

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVERI PAYMENTS INC.,
Petitioner,

v.

SIGHTLINE PAYMENTS LLC,
Patent Owner.

IPR2022-00706
Patent 9,466,176 B2

Before MITCHELL G. WEATHERLY, CARL M. DEFRANCO, JR., and
SCOTT C. MOORE, *Administrative Patent Judges*.

WEATHERLY, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. BACKGROUND

Everi Payments Inc. (“Petitioner”) filed a petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 1, 2, 4–10, 12–17, 19, and 20 (the “challenged claims”) of U.S. Patent No. 9,466,176 B2 (Ex. 1002, “the ’176 patent”). 35 U.S.C. § 311. Sightline Payments LLC (“Patent Owner”) is the owner of the ’176 patent and did not file a Preliminary Response.

Based on our review of the record, we conclude that Petitioner is reasonably likely to prevail with respect to at least claim 1 of the '176 patent.

A. RELATED MATTERS

The '176 patent was the subject of an infringement action filed September 30, 2021 in *Sightline Payments LLC v. Everi Holdings Inc. et al*, No. 6:21-cv-01015 (W.D. Tex.). *See* Pet. 1; Paper 4, 2. However, that case was dismissed on June 1, 2022 due to improper venue. *See* Ex. 1037.

Pending before the Office are petitions filed by Petitioner for *inter partes* review of four related patents, namely, U.S. Patent Nos. 8,708,809 B2 (IPR2022-00614); 8,998,708 B2 (IPR2022-00696); 9,196,123 B2 (IPR2022-00663); and 9,785,926 B2 (IPR2022-00707). Those patents were each the subject of the above-identified infringement action.

B. THE '176 PATENT

The '176 patent is directed to a system and method for moving money electronically into and out of various accounts associated with a casino gaming environment without cash. Ex. 1002, 2:4–6. According to the '176 patent, a player can selectively transfer funds between various types of gaming accounts and a personal account. *Id.* at 3:63–65. Figure 2A of the '176 patent, reproduced below, illustrates an embodiment of the fund transfer system.

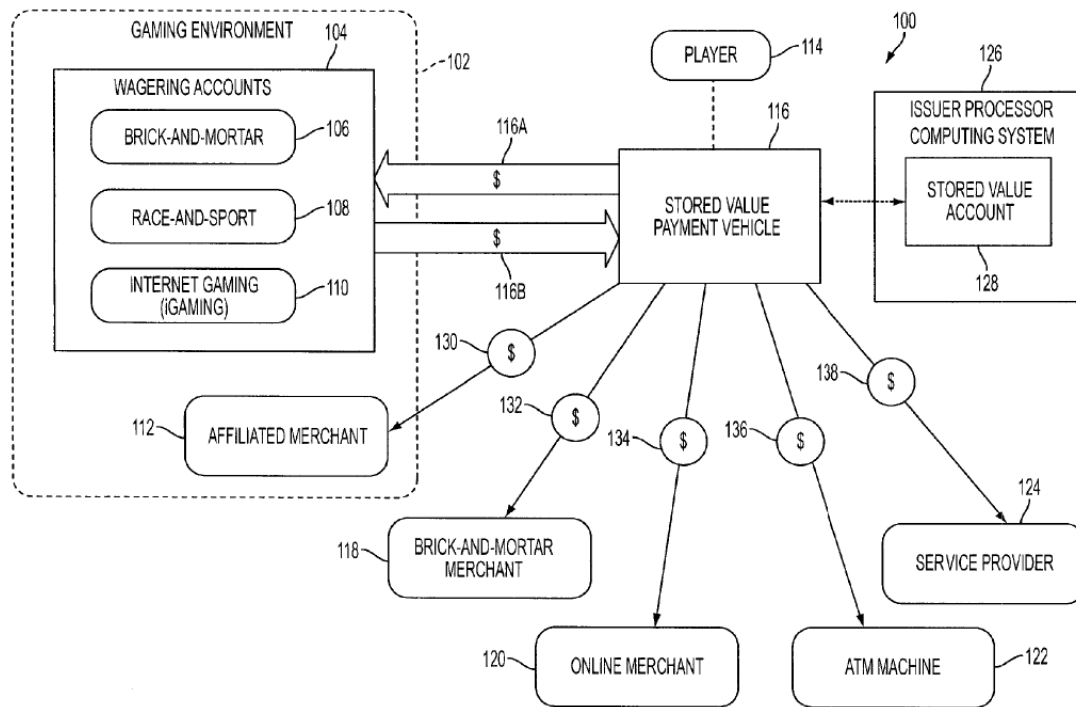


FIG. 2A

Figure 2A depicts an example system view and flow process 100 using stored value payment vehicle 116. Ex. 1002, 3:17–18. In this embodiment, player 114 is issued stored value payment vehicle 116, such as a prepaid card, that is associated with stored value account 128, such as a bank account, that is maintained by issuer processor computing system 126. *Id.* at 6:48–51. In some embodiments, a player can be associated with a player identifier that is linked by the issuing entity (such as a casino) to a loyalty profile, and is linked to, or otherwise associated with, the stored value account. *Id.* at 5:7–15. The player can fund (i.e., increase the available balance) stored value account 128 through traditional techniques, such as by fund transfers from a demand access account (DDA) and/or funds loaded from a credit card to the stored value account through an online interface. *Id.* at 6:66–7:4. In addition, player 114 can selectively fund stored value

account 128 from gaming environment 102 using cash, jackpot payouts, and numerous other ways, such as chip and slot ticket redemption. *Id.* at 7:4–8.

As depicted in Figure 2A, player 114 can selectively direct funds 116A associated with stored value payment vehicle 116 to a gaming account and can also selectively direct funds 116B associated with the gaming account to the stored value payment vehicle so as to transfer funds, back and forth, in real-time between stored value account 128 and the gaming account. *Id.* at 7:53–62. The '176 patent explains that because all of the funds are electronically transferred between a selected gaming account and stored value account 128 as credits and debits, the need for the player or gaming environment 102 to physically handle cash or coins is eliminated. *Id.* at 8:10–14. The gaming accounts associated with player 114 are shown in Figure 2A as wagering accounts 104, which can be managed by a management computing system (not shown) affiliated with gaming environment 102. *Id.* at 8:23–26. In Figure 2A, wagering accounts 104 include a brick-and-mortar wagering account 106, a race and-sport wagering account 108, and an iGaming wagering account 110. *Id.* at 8:26–30.

In addition to or as an alternative to the player transferring balances through the gaming environment, the player can interact with an application executing on a computing device to initiate various balance transfers, as depicted in Figure 7A, reproduced below.

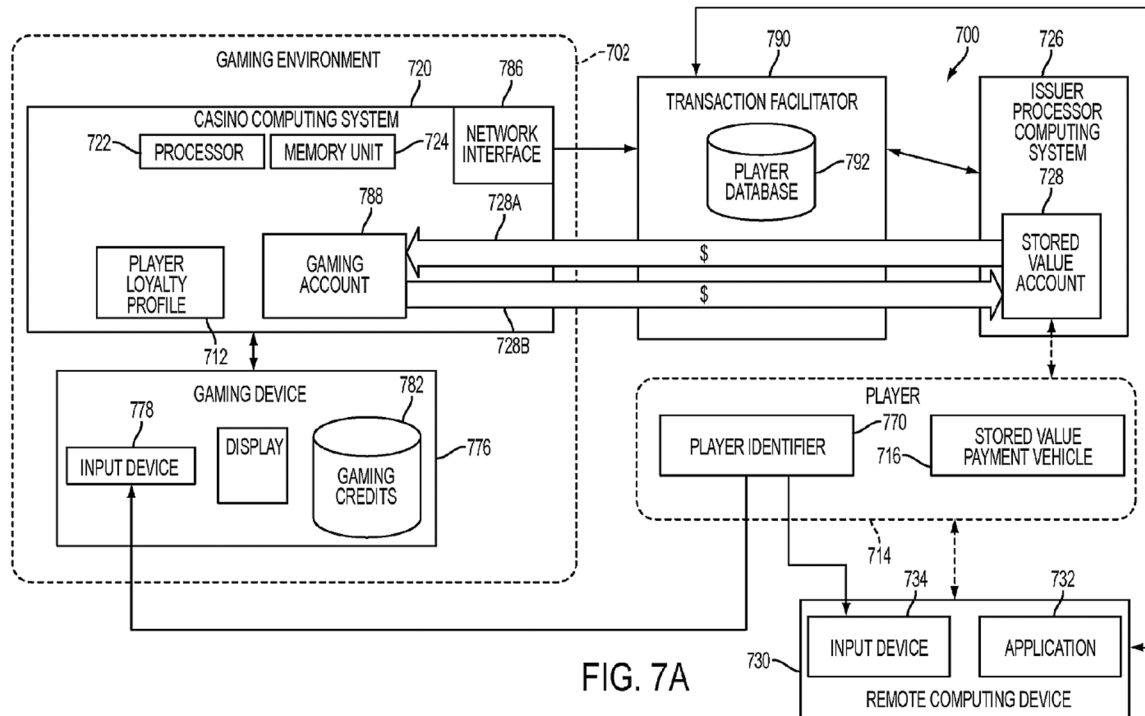


Figure 7A depicts an example system diagram that includes a computing device executing an application for facilitating balance transfers. Ex. 1002, 3:36–38. In particular, Figure 7A depicts an example system diagram that includes remote computing device 730 executing application 732 for facilitating balance transfers. *Id.* at 13:48–51. According to the '176 patent, remote computing device 730 can be any networked computing device, including, “a smart phone, a tablet computer, a desktop computer, a laptop computer, a gaming device, a wearable computing device, a kiosk, [and] an ATM.” *Id.* at 13:51–55. Remote computing device 730 can execute application 732 for transferring balances at the player's direction to any number of gaming accounts 788 from, for example, stored value account 728, or application 732 can provide instructions to transaction facilitator 790 to perform the balance transfers. *Id.* at 13:55–14:3.

Transaction facilitator 790, or at least components thereof, can reside within gaming environment 702 or be controlled by an operator of the

gaming environment, or can be controlled by the issuer processor computing system 726. *Id.* at 12:23–31. Gaming environment 702 includes casino computing system 720, which has one or more processors 722 and one or more computer memory units 724, and which processes the player identifier. *Id.* at 12:38–41. As depicted in Figure 7A, player identifier 770 is associated with player 714 and is input to input device 778 of gaming device 776 to identify player loyalty profile 712 of the player, or is input using input device 734 of remote computing device 730. *Id.* at 12:58–62, 14:12–16. Casino computing system 720 can transmit player identifier 770, or other player identifying data, to transaction facilitator 790 using network interface 786. *Id.* at 12:62–65. Once transaction facilitator 790 receives player identifier 770, or other player identifying data, it matches the player identifying data to a particular stored value account 728, which is maintained by player database 792. *Id.* at 12:66–13:2, 14:34–38. After transaction facilitator 790, identifies stored value account 728, transaction facilitator 790 transmits a message to issuer processor computing system 726 that may include a balance inquiry, or transfer authorization. *Id.* at 13:11–16, 14:38–40.

For a fund transfer message, transaction facilitator 790 enables fund transfer 728A by debiting stored value account 728 and crediting the gaming account 788, or fund transfer 728B by debiting gaming account 788 and crediting stored value account 728. *Id.* at 13:16–23, 13:66–14:3. Funds transferred into gaming account 788 can be converted to gaming credits 782 for gaming at gaming device 776. *Id.* at 13:23–25, 14:40–42. The '176 patent explains that players using the disclosed systems and methods may desire to load funds into their stored value account in substantially real-time

so that the funds are accessible via their stored value payment vehicle relatively quickly. *Id.* at 16:65–17:2. The load request may be initiated by the casino computing system, or the remote computing device, and goes through the transaction facilitator computing system, so that the transaction facilitator computing system communicates with the issuer processor computing system to increase a balance amount of the stored value account based on the total value of the player funds. *Id.* at 2:29–41, 17:8–16, 18:1–5.

C. THE ASSERTED CHALLENGES

Petitioner challenges the patentability of claims as follows:

Claim(s) challenged	35 U.S.C. § ¹	Reference(s)
1, 2, 4, 5, 7–10, 12–17, 19, 20	103	Smith ²
1, 2, 4–10, 12–17, 19, 20	103	Sommer ³

¹ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013. The application for the ’176 patent was filed on October 23, 2015. Ex. 1002, code (22). Although the ’176 patent claims priority to applications filed before March 16, 2013, *id.* at code (60), Patent Owner has not shown that the written description of the earlier applications supports the challenged claims. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378–80 (Fed. Cir. 2015); *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008). Therefore, for purposes of this Decision, we apply the post-AIA versions of 35 U.S.C. §§ 102 and 103.

² U.S. Patent Application Publication No. 2013/0073447 A1, pub. Mar. 21, 2013 (Ex. 1005, “Smith”).

³ U.S. Patent Application Publication No. 2008/0113776 A1, pub. May 15, 2008 (Ex. 1006, “Sommer”).

In support of these challenges, Petitioner also submits the declaration of Dwight Crevelt. *See* Ex. 1001. At this stage, Sightline proffers no testimonial evidence.

On April 24, 2018, the Supreme Court held that, under 35 U.S.C. § 314, the Office may not institute review of fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). For the reasons expressed below, we determine that Petitioner has demonstrated a reasonable likelihood of establishing that at least claim 1 is unpatentable. In accordance with the *SAS* decision and 37 C.F.R. § 42.108(a), we institute an *inter partes* review of all challenged claims of the '176 patent on all grounds alleged by Petitioner.

D. THE CHALLENGED CLAIMS

Three of the challenged claims are independent—claims 1, 8, and 14. Claims 1 and 8 recite a “computer-based method” of transferring funds between a stored value account and a gaming account, whereas claim 14 recites a “gaming system.” *See* Ex. 1002, 22:15–41 (claim 1), 23:1–20 (claim 8), 24:1–16 (claim 14). Independent claim 1, which is representative of the claimed subject matter, recites:

1. [1.0] A computer-based method of electronic fund transfer between a stored value account and a gaming account, the method performed by one or more computing devices comprising instructions stored in a memory, which when executed by one or more processors of the one or more computing devices, cause the one or more computing devices to perform the method comprising:

[1.1] receiving by the one or more computing devices player credentials for a player, wherein the player credentials are associated with a gaming account having a balance,

- [1.2] wherein the player credentials were entered into a remote computing device;
- [1.3] based at least partially on the player credentials, identifying by the one or more computing devices a stored value account associated with the player,
- [1.4] wherein the stored value account associated with the player maintains an amount of funds available for use by the player;
- [1.5] receiving by the one or more computing devices a funding instruction, wherein the funding instruction identifies a balance amount to be electronically transferred from the stored valued account to the gaming account,
- [1.6] wherein the funding instruction was entered into the remote computing device; and
- [1.7] responsive to receiving a funding instruction, causing by the one or more computing devices a decrease of the balance of the stored value account and an increase of the balance of the gaming account.

Id. at 22:15–41 (with Petitioner’s bracketed enumerations added to ease discussion).

II. ANALYSIS

A. CLAIM INTERPRETATION

We interpret claims in the same manner used in a civil action under 35 U.S.C. § 282(b) “including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). When applying that standard, we interpret the claim language as it would be understood by one of ordinary skill in the art in light of the specification. *Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1279–80 (Fed. Cir. 2017). Thus, we give claim terms their ordinary

and customary meaning as understood by an ordinarily skilled artisan. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). Only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017).

Here, neither party proposes an interpretation of the claim terms beyond their ordinary and customary meaning. *See* Pet. 10. Thus, at this stage, we see no reason to depart from that approach.

B. LEVEL OF ORDINARY SKILL IN THE ART

Petitioner contends, based on testimony from Mr. Crevelt, that one skilled in the art during the relevant time frame “would have a Bachelor’s degree in Computer Engineering or Computer Science, or an equivalent degree, with at least two years of experience in casino or gaming transaction facilitation, or related technologies.” Pet. 10 (citing Ex. 1001 ¶ 37).

At this stage, Patent Owner does not contest Mr. Crevelt’s testimony, and we discern no reason to question Mr. Crevelt’s credibility. Thus, for purposes of institution, we adopt the level of skill in the art proffered by Petitioner.

C. LEGAL STANDARDS

Petitioner challenges the patentability of claims 1, 2, 4–10, 12–17, 19, and 20 on the grounds that the claims are obvious in light of either Smith or Sommer. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), reaffirmed the framework for determining obviousness as set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The *KSR* Court summarized the four factual inquiries set forth in *Graham* that we apply in determining whether a claim is reasonably likely to be unpatentable as

obvious under 35 U.S.C. § 103(a) as follows: (1) determining the scope and content of the prior art, (2) ascertaining the differences between the prior art and the claims at issue, (3) resolving the level of ordinary skill in the pertinent art, and (4) considering objective evidence indicating obviousness or nonobviousness. *KSR*, 550 U.S. at 406. With these standards in mind, we address Petitioner's first challenge below.

D. CLAIMS 1, 2, 4, 5, 7–10, 12–17, 19, AND 20:
OBVIOUSNESS IN VIEW OF SMITH

Petitioner challenges claims 1, 2, 4, 5, 7–10, 12–17, 19, and 20 as obvious based on Smith. Pet. 11–49. For the reasons expressed below, we conclude that Petitioner has demonstrated a reasonable likelihood of establishing that Smith renders these claims unpatentable as obvious.

1. Overview of Smith

Smith relates to an electronic funds transfer system that transfers funds to a verified account using a player card. Ex. 1005 ¶ 2. An exemplary system is depicted in Figure 1, reproduced below.

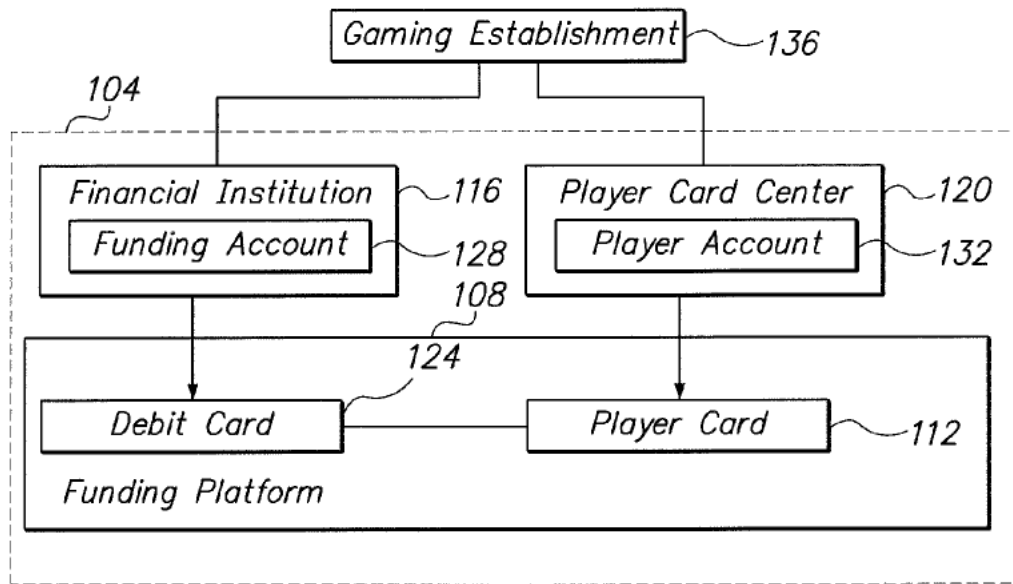


FIG. 1

Smith's Figure 1 is a block diagram illustrating an exemplary funding system. *Id.* ¶ 22. Funding system 104 links accounts so that funds may be transferred from a funding account to another account such as a player card account at a gaming establishment. *Id.* ¶ 32. In particular, "a bank or other financial institution 116 may provide one or more funding accounts 128 (e.g., debit card, checking, savings, or other accounts) for holding and transferring a player's funds." *Id.* ¶ 33. Financial institution 116 may issue debit card 124 through which funds in funding account 128 and the funding account itself may be accessed. *Id.* Player card center 120 may issue player tracking cards 112 for use by players in accessing their player accounts 132 at a gaming establishment so that players may accumulate rewards that are redeemed through their player tracking card 112. *Id.* ¶ 34. Player tracking card 112 and debit card 124 may have information stored thereon that "identifies a player's account at a gaming establishment and/or financial institution 116, respectively." *Id.* ¶ 35. Linking platform 108 associates a

player's funding account 128 with his or her player account 132. *Id.* ¶ 36. Details of funding platform 108 are depicted in Figure 3, reproduced below.

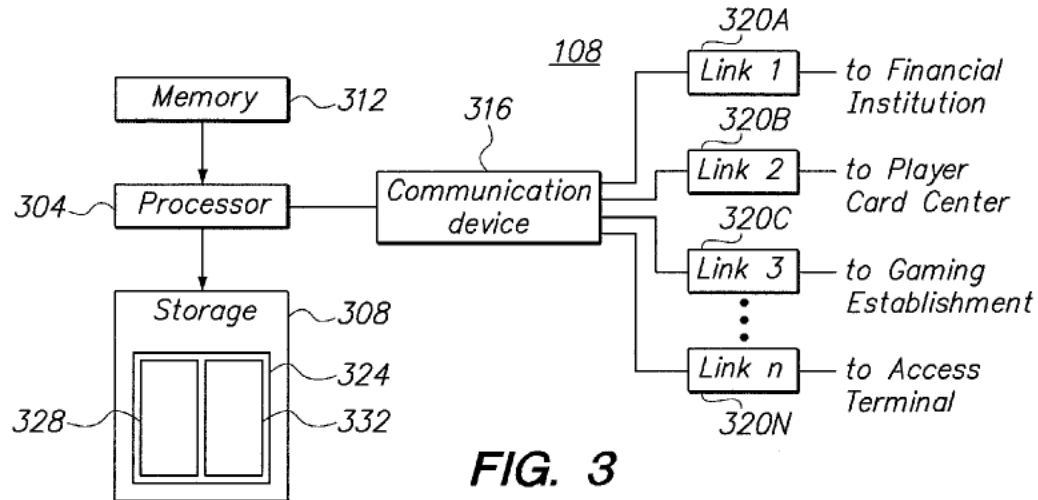


Figure 3 is a block diagram illustrating an exemplary funding platform. *Id.* ¶ 24. Funding platform 108 includes communication device 316 that “execute fund transfers, such as by identifying a source account, a destination account, an amount to be transferred, and/or providing authorization for the transfers.” *Id.* ¶ 45. As depicted in Figure 3, communication device establishes communication links in which “a first communication link 320A may form a connection with a financial institution while a second communication link 320B may form a connection with a gaming establishment.” *Id.* ¶ 46. Account information 324 may include data to associate or link player account information 328 and funding account information 332 so that this information may be linked by storing each with the same unique identifier. *Id.* ¶ 49. In use, “the player may swipe or scan his or her card at a card reader of a gaming machine, which devices transmits the player card information to the funding platform.” *Id.* ¶ 77. Once the player card information has been received and access to the player

account is verified, funds may then be transferred from the funding account. ¶¶ 78–79. The flow of such funds is depicted in Figure 6, reproduced below.

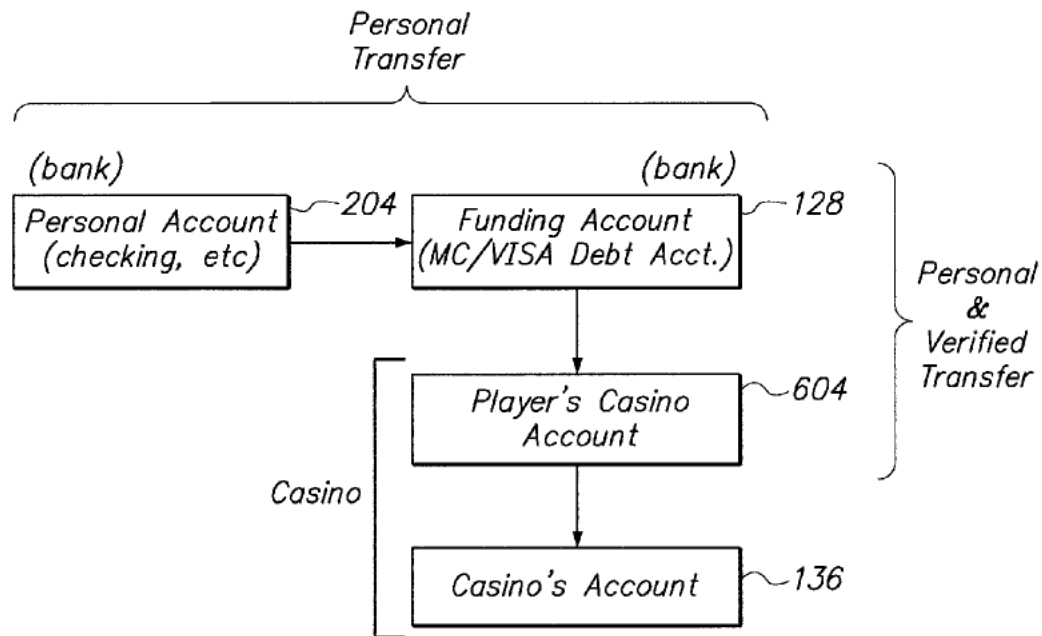


FIG. 6

Figure 6 is a block diagram illustrating an exemplary funds transfer via the funding system. *Id.* ¶ 27. Smith explains that “funds may originate from the player’s personal accounts 204, such as bank account(s), credit card(s) or other sources of funding that are held independent of the funding system.” *Id.* ¶ 84. The funds may be transferred to funding account 128 and then from funding account 128 to gaming establishment 136 using a credit card or the like so that the player can use the funds to place wagers. *Id.* ¶¶ 33, 84–85. “Alternatively, the player might transfer the funds from their player account to their debit account.” *Id.* ¶ 93.

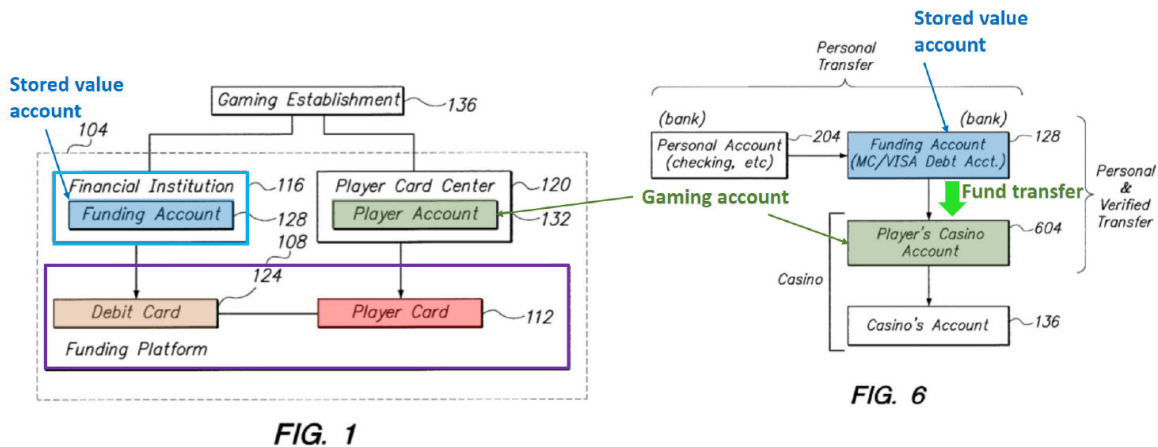
2. Independent Claim 1

Petitioner argues that Smith renders independent claim 1 unpatentable as obvious. *See* Pet. 14. In doing so, Petitioner provides a detailed mapping

of how Smith meets each of the recited claim elements and cites testimony from Mr. Crevelt in support. *See id.* at 14–27. Patent Owner does not contest Petitioner’s challenge at this stage, but keeping in mind that Petitioner bears the burden of establishing a reasonable likelihood of success, we have fully considered Petitioner’s showing with respect to each limitation of claim 1.

a) Limitation 1.0; the Preamble

Limitation 1.0 refers to the following text from claim 1: “A computer-based method of electronic fund transfer between a stored value account and a gaming account, the method performed by one or more computing devices comprising instructions stored in a memory, which when executed by one or more processors of the one or more computing devices, cause the one or more computing devices to perform the method comprising.” Ex. 1002, 22:15–21. Petitioner contends that to the extent the preamble is limiting,⁴ Smith discloses this limitation in Figures 1 and 6 reproduced below. Pet. 14.



⁴ We need not decide whether the preamble of claim 1 is limiting for purposes of this Decision because Petitioner has demonstrated a reasonable likelihood of showing that the cited art teaches the preamble.

Figure 1 is a block diagram illustrating an exemplary funding system, and Figure 6 is a block diagram illustrating an exemplary funds transfer via the funding system, as annotated by Petitioner to include color coding and to denote that Smith's funding account 128 is a stored value account. Ex. 1005 ¶¶ 22, 27; Pet. 14. According to Petitioner, Smith's Figure 1 and 6 disclose transferring funds between funding account 128 (blue) (stored value account) and player's casino account 132/604 (green) (gaming account). Pet. 14. In particular, Petitioner contends that Smith's funding platform 108 (purple) "is a computing device," which has processor 304, memory 312, and storage 308 that "has instructions stored therein for execution by the processors" to transfer funds to the gaming account. *Id.* at 14–15 (referencing Ex. 1005 ¶¶ 36, 39, 43–45, 47, 49, Fig. 3; *see also* Ex. 1001 ¶¶ 103–106). Petitioner's assertions are corroborated by Mr. Crevelt, who testifies that Smith's funding platform 108 "functions 'as a hub to orchestrate fund transfers between a player, various accounts, and the gaming establishment 136' – such as between a stored value account 128 and gaming account 604/132." Ex. 1001 ¶ 105 (citing Ex. 1005 ¶¶ 36, 39).

At this stage of the proceeding we credit the unrebutted testimony from Mr. Crevelt. Based largely on this testimony, Petitioner demonstrates a reasonable likelihood that Smith discloses a "method of electronic fund transfer between a stored value account and a gaming account" as recited in limitation 1.0.

b) Limitation 1.1; Player Identifier

Limitation 1.1 refers to the following text from claim 1: "receiving by the one or more computing devices player credentials for a player, wherein the player credentials are associated with a gaming account having a

balance.” Ex. 1002, 22:22–24. Petitioner contends that Smith discloses “player tracking card 112 for accessing a player’s account(s)” and that the player account “is a gaming account having a balance, because ‘the player may utilize the funds associated with their casino account 604 to place wagers.’” Pet. 16 (citing Ex. 1005 ¶¶ 9, 34–35, 41, 76, 85, Fig. 1; Ex. 1001 ¶¶ 109, 114). According to Petitioner, Smith’s “player tracking card 112 ... may have information stored thereon or which is otherwise associated therewith that identifies a player’s account at a gaming establishment.” *Id.* at 18 (citing Ex. 1005 ¶¶ 34–35, 77–78).

c) Limitation 1.2; Remote Computing Device

Limitation 1.2 refers to the following text from claim 1: “wherein the player credentials were entered into a remote computing device.” Ex. 1002, 22:25–26. Petitioner contends that Smith discloses a remote computing device because a player in Smith enters credentials “to funding platform 108 via a ‘kiosk, gaming machine computer or other access terminal,’” which is consistent with the exemplary device disclosed in the ’176 patent. Pet. 18 (citing Ex. 1005 ¶ 77; E1001 ¶ 117). According to Petitioner, Smith also discloses a home or work computer, and that an ordinary artisan “would understand and immediately envisage that Smith’s ‘home or work computer’ would” read on the claimed remote computing device. *Id.* at 19 (citing Ex. 1005 ¶ 90; Ex. 1001 ¶ 118).

d) Limitation 1.3; Stored Value Account

Limitation 1.3 refers to the following text from claim 1: “based at least partially on the player credentials, identifying by the one or more computing devices a stored value account associated with the player.” Ex. 1002, 22:27–29. Petitioner contends that Smith’s “[f]unding

account 128 is a stored value account that can be a ‘checking, savings, or other account’ issued by a ‘bank or other financial institution’ for ‘holding and transferring a player’s funds.’” Pet. 20 (citing Ex. 1005 ¶ 33).

According to Petitioner, once Smith’s “player card information is received by the computing device 108, the funding platform retrieves funding account information 332 [] from storage 308, which identifies the player’s funding account 128 (*i.e., stored value account*).” *Id.* at 21 (citing Ex. 1005 ¶ 49; Ex. 1001 ¶ 122).

e) Limitation 1.4; Stored Value Account Funds

Limitation 1.4 refers to the following text from claim 1: “wherein the stored value account associated with the player maintains an amount of funds available for use by the player.” Ex. 1002, 22:29–31. Petitioner contends that Smith discloses this limitation because Smith’s stored value account is for “holding and transferring a player’s funds.” Pet. 22 (citing Ex. 1005 ¶ 33). In particular, Petitioner contends that Smith’s debit card 124 is issued to the player and is associated with the stored value account 128 to allow the player “to access funds in the stored value account.” *Id.* (citing Ex. 1001 ¶ 125).

f) Limitation 1.5; Funding Instructions for Transfer

Limitation 1.5 refers to the following text from claim 1: “receiving by the one or more computing devices a funding instruction, wherein the funding instruction identifies a balance amount to be electronically transferred from the stored valued account to the gaming account.” Ex. 1002, 22:32–35. Petitioner contends that Smith’s ““access devices may be configured to receive the player tracking account identifier and to request a fund transfer utilizing the funding account identifier’ to ‘send funds from a

funding account... to a player's casino account.” Pet. 24 (citing Ex. 1005 ¶ 13). In particular, according to Petitioner, Smith's funding platform/computing device retrieves information that “identifies the player's stored value account 128, and transmits instructions to the financial institution's server including ‘an account number, amount to be transferred, and authorization information’ to transfer funds from the player's stored value account 128 to the player's casino/gaming account 604/132.” *Id.* at 24–25 (citing Ex. 1005 ¶¶ 39, 44–45, 77, 79, 85; Ex. 1001 ¶ 129).

g) Limitation 1.6; Remote Computing Device Instructions

Limitation 1.6 refers to the following text from claim 1: “wherein the funding instruction was entered into the remote computing device.” Ex. 1002, 22:36–37. Petitioner contends that Smith initiates the funding transfer by the player entering information to “funding platform 108 via a ‘kiosk, gaming machine computer or other access terminal.” Pet. 25 (citing Ex. 1005 ¶ 77, Fig. 3). According to Petitioner Smith also meets this limitation because “Smith discloses that a player ‘may also be permitted to transfer funds by accessing a server of the system on-line, such as from their home or work computer.” *Id.* (citing Ex. 1005 ¶ 90).

h) Limitation 1.7; Decrease/Increase Balance

Limitation 1.7 refers to the following text from claim 1: “responsive to receiving a funding instruction, causing by the one or more computing devices a decrease of the balance of the stored value account and an increase of the balance of the gaming account.” Ex. 1002, 22:38–41. Petitioner contends that because Smith transfers funds from stored value account 128 to the player's casino/gaming account 604, “[t]he transfer necessarily causes a decrease in the balance of the stored value account 128, and a

corresponding increase in the balance of player's casino/gaming account 604.” Pet. 26 (citing Ex. 1005 ¶ 85; Ex. 1001 ¶ 134).

i) Conclusion

Having reviewed the preliminary record, including Petitioner's showing as to how Smith discloses or renders obvious each of the limitations of claim 1 (*see* Pet. 14–27), we conclude that Petitioner demonstrates a reasonable likelihood that Smith renders claim 1 unpatentable as obvious.

3. Remaining Claims 2, 4, 5, 7–10, 12–17, 19, and 20

Petitioner also argues that Smith renders claims 2, 4, 5, 7–10, 12–17, 19, and 20 unpatentable as obvious. Pet. 27–51. Patent Owner has not yet proffered argument or evidence in response to Petitioner's challenge to these claims. Based on our review of Petitioner's argument and evidence, we conclude that Petitioner demonstrates a reasonable likelihood that Smith renders claims 2, 4, 5, 7–10, 12–17, 19, and 20 unpatentable as obvious.

E. PETITIONER'S CHALLENGE BASED ON SOMMER

Petitioner challenges claims 1, 2, 4–10, 12–17, 19, and 20 as obvious based on Sommer. Pet. 49–84. Because, as discussed above, Petitioner meets the threshold for institution by demonstrating a reasonable likelihood that at least claim 1 is unpatentable as obvious over Smith, we need not decide whether Petitioner's other challenges demonstrate the same. The challenges based on Sommer, in our view, are best left for trial after full development of the record. Because “[e]qual treatment of claims and grounds for institution purposes has pervasive support in *SAS*,” we institute review of all the challenges as raised in the Petition. *See PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018).

III. CONCLUSION

For the reasons expressed above, we determine that Petitioner has demonstrated a reasonable likelihood of showing that the challenged claims are unpatentable as obvious. In accordance with the Court's decision in *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018) and 37 C.F.R. § 42.108(a), we institute an *inter partes* review of all challenged claims of the '176 patent on all grounds alleged by Petitioner.

Nevertheless, this Decision does not reflect a final determination on the patentability of any claim. We further note that the burden remains on Petitioner to prove unpatentability of each challenged claim. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

IV. ORDER

For the reasons given, it is:

ORDERED that *inter partes* review of claims 1, 2, 4–10, 12–17, 19, and 20 of the '176 patent is *instituted* for all challenges set forth in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '176 patent is instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is given of the institution of a trial.

IPR2022-00706
Patent 9,466,176 B2

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