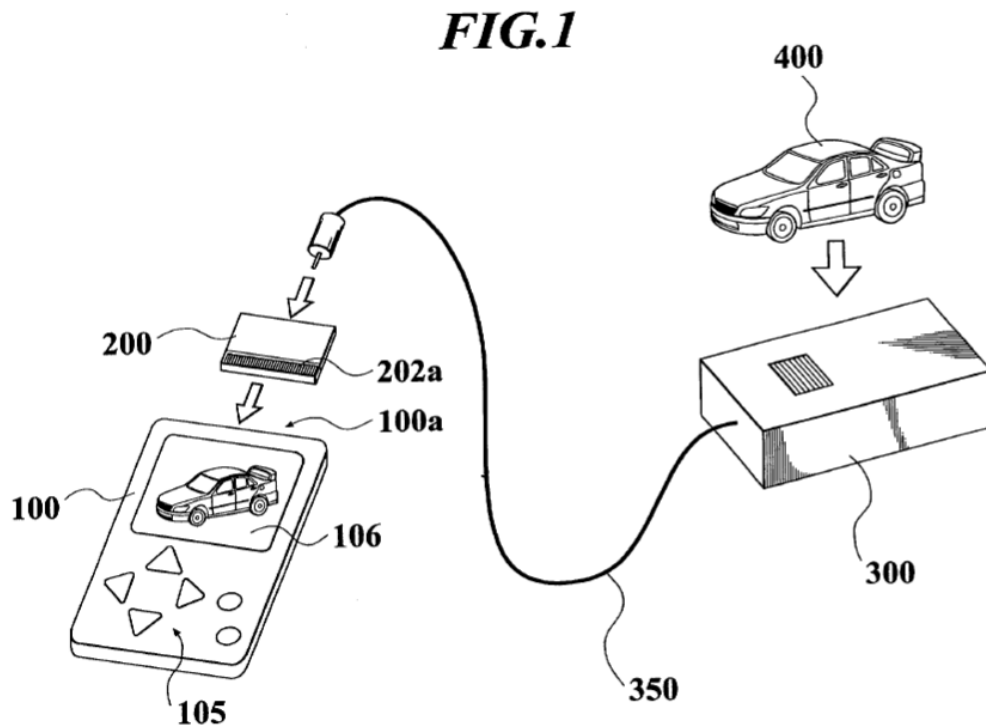


Figure 1 shows a game device, cartridge, reader, and toy. *Id.* at 7. The game system includes toy 400 that stores information, reader 300 that detects the information, and game device 100 that executes a game with a character representing toy 400. *Id.* Abstract.

Katoh describes “a toy (for example, the toy 400 in FIG. 1) for storing toy information (for example, the ID code 418a in FIG. 3)” (*id.* at 2), “executing a game in which a character representing the toy appears, in accordance with the toy information detected by the reader” (*id.* at 2–3), “[t]he character that represents the toy is one representing an object which the toy forms” (*id.* at 3), “the toy comprises a storage section (for example, the memory 418 in FIG. 3) for storing play information (for example, the play data 418b in FIG. 3) about the game” (*id.* at 4), “the play information concerns about game play” (*id.*), and “a contactless IC card is best known” (*id.* at 8).

“In FIG. 6, the character data 214 are stored in a form of a data table [in] which ID codes and character data are made corresponding to each other.” *Id.* at 17, Fig. 6. Character data 214 concern the performance of the character and can include, for example, maximum speed. *Id.* at 17–18.

#### 4. *Mawle (Ex. 1006)*

Mawle “relates to a toy figure that can be used with multiple, different game systems.” Ex. 1006, 1:12–13. Toy figure 100 has three-dimensional body 105, integrated circuit 110, and connector 115 that is electrically connected to integrated circuit 110. *Id.* at 3:29–30, 3:32–36. Toy figure 100 can have a more complex shape and is adapted to mate with an electronic game. *Id.* at 3:37–38, 3:58–59. Integrated circuit 110 stores characteristics of toy figure 100. *Id.* at 3:40–41. Characteristics can include power, amount

of energy, attack methods, damage, and other statistics. *Id.* at 3:50–55. Memory 100 can include predetermined attributes unique to toy figure 100. *Id.* at 4:54–56.

Toy figure 100 can be adapted for play with hand-held device 300 through adapter 302 that mates with connector 115 and attaches to hand-held device 300. *Id.* at 12:30–35. Controller 2100 of device 300 downloads information from toy figure 100 before beginning a game. *Id.* at 12:40–45. “After the controller 2100 adjusts game play based on the downloaded information, the controller 2100 receives input from the player through one of the inputs 315, 320, 325 indicating the start of the game (step 2215),” and the “controller 2100 then begins the game (step 2220).” *Id.* at 13:9–13.

*D. Challenge Based on Levy and Lee*

Petitioner contends that claims 1, 3, 5, 7, 8, 10, and 25 are unpatentable over Levy and Lee. Pet. 16, 23–35. In particular, Petitioner contends that Levy teaches an action figure having an integrated circuit chip that contains game initial data and a bonus data set but does not teach that the chip is detachable from the action figure. *Id.* at 23; *see also id.* at 17–21 (asserting what Levy teaches), 24–35 (claim chart asserting that Levy, Lee, or Levy and Lee teach the limitations of claims 1, 3, 5, 7, 8, 10, and 25). Petitioner relies on Lee for teaching such a chip. *Id.* at 23; *see also id.* at 21–23 (asserted teachings of Lee), 24–35.

Patent Owner responds that Levy and Lee fail to teach a “token for a gaming machine,” a “token . . . being attachable to and detachable from a figure,” “storing at least game initial data,” and “a bonus data set.” PO Resp. 30–41. Patent Owner also responds that Levy and Lee fail to teach “an identification code,” as recited by claim 8. *Id.* at 41–42. Patent Owner

additionally argues that one of ordinary skill in the art would not have been motivated to combine Levy and Lee. *Id.* at 58–59.

1. *Claim 1*

a. *“A token for a gaming machine on which a player plays a game by controlling a character”*

Petitioner argues that Levy and Lee each teach “a gaming machine on which a player plays a game by controlling a character.” Pet. 24–27 (citing Ex. 1002 ¶¶ 36, 57–59, 80; Ex. 1003, 1:44–50, 5:27–42, Figs. 1, 4, 5; Ex. 1004, 2:49–63, Fig. 2); *see also id.* at 17–21 (asserting what Levy teaches), 21–23 (asserting what Lee teaches).

Patent Owner responds that Levy and Lee do not teach or suggest a “token for a gaming machine.” PO Resp. 30–32 (citing Pet. 22–27, 34–35; Ex. 1002 ¶¶ 57–59, 80; Ex. 1003, 2:14–20; Ex. 1004, 6:25–66). According to Patent Owner, Levy teaches an action figure, not a token under its proposed interpretation, and teaches a re-programmable memory, thus “indicating that no particular game piece or the memory stored therein is required for game play.” *Id.* at 31 (citing Ex. 1003, 2:14–20). Patent Owner also contends that Petitioner’s proposed modification acknowledges that Levy does not teach a token and does not teach that its integrated circuit chip is a token. *Id.* Patent Owner also argues that Lee teaches a transducer, not a token, under either party’s proposed interpretation for “token.” *Id.* at 32 (citing Ex. 1004, 6:25–66).

We find that the relied-upon portions of Levy teach an “electronic game [that] includes at least one, and preferably, a plurality of ‘intelligent’ game pieces” and in the embodiment of Figure 5, that “each game piece 14' takes the form of a figurine 64.” Ex. 1003, 1:44–46, 5:27–28, Figs. 1, 4, 5.

We also find that Levy teaches that “figurine 64 is attached at its base to a lid 66 which overlies the opening of a nonferromagnetic enclosure 68” and “[s]eated within the enclosure 68 is a re-programmable memory device 70 (i.e., an EEPROM chip or the like) which stores statistics about the player represented by the figurine 64.” *Id.* at 5:32–38, Fig. 5.

As discussed below in connection with the asserted reason to combine Levy and Lee, Petitioner proposes to modify Levy’s memory device 70 or EEPROM chip in view of Lee to arrive at a “token for a gaming machine.” *See* Pet. 23–24.

Thus, we determine that Levy teaches or suggests figurine 64 for a gaming machine on which a player plays a game by controlling a character.

- b. “an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters”*

Petitioner argues that Levy teaches “an integrated circuit chip having a storage section storing at least game initial data regarding the character, and a figure identifying one of a plurality of selectable characters.” Pet. 27–28 (citing Ex. 1003, 1:44–53, 5:27–38); *see also id.* at 17–21 (asserting what Levy teaches). Petitioner also argues that Lee teaches “a token 64 which is attachable to and detachable from a figure, and has a transducer containing identification data.” *Id.* at 28–29 (citing Ex. 1002 ¶¶ 85–88; Ex. 1004, 6:28–35, 6:44–51, Fig. 2); *see also id.* at 21–23 (asserting what Lee teaches).

Patent Owner responds that Petitioner relies on Lee for teaching “a token . . . being attachable to and detachable from a figure” but Lee does not teach such a token. PO Resp. 33 (citing Pet. 28–29; Ex. 1002 ¶ 86).

According to Patent Owner, Lee does not teach a token under either party's proposed interpretation and does not teach an integrated circuit chip. *Id.* at 33–34 (citing Ex. 1004, 6:25–56). Patent Owner also argues that Petitioner's declarant testimony that Lee's transducer could include an integrated circuit chip is irrelevant and unsupported. *Id.* at 34–36 (citing Ex. 1002 ¶¶ 57, 58; Ex. 1018, 5:8–18). Patent Owner further argues that Lee does not teach or suggest that its “transducer is detachable once attached” and that Petitioner's evidence is insufficient. *Id.* at 36–37 (citing Pet. 23; Ex. 1002 ¶¶ 40–41, 59; Ex. 1004, 6:41–51).

Petitioner replies that Lee's transducer 64 is detachable. Pet. Reply 12–15 (citing PO Resp. 36–37, 44–45, 51–52; Ex. 1002 ¶¶ 56–59, 79, 85–87, 100, 120–122, 157–159; Ex. 1004, 6:15–19, 6:48–50; Ex. 2001 ¶ 41). Petitioner also argues that Patent Owner attacks the references individually, relies on an incorrect interpretation of claim terms, and fails to address Petitioner's proposed combination. *Id.* at 15–20 (citing Pet. 23–24; PO Resp. 31–36; Ex. 1018, 5:3–5, 5:8–10, 5:16–18, Fig. 4).

Patent Owner replies it is attacking improper assertions made in Petitioner's invalidity arguments, not individually attacking the references. PO Sur-Reply 8 (citing Pet. Reply 15–17, 20, 22), 15–16 (citing PO Resp. 58–59; Pet. Reply 19–20). Patent Owner also argues that Lee's transducer is not a token, Petitioner does not dispute that it is not a token, and Lee's transducer would not be a token under Patent Owner's proposed interpretation. *Id.* at 9–11 (citing Pet. 23; Pet. Reply 11, 12, 17; Ex. 1002 ¶ 59; Ex. 1004, 6:25–36, 6:47–54, Fig. 2), 16–20 (citing Pet. 16, 24, 30–31; PO Resp. 34–35, 58–59; Pet. Reply 17–19; Ex. 1002 ¶¶ 57–58). Patent

Owner further contends that new arguments and theories have been presented. *Id.* at 11–13 (citing Pet. 28; Pet. Reply 13, 14, 19).

We find that the relied-upon portions of Levy teach an “electronic game [that] includes at least one, and preferably, a plurality of ‘intelligent’ game pieces,” that “each game piece 14' takes the form of a figurine 64,” and that “figurine 64 is attached at its base to a lid 66 which overlies the opening of a nonferromagnetic enclosure 68” and “[s]eated within the enclosure 68 is a re-programmable memory device 70 (i.e., an EEPROM chip or the like) which stores statistics about the player represented by the figurine 64.” Ex. 1003, 1:44–46, 5:27–28, 5:32–38, Figs. 1, 4, 5. We also credit Petitioner’s declarant testimony that one of ordinary skill in the art would understand that Levy’s memory device 70 or EEPROM to be an “integrated circuit chip having a storage section” because it finds support in the record. Ex. 1002 ¶¶ 50, 82.

We also find that the relied-upon portions of Lee teach that, in the embodiment shown in Figure 2, “transducer 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures as part of the activity center.” Ex. 1004, 6:44–51. Figure 2 shows transducer 64 near a recessed portion in the base of a figure. Petitioner’s declarant also testifies that Lee’s transducer is attachable and detachable or “it would have been obvious to make it such, as it would have been attached by friction in the space indicated, or by some sort of adhesive that would not need to be permanent.” Ex. 1002 ¶¶ 59; see also Pet. 23 (arguing that it would have been obvious “to provide the integrated circuit chip of Levy in a token that is attachable to and detachable from the action figure, as done in Lee” so that “various action figures can be

used with it”). We credit that testimony because Petitioner has identified a reason that one of ordinary skill in the art would have wanted to provide an attachable/detachable token, and the full record indicates that forming such an attachment is within the level of ordinary skill in the art. We, thus, determine that one of ordinary skill in the art would have made the proposed modification so that “various action figures can be used with it.” See Pet. 23.

Even under Patent Owner’s proposed interpretation of “attachable to and detachable from” to mean “configured to be non-permanently connected to and readily separated from” (PO Resp. 21–22), we determine that Levy as modified by Lee would result in an attachment that is “configured to be non-permanently connected to and readily separated from” because Petitioner’s declarant states it could be formed by “some sort of adhesive that would not need to be permanent” (Ex. 1002 ¶ 59).

Patent Owner also responds that Levy and Lee do not teach or suggest “storing at least game initial data.” PO Resp. 37–38 (citing Pet. 23, 27–28). Patent Owner argues that Levy only teaches statistics related to its figurine and does not teach that “any information stored in the disclosed figure is required for commencement of a game.” *Id.* at 38 (citing Ex. 1003, 5:35–38). Patent Owner also argues that Levy’s data is “re-programmable” and thus, “no particular data stored within is required for commencement of a game.” *Id.* (citing Ex. 1003, Abstract, 1:44–50, 2:14–20, 5:35–38, 6:64–67). Patent Owner further argues that Lee does teach storing “anything, much less ‘game initial data.’” *Id.* (citing Ex. 1004, 6:25–61).

Petitioner replies that, in Levy, game pieces are required to commence the game. Pet. Reply 17 (citing Ex. 1003, 7:24, 8:26–27, Fig. 7). Petitioner

also argues that Levy teaches “game initial data” and “bonus data” under either parties’ proposed interpretation. *Id.* at 20–23 (citing Pet. 20–21, 29–33; PO Resp. 41–42; Ex. 1001, Fig. 3; Ex. 1002 ¶¶ 50, 89, 90, 94; Ex. 1003, 4:30–34, 8:26–27, 9:12–16, Fig. 7).

Patent Owner replies that Petitioner did not respond to its argument that Levy’s game piece is reprogrammable so that Levy indicates that its stored data is not required for commencement of a game. PO Sur-Reply 13–14 (citing PO Resp. 38; Pet. Reply 21; Ex. 1003, Abstract, 1:44–50, 2:14–20, 5:35–38, 6:64–67).

We find that the relied-upon portions of Levy teach that, “when a game of baseball is to be simulated, each game piece stores statistics associated with either a single player or a whole team of past or present major league baseball players.” Ex. 1003, 1:50–53; *see also id.* at 3:1–5 (stating that “with baseball being the simulated game, each game piece 14 represents an individual baseball player, typically a current or past major league baseball player whose statistics are electronically stored in the game piece in a manner described hereinafter”). Levy also teaches that “[w]hether the batting game piece 14 hit[s] the thrown pitch, and the type of hit, would be established by the processor 80 of FIG. 6 using the batting statistics stored by the batting game piece.” *Id.* at 9:12–16; *see also* Pet. 20 (citing Ex. 1003, 2:67–3:10, 8:54–9:16), 21 (citing Ex. 1003, 9:12–16).

Also, in connection with the limitation “game initial data . . . is read by the gaming machine when the figure with the token is set on the gaming machine,” Petitioner argues, and we find, that Levy teaches that “a read prompt message is displayed (step 110), prompting a player to successively place game pieces 14 of FIG. 3 into the slot of FIG. 3 so that the piece can

be read by the reader 38 of FIG. 3” and the “reading of the game pieces 14’ is carried out without any player intervention.” Ex. 1003, 7:64–68, 8:4–5; *see also* Pet. 29 (citing Ex. 1002 ¶ 89; Ex. 1003, 1:44–53, 2:67–3:5, 6:66–69, 7:63–8:5).

Because Levy teaches that its game pieces store statistics about a baseball player, that the stored statistics are read when the game pieces are placed on its game board, and that Levy uses the statistics stored in its game pieces to resolve pitches between two game pieces, we determine that Levy teaches or suggests “an integrated circuit chip having a storage section storing at least game initial data regarding the character.”

Even under Patent Owner’s proposed interpretation of “game initial data” as “a data set required for commencement of a game,” Levy’s data stored in its game piece is read before commencing a game. *See* PO Resp. 15–16 (proposing interpretation for “game initial data”); Ex. 1003, 8:26–27 (“Once all of the game pieces 14 (or 14’) have been read, then the actual playing of the game is commenced . . .”). Further, even if Levy’s memory device 70 is re-programmable, Levy teaches or suggests it would be re-programmed for another game. *See* Ex. 1003, 1:41–50 (stating that “an electronic game is provided which affords that opportunity to change the playing characteristics of an activity (game) simulated by the game” and describing that the “‘intelligent’ game pieces, each containing at least one re-programmable semiconductor memory device, [are] initially programmed with a set of characteristics associated with a particular aspect of the activity simulated by the game of the invention”). Thus, Levy teaches or suggests its game pieces can be re-programmed with other “game initial data” or “data set required for commencement of a game.”

Thus, based on the full record, a preponderance of the evidence persuades us that Levy and Lee teach or suggest “an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters.”

- c. *“wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine”*

Petitioner argues that Levy teaches “game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine.” Pet. 29 (citing Ex. 1002 ¶ 89; Ex. 1003, 1:44–53, 2:67–3:5, 6:66–69, 7:63–8:5); *see also id.* at 17–21 (asserting what Levy teaches). Petitioner also argues that Lee teaches that the “identification of the token 64 is read by the gaming machine when the figure with the token is set on the gaming machine and that any transducer identification technology can be used.” *Id.* at 29–30 (citing Ex. 1004, 6:25–55); *see also id.* at 21–23 (asserting what Lee teaches). Patent Owner does not present any arguments for this particular limitation. *See generally* PO Resp.

We find that the relied-upon portions of Levy teach that “when a game of baseball is to be simulated, each game piece stores statistics associated with either a single player or a whole team of past or present major league baseball players” and “a read prompt message is displayed (step 110), prompting a player to successively place game pieces 14 of FIG. 3 into the slot of FIG. 3 so that the piece can be read by the reader 38 of FIG. 3.” Ex. 1003, 1:50–53, 7:64–68. Levy also teaches that “[w]hether the

batting game piece 14 hit[s] the thrown pitch, and the type of hit, would be established by the processor 80 of FIG. 6 using the batting statistics stored by the batting game piece.” *Id.* at 9:12–16.

Because Levy teaches using batting statistics from a particular game piece’s stored statistics to resolve pitches and that the statistics stored in the game pieces are read when they are placed on its game board, a preponderance of the evidence persuades us that Levy teaches or suggests “wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine.”

*d. “has a bonus data set providing a predetermined profit in a game”*

Petitioner argues that Levy teaches that “the game initial data has a bonus data set providing a predetermined profit in a game, which is used to determine batting results.” Pet. 30–31 (citing Ex. 1002 ¶¶ 51, 93–95; Ex. 1003, 2:67–3:5, 9:4–16); *see also id.* at 17–21 (asserting what Levy teaches).

Patent Owner responds that Levy and Lee do not teach or suggest a “bonus data set,” under its proposed interpretation of “a data set associated with the token as a bonus that provides a predetermined benefit that causes the game to proceed in a manner differently that if the predetermined benefit was not associated with the token.” PO Resp. 38–39. Patent Owner argues that Petitioner relies on its declarant testimony, not the teachings of Levy or Lee and that the relied-upon “batting statistic” is not a “bonus data set” and does not provide a “predetermined profit.” *Id.* at 39–40 (citing Pet. 31; Ex. 1002 ¶¶ 51–52; Ex. 1003, 2:67–3:5, 9:4–16); 40–41 (citing Pet. 31;

Ex. 2001 ¶ 33). Patent Owner also argues that Levy’s “batting statistics” are more like the “capability values” of the ’377 patent, “which are explicitly contrasted with ‘bonus data.’” *Id.* at 40 (citing Ex. 1001, 13:50–14:10; Ex. 2001 ¶¶ 26–31).

Petitioner replies that Levy teaches “game initial data” and “bonus data” under either parties’ proposed interpretations. Pet. Reply 20–23 (citing Pet. 20–21, 29–33; PO Resp. 41–42; Ex. 1001, Fig. 3; Ex. 1002 ¶¶ 50, 89, 90, 94; Ex. 1003, 4:30–34, 8:26–27, 9:12–16, Fig. 7). Patent Owner replies that Petitioner does not rely on any express teachings and provides no reasons for relying on declarant testimony on how Levy might work. PO Sur-Reply 14. Patent Owner also argues that batting statistics do not provide a predetermined benefit, unlike the ’377 patent which describes beginning with a bonus before game play, not obtaining it through game play. *Id.* at 14–15 (citing Pet. Reply 22).

The relied-upon portions of Levy teach “with baseball being the simulated game, each game piece 14 represents an individual baseball player, typically a current or past major league baseball player whose statistics are electronically stored in the game piece” and that “[w]hether the batting game piece 14 hit[s] the thrown pitch, and the type of hit, would be established by the processor 80 of FIG. 6 using the batting statistics stored by the batting game piece.” *Id.* at 3:1–5, 9:12–16.

Because Levy teaches storing statistics that include batting statistics, Levy teaches or suggests that better batting statistics would result in more hits. Thus, a preponderance of the evidence persuades us that Levy teaches a “bonus data set providing a predetermined profit in a game.” Even under Patent Owner’s proposed interpretation of “bonus data,” Levy teaches or

suggests that better batting statistics would result in more hits, thus “provid[ing] a predetermined benefit that causes the game to proceed in a manner differently that if the predetermined benefit was not associated with the token.” Levy also teaches or suggests that such batting statistics would be a bonus before game play, even if it were to get better through game play.

## 2. Claim 3

Claim 3 depends directly from claim 1 and recites “wherein the game initial data includes a character data set regarding the character controlled by the player with the gaming machine, a bonus data set, or a combination thereof.” Ex. 1001, 24:7–10.

Petitioner refers to arguments presented for the integrated circuit chip, game initial data, and bonus data set of claim 1. Pet. 31. Petitioner contends that the “batter in Levy will have a combination of statistics including a character data set with necessary information such as batting average and a bonus data set with information such as number of home runs, if any.” *Id.* (citing Ex. 1002 ¶¶ 51–52). Patent Owner does not present any arguments specifically for claim 3. *See generally* PO Resp.

Based on our findings from Levy discussed above for claim 1, a preponderance of the evidence persuades us that Levy teaches or suggests “wherein the game initial data includes a character data set regarding the character controlled by the player with the gaming machine, a bonus data set, or a combination thereof.”

## 3. Claim 5

Claim 5 depends directly from claim 1 and recites “wherein the token is utilized for providing a strategic simulation game.” Ex. 1001, 24:14–15.

Petitioner argues that Levy’s “action figure with memory is utilized for providing a strategic simulation game.” Pet. 31–33 (citing Ex. 1003, 1:6–9, 1:44–53, 2:67–3:5, 9:1–17, 9:24–31). Patent Owner does not present any arguments specifically for claim 5. *See generally* PO Resp.

The relied-upon portions of Levy teach “an electronic game for simulating a sport such as baseball or the like;” game pieces with memory “programmed with a set of characteristics associated with a particular aspect of the activity simulated by the game;” “game pieces 14 represent[ing] a separate player associated with the game being simulated;” and “steps 100–128 [of Figure 7] are generic to any game to be simulated.” Ex. 1003, 1:6–9, 1:44–53, 2:67–3:5, 9:24–31. Petitioner also proposes modifying Levy in view of Lee to arrive at a token. Pet. 23–24.

In view of these teachings of Levy, a preponderance of the evidence persuades us that Levy and Lee teach or suggest “wherein the token is utilized for providing a strategic simulation game.”

#### 4. Claim 7

Claim 7 depends directly from claim 1 and recites “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure.” Ex. 1001, 24:26–28.

Petitioner argues that Lee teaches that its “token is attachable to the figure by insertion into a recess in a surface of the figure.” Pet. 33 (citing Ex. 1004, 6:44–51, Fig. 2). Patent Owner does not present any arguments specifically for claim 7. *See generally* PO Resp.

We find that the relied-upon portions of Lee teach that, in the embodiment shown in Figure 2, “transducer 64 can be attached to a preexisting wrestling figure.” Ex. 1004, 6:44–51. Figure 2 shows

transducer 64 near a recessed portion in the base of a figure. Petitioner's declarant also testifies that Lee's transducer is attachable and detachable. Ex. 1002 ¶¶ 87, 88; *see also* Pet. 23 (arguing that it would have been obvious "to provide the integrated circuit chip of Levy in a token that is attachable to and detachable from the action figure, as done in Lee" so that "various action figures can be used with it"). We credit that testimony because the full record supports it.

Thus, a preponderance of the evidence persuades us that Lee teaches "wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure."

#### 5. Claim 8

Claim 8 depends directly from claim 1 and recites "wherein the game initial data also includes an identification code identifying the token." Ex. 1001, 24:29–31.

Petitioner argues that Levy teaches that its game initial data includes an identification code. Pet. 33–34 (citing Ex. 1002 ¶¶ 102–103; Ex. 1003, 1:44–53, 2:67–3:5). Patent Owner responds that Levy and Lee do not teach or suggest "an identification code identifying the token" because Petitioner argues that "information which is stored for the player would include an identification of the player." PO Resp. 41 (quoting from Pet. 34). Patent Owner also argues that Petitioner's declarant testimony is unsupported and conclusory. *Id.* at 42 (citing Ex. 1002 ¶ 103). Patent Owner further contends that Levy does not teach implicitly "an identification code because Levy's figure may be identified by name, not "an identification code." *Id.*

Petitioner replies that Levy's statistics would include an identification of the player. Pet. Reply 22–23. Patent Owner replies that Petitioner does

not address the actual claim language and fails to show claim 8 is invalid. PO Sur-Reply 20 (citing Pet. 33–34; Pet. Reply 22–23).

We agree with Patent Owner that Levy does not teach that its “game initial data also includes an identification code identifying the token.” Petitioner has not established that Levy teaches a token. Thus, Petitioner’s asserted game initial data (the statistics stored in Levy’s game pieces) cannot identify a token that is not found in Levy. *See* Pet. 23–24, 28. Also, under our partial interpretation of “token” as not including the “figure,” Petitioner’s asserted identification code only identifies the figure, not any token. *See id.* Further, Petitioner’s proposed modification does not address how the asserted game initial data of Levy would be modified in view of Lee to include an identification code identifying the token resulting from the modification, instead of the figure of Levy. *See id.* at 23–24.

Thus, Petitioner does not persuade us by a preponderance of the evidence that Levy and Lee would have rendered obvious claim 8.

#### 6. Claim 10

Claim 10 depends directly from claim 1 and recites “wherein: the token is securable in a recess formed in a bottom face of a base portion of the figure.” Ex. 1001, 24:36–38.

Petitioner refers to its argument for claim 7 and reproduces a portion of Figure 2 of Lee. Pet. 34. Patent Owner does not present any arguments specifically for claim 10. *See generally* PO Resp.

Claims 7 and 10 recite similar subject matter. *Compare* Ex. 1001, 24:26–28 (reciting “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure”) *with id.* at 24:36–38. Based on the same findings from Lee for claim 7, a preponderance of the

evidence persuades us that Lee teaches “wherein: the token is securable in a recess formed in a bottom face of a base portion of the figure.”

7. *Claim 25*

Claim 25 is an independent claim and is reproduced below.

25. A token for a gaming machine on which a player plays a game by controlling one of a plurality of selectable characters comprising:

a storage section storing at least game initial data, and being attachable to and detachable from a figure identifying one of the plurality of selectable characters;

wherein the game initial data stored in the storage section is read by the gaming machine when the figure with the token is set on the gaming machine; and

wherein the game initial data includes a bonus data set for providing a predetermined profit in the game.

Ex. 1001, 26:10–20.

For each of the limitations of claim 25, Petitioner refers to its arguments presented for corresponding limitations of claim 1. *See* Pet. 34–35. Claim 25 does not recite “an integrated circuit chip,” like claim 1. *See* Ex. 1001, 23:58–24:2, 26:10–20; PO Resp. 10–11 (chart with corresponding recitations of claims 1 and 25). We also consider for claim 25 Patent Owner’s arguments for similar recitations found in claim 1.

Based on the same findings we discussed above for each of the corresponding limitations of claim 1, a preponderance of the evidence persuades us that Levy and Lee teach or suggest each of the limitations of claim 25.

*8. Reason to Combine Levy and Lee*

Petitioner argues that it would have been obvious “to provide the integrated circuit chip of Levy in a token that is attachable to and detachable from the action figure, as done in Lee” so that “various action figures can be used with it.” Pet. 23 (citing Ex. 1002 ¶ 88). Petitioner also argues that Lee provides explicit motivation for its asserted combination and that the combination represents “use of a known technique (provision of a game figure with a detachable token as in Lee) to improve a similar device (a game figure with an integral chip as in Levy) in the same way.” *Id.* at 23–24 (citing Ex. 1002 ¶ 88; Ex. 1004, 6:46–51).

Patent Owner responds that Petitioner’s reason for its proposed combination “is based on an incorrect premise—namely, that ‘provision of a game figure with a detachable token’ was a ‘known technique.’” PO Resp. 58 (citing Pet. 23, 38, 58); *see also* PO Sur-Reply 15–20 (presenting similar arguments). According to Patent Owner, there is insufficient evidence that providing a game figure with a detachable token was a known technique because Lee teaches only a transducer. PO Resp. 58–59 (citing Pet. 23–24, 38, 58). Patent Owner also argues that Petitioner has not explained sufficiently how its proposed combinations would work, and thus, one of ordinary skill in the art “would not have had a reason to combine the disparate disclosure of the various references in the manner claimed by the Challenged Claims.” *Id.* at 59.

As discussed above, we find that Lee teaches that, in the embodiment shown in its Figure 2, “transducer 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures as part of the activity center.” Ex. 1004, 6:44–

51. Lee, thus, supports Petitioner’s declarant testimony that one of ordinary skill in the art would have modified Levy so that its integrated circuit chip is detachable in the same manner as Lee so that “various action figures can be used with the token.” Ex. 1002 ¶ 88 (citing Ex. 1006, 6:46–51). We also find that modifying Levy as proposed by Petitioner is within ordinary skill. *See, e.g.*, Ex. 1002 ¶ 59. Thus, Petitioner demonstrates that one of ordinary skill in the art would have had a reasonable expectation of success in making the proposed modification.

For the reasons above, we determine that Petitioner shows by a preponderance of the evidence that one of ordinary skill in the art would have modified Levy in view of Lee to arrive at the subject matter of claims 1, 3, 5, 7, 10, and 25. For claim 8, we determine that Petitioner does not show that Levy and Lee teach or suggest its limitations.

*E. Challenge Based on Katoh and Lee*

Petitioner contends that claims 1, 3, 5, 7, 8, 10, and 25 are unpatentable over Katoh and Lee. Pet. 16–17, 38–55. Petitioner contends that Katoh teaches all the limitations of these claims, except it does not teach an integrated circuit that could be detachable, but Lee teaches such a chip. *Id.* at 38 (citing Ex. 1002 ¶¶ 117–123); *see also id.* at 21–23 (asserting what Lee teaches), 35–38 (asserting what Katoh teaches), 39–55 (claim chart asserting that Katoh, Lee, or Katoh and Lee teach the limitations of claims 1, 3, 5, 7, 8, 10, and 25).

Patent Owner responds that Katoh and Lee fail to teach a “token for a gaming machine,” a “token . . . being attachable to and detachable from a figure,” “game initial data,” and “a bonus data set.” PO Resp. 43–48. Patent Owner also responds that Katoh and Lee fail to teach “the game initial data

also includes an identification code identifying the token,” as recited by claim 8. *Id.* at 48–49. Patent Owner additionally argues that one of ordinary skill in the art would not have been motivated to combine Katoh and Lee. *Id.* at 58–59.

1. *Claim 1*

a. *“A token for a gaming machine on which a player plays a game by controlling a character”*

Petitioner contends that Katoh teaches “a gaming machine that uses a figure including a memory – the contactless IC card including responder 410.” Pet. 39–40 (citing Ex. 1005, Abstract, 1, Figs. 1–3A). Petitioner also contends that Lee teaches “a token including transducer 64 for a gaming machine on which a player plays a game by controlling a character.” *Id.* at 40–41 (citing Ex. 1002 ¶¶ 56–58; Ex. 1004, 6:44–51, Fig. 2).

Patent Owner responds that Katoh and Lee do not teach or suggest a “token for a gaming machine.” PO Resp. 43–44. Patent Owner contends that Petitioner does not assert that Katoh teaches a “token for a gaming machine” and does not provide evidence that one of ordinary skill in the art would have viewed the toy of Katoh as a token. *Id.* at 43 (citing Pet. 35–55). Patent Owner also contends that Petitioner’s proposed modification acknowledges that Katoh does not teach a token and does not teach that an integrated circuit chip by itself is a token. *Id.* Patent Owner further contends that Katoh does not teach or suggest a token under its proposed interpretation. *Id.* at 44. As for Lee, Patent Owner argues that it teaches a transducer, not a token, under either party’s proposed interpretation for “token.” *Id.* (citing Pet. 40–41; Ex. 1002 ¶ 121; Ex. 1004, 6:25–66).

We find that the Abstract of Katoh teaches a “game system [that] comprises a toy 400 which stores toy information.” Figures 1–3A show the game system of Katoh with game device 100, toy 400, and memory 418. Game device 100 executes a game with a character representing toy 400. Ex. 1005, Abstract. As discussed below in connection with the asserted reason to combine Katoh and Lee, Petitioner proposes to modify Katoh’s memory in view of Lee to arrive at a “token for a gaming machine.” See Pet. 38–39.

Thus, we determine that Katoh teaches or suggests toy 400 for a gaming machine on which a player plays a game by controlling a character.

- b. *“an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters”*

Petitioner argues that Katoh teaches “an integrated circuit chip having a storage section storing at least game initial data regarding the character.” Pet. 41–44 (citing Ex. 1005, 2–4, 8, Fig. 3A); *see also id.* at 35–38 (asserting what Katoh teaches). Petitioner also argues that Lee teaches “a token that is attachable to and detachable from a figure identifying one of plurality of selectable characters.” *Id.* at 44 (citing Ex. 1002 ¶¶ 117–123; Ex. 1004, 6:44–51, Fig. 2); *see also id.* at 21–23 (asserting what Lee teaches).

Patent Owner responds that Petitioner relies on Lee for teaching “a token . . . being attachable to and detachable from a figure” but Lee does not teach such a token. PO Resp. 44–45 (citing Pet. 38, 40–41; Ex. 1002 ¶ 121). According to Patent Owner, Lee does not teach a token under either party’s proposed interpretation and does not teach an integrated circuit chip. *Id.* at

45. Referring to similar arguments made for the challenge based on Levy and Lee, Patent Owner further argues that Lee does not teach or suggest that its “transducer, once attached, is detachable from a figure.” *Id.*

We find that the relied-upon portions of Katoh teach “a toy (for example, the toy 400 in FIG. 1) for storing toy information (for example, the ID code 418a in FIG. 3)” (Ex. 1005, 2); “executing a game in which a character representing the toy appears, in accordance with the toy information detected by the reader” (*id.* at 2–3); “[t]he character that represents the toy is one representing an object which the toy forms” (*id.* at 3); “the toy comprises a storage section (for example, the memory 418 in FIG. 3) for storing play information (for example, the play data 418b in FIG. 3) about the game” (*id.* at 4); “the play information concerns about game play” (*id.*); and “a contactless IC card is best known” (*id.* at 8). We also credit Petitioner’s declarant testimony regarding the integrated circuit chip of claim 1 because it finds support in the record. Ex. 1002 ¶¶ 62–63, 117–119.

We also find that the relied-upon portions of Lee teach that, in the embodiment shown in Figure 2, “transducer 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures as part of the activity center.” Ex. 1004, 6:44–51. Figure 2 shows transducer 64 near a recessed portion in the base of a figure. Petitioner’s declarant also testifies that Lee’s transducer is attachable and detachable or “it would have been obvious to make it such, as it would have been attached by friction in the space indicated, or by some sort of adhesive that would not need to be permanent.” Ex. 1002 ¶ 59; *see also* Pet. 38 (arguing that it would have been obvious “to provide the

integrated circuit chip of Katoh in a token that is attachable to and detachable from the action figure, as done in Lee” so that “various toy figures can be used with the token to play a game”). We credit that testimony because Petitioner has identified a reason one of ordinary skill in the art would have wanted to provide an attachable/detachable token, and the full record indicates that forming an attachment that is detachable is within the level of ordinary skill in the art. We, thus, determine that one of ordinary skill in the art would have made the proposed modification so that “various toy figures can be used with the token to play a game.”

Even under Patent Owner’s proposed interpretation of “attachable to and detachable from” to mean “configured to be non-permanently connected to and readily separated from” (PO Resp. 21–22), we determine that Katoh as modified by Lee would result in an attachment that is “configured to be non-permanently connected to and readily separated from” because Petitioner’s declarant states it could be formed by “some sort of adhesive that would not need to be permanent” (Ex. 1002 ¶ 59).

Patent Owner also responds that Katoh and Lee do not teach or suggest “storing at least game initial data.” PO Resp. 46–47. Patent Owner asserts that Petitioner does not identify what parts of Katoh teach “a storage section storing at least game initial data” and instead cite without explanation several portions of Katoh. *Id.* at 46 (citing Pet. 41). Patent Owner also argues that Katoh only teaches an “‘ID code’ . . . and ‘play data’ that reflects the state of play” but not information required for commencement of a game.” *Id.* (citing Ex. 1005, 12–13, 15, Fig. 6). According to Patent Owner, Katoh teaches that a game may be commenced with default values. *Id.* at 46–47 (citing Ex. 1005, 16, Fig. 16). Patent

Owner further argues that Lee does teach storing “anything, much less ‘game initial data.’” *Id.* at 47 (citing Ex. 1004, 6:25–61).

Petitioner replies that Katoh teaches game initial data and bonus data similar to the ’377 patent. Pet. Reply 23–24 (citing Pet. 35–38, 45–50; Ex. 1001, Figs. 3, 6A, 6B; Ex. 1005, Figs. 3C, 5). Patent Owner replies that Petitioner does not respond to the argument that Katoh’s toy is not required for commencing a game. PO Sur-Reply 21 (citing Ex. 1005, 16, Fig. 5).

In connection with the recitation “the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure is set on the gaming machine,” Petitioner points us to portions of Katoh that teach that “the player brings the toy 400 close to the reader 300, or lays the toy 400 on the reader 300” (Ex. 1005, 10), “responder 410 (shown in FIG. 3A) which is the data carrier, is placed into the toy 400” (*id.*), “reader 300 communicates data with the responder 410” (*id.*), and “game device 100 makes the character corresponding to the identified toy 400, appear in the race game as the character to be operated by the player” (*id.*), and “[i]n FIG. 6, the character data 214 are stored in a form of a data table [in] which ID codes and character data are made corresponding to each other” (*id.* at 17).

Because Katoh teaches that its toy 400 stores character data 214 and that toy 400 is placed on reader 300 to communicate data so that toy 400 appears as a character in the game, we determine that Katoh teaches or suggests “an integrated circuit chip having a storage section storing at least game initial data regarding the character.”

Even under Patent Owner’s proposed interpretation of “game initial data” as “a data set required for commencement of a game,” Katoh’s data

stored in its toy 400 is read before commencing a game. See PO Resp. 15–16 (proposing interpretation for “game initial data”); Ex. 1005, 10 (teaching that “the player . . . lays the toy 400 on the reader 300,” “reader 300 communicates data with the responder 410” in the toy, and then “game device 100 makes the character corresponding to the identified toy 400, appear in the race game as the character to be operated by the player”).

Thus, based on the full record, a preponderance of the evidence persuades us that Katoh and Lee teach or suggest “an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters.”

- c. *“wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine”*

Petitioner argues that Katoh teaches “the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure is set on the gaming machine.” Pet. 45–47 (citing Ex. 1005, 2–3, 10, 17–18, Figs. 1, 5, 6); *see also id.* at 35–38 (asserting what Katoh teaches). Petitioner also argues that Lee teaches that “the game initial data is read by the gaming machine when the figure with the token is set on the gaming machine.” *Id.* at 48 (citing Ex. 1002 ¶¶ 124–130; Ex. 1004, 6:22–55); *see also id.* at 21–23 (asserting what Lee teaches). Patent Owner does not present any arguments for this particular limitation. *See generally* PO Resp.

We find that the relied-upon portions of Katoh teach that “the player brings the toy 400 close to the reader 300, or lays the toy 400 on the reader

300” (Ex. 1005, 10); “responder 410 (shown in FIG. 3A) which is the data carrier, is placed into the toy 400” (*id.*); “reader 300 communicates data with the responder 410” (*id.*); “game device 100 makes the character corresponding to the identified toy 400, appear in the race game as the character to be operated by the player” (*id.*); and “[i]n FIG. 6, the character data 214 are stored in a form of a data table which ID codes and character data are made corresponding to each other” (*id.* at 17). *See also id.*, Abstract (stating that “toy 400 is able to store play information about the game inputted by data transmission which is then used in the game device 100 when the game is executed”).

Because Katoh teaches reading data stored in toy 400 so that toy 400 appears in a race game, a preponderance of the evidence persuades us that Katoh teaches or suggests “wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine.”

*d. “has a bonus data set providing a predetermined profit in a game”*

Petitioner argues that Katoh teaches that “the game initial data has a bonus data set providing a predetermined profit in a game,” in particular, “each tune-up degree B and C indicating minor or major conversion is an item of initial data that is a bonus data set.” Pet. 48–49 (citing Ex. 1002 ¶¶ 131–135; Ex. 1005, Abstract, 4, 12–13, Fig. 3C); *see also id.* at 35–38 (asserting what Katoh teaches).

Patent Owner responds that Katoh and Lee do not teach or suggest a “bonus data set,” under its proposed interpretation. PO Resp. 47. Patent Owner argues that Katoh’s “tune-up degree” does not teach “bonus data”

because it is a “data set common to every playable character in a game,” which is more like the “capability values” of the ’377 patent, “which are explicitly contrasted with ‘bonus data.’” *Id.* at 47–48 (citing Pet. 48–50; Ex. 1001, 13:50–14:10; Ex. 1002 ¶¶ 131–135; Ex. 2001 ¶¶ 26–31). Patent Owner also argues that “‘tune-up degree’ is provided as a result of game play, not a ‘bonus’ that is included with ‘game initial data,’ as is required by the claims.” *Id.* at 48 (citing Ex. 1005, 15–16).

Petitioner replies that Katoh teaches game initial data and bonus data similar to the ’377 patent. Pet. Reply 23–24 (citing Pet. 35–38, 45–50; Ex. 1001, Figs. 3, 6A, 6B; Ex. 1005, Figs. 3C, 5).

The relied-upon portions of Katoh teach that “toy 400 is able to store play information about the game inputted by data transmission which is then used in the game device 100 when the game is executed” (Ex. 1005, Abstract); “play information may change an attribute of the character, an action of the character, the shape of the character or a scene of the game” (*id.*); the “game device changes at least one of an attribute of the character, an action of the character, a shape of the character and a scene, of the game, in accordance with the play information” (*id.* at 4); and “[a]ccording to this tune-up degree, running performance of the character to be operated will change in this race game” (*id.*). We also find that Figure 4 shows that “Tune-Up Degree” is part of play data, and “Tune-Up Degree” can be “A:Major Conversion,” “B:Minor Conversion,” or “C:No Conversion.” See *id.* at 12 (“FIG. 3C shows an example of the play data 418b.”). Katoh teaches that “major conversion” in “tune-up degree” results in a higher maximum speed than a “minor conversion.” *Id.* at 13.

Because Katoh teaches storing statistics that include “tune-up degree,” and that “major conversion” results in higher maximum speed, a preponderance of the evidence persuades us that Katoh teaches a “bonus data set providing a predetermined profit in a game.” Even under Patent Owner’s proposed interpretation of “bonus data,” Katoh teaches or suggests that “major conversion” would provide higher maximum speed, thus “provid[ing] a predetermined benefit that causes the game to proceed in a manner differently than if the predetermined benefit was not associated with the token.”

### 2. *Claim 3*

Claim 3 depends directly from claim 1 and recites “wherein the game initial data includes a character data set regarding the character controlled by the player with the gaming machine, a bonus data set, or a combination thereof.” Ex. 1001, 24:7–10.

Petitioner refers to arguments presented for the integrated circuit chip, game initial data, and bonus data set of claim 1. Pet. 50. Patent Owner does not present any arguments specifically for claim 3. *See generally* PO Resp.

Based on our findings from Katoh discussed above for claim 1, a preponderance of the evidence persuades us that Katoh teaches or suggests “wherein the game initial data includes a character data set regarding the character controlled by the player with the gaming machine, a bonus data set, or a combination thereof.”

### 3. *Claim 5*

Claim 5 depends directly from claim 1 and recites “wherein the token is utilized for providing a strategic simulation game.” Ex. 1001, 24:14–15.

Petitioner argues that Katoh teaches that its “figure is utilized for providing a strategic simulation game.” Pet. 50–51 (citing Ex. 1005, 3, 8, 11, Figs. 2, 10). Patent Owner does not present any arguments specifically for claim 5. *See generally* PO Resp.

The relied-upon portions of Katoh teach “the game may be any one of, a race game, a role-playing game, a shooting game, an action game, a puzzle game, a simulation game, and the like.” Ex. 1005, 3. In view of these teachings of Katoh, a preponderance of the evidence persuades us that Katoh teaches or suggests “wherein the token is utilized for providing a strategic simulation game.”

#### 4. Claim 7

Claim 7 depends directly from claim 1 and recites “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure.” Ex. 1001, 24:26–28.

Petitioner argues that Lee teaches that its “token is attachable to the figure by insertion into a recess in a surface of the figure.” Pet. 51–52 (citing Ex. 1004, 6:44–51, Fig. 2). Patent Owner does not present any arguments specifically for claim 7. *See generally* PO Resp.

We find that the relied-upon portions of Lee teach that, in the embodiment shown in Figure 2, “transducer 64 can be attached to a preexisting wrestling figure.” Ex. 1004, 6:44–51. Figure 2 shows transducer 64 near a recessed portion in the base of a figure. Petitioner’s declarant also testifies that Lee’s transducer is attachable and detachable. Ex. 1002 ¶ 123; *see also* Pet. 38 (arguing that it would have been obvious “to provide the integrated circuit chip of Katoh in a token that is attachable to and detachable from the action figure, as done in Lee” so that “various toy

figures can be used with the token to play a game”). We credit that testimony because the full record supports it.

Thus, a preponderance of the evidence persuades us that Lee teaches “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure.”

#### 5. *Claim 8*

Claim 8 depends directly from claim 1 and recites “wherein the game initial data also includes an identification code identifying the token.” Ex. 1001, 24:29–31.

Petitioner argues that Katoh teaches that its game initial data includes an identification code identifying the token. Pet. 52–53 (citing Ex. 1005, 2–3, 7, Figs. 3A, 3B, 6). Patent Owner responds that Katoh and Lee do not teach or suggest “an identification code identifying the token” because the “ID code” of Katoh “is used to identify a character in an electronic game, not a token (or even the toy storing such ID code).” PO Resp. 49 (citing Pet. 50–51; Ex. 1002 ¶¶ 142–143; Ex. 1005, 17–18, Fig. 6). Patent Owner also argues that Petitioner does not identify which element of Katoh allegedly satisfies the recited “identification code identifying the token.” *Id.* (citing Pet. 52–53). Patent Owner further replies that Petitioner does not address its arguments for claim 8 in its Reply. PO Sur-Reply 22.

We agree with Patent Owner that Katoh does not teach that its “game initial data also includes an identification code identifying the token.” Petitioner has not established that Katoh teaches a token. Thus, Petitioner’s asserted game initial data (the statistics stored in Katoh’s game pieces) cannot identify a token that is not found in Katoh. See Pet. 38–39, 52–53. Also, under our partial interpretation of “token” as not including the

“figure,” Petitioner’s asserted identification code only identifies the figure, not any token. *See id.* Further, Petitioner’s proposed modification does not address how the asserted game initial data of Katoh would be modified in view of Lee to include an identification code identifying the token resulting from the modification, instead of the figure of Katoh. *See id.* at 38–39.

Thus, Petitioner does not persuade us by a preponderance of the evidence that Katoh and Lee would have rendered obvious claim 8.

#### 6. *Claim 10*

Claim 10 depends directly from claim 1 and recites “wherein: the token is securable in a recess formed in a bottom face of a base portion of the figure.” Ex. 1001, 24:36–38.

Petitioner refers to its argument for claim 7. Pet. 53. Patent Owner does not present any arguments specifically for claim 10. *See generally* PO Resp.

Claims 7 and 10 recite similar subject matter. *Compare* Ex. 1001, 24:26–28 (reciting “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure”) *with id.* at 24:36–38. Based on the same findings from Lee for claim 7, a preponderance of the evidence persuades us that Lee teaches “wherein: the token is securable in a recess formed in a bottom face of a base portion of the figure.”

#### 7. *Claim 25*

For each of the limitations of claim 25, Petitioner refers to its arguments presented for corresponding limitations of claim 1. *See* Pet. 53–55 (citing also Ex. 1005, 7, Fig. 8). We also consider for claim 25 Patent Owner’s arguments for similar recitations found in claim 1.

Based on the same findings we discussed above for each of the corresponding limitations of claim 1, a preponderance of the evidence persuades us that Katoh and Lee teach or suggest each of the limitations of claim 25.

#### *8. Reason to Combine Katoh and Lee*

Petitioner argues that “[i]t would have been obvious . . . to provide the integrated circuit chip of Katoh in a token that is attachable to and detachable from the action figure, as done in Lee” because of the “benefit of being able to detach a token such that various toy figures can be used with the token.” Pet. 38 (citing Ex. 1002 ¶¶ 117–123). Petitioner also argues that Lee provides motivation for the combination and that the combination is “the use of a known technique (provision of a game figure with a detachable token as in Lee) to improve a similar device (a game figure with an integral chip as in Katoh) in the same way.” *Id.* (citing Ex. 1002 ¶¶ 117–123; Ex. 1004 6:46–51).

As discussed above for the challenge based on Levy and Lee, Patent Owner also responds for the challenged based on Katoh and Lee that Petitioner’s reason for its proposed combination “is based on an incorrect premise,” that there is insufficient evidence that providing a game figure with a detachable token was a known technique, and that Petitioner has not explained sufficiently how its proposed combinations would work, and thus, one of ordinary skill in the art “would not have had a reason to combine the disparate disclosure of the various references in the manner claimed by the Challenged Claims.” PO Resp. 58–59 (citing Pet. 23–24, 38, 58); *see also* PO Sur-Reply 15–20 (arguing that Petitioner’s invalidity arguments rest on

improper assertions), 21–23 (arguing that Lee does not teach a detachable token with an integrated circuit chip).

As discussed above, we find that Lee teaches that, in the embodiment shown in its Figure 2, “transducer 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures as part of the activity center.” Ex. 1004, 6:44–51. Lee, thus, supports Petitioner’s declarant testimony that one of ordinary skill in the art would have modified Katoh so that its integrated circuit chip is detachable in the same manner as Lee so that “various action figures can be used with it.” Ex. 1002 ¶ 123 (citing Ex. 1006, 6:46–51). We also find that modifying Levy as proposed by Petitioner is within ordinary skill. *See, e.g.*, Ex. 1002 ¶ 59. Thus, Petitioner demonstrates that one of ordinary skill in the art would have had a reasonable expectation of success in making the proposed modification.

For the reasons above, we determine that Petitioner shows by a preponderance of the evidence that one of ordinary skill in the art would have modified Katoh in view of Lee to arrive at the subject matter of claims 1, 3, 5, 7, 10, and 25. For claim 8, we determine that Petitioner does not show that Katoh and Lee teach or suggest its limitations.

*F. Challenge Based on Mawle and Lee*

Petitioner contends that claims 1, 3, 5, 7, 8, 10, and 25 are unpatentable over Mawle and Lee. Pet. 16–17, 57–73. Petitioner contends that Mawle does not teach an integral memory that could be detached but Lee teaches a detachable memory. *Id.* at 57; *see also id.* at 21–23 (asserting what Lee teaches), 55–57 (asserting what Mawle teaches), 58–73 (claim

chart asserting that Mawle, Lee, or Mawle and Lee teach the limitations of claims 1, 3, 5, 7, 8, 10, and 25).

Patent Owner responds that Mawle and Lee fail to teach a “token for a gaming machine,” a “token . . . being attachable to and detachable from a figure,” “storing game initial data,” and “a bonus data set providing a predetermined profit in a game.” PO Resp. 50–55. Patent Owner also responds that Mawle and Lee fail to teach “an identification code identifying the token,” as recited by claim 8. *Id.* at 55–58. Patent Owner additionally argues that one of ordinary skill in the art would not have been motivated to combine Mawle and Lee. *Id.* at 58–59.

1. *Claim 1*

a. *“A token for a gaming machine on which a player plays a game by controlling a character”*

Petitioner contends that Mawle teaches “a game figure having an integrated circuit 110 for use in a gaming machine on which a player plays a game by controlling a character.” Pet. 58–59 (citing Ex. 1006, 3:28–60, 13:9–19, Fig. 1); *see also id.* at 55–57 (asserting what Mawle teaches). Petitioner also argues that Lee teaches “a gaming machine on which a player plays a game by controlling a character.” *Id.* at 60 (citing Ex. 1004, 2:49–63); *see also id.* at 21–23 (asserting what Lee teaches).

Patent Owner responds that Mawle and Lee do not teach or suggest a “token for a gaming machine.” PO Resp. 50–51. Patent Owner argues that Petitioner does not assert that Mawle teaches a “token for a gaming machine” and does not provide evidence that one of ordinary skill in the art would have viewed the toy figure of Mawle as a token. *Id.* at 50 (citing Pet. 57–73). Patent Owner also argues that Petitioner’s proposed

modification acknowledges that Mawle does not teach a token and does not teach that an integrated circuit chip by itself is a token. *Id.* Patent Owner further contends that Mawle does not teach or suggest a token under its proposed interpretation. *Id.* at 50–51 (citing Ex. 1006, 15:11–13). As for Lee, Patent Owner argues that it teaches a transducer, not a token, under either party’s proposed interpretation for “token.” *Id.* at 51 (citing Pet. 62–63).

We find that the relied-upon portions of Mawle teach that “toy figure[] 100 also includes an integrated circuit 110 including nonvolatile, re-writeable memory, read only memory, and support circuitry;” “toy figure[] 100 is adapted to mate with an electronic game system to permit interaction between the toy figure[] 100 and the electronic game system;” “[a]fter the controller 2100 adjusts game play based on the downloaded information, the controller 2100 receives input from the player through one of the inputs 315, 320, 325 indicating the start of the game (step 2215);” and the “controller 2100 then begins the game (step 2220).” Ex. 1006, 3:31–33, 3:58–60, 13:9–13. As discussed below in connection with the asserted reason to combine Mawle and Lee, Petitioner proposes to modify Mawle’s memory in view of Lee to arrive at a “token for a gaming machine.” See Pet. 57–58.

Thus, we determine that Mawle teaches or suggests toy figures 100 for a gaming machine on which a player plays a game by controlling a character.

- b. *“an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters”*

Petitioner argues that Mawle teaches “an integrated circuit chip 110 having a storage section storing at least game initial data regarding the character.” Pet. 61–62 (citing Ex. 1006, 3:28–4:63, Figs. 1, 3); *see also id.* at 55–57 (asserting what Mawle teaches). Petitioner also argues that Lee teaches that “transducer 64 that identifies a game piece that is attachable to and detachable from the toy figure.” *Id.* at 62–63 (citing Ex. 1002 ¶¶ 154–159; Ex. 1004, 6:44–51, Fig. 2); *see also id.* at 21–23 (asserting what Lee teaches).

Patent Owner responds that Petitioner relies on Lee for teaching “a token . . . being attachable to and detachable from a figure” but Lee does not teach such a token. PO Resp. 51–52 (citing Pet. 62–63; Ex. 1002 ¶ 157). According to Patent Owner, Lee does not teach a token under either party’s proposed interpretation and does not teach an integrated circuit chip. *Id.* at 52. Referring to similar arguments made for the challenge based on Levy and Lee, Patent Owner further argues that Lee does not teach or suggest that its transducer “once attached . . . is detachable from a figure.” *Id.*

We find that the relied-upon portions of Mawle teach that “toy figure[] 100 also includes an integrated circuit 110 including nonvolatile, re-writable memory, read only memory, and support circuitry,” “[c]haracteristics of the toy figures 100 are stored in the integrated circuit 110,” and “[c]haracteristics include results of past games in which the toy figure[] 100 was involved, gaming rules, a unique identification for the toy

figure, visual and/or audio representations of the toy figure, and attributes of the toy figure.” Ex. 1006, 3:31–33, 3:39–44.

We also find that the relied-upon portions of Lee teach that, in the embodiment shown in Figure 2, “transducer 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures as part of the activity center.” Ex. 1004, 6:44–51. Figure 2 shows transducer 64 near a recessed portion in the base of a figure. Petitioner’s declarant also testifies that Lee’s transducer is attachable and detachable or “it would have been obvious to make it such, as it would have been attached by friction in the space indicated, or by some sort of adhesive that would not need to be permanent.” Ex. 1002 ¶ 59; *see also* Pet. 57–58 (arguing that it would have been obvious “to make the IC chip detachable from the action figure, in view of Lee” so that “various toy figures can be used with the token to play a game”). We credit that testimony because Petitioner has identified a reason one of ordinary skill in the art would have wanted to provide an attachable/detachable token, and the full record indicates that forming an attachment that is detachable is within the level of ordinary skill in the art. We, thus, determine that one of ordinary skill in the art would have made the proposed modification so that “various toy figures can be used with the token to play a game.” *See* Pet. 57–58.

Even under Patent Owner’s proposed interpretation of “attachable to and detachable from” to mean “configured to be non-permanently connected to and readily separated from” (PO Resp. 21–22), we determine that Mawle as modified by Lee would result in an attachment that is “configured to be non-permanently connected to and readily separated from” because

Petitioner's declarant states it could be formed by "some sort of adhesive that would not need to be permanent" (Ex. 1002 ¶ 59).

Patent Owner also responds that Mawle and Lee do not teach or suggest "storing at least game initial data." PO Resp. 52. Patent Owner asserts that Petitioner does not identify what parts of Mawle teach "a storage section storing at least game initial data" and instead cites without explanation several portions of Mawle. *Id.* at 52–53 (citing Pet. 61–62). Patent Owner also argues that Mawle teaches a "toy with memory that includes characteristics and attributes of a character that can be played in an electronic game" but not information required for commencement of a game." *Id.* at 53. According to Patent Owner, Mawle teaches that a game may be commenced without any toy. *Id.* (citing Ex. 1006, 15:11–13). Patent Owner further argues that Lee does not teach storing "anything, much less 'game initial data.'" *Id.* at 54.

Petitioner replies that Mawle teaches game initial data and bonus data similar to the '377 patent. Pet. Reply 24–25 (citing Pet. 57, 61–67; Ex. 1001, 22:61–23:3). Patent Owner replies that Mawle and Lee do not teach such data because Mawle's toy is not required for commencing a game. PO Sur-Reply 23 (citing Ex. 1006, 15:11–13).

As discussed above, we find that Mawle teaches that "[c]haracteristics of the toy figures 100 are stored in the integrated circuit 110" and "include results of past games in which the toy figure[] 100 was involved, gaming rules, a unique identification for the toy figure, visual and/or audio representations of the toy figure, and attributes of the toy figure." Ex. 1006, 3:39–44. We also find that Mawle teaches that "[a]fter the controller 2100 adjusts game play based on the downloaded information, the controller 2100

receives input from the player through one of the inputs 315, 320, 325 indicating the start of the game (step 2215),” and the “controller 2100 then begins the game (step 2220).” *Id.* at 13:9–13.

In view of these teachings of Mawle, we determine that Mawle teaches or suggests “an integrated circuit chip having a storage section storing at least game initial data regarding the character.”

Even under Patent Owner’s proposed interpretation of “game initial data” as “a data set required for commencement of a game,” Mawle’s characteristics stored in its toy figures 100 is downloaded before commencing a game. *See* PO Resp. 15–16 (proposing interpretation for “game initial data”); Ex. 1006, 3:39–44, 13:9–13.

Thus, based on the full record, a preponderance of the evidence persuades us that Mawle and Lee teach or suggest “an integrated circuit chip having a storage section storing at least game initial data regarding the character and being attachable to and detachable from a figure identifying one of a plurality of selectable characters.”

c. *“wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine”*

Petitioner argues that Mawle teaches that “the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure is set on the gaming machine.” Pet. 63–65 (citing Ex. 1006, 12:30–13:22, Figs. 3, 4); *see also id.* at 55–57 (asserting what Mawle teaches). Petitioner also argues that Lee teaches that “game piece identification is read by the gaming machine when the figure with the token is set on the gaming machine.” *Id.* at 65–66 (citing Ex. 1002 ¶¶ 160–

164; Ex. 1004, 6:22–55); *see also id.* at 21–23 (asserting what Lee teaches). Patent Owner does not present any arguments for this particular limitation. *See generally* PO Resp.

We find that the relied-upon portions of Mawle teach that “toy figure[] 100 is adapted for play with the hand-held device 300 using the adapter 302 that attaches to the housing 310 and provides the necessary electronic connections for interfacing the toy figures 100 with the hand-held device 300;” “the player can effectively insert the toy figures 100 into the hand-held device 300, which uses information downloaded through the adapter 302 and through the memory device 332 to interact with the toy figure;” and “controller 2100 accesses from the toy figure information such as the rules and specifications that govern how the game is played in conjunction with the toy figure, a unique identification of the toy figure, visual and/or audio representations of the toy figure, and attributes of the toy figure.” Ex. 1006, 13:30–34, 13:36–39, 13:46–51.

Because Mawle teaches downloading data stored in toy figure 100, such as how the game is to be played and attributes of the toy figure, a preponderance of the evidence persuades us that Mawle teaches or suggests “wherein the game initial data is selectable from the identified character’s initial data and is read by the gaming machine when the figure with the token is set on the gaming machine.”

*d. “has a bonus data set providing a predetermined profit in a game”*

Petitioner argues that Mawle teaches that “the game initial data has a bonus data set providing a predetermined profit in a game.” Pet. 66–67

(citing Ex. 1002 ¶¶ 165–167; Ex. 1006, 3:40–57, 14:1–14, 16:14–34); *see also id.* at 55–57 (asserting what Mawle teaches).

Patent Owner responds that Mawle and Lee do not teach or suggest a “bonus data set.” PO Resp. 54. Patent Owner argues that Mawle’s player attributes “are common to each and every character in the game” and more like the “capability values” of the ’377 patent, “which are explicitly contrasted with ‘bonus data.’” *Id.* at 54 (citing Pet. 57, 66–67; Ex. 1001, 13:50–14:10; Ex. 1002 ¶¶ 165–167; Ex. 2001 ¶¶ 26–31). Patent Owner also argues that “the player attributes that Petitioner identifies do not provide a ‘predetermined profit’ as is required by the claim language” because they “are merely inputs to a processor’s determination of a game outcome.” *Id.* at 54–55 (citing Ex. 1006, 8:64–66; Ex. 2001 ¶ 38).

Petitioner replies that Mawle teaches game initial data and bonus data similar to the ’377 patent. Pet. Reply 24–25 (citing Pet. 57, 61–67; Ex. 1001, 22:61–23:3). Patent Owner replies that Mawle and Lee do not teach such data because Mawle’s toy is not required for commencing a game. PO Sur-Reply 23 (citing Ex. 1006, 15:11–13).

We find that the relied-upon portions of Mawle teach that “[a]ttributes of the toy figures 100 may include, for example, power type, evolution type, name, weakness type, resistance type, skills, amount of energy required for play, attack methods, available weapons, intelligence, damage that the toy figure can withstand (called hit total), number of survived attacks, and other game statistics.” Ex. 1006, 3:50–55.

Because Mawle teaches storing attributes, such as “available weapons,” a preponderance of the evidence persuades us that Mawle teaches or suggests a “bonus data set providing a predetermined profit in a game.”

Even under Patent Owner’s proposed interpretation of “bonus data,” Mawle teaches or suggests that a certain toy figure 100 can have an “available weapon” that another toy figure 100 does not, so that the “available weapon” “provides a predetermined benefit that causes the game to proceed in a manner differently that if the predetermined benefit was not associated with the token.”

### 2. *Claim 3*

Claim 3 depends directly from claim 1 and recites “wherein the game initial data includes a character data set regarding the character controlled by the player with the gaming machine, a bonus data set, or a combination thereof.” Ex. 1001, 24:7–10.

Petitioner refers to arguments presented for the integrated circuit chip, game initial data, and bonus data set of claim 1. Pet. 67–68. Patent Owner does not present any arguments specifically for claim 3. *See generally* PO Resp.

Based on our findings from Mawle discussed above for claim 1, a preponderance of the evidence persuades us that Mawle teaches or suggests “wherein the game initial data includes a character data set regarding the character controlled by the player with the gaming machine, a bonus data set, or a combination thereof.”

### 3. *Claim 5*

Claim 5 depends directly from claim 1 and recites “wherein the token is utilized for providing a strategic simulation game.” Ex. 1001, 24:14–15.

Petitioner argues that Mawle teaches that its “figure 100 is utilized for providing a strategic simulation game.” Pet. 68–71 (citing Ex. 1006, 1:63–2:2, 4:1–13, 13:9–22, 16:14–29, 17:39–18:35, Figs. 27A–27D). Patent

Owner does not present any arguments specifically for claim 5. *See generally* PO Resp.

We find that the relied-upon portions of Mawle teach that the “game system may be any video game, computer peripheral, personal computer game,” “include Internet-based games or arcade games,” and “may be a smart game board, which is a traditional game board equipped with a processor and memory for interacting with the players and the toy figures.” Ex. 1006, 16:24–29. Mawle also describes “game arena 200 in which opposing toy figures 100 engage in a battle.” *Id.* at 4:1–13, Fig. 2.

Thus, a preponderance of the evidence persuades us that Mawle teaches or suggests “wherein the token is utilized for providing a strategic simulation game.”

#### 4. Claim 7

Claim 7 depends directly from claim 1 and recites “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure.” Ex. 1001, 24:26–28.

Petitioner argues that Lee teaches that its “token is attachable to the figure by insertion into a recess in a surface of the figure.” Pet. 71 (citing Ex. 1004, 6:44–51, Fig. 2). Patent Owner does not present any arguments specifically for claim 7. *See generally* PO Resp.

We find that the relied-upon portions of Lee teach that, in the embodiment shown in Figure 2, “transducer 64 can be attached to a preexisting wrestling figure.” Ex. 1004, 6:44–51. Figure 2 shows transducer 64 near a recessed portion in the base of a figure. Petitioner’s declarant also testifies that Lee’s transducer is attachable and detachable. Ex. 1002 ¶ 157; *see also* Pet. 57–58 (arguing that it would have been

obvious “to make the IC chip detachable from the action figure, in view of Lee” so that “various toy figures can be used with the token to play a game”). We credit that testimony because the full record supports it.

Thus, a preponderance of the evidence persuades us that Lee teaches “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure.”

#### 5. *Claim 8*

Claim 8 depends directly from claim 1 and recites “wherein the game initial data also includes an identification code identifying the token.”

Ex. 1001, 24:29–31.

Petitioner argues that Mawle teaches that its game initial data includes an identification code identifying the token. Pet. 71–72 (citing Ex. 1006, 3:40–45, 4:52–6:3, 7:18–56, 10:57–65, 12:40–55, 14:1–34, 16:57–65). Petitioner also argues that Lee teaches that “the game initial data includes an identification code identifying the token.” *Id.* at 72 (citing Ex. 1004, 4:7–22).

Patent Owner responds that Mawle and Lee do not teach or suggest “an identification code identifying the token.” PO Resp. 55. In particular, Patent Owner argues that Mawle teaches or suggests neither storing game initial data nor an identification code identifying the token because an identification for the toy does not identify the token and Mawle indicates that the in-game character identification can be in two toys. *Id.* at 55–56 (citing Ex. 1006, 10:57–56). Patent Owner also argues that Petitioner’s declarant testimony is unsupported and conclusory and improperly supplements Mawle. *Id.* at 56 (citing Ex. 1002 ¶ 174)

Regarding Lee, Patent Owner contends that Lee does not teach or suggest storing game initial data or game initial data that includes an identification code identifying a token. *Id.* a 57. Patent Owner also contends that Petitioner’s declarant testimony improperly supplements Lee and is unsupported. *Id.* at 57–58 (citing Ex. 1002 ¶ 175; Ex. 2008, 4:57–5:11). Patent Owner further replies that Petitioner does not address its arguments for claim 8 in its Reply. PO Sur-Reply 24 (citing PO Resp. 55–58; Pet. Reply 24–25).

We agree with Patent Owner that Mawle does not teach that its “game initial data also includes an identification code identifying the token.” Petitioner has not established that Mawle teaches a token. Thus, Petitioner’s asserted game initial data (the attributes stored in Mawle’s game pieces) cannot identify a token that is not found in Mawle. *See* Pet. 57–58, 71–72. Also, under our partial interpretation of “token” as not including the “figure,” Petitioner’s asserted identification code only identifies the figure, not any token. *See id.* Further, Petitioner’s proposed modification does not address how the asserted game initial data of Mawle would be modified in view of Lee to include an identification code identifying the token resulting from the modification, instead of the figure of Mawle. *See id.* at 57–58.

Thus, Petitioner does not persuade us by a preponderance of the evidence that Mawle and Lee would have rendered obvious claim 8.

#### 6. *Claim 10*

Claim 10 depends directly from claim 1 and recites “wherein: the token is securable in a recess formed in a bottom face of a base portion of the figure.” Ex. 1001, 24:36–38.

Petitioner refers to its argument for claim 7. Pet. 72–73. Patent Owner does not present any arguments specifically for claim 10. See *generally* PO Resp.

Claims 7 and 10 recite similar subject matter. *Compare* Ex. 1001, 24:26–28 (reciting “wherein: the token is attachable to the figure by insertion into a recess in a surface of the figure”) *with id.* at 24:36–38. Based on the same findings from Lee for claim 7, a preponderance of the evidence persuades us that Lee teaches “wherein: the token is securable in a recess formed in a bottom face of a base portion of the figure.”

#### 7. Claim 25

For each of the limitations of claim 25, Petitioner refers to its arguments presented for corresponding limitations of claim 1. See Pet. 73. We also consider for claim 25 Patent Owner’s arguments for similar recitations found in claim 1.

Based on the same findings we discussed above for each of the corresponding limitations of claim 1, a preponderance of the evidence persuades us that Mawle and Lee teach or suggest each of the limitations of claim 25.

#### 8. Reason to Combine Mawle and Lee

Petitioner argues that “[i]t would have been obvious . . . to make the IC chip detachable from the action figure [of Mawle], in view of Lee” because of the “benefit of being able to detach a token such that various toy figures can be used with the token.” Pet. 57–58 (citing Ex. 1002 ¶¶ 154–159). Petitioner also argues that its proposed combination is “the use of a known technique (provision of a game figure with a detachable token as in

Lee) to improve a similar device (a game figure with an integral chip as in Mawle) in the same way.” *Id.* (citing Ex. 1002 ¶¶ 154–159).

As discussed above for the other challenges, Patent Owner also responds for the challenged claims based on Mawle and Lee that Petitioner’s reason for its proposed combination “is based on an incorrect premise,” that there is insufficient evidence that providing a game figure with a detachable token was a known technique, and that Petitioner has not explained sufficiently how its proposed combinations would work, and thus, one of ordinary skill in the art “would not have had a reason to combine the disparate disclosure of the various references in the manner claimed by the Challenged Claims.” PO Resp. 58–59 (citing Pet. 23–24, 38, 58); *see also* PO Sur-Reply 15–20 (arguing that Petitioner’s invalidity arguments rest on improper assertions), 23–24 (arguing that Lee does not teach a detachable token with an integrated circuit chip and thus, one of ordinary skill would not have had a reason to combine Mawle and Lee).

As discussed above, we find that Lee teaches that, in the embodiment shown in its Figure 2, “transducer 64 can be attached to a preexisting wrestling figure” so that “a child who has a collection of various action figures can use those figures as part of the activity center.” Ex. 1004, 6:44–51. Lee, thus, supports Petitioner’s declarant testimony that one of ordinary skill in the art would have modified Mawle so that its integrated circuit chip is detachable in the same manner as Lee so that “various action figures can be used with it.” Ex. 1002 ¶ 159 (citing Ex. 1006, 6:46–51). We also find that modifying Levy as proposed by Petitioner is within ordinary skill. *See, e.g.*, Ex. 1002 ¶ 59. Thus, Petitioner demonstrates that one of ordinary skill

in the art would have had a reasonable expectation of success in making the proposed modification.

For the reasons above, we determine that Petitioner shows by a preponderance of the evidence that one of ordinary skill in the art would have modified Mawle in view of Lee to arrive at the subject matter of claims 1, 3, 5, 7, 10, and 25. For claim 8, we determine that Petitioner does not show that Mawle and Lee teach or suggest its limitations.

*G. Objective Evidence of Nonobviousness*

The parties do not direct us to any objective evidence of nonobviousness. *See generally* Pet.; PO Resp.; Tr. 72:19–22 (Patent Owner’s counsel stating it did not submit objective evidence of non-obviousness).

*H. Weighing the Graham Factors*

“Once all relevant facts are found, the ultimate legal determination [of obviousness] involves weighing of the fact findings to conclude whether the claimed combination would have been obvious to an ordinary artisan.”

*Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1361 (Fed. Cir. 2017) (quoting *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 676 F.3d 1063, 1068–69 (Fed. Cir. 2012)).

Above, based on full record before us, we provide our factual findings regarding (1) the level of ordinary skill in the art, (2) the scope and content of the prior art, (3) any differences between the claimed subject matter and the prior art, and (4) objective evidence of nonobviousness.

In particular, we find that (1) Patent Owner’s proposed level of ordinary skill in the art is consistent with the prior art of record; (2) the asserted references teach all the limitations of claims 1, 3, 5, 7, 10, and 25,

but not claim 8; (3) one of ordinary skill in the art would have had a reason to modify the asserted references with a reasonable expectation of success, and (4) there is no objective evidence of nonobviousness in the record.

Weighing these underlying factual determinations, a preponderance of the evidence persuades us that claims 1, 3, 5, 7, 10, and 25, but not claim 8, of the '377 patent are unpatentable.

### III. CONCLUSION<sup>2</sup>

In summary:

| References                    | Basis    | Claims                    | Claims Shown Unpatentable | Claims Not Shown Unpatentable |
|-------------------------------|----------|---------------------------|---------------------------|-------------------------------|
| Levy and Lee                  | § 103(a) | 1, 3, 5, 7, 8, 10, and 25 | 1, 3, 5, 7, 10, and 25    | 8                             |
| Katoh and Lee                 | § 103(a) | 1, 3, 5, 7, 8, 10, and 25 | 1, 3, 5, 7, 10, and 25    | 8                             |
| Mawle and Lee                 | § 103(a) | 1, 3, 5, 7, 8, 10, and 25 | 1, 3, 5, 7, 10, and 25    | 8                             |
| <b><u>Overall Outcome</u></b> |          |                           | 1, 3, 5, 7, 10, and 25    | 8                             |

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<sup>2</sup> Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

#### IV. ORDER

Accordingly, it is:

ORDERED that claims 1, 3, 5, 7, 10, and 25, but not claim 8, of U.S. Patent No. 7,338,377 B2 have been shown, by a preponderance of the evidence, to be unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, the parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2018-00755  
Patent 7,338,377 B2

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