

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EVERI PAYMENTS INC.,
Petitioner,

v.

SIGHTLINE PAYMENTS LLC,
Patent Owner.

IPR2022-00707
Patent 9,785,926 B2

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

WEATHERLY, *Administrative Patent Judge*.

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

I. INTRODUCTION

We have authority to hear this *inter partes* review under 35 U.S.C. § 6(c). We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. Briefly, we determine that Everi Payments Inc. (“Petitioner”) has proven by a preponderance of the evidence that claims 1,

2, 4–10, 12–17, 19, and 20 of U.S. Patent No. 9,785,926 B2 (Ex. 1002, “the ’926 patent”) are unpatentable. *See* 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

A. Background

Petitioner filed a petition for *inter partes* review of claims 1, 2, 4–10, 12–17, 19, and 20 (the “challenged claims”) of the ’926 patent. Paper 1 (“Petition” or “Pet.”) Sightline Payments LLC (“Patent Owner”) did not file a Preliminary Response. On September 21, 2022, based on the record before us at the time, we instituted an *inter partes* review of all challenged claims on all grounds alleged as indicated in the table below. Paper 8 (“Institution Decision” or “Dec.”).

Claims 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 ’926 patent was filed on October 23, 2015. Ex. 1002, code (22). Although the ’926 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”).

After we instituted this review, Patent Owner filed a Patent Owner Response in opposition to the Petition (Paper 11, “PO Resp.”) that was supported by a Declaration from Michael I. Shamos, Ph.D. (Ex. 2001). Petitioner filed a Reply in support of the Petition (Paper 17, “Reply”). Patent Owner filed a Sur-reply responding to the Reply (Paper 19, “Sur-reply”). Patent Owner did not move to amend any claim of the ’926 patent. We heard oral argument on June 14, 2023, and a transcript of the argument has been entered in the record (Paper 26, “Tr.”).

B. Related Proceedings

The ’926 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 9,466,176 B2 (IPR2022-00706). Those patents were each the subject of the above-identified infringement action.

C. The ’926 patent

The ’926 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, 2:6–8, 2:18–20. According to the ’926 patent, a player can selectively transfer funds between various types of gaming accounts and a personal account. *Id.* at 3:65–67. Figure 2A of the ’926 patent, reproduced below, illustrates an embodiment of the fund transfer system.

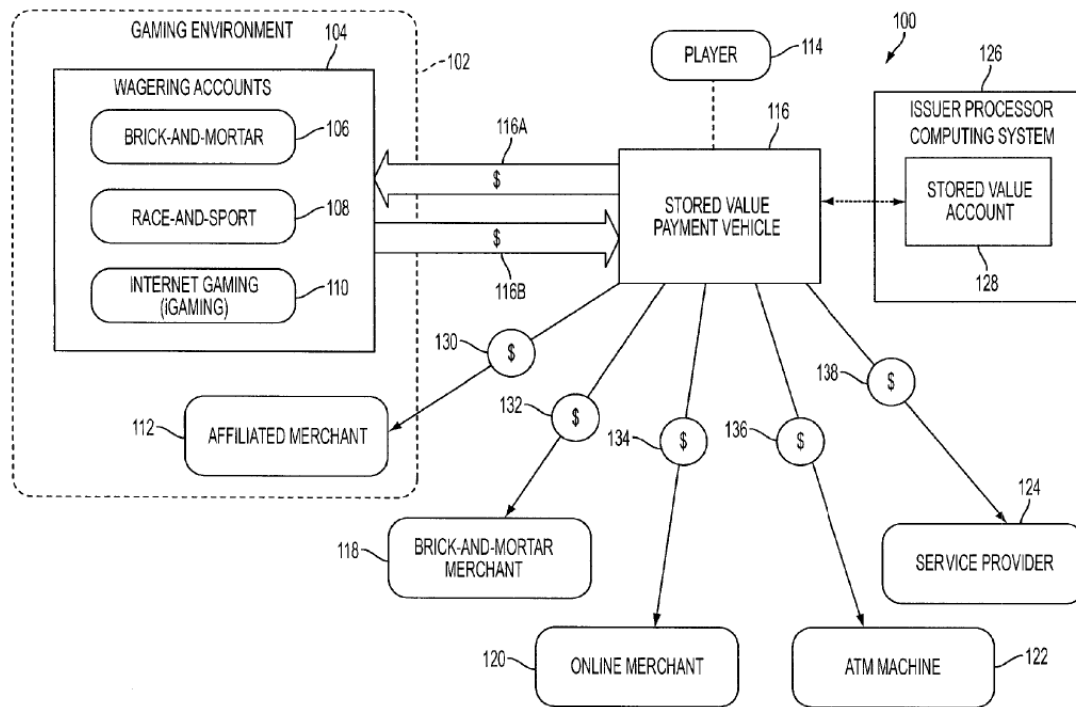


FIG. 2A

Figure 2A depicts an example system view and flow process 100 using stored value payment vehicle 116. Ex. 1002, 3:16–17. 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 6:51–62. 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 5:9–17. 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 7:2–7. 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 7:8–11. Further, stored value payment vehicle 116 can be used by player 114 to make purchases at a variety of merchants including brick-and-mortar merchant 118, online merchant 120, ATM machine 122, and service provider 124. *Id.* at 7:12–17.

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 7:57–65. The '926 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 8:13–17. 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 8:26–29. 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 8:30–33.

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.

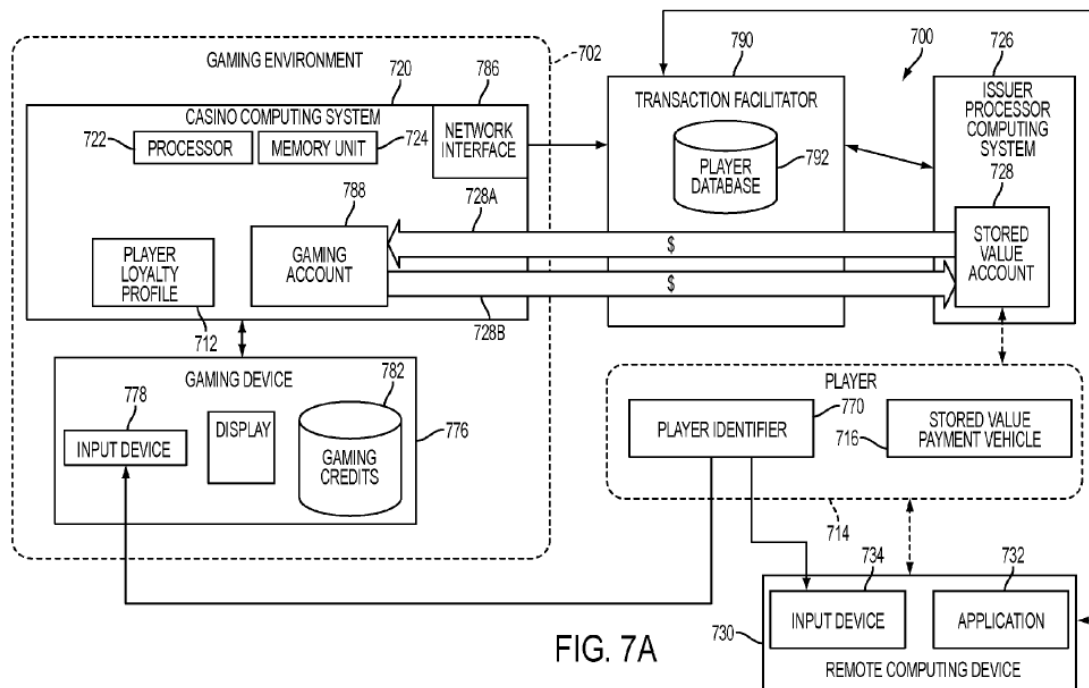


Figure 7A depicts an example system diagram that includes a computing device executing an application for facilitating balance transfers. Ex. 1002, 3:38–40. In particular, Figure 7A depicts an example system diagram that includes remote computing device 730 executing application 732 for facilitating balance transfers. *Id.* at 13:51–53. According to the ’926 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 13:54–58. 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 13:58–14:6.

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 12:26–35. 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 12:42–45. 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 12:62–66, 14:15–19. Casino computing system 720 can transmit player identifier 770, or other player identifying data, to transaction facilitator 790 using network interface 786. *Id.* at 12:65–13:2. 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 13:3–6, 14:38–41. 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 13:15–20, 14:41–43.

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 13:20–26, 14:1–6. Funds transferred into gaming account 788 can be converted to gaming credits 782 for gaming at gaming device 776. *Id.* at 13:26–28, 14:43–45. The

'926 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 17:1–5. 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 2:42–52, 17:11–20, 18:55–63.

D. Illustrative Claims

Three of the challenged claims are independent—claims 1, 8, and 14. The primary differences among these claims are that claims 1 and 8 recite a “computer-based method” of funding an account, and claim 14 recites a “gaming system” for funding an account. *See* Ex. 1002, 22:21–46 (claim 1), 23:6–32 (claim 8), 24:1–25 (claim 14). Claim 8 differs from claim 1 by requiring a transaction facilitator computing system and uses a load request to fund a gaming account, whereas claim 1 transfers funds between a stored value account and a gaming account based on instructions from a remote computing device. *Compare* Ex. 1002, 22:21–46, *with id.* at 23:6–32. Claim 14 differs from claim 1 by requiring a player loyalty account associated with the stored value account, and transferring funds from the gaming account to the stored value account. *Compare* Ex. 1002, 22:21–46, *with id.* at 24:1–25. Independent claim 1, which is representative of the claimed subject matter, recites:

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] associating in computer memory of the one or more computing devices, a stored value account of a player with player credentials for a gaming environment,

[1.2] wherein the stored value account is an open-loop account that holds a balance of funds maintained by a host computing system on a bank card network,

[1.3] wherein funds held in the stored value account are usable for payment transactions at any of a plurality of merchants associated with the bank card network;

[1.4] based at least partially on the player credentials for the player entered into a remote computing device, identifying the stored value account associated with the player credentials; and

[1.5] responsive to receiving a funding instruction entered into the remote computing device and via closed-loop transactions, causing by the one or more computing devices a decrease of the balance of funds of the stored value account and an increase of the balance of a gaming account.

Id. at 22:21–46 (with Petitioner’s bracketed enumerations added to ease discussion).

II. ANALYSIS

A. Legal Standards

To prevail in its challenges to the patentability of the claims, Petitioner must establish unpatentability by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). “In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815

F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden never shifts to Patent Owner. See *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of proof in *inter partes* review).

We previously instructed Patent Owner that “any arguments for patentability not raised in the [Patent Owner Response] may be deemed waived.” Paper 9, 8; see also *In re Nuvasive, Inc.*, 842 F.3d 1376, 1381 (Fed. Cir. 2016) (holding that patent owner’s failure to proffer argument at trial as instructed in scheduling order constitutes waiver). Additionally, the Board’s Trial Practice Guide states that the Patent Owner Response “should identify all the involved claims that are believed to be patentable and state the basis for that belief.” Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) 66.⁴

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 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) when in

⁴ See <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

evidence, considering objective evidence indicating obviousness or nonobviousness. *KSR*, 550 U.S. at 406 (citing *Graham*, 383 U.S. at 17–18).

Petitioner must explain how the prior art would have rendered the challenged claims unpatentable. An obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; accord *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1259 (Fed. Cir. 2007). However, Petitioner cannot satisfy its burden of proving obviousness by employing “mere conclusory statements,” but “must instead articulate specific reasoning, based on evidence of record” to support an obviousness determination. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380–81 (Fed. Cir. 2016). Petitioner also must articulate a reason why a person of ordinary skill in the art would have combined the prior art references. *NuVasive*, 842 F.3d at 1382.

At this final stage, we determine whether a preponderance of the evidence of record shows that the challenged claims would have been rendered obvious in view of the asserted prior art. We analyze the asserted grounds of unpatentability in accordance with these principles.

B. 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).

Petitioner and Patent Owner disagree over the interpretation of “gaming account” as recited in the independent claims 1, 8, and 14. *See* PO Resp. 15–18; Reply 1–4.⁵ Patent Owner contends that “gaming account” should be construed as a “financial account associated with a player and that may be used in a gaming or *non-gaming* environment of a casino.” PO Resp. 15 (emphasis added). According to Patent Owner, our interpretation of “gaming account” should include accounts that must be usable in non-gaming environments because the “specification [of the ’926 patent] also discloses the gaming account is used in non-gaming environments,” such as “a retailer on casino property or at an online merchant, both of which are examples of non-gaming environments.” *Id.* at 16 (citing Ex. 1002, 7:20–27, 10:6–10:15).

⁵ Patent Owner also argues that Petitioner fails to identify how “the challenged claim should be construed” as set forth in 37 C.F.R. § 42.104(b)(3). PO Resp. 11. However, Patent Owner identifies no specific term requiring interpretation other than “gaming account,” *id.* at 11–18, on which Petitioner provides its position, Reply 1–4. We discern no dispute regarding whether the Petition meets the requirements of Rule 42.104(b)(3) and thus do not further address the issue in this Decision.

Patent Owner also points to an embodiment in Figure 8 of the '926 patent, which “*aims to capture patron spending behavior that occurs in non-gaming environments of a casino*, such as in the restaurants, hotels, retail establishments, ATM’s a[s] well as spending behavior that occurs in non-casino environments, such as in the restaurants, hotels, retail establishments, ATMs.” PO Resp. 17 (quoting Ex. 1002, 15:12–15:18). Based on that disclosure, Patent Owner argues that Petitioner’s proposed interpretation seeks to “exclude the primary embodiment of using the gaming account in both gaming or non-gaming environment.” *Id.* at 17–18.

Petitioner replies that the specification of the '926 patent explicitly defines the term “gaming account”—

As used herein, a gaming account can be any type of financial account (i.e., electronic ledger) that is associated with a player, or collection of financial accounts that are associated with a player, *and maintained by a casino, or at least on behalf of a casino.*

Reply 2 (citing Ex. 1002, 7:39–43⁶) (second emphasis added). As such, Petitioner argues, “that definition controls,” and Patent Owner’s proposed interpretation improperly attempts to avoid that explicit definition by “mandat[ing] that the term ‘gaming account’ *must* have the capability of being used in non-gaming environments.” *Id.* at 2, 4, respectively. In particular, Petitioner contends that Patent Owner’s proposed interpretation improperly captures “financial accounts that have nothing to do with gaming,” such as “[a]ny generic debit card account that could be used to make wagers, buy dinner or stay at a hotel in a casino,” including “a player’s

⁶ Petitioner mistakenly cites Ex. 1002, 7:28–32, but the location of the material in the '926 patent is apparent from a cursory review.

Starbucks account . . . when used at Starbucks in a casino.” *Id.* at 2–3. And, while Patent Owner may rely on Figure 8 and its description to show one objective of the ’926 patent (i.e., “capturing patron spending behavior” in non-gaming environments), Petitioner notes that “these are *examples*, of how the gaming account *can* be used, not *requirements*.” *Id.* at 3. Indeed, as Petitioner also notes, neither Figure 8 nor the accompanying text describe using the gaming account to capture spending behavior in non-gaming environments. *Id.* (citing Ex. 1002, 15:12–16:64).

On this record, we determine that the claim term “gaming account” has the meaning explicitly set forth in the specification of the ’926 patent—“any type of financial account (i.e., electronic ledger) that is associated with a player, or collection of financial accounts that are associated with a player, and maintained by a casino, or at least on behalf of a casino.” Ex. 1002, 7:39–43. Patent Owner does not identify any portion of the specification that evidences an express intent to limit the scope of the term “gaming account” to an account that requires the capability of being used in *both* gaming *and* non-gaming environments, and we reject Patent Owner’s attempt to import concepts from the embodiment illustrated in Figure 8 into the meaning of “gaming account.”

C. Level of Ordinary Skill

Petitioner argues, with support from its declarant, 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). Patent Owner does not dispute Petitioner’s definition of the level of skill in the art, but asserts

that it should also include “familiarity with gaming and financial regulations. PO Resp. 10–11 (citing Ex. 2001 ¶¶ 27–28).

Petitioner replies that Patent Owner’s additional qualification for the level of skill in the art is “implied and unnecessary” because “[t]he agreed-upon level of skill in the art . . . *already includes* ‘familiarity with gaming and financial regulations.’” Reply 1 (quoting PO Resp. 10). According to Petitioner, “a person having at least two years of experience in casino or gaming transaction facilitation necessarily becomes familiar with gaming and financial regulations during their experience implementing gaming systems into an actual casino environment.” *Id.* (citing Ex. 1039 ¶¶ 1–3).

Both Petitioner and Patent Owner agree that one skilled in the art of gaming transaction facilitation would have familiarity with gaming and financial regulations—whether such familiarity is implied per Petitioner or stated outright per Patent Owner. Thus, we adopt Petitioner’s definition of the level of skill in the art with Patent Owner’s additional modification of that definition.

D. Mr. Crevelt’s Credibility as an Expert

As a preliminary matter, Patent Owner argues that the testimony of Petitioner’s expert, Mr. Crevelt, is “flawed and should be accorded no weight” because Mr. Crevelt “did not consider the impact of any [gaming] regulations when preparing his declaration,” despite admitting that one skilled in the art would have done so. PO Resp. 18–19 (citing Ex. 2006, 53:9–55:8). According to Patent Owner, “[w]ithout its flawed expert testimony,” Petitioner’s evidence of obviousness consists only of “attorney argument,” and, thus, Petitioner “has failed to carry its burden” of proving that the challenged claims are unpatentable. *Id.* at 20.

At the outset, we note that Patent Owner’s arguments relate to the weight, rather than the admissibility, of Mr. Crevelt’s testimony.⁷ We also note that Patent Owner does not identify any particular gaming regulation that would have been relevant to Mr. Crevelt’s analysis of the prior art. *See* PO Resp. 18–20. So, to the extent Patent Owner contends we should disregard Mr. Crevelt’s testimony for purportedly failing to consider gaming regulations *in general*, we disagree. In our view, Mr. Crevelt intrinsically would have applied his general knowledge of gaming regulations in opining on how one skilled in the art would have understood the disclosures in the prior art, despite not citing to any particular regulation.

In describing his qualifications, Mr. Crevelt states that he formed his opinions based on his expertise in “the field of design and operation of gaming machines and systems for the casino industry.” Ex. 1001 ¶ 3. That expertise includes knowledge of gaming regulations, as shown by his work as a “technical gaming control liaison” to the “Nevada Gaming Control Board, [which] regulates the gaming industry in Nevada, overseeing the licensing and compliance of casinos as well as manufacturers and the equipment used in gaming.”⁸ *Id.* ¶ 9. Mr. Crevelt also refers to his experience with “regulators in New South Wales, Australia and the state of Mississippi” in analyzing various gaming devices. *Id.* ¶ 15.

⁷ Patent Owner acknowledged as much during the oral hearing. *See* Tr. 40:24–41:13.

⁸ Patent Owner’s own expert, Dr. Shamos, similarly states that, “[o]ver time,” he was familiar with “the Nevada Gaming Control Board regulations,” while also acknowledging that citing those specific regulations in his declaration was unnecessary in order to offer his opinions. Ex. 1040, 32:12–34:12.

Importantly, Mr. Crevelt testifies that, “[i]n formulating [his] opinions,” he relied upon his knowledge and work in the casino gaming industry (*id.* ¶¶ 23, 26), which, as discussed above, includes gaming regulations (*id.* ¶¶ 3, 9). In our view, Mr. Crevelt’s opinions intrinsically would have accounted for gaming regulations in assessing Smith’s disclosure.⁹ Any other view takes a blind eye to the way the casino industry operates, as Mr. Crevelt makes clear in detailing his qualifications. Thus, we reject the notion that Mr. Crevelt’s testimony should be accorded no weight and disregarded, as Patent Owner mistakenly believes.

E. Petitioner’s Contentions Relating to What an Ordinarily Skilled Artisan Would “Immediately Envisage”

As another overarching matter, Patent Owner faults the Petition for “repeatedly fill[ing] in gaps in the prior art teachings with reference to what a person of skill in the art would ‘immediately envisage.’” PO Resp. 20 (citing, *e.g.*, Pet. 19). According to Patent Owner, Petitioner’s use of expert testimony to discern what one skilled in the art might “immediately envisage” from the prior art “is akin to relying on common sense to fill in

⁹ Nor are we persuaded by Patent Owner’s argument that Mr. Crevelt “admits” under cross-examination that he did not consider “the impact of any regulations” when looking at Smith. PO Resp. 18–19 (citing Ex. 2006, 53:9–54:4). That is because Patent Owner’s line of questioning implied Mr. Crevelt’s consideration of a *particular* regulation, which Patent Owner never identified. Indeed, in answering Patent Owner’s questions, Mr. Crevelt testified that he did not look to any regulations associated specifically with “producing something” or “implementing Smith in an actual casino environment,” which is a different issue than whether knowledge of gaming regulations generally is needed to understand Smith’s teachings as a whole. Ex. 2006, 53:9–23.

missing claim limitations,” and this “shortcut fails to meet the heightened standard for relying on common sense.” *Id.* at 20–22.

We disagree. We discern no instances in which Petitioner fills a gap in either Smith or Sommer by relying solely on Mr. Crevelt’s testimony. Rather, Petitioner relies on his testimony to show what an ordinarily skilled artisan “would understand and immediately envisage” from *specific disclosures* in those prior art references. *See, e.g.*, Pet. 21, 24, 30–32, 39, 40. In other words, Petitioner does not proffer expert testimony to supplement something missing in the prior art reference, but rather to help us understand subject matter expressly disclosed in the reference that meets the disputed claim limitation, albeit using different language. Expert testimony that explains the understanding of an ordinarily skilled artisan can be an invaluable form of probative evidence when determining anticipation or obviousness, and we see nothing wrong with Petitioner’s approach.

Indeed, using expert testimony to show what one skilled in the art would “at once envisage” from an express disclosure in the prior art finds ample support in a long line of cases, thus, we are not persuaded by Patent Owner’s argument to the contrary. *See, e.g., Kennametal, Inc. v. Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015) (holding that “a reference can anticipate a claim even if it ‘d[oes] not expressly spell out’ all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.”) (alteration in original) (citation omitted); *Chamberlain Grp., Inc. v. Techtronic Indus. Co.*, 935 F.3d 1341, 1350 (Fed. Cir. 2019) (“[E]ven when a reference discloses elements in different locations in the disclosure, the relevant question is whether the reference is

sufficiently clear in disclosing the combinability of those elements such that a skilled artisan would ‘at once envisage’ the claimed combination.”); *BlephEx, LLC v. Myco Indus., Inc.*, 24 F.4th 1391, 1401 (Fed. Cir. 2022) (applying the “at once envisage” test to analyze “generic statements” in a prior art reference).

In any event, to the extent Patent Owner identifies any instances in which Petitioner purportedly relies *solely* on Mr. Crevelt’s testimony to supply a missing claim limitation, we account for it in our analysis of Petitioner’s contentions. As discussed below, we determine that Petitioner’s contentions are adequately supported by the evidence of record, which includes specific disclosures in the prior art along with supporting testimony from Mr. Crevelt.

F. 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 in view of Smith. Pet. 11–49. Patent Owner does not contest Petitioner’s showing for most of the limitations recited in independent claims 1, 8, and 14 or dependent claims 2, 5, 7–10, 13–17, and 20. We address each contested limitation in the independent claims and dependent claims 4, 12, and 19 below. For all limitations that are not expressly contested by Patent Owner, we find that Petitioner’s showing is persuasive based on the arguments set forth in the Petition and the evidence cited in support of those arguments. For the reasons expressed below, we conclude that Petitioner has proven by a preponderance of evidence that Smith renders claims 1, 2, 4, 5, 7–10, 12–17, 19, and 20 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.

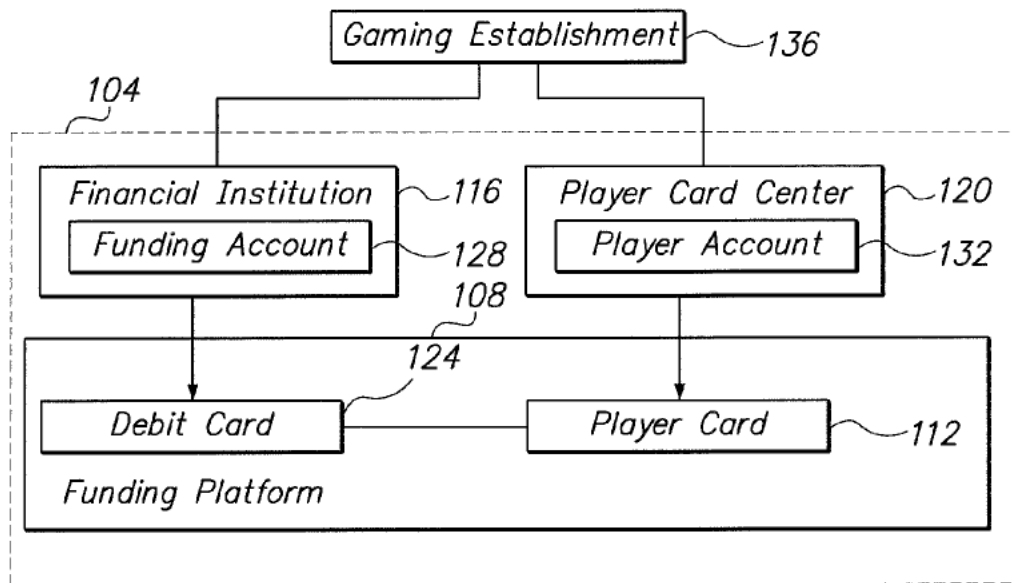


FIG. 1

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.

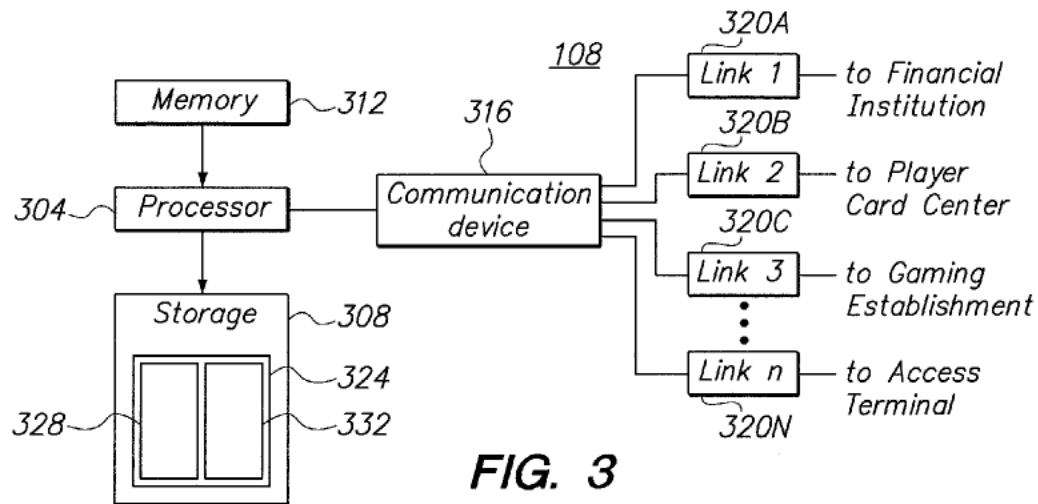


FIG. 3

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 device 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. *Id.* ¶¶ 78–79. The flow of such funds is depicted in Figure 6, reproduced below.

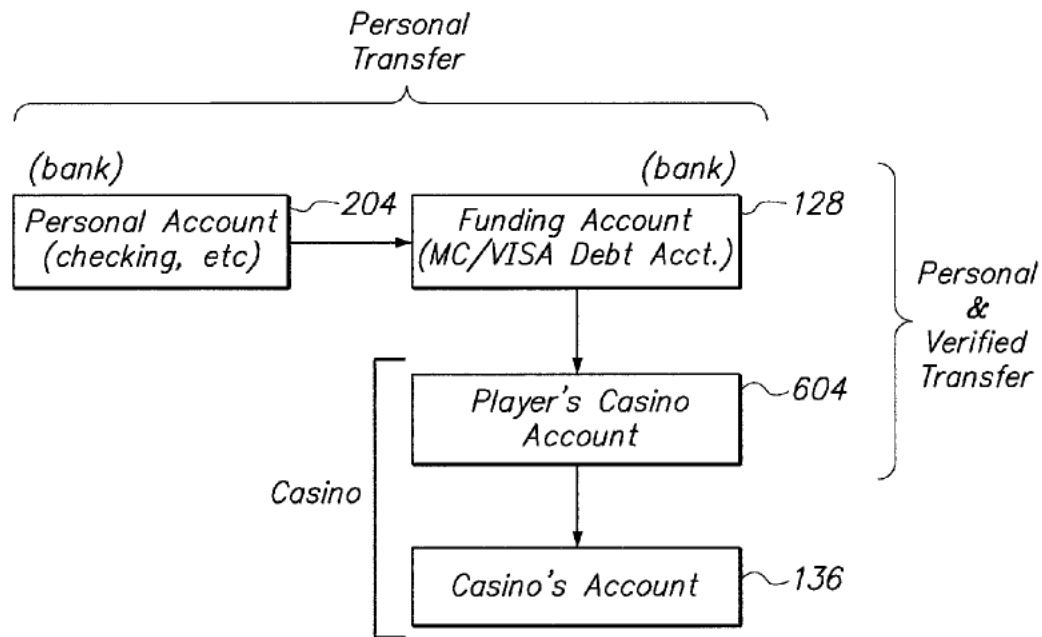


FIG. 6

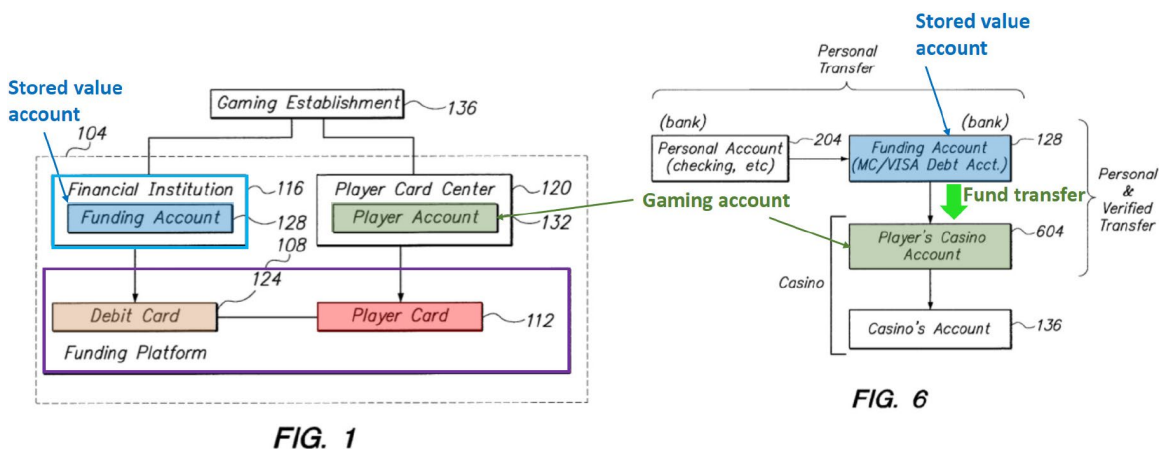
Figure 6 is a block diagram illustrating an exemplary funds transfer via the funding system. *Id.* ¶ 27. Smith explains that “funds may originate from the player’s personal accounts 204, such as bank account(s), credit card(s) or other sources of funding that are held independent of the funding system.” *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. Claims 1, 8, and 14: “gaming account”

We begin with claim 1. Petitioner divides claim 1 into six parts and explains how Smith meets each of the recited claim limitations. *See* Pet. 14–29 (citing Ex. 1001 ¶¶ 103–126). Patent Owner contends that Smith fails to describe or suggest the “gaming account” of limitation 1.0. *See* PO Resp. 27–33.

To show how Smith meets the disputed “gaming account” limitation, Petitioner submits annotated versions of Smith’s Figures 1 and 6 as reproduced below. *See* Pet. 14 (reflecting annotated figures below), 16 (reflecting different annotations on Smith’s Figure 6).



Petitioner contends that player account 132 in Smith’s Figure 1 (above left in green) and player casino account 604 in Figure 6 (above right in green) meet the claimed “gaming account” element of claim 1. Pet. 14–15. According to Petitioner, player account 132 and player casino account 604 are “the same account.” *Id.* at 12 n.2. Petitioner also explains that Smith’s funding account 128 (blue) meets the claimed “stored value account” of claim 1 and that funding platform 108 (purple), which corresponds to the

claimed “computing device,” is used to transfer funds between stored value account 128 and gaming account 132/604—

Smith’s funding platform 108 (purple), shown in Fig. 1 above . . . , 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. (E1005, [0039], [0036].) Funding platform 108 [Fig. 3] is a server having a processor 304 . . . , memory 312 and storage 308 (E1005, [0043]–[0045], Abstract; E1001, ¶¶103–105.) Memory 312 stores data so that it is accessible to processor 304. Storage 308 has instructions stored therein for execution by the processors. (E1005, [0047], [0049].) Smith thus discloses a computer-based method of transferring funds between a stored value account and a gaming account. (*Id.*, [0092]; E1001, ¶¶103–106.)

Id. at 14–15.

Patent Owner disputes that Smith’s player account 132/604 is a “gaming account,” as required by claim 1. *See* PO Resp. 27–33; Sur-Reply 7–13. In doing so, Patent Owner contends that Petitioner’s reliance on Smith’s player account 132 (Figure 1) and player casino account 604 (Figure 6) is “premised on the mistaken belief” that these two accounts “are to the same account.” PO Resp. 29 (citing Pet. 14, 25). According to Patent Owner, “these two accounts [in Smith] are provided for *different purposes* and can be provided by *different entities*.” *Id.* at 30 (emphases added); *see also* PO Sur-Reply 9 (“these two accounts have different purposes”).

We are not persuaded by Patent Owner’s attempt to paint Smith’s player accounts 132 and 604 as being “different.” Although we agree with Patent Owner that Smith’s Figure 1 depicts player account 132 as “its own entity” outside of gaming establishment 136, we note that Smith’s Figure 6 nonetheless depicts player account 604 within the gaming establishment, i.e.,

the “[c]asino.” Ex. 1005, Figs. 1, 6. But looking at the figures alone tells only half the story. What Patent Owner and its declarant, Dr. Shamos, ignore is that, in describing the funding system of Figure 1, Smith begins with the premise that player card center 120, which maintains player account 132, “may be its own entity *or may be part of a gaming establishment.*” *Id.* ¶ 34 (emphasis added). That disclosure by Smith expressly contemplates that, although shown outside of gaming establishment 136 in Figure 1, player account 132 may also be maintained within gaming establishment 136. Indeed, in conjunction with that very same disclosure, Smith again acknowledges that player card center 120 may be “use[d] by players in accessing *their player accounts at a gaming establishment.*” *Id.* (emphasis added).

Moreover, in arguing otherwise, Patent Owner ignores the overall purpose of Smith’s funding system—to electronically link a funding account at a financial institution with a player account at a gaming establishment “for the purpose of making one or more wagers.” Ex. 1005 ¶ 29. As described in more detail,

FIG. 1 is a block diagram illustrating an arrangement of components or parts of the funding system. As can be seen, the funding system 104 may utilize various currency and other accounts held at various institutions. The funding system 104 may also provide *a facility to link such accounts such that funds may be transferred from a funding account via another account, such as a player card account or trust account at a gaming establishment* or the gaming establishment’s financial institution.

. . . .

As described . . . with regard to FIG. 1, the transferred funds may be held in a funding account at the financial institution 116. The funding account generally holds funds *transferrable to*

a gaming establishment 136 for the purpose of wagering at one or more wagering games.

Ex. 1005 ¶¶ 32, 41 (emphases added). That description of Figure 1 as depicting the transfer of funds from a funding account to a “player card account or trust account at a gaming establishment or [its] financial institution” is essentially identical to the way Smith describes what is depicted in Figure 6—“the transfer of funds would typically occur between a player's funding account 128 and a player's casino or trust account 604, such as facilitated by the gaming establishment or its financial institution.”

Compare Ex. 1005 ¶ 41, *with id.* ¶ 85.

Nothing prohibits a prior art reference from “be[ing] considered for everything it teaches by way of technology,” rather than being limited to a particular embodiment or invention. *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1076 (Fed. Cir. 2015); *see also Hayward Industries, Inc. v. Pentair Water Pool and Spa, Inc.*, 814 Fed. Appx. 592, 596 (Fed. Cir. 2020) (essentially same). Thus, we reject the notion that player account 132 in Figure 1 cannot be a casino-level account in the same manner as the player casino account 604 in Figure 6. Far from being a different account, player account 604 in Figure 6 simply illustrates the alternative configuration described in the context of Smith’s Figure 1, i.e., where the player account “may be part of a gaming establishment” as opposed to being “its own entity” outside the gaming establishment. Ex. 1005 ¶ 34. Indeed, by describing Figure 1 as “illustrating an exemplary funding system,” while describing Figure 6 as “illustrating an exemplary funds transfer via the funding system,” Smith suggests that Figure 6 is an example of the type of transfer possible with the funding system of Figure 1. *Id.* ¶¶ 22, 27.

We also are not persuaded by Patent Owner’s argument that Smith’s player account 132 is a “tracking account” rather than a financial account. PO Resp. 28; PO Sur-Reply 10. According to Patent Owner, because Smith describes player account 132 in conjunction with tracking card 112, it is used solely for tracking the identity of a player rather than holding funds for wagering by the player. *See id.* Again, Patent Owner loses sight of Smith’s disclosure as a whole. In fact, Smith draws a clear distinction between tracking card 112 and player account 132 in describing the funding system of Figure 1—

[T]he player card center 120 may issue player tracking cards 112 for use by players in accessing their player accounts at a gaming establishment.

. . . .

The player tracker card 112 . . . may have information stored thereon or which is otherwise associated therewith that identifies a player’s account at a gaming establishment. . . .

. . . .

[A]s shown in FIG. 1, a funding account 128 and player card account 132 are associated via their respective associated debit card 124 and player tracking card 112.

Ex. 1005 ¶¶ 34–36, respectively. In other words, Smith’s tracking card 112 is simply a separate means of identifying the player’s account at the gaming establishment, it is not the account itself. And, although tracking card 112 may be associated with player account 132, that association does not somehow transform the player account into one that is used solely for tracking.

In a further attempt to show that Smith’s player account 132 is not a financial account, Patent Owner argues that it “holds reward points *instead*

of money.” PO Resp. 28 (emphasis added); *see also id.* at 29 (“A critical distinction is that account 604 holds player funds while account 132 holds points.”). The evidence says otherwise, however. The fact that Smith’s “player account” may hold funds for wagering is made abundantly clear by the overall objective of Smith’s funding system—

The funding system provides a number of benefits. For instance, the funding system may utilize a funding account that is owned by the player to transfer funds to a gaming establishment. The player’s funds may be first transferred to this funding account from another personal account, and then from their personal account *to a player’s trust org or casino account. The player may then make wagers using funds in their casino account.* The funding system also provides a verification process that verifies player intent to transfer and player authorization prior to the transfer of funds between those accounts.

Since these transfers (from a player’s personal banking account to their funding account and then from their funding account *to their casino account*) are between a player’s own accounts, and because the transfers must be verified by the player, it is unlikely that the transfer can be deemed improper or unauthorized. In addition, chargebacks are reduced or eliminated because the player’s transfers of funds to their funding account and then *to their casino account* are between the player’s own accounts (and do not comprise merchant transfers).

Ex. 1005 ¶¶ 9–10 (emphases added). And, later, in describing the purpose of player card center 120 (which includes player account 132), Smith explains that it is used not only for the player to access “points” but also to “access a *funding* account”—

[T]he player card center 120 may issue player tracking cards 112 for use by players in accessing their player accounts at a gaming establishment. For example, players may accumulate rewards such as player points and redeem such points via their player tracking card 112. . . . *In addition, it is contemplated that a*

player may access a funding account he or she has at the gaming establishment using the player tracking card.

Ex. 1005 ¶ 34 (emphases added).

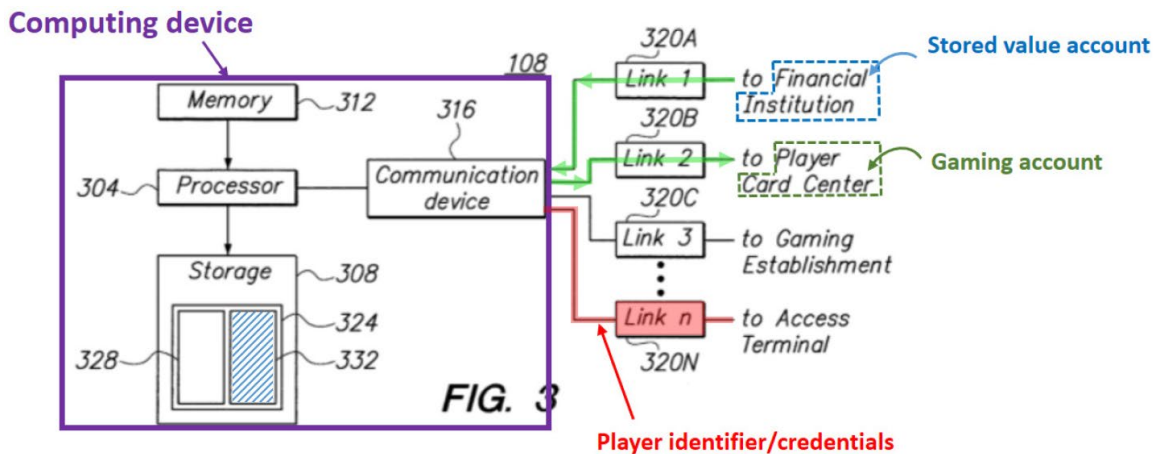
Those disclosures, when read in the context of Figure 1, clearly support that Smith’s player account 132 holds funds for wagering by the player at a gaming establishment. As such, we find that player account 132 is a “gaming account” as properly construed—“financial account . . . that is associated with a player . . . and maintained by a casino.” To the extent Dr. Shamos opines otherwise, we do not find that testimony credible or persuasive, as it is clearly inconsistent with Smith’s express teachings. *See, e.g.,* Ex. 2001 ¶¶ 31–41. We find Mr. Crevelt’s testimony to be more persuasive as establishing that player card account 132 is a financial account that holds funds for use by a player in wagering at a casino or other gaming establishment. *See, e.g.,* Ex. 1001 ¶¶ 106, 111, 114, 121; Ex. 1039 ¶¶ 14–16. Also, to the extent Patent Owner faults Smith for not disclosing that player account 132 or player casino account 604 “are used in a non-gaming environment” of a casino (PO Resp. 31–33), we are not persuaded for the simple reason that it is premised on an improper claim interpretation, namely, an interpretation proposed by Patent Owner but rejected by us, as discussed in Part II.B above.

Having considered the evidence of record and the parties’ arguments, we find that Smith teaches the “gaming account” limitation of claim 1. Patent Owner does not separately argue this limitation as found in independent claims 8 and 14. *See* PO Resp. 33. Thus, for the same reasons as claim 1, we find that Smith meets the “gaming account” limitation of claims 8 and 14. *See* Pet. 32–33 (claim 8), 37 (claim 14).

3. Claim 1 “closed-loop transactions”

Patent Owner also contends that Smith fails to describe an aspect of limitation 1.5, namely “receiving a funding instruction . . . via closed loop transactions.” Patent Owner does not otherwise contest that Smith meets each limitation of claim 1. PO Resp. 33–35. More specifically, Patent Owner argues that Petitioner fails to establish that Smith uses “closed-loop transactions” as the mechanism for receiving the “funding instruction” that causes “a decrease of the balance of funds of the stored value account and an increase of the balance of a gaming account.” *Id.* at 34. Rather, Patent Owner contends that Petitioner “wrongly equates [closed-loop transactions] to disclosure in the ’926 specification of using a player identifier with “closed network communications.” *Id.* (citing Pet. 28).

We disagree. Petitioner provides an annotated version of Smith’s Figure 3 (reproduced below) to explain how Smith uses a “closed-loop transaction” to send a funding request.



Petitioner contends Smith describes that a player “enter[s] the funding request at an ‘access terminal’ which can be a ‘kiosk’ or gaming machine’ within the casino connected to funding platform 108 [purple] via a closed-loop connection (e.g., link 320N) [red].” Pet. 29 (citing Ex. 1005 ¶¶ 46, 77;

Ex. 1001 ¶ 126). Smith's access terminal (i.e, kiosk or gaming device) and funding platform 108 are maintained by the casino. The transmission of a funding request is identified by Petitioner as exactly the type of "transaction" that Dr. Shamos explains to be an exemplary "closed-loop transaction" recited in claim 1. Dr. Shamos explains:

Q. . . So is it fair to say that any time a player is at a gaming device and wishes to request a transfer of funds from their bank account to their gaming account, that there is a closed loop transaction where the gaming device is in communication with the casino?

* * *

THE WITNESS: . Yeah.

Ex. 1040, 214:22–215:5.

Q. . . . So if a player wants to transfer funds from their bank account to their casino account and they're at a gaming device, they've got to engage in this closed loop transaction before they can effectuate the transfer of funds from bank account to their casino account?

A. . . That's correct.

And the reason that's correct is the gaming device itself cannot cause that to occur because the gaming device doesn't know your debit card number. The gaming device only knows your player card number. So it has to communicate through a closed loop transaction with the casino computing system so that the open loop transaction can occur.

Id. at 216:13–217:4.

Petitioner persuades us that Smith's description of a player initiating a transfer from their bank (i.e., stored value) account to their casino (i.e., gaming) account by using Smith's access terminal (e.g., a "gaming machine") to send a request for the transfer to the casino's funding

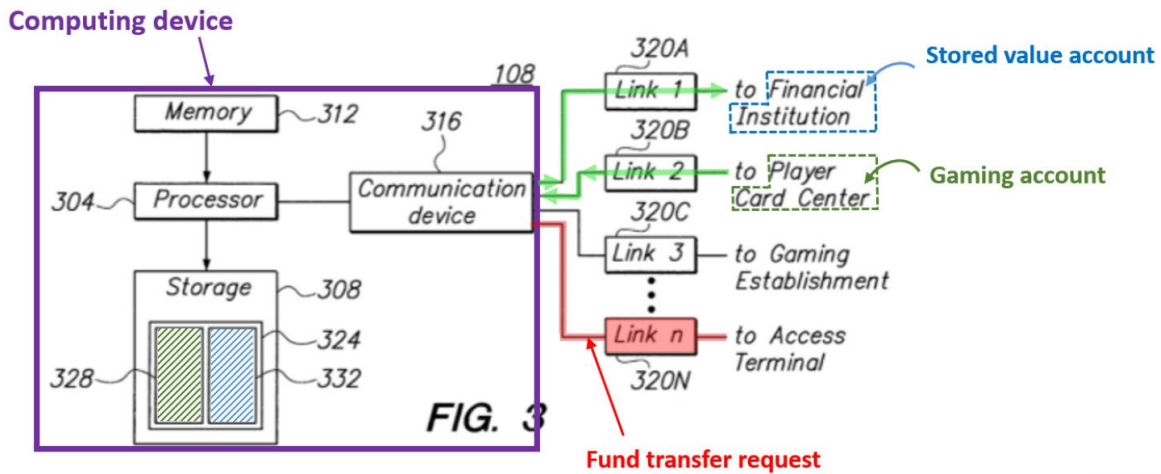
platform 108 constitutes a “closed loop transaction” of the type recited in claim 1. Ex. 1005 ¶¶ 46, 77, Fig. 3; Ex. 1001 ¶ 126; *see also* Reply 13 (citing Pet. 26–28, Ex. 1005 ¶¶ 13, 35, 48, 49, 77, Fig. 3; Ex. 1001 ¶¶ 118, 123–124; Ex. 1039 ¶ 19).¹⁰ Accordingly, we find that Smith teaches limitation 1.5.

4. Claim 14, “based on a received funding command, selectively increase funds held by the stored value account and decrease funds held by the gaming account through a closed-loop payment network”

Limitation 14.8 of independent claim 14 recites: “based on a received funding command, selectively increase funds held by the stored value account and decrease funds held by the gaming account through a closed-loop payment network.” Ex. 1002, 24:20–23. Petitioner contends that Smith discloses that “the player might transfer the funds from their player account [604] to their debit account [128].” Pet. 44–45 (citing Ex. 1005 ¶¶ 93–94, Fig. 6; Ex. 1001 ¶ 171). Petitioner presents an annotated version

¹⁰ Patent Owner argues that we should not consider argument and evidence proffered by Petitioner in its Reply on the issue of whether Smith describes “closed-loop transactions” of claim 1 or the “closed-loop payment network” of claim 14. Surreply 13–14. We reject Patent Owner’s argument for at least two reasons. First, Petitioner persuasively made its case on this issue based on its showing in the Petition as discussed throughout this section. Second, Patent Owner had a full and fair opportunity via its Surreply to be heard on the merits of Petitioner’s argument, which we find to be based on a rather unusual reading by Patent Owner of “open-loop” and “closed-loop” that is difficult to discern upon a first reading of the claim or even after careful study of the Specification. Third, Patent Owner’s counsel offered arguments on this issue at the oral hearing. *See, e.g.*, Tr. 63:11–64:2, 64:14–26, 65:13–66:25.

of Smith's Figure 3 (reproduced below) to illustrate the way in which such fund transfers occur.



Smith's Figure 3 diagrammatically illustrates the system by which Smith's funding platform 108 enables transfers of funds. Petitioner contends that: "Smith's system transmits player card information (and an associated funding request) to a **computing device** (purple) including communication device 316 and processor 304 via link 320N (red)." *Id.* at 45–46 (citing Ex. 1005 ¶¶ 46, 77).

As for the transfer itself, Petitioner contends that:

Based on the player card information, processor 304 identifies and associates from storage 308 the player's casino account information 328 (green hashed) and funding account information 332 (blue hashed). The computing device 108 (purple) then selectively executes the fund transfer from the gaming account to the stored value account via (1) link 320A to the financial institution 116 and (2) link 320B to the player card center 120.

Id. at 46 (citing Ex. 1005 ¶¶ 45–46, 79; Ex. 1001 ¶ 184).

First, Patent Owner argues that Petitioner's showing fails because Smith's Figure 6 "discloses a one-way arrow from funding account 128 to player's casino account 604," the "exact opposite" of what is recited in limitation 14.8. PO Resp. 35–36. Patent Owner also criticizes Petitioner's

reliance on Smith's indication that "the player might transfer the funds from their player account to their debit account," Ex. 1005 ¶ 93, because "Smith does not provide any details" of how such transfers occur.

We disagree. Smith explains that these transfers from player account to debit (i.e., stored value) account occur using "the system and method of the invention [that] may be used to transfer funds from a casino to a player's account." Ex. 1005 ¶ 93. We find that Smith discloses that its systems for transferring a player's funds between a bank and casino work in both directions.

Second, Patent Owner argues that Petitioner fails to prove that Smith discloses transfers occurring "through a closed-loop payment network." PO Resp. 38–39. Patent Owner largely repeats its argument made in connection with Petitioner's showing for the "closed-loop transactions" requirement of limitation 1.5. *Compare id.*, with *id.* at 33–35.

We find that the request for a funds transfer described above constitutes a "closed-loop transaction" for the reasons expressed in Part II.F.3 above. The types of transfers of funds between casino and bank illustrated in Smith's Figures 3 and 6 are a "closed-loop" because it occurs using communication link 320N, which is a dedicated internal communication link between one of Smith's "access terminals" and its funding platform, both of which are within the casino. Ex. 1005 ¶¶ 46, 77. For these reasons, Petitioner persuades us that Smith teaches all aspects of limitation 14.8.

5. Claim 14: "wherein the funding command is provided by the player from a remote computing device"

Limitation 14.9 refers to the portion of claim 14 that recites: "wherein the funding command is provided by the player from a remote computing

device.” Ex. 1002, 24:23–25. For limitation 14.9, Petitioner relies upon its showing for limitations 1.4 and 1.5, Pet. 46 (citing *id.* at 23–29), which collectively also require that a request to transfer funds between the stored value account and the gaming account be initiated at a “remote computing device,” *compare id.*, 22:37–42 (claim 1), *with id.* at 24:23–25 (claim 14). Petitioner contends that Smith describes the player sending a command by first entering credentials into “kiosk, gaming machine computer, or other access terminal” or “from their home or work computer” and requesting a fund transfer from the kiosk or gaming machine computer. Pet. 27–28 (citing Ex. 1005 ¶¶ 77–79, 90; Ex. 1001 ¶¶ 120–121, 125 (describing initiating transfer from remote computing devices)). Petitioner concludes that it would have been obvious to an ordinarily skilled artisan that Smith’s disclosure of transferring funds using a kiosk, gaming machine computer, or other access terminal also applies to the player’s home or work computer. *Id.*

Patent Owner counters that “Smith is almost entirely silent on the flow of funds from a player’s casino account to a funding account” and “does not provide any details of how the player would transfer funds from their player account to their debit account.” PO Resp. 40. Also, according to Patent Owner, Smith “does not disclose using an access terminal or funding platform 108 to do so.” *Id.*; *see also* PO Sur-Reply 18–19 (arguing that nothing links Smith’s disclosure that an “access terminal is used to transfer funds from a stored value account” with its disclosure that “a player can transfer funds into a stored value account”).

Having reviewed the evidence, we are persuaded by Petitioner’s contentions. Smith clearly discloses that funding platform 108 “may be used

to transfer funds from a casino to a player's account," and "[a]lternatively, the player might transfer the funds from their player account to their debit account." Ex. 1005 ¶ 93. As for how the transfer is done, we credit Mr. Crevelt's testimony that a player sends a funding instruction from "'kiosk, gaming machine computer or other access terminal,' both of which are expressly defined as types of 'remote computing devices' in the '926 Patent," (Ex. 1001 ¶ 119 (citing Ex. 1002, 13:53–58, claim 5; Ex. 1005 ¶ 77), and more specifically, "from the player swiping his/her player card, along with a fund transfer request." Ex. 1039 ¶ 19; Reply 18 (citing Ex. 1005 ¶¶ 77, 78, 88). Based on the swiped information, computing device 108 "orchestrates" the "fund transfers between" the "various accounts" such as player's casino account 132/604 and the funding account 128. Reply 15 (citing Ex. 1005 ¶ 39). Indeed, Dr. Shamos testified that "'it would seem logical' and 'probable' that Smith's funding platform 108 performs the fund transfer in this manner." Ex. 1040, 180:7–181:15. He explained that "by giving a player card [to perform the transfer], then of course they have to figure out from the player card what the correct debit card account is and that would be – *the funding platform would be used for that.*" *Id.* Mr. Crevelt agreed. Ex. 1039 ¶ 25.

On this record, we are persuaded that Smith teaches or suggests a funding system that "selectively increase[s] funds held by the stored value account and decrease[s] funds held by the gaming account based on a funding command provided by the player through an application executing on a remote computing device," as required by claim 14.

6. Dependent Claims 4, 12, and 19: “substantially real-time”

Claim 4 depends from independent claim 1 and further recites “the causing of the decrease of the balance of the stored value account and the increase of the balance of the gaming account *occurs in substantially real-time.*” Ex. 1002, 22:54–557 (emphasis added). Claim 12 depends from independent claim 8 and recites the materially similar limitation of “the increase of the balance amount of the gaming account is caused to occur substantially in real-time.” *Id.* at 23:45–47. Claim 19 depends from independent claim 14 and recites the materially similar limitation of “the selective increase of funds held by the stored value account occurs substantially in real-time.” *Id.* at 24:43–45.

Although neither party requests that we construe the claim term “substantially real-time,” the ’926 patent provides that as “used herein, substantially real-time means generally less than about 20 minutes” *Id.* at 5:59–61. And Patent Owner concedes that this claim term encompasses transfers taking “less than about 20 minutes.” PO Resp. 41.

Petitioner contends that one skilled in the art would have understood that, because Smith discloses that its funding platform is configured to send confirmations of fund transfers in real time, it is also configured to perform these fund transfers in real time. *See* Pet. 28–29 (citing Ex. 1005 ¶ 95); Reply 18–20 (citing Ex. 1001 ¶¶ 129–132). More specifically, as described in Smith,

if a player requests that funds be transferred from their funds account to their player tracking account, the funds platform may send a confirmation of the transaction by email, text message or the like, to the player’s cell phone, PDA [personal digital assistant], computer or the like. *This confirmation may be sent when a transaction request is received and/or completed,*

whereby the player is provided real-time confirmation information.

Ex. 1005 ¶ 95 (emphasis added). Mr. Crevelt points to Smith’s additional disclosures that “a player can swipe his or her card at a gaming machine to request a fund transfer,” and “[t]hen, while the player is still at the gaming machine, the player can provide some verification information (e.g., ‘mother’s maiden name, name of his or her first pet, his or her father’s middle name, etc.’) to allow the funds to be transferred.” Ex. 1001 ¶ 131 (citing Ex. 1005 ¶¶ 77, 79–80). With Smith’s disclosures in mind, Mr. Crevelt testifies that one skilled in the art—

would therefore understand that the player would want his or her funds to be transferred while still at that gaming machine such that the funds can be gambled while still at the gaming machine. Otherwise, there would be no particular benefit to being able to perform such a transaction while at the gaming machine as opposed to walking to an attendant at the casino cage, for example. If the player had to sit and wait at the gaming machine for an extended period of time . . . until his or her funds were transferred, the player would be frustrated and the entire purpose of being able to fund the player’s casino account from the gaming machine would be lost.

Ex. 1001 ¶ 131 (citing Ex. 1005 ¶¶ 77, 79–80). Mr. Crevelt further explains—

electronic fund transfers in the gaming industry at the time of filing the ’926 patent were well known to be done in substantially real-time given the advances in cashless gaming, the ease of electronic fund transfers performed by banking systems, and the desire to make transferred funds immediately available to a player for spending.

Id. ¶ 269; *see also id.* ¶ 132 (citing Ex. 1023, 1:65–2:17 (indicating that electronic funds transfers processed at the gaming machine increase casino revenue as motive to make real-time transfers)).

Patent Owner argues that “Smith provides no details on how quickly funds are transferred to the gaming account.” PO Resp. 38. According to Patent Owner, real-time transfer “is contrary to [the] core teaching in Smith where the ‘verified transfer involves one or more verification steps or processes whereby a fund transfer is verified and confirmed before it is effectuated.’” *Id.* at 42 (citing Ex. 1005 ¶ 87). Patent Owner also argues that Petitioner “wrongly focuses on the desire of the player while ignoring the motivation of the casino and gaming regulations to provide responsible gaming environments.” *Id.*

We do not find Patent Owner’s arguments persuasive. Patent Owner fails to adequately explain how Smith’s verification steps—which presumably are performed *before* Smith’s funding platform issues an instruction to transfer funds—would somehow prevent a *subsequent* transfer from being executed in substantially real time. Nor does Patent Owner identify any particular regulation that would be violated by a real-time transfer of funds in Smith or otherwise explain why such a real-time funds transfer would conflict with the vague notion of “responsible gaming.”

More persuasive is Petitioner’s explanation, as buttressed by the testimony of Mr. Crevelt, that Smith’s teaching of sending a player “real-time confirmation” of a fund transfer by email or text to the player’s cell phone or PDA, while at the gaming machine, would have been understood by one skilled in the art to mean that the funding platform performs the fund transfer in real time in order to carry out Smith’s stated objective of making funds immediately available to a player. *See* Ex. 1001 ¶ 131. We also find persuasive Mr. Crevelt’s testimony that it was well known in the gaming industry that electronic fund transfers could be conducted in substantially

real time, and that a casino would desire to make transferred funds immediately available for gaming. *See id.* ¶¶ 132, 269. On this record, we are persuaded that Smith teaches or suggests decreasing the balance of a stored value account, and increasing the balance of a gaming account, in substantially real time, i.e., in less than about 20 minutes, as required by dependent claims 4, 12, and 19.

G. Claims 1, 2, 4–10, 12–17, 19, 20: Obviousness in View of Sommer

Petitioner also challenges claims 1, 2, 4–9, 11–17, 19, and 20 as obvious over Sommer.¹¹ *See* Pet. 4, 51–87. We begin with Petitioner’s challenge of claim 1. Petitioner contends that Sommer teaches or suggests all the limitations of claim 1, and supports its contentions with the expert testimony of Mr. Crevelt. *See id.* at 54–66 (citing Ex. 1001 ¶¶ 201–224); Reply 21–23. For the “gaming account” limitation, which is the only disputed limitation in claim 1, Petitioner points to Sommer’s disclosure of a “player account” at a gaming establishment from which a player can wager money. Pet. 56 (citing Ex. 1006 ¶¶ 25, 35, Fig. 2).

Patent Owner responds that “Sommer does not teach a gaming account” because there is “no disclosure in Sommer [that] the alleged gaming account could be used in a non-gaming environment of a casino.” PO Resp. 46–48. That argument fails because it is premised on an incorrect construction of “gaming account.” As discussed in Part II.B above, we rejected Patent Owner’s proposed interpretation of “gaming account” requiring that the account be capable of being used in non-gaming environments. Rather, we agreed with Petitioner that, properly interpreted,

¹¹ This challenge includes dependent claim 6, whereas Petitioner’s Smith-based challenge does not.

the “gaming account” need only be capable of being used in gaming environments. And, indisputably, Sommer discloses “various embodiments of transferring funds between multiple accounts at financial institutions and a player account in a *gaming environment*.” Ex. 1006 ¶ 25 (emphasis added); *see also id.* ¶¶ 13, 18, 30, 35, Fig. 2. Thus, based on the proper interpretation of “gaming account,” Petitioner persuades us that Sommer discloses a “gaming account” in the manner claimed.

Patent Owner also disputes whether Sommer discloses the “closed-loop transactions” of claim 1. Petitioner persuasively demonstrates that Sommer’s “withdrawal request” to move funds from a bank account to the player’s gaming account “can be entered into the ‘gaming device’ in the casino, which is a closed-loop transaction.” Pet. 66 (citing Ex. 1006 ¶ 23, 31, 33, Ex. 1001 ¶ 217); *see also* Reply 25 (citing Pet. 56 (citing Ex. 1006 ¶ 30), Pet. 64 (citing Ex. 1001 ¶ 217; Ex. 1006 ¶¶ 22, 30), Pet. 65–66 (citing Ex. 1006 ¶ 35; Ex. 1039 ¶ 30)).

Patent Owner does not dispute Petitioner’s showing of how Smith teaches the remaining limitations of claim 1. *See* PO Resp. 46–48. Nor does Patent Owner dispute Petitioner’s showing that Smith teaches the limitations of dependent claim 6, which depends from claim 1 and is not part of Patent Owner’s earlier challenge based on Smith. *See* PO Resp. 49–61 (separately arguing only claims 4, 12, 14, and 19). Thus, we need not address the sufficiency of Petitioner’s showing as to the undisputed limitations of claims 1 and 6. *See In re NuVasive*, 841 F.3d at 974. In any event, based on our review, we find that the record fully supports Petitioner’s showing that Sommer discloses all the limitations of claims 1 and 6. *See* Pet. 52–66, 68.

In sum, after weighing all relevant factual findings, including the level of ordinary skill in the art, the scope and content of Sommer, and any differences between Sommer and the claimed invention,¹² we conclude that Petitioner demonstrates by a preponderance of the evidence that claims 1 and 6 of the '926 patent are unpatentable as obvious over Sommer under 35 U.S.C. § 103(a).

Finally, because we have already determined that challenged claims 2, 4, 5, 7–9, 11–17, 19, and 20 are unpatentable over Smith, we do not address whether those same claims are unpatentable under Petitioner's alternative challenge based on Sommer. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding that petitioner “is entitled to a final written decision addressing all of the claims it has challenged”) (emphasis added); *Boston Scientific Scimed, Inc. v. Cook Grp. Inc.*, 809 F. App'x 984, 990 (Fed. Cir. 2020) (non-precedential) (recognizing that the “Board need not address issues that are not necessary to the resolution of the proceeding” and, thus, has “discretion to decline to decide additional instituted grounds once the petitioner has prevailed on all its challenged claims”).

III. CONCLUSION

In summary,

Claim(s)	35 U.S.C. §	Reference(s)	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
1, 2, 4, 5, 7–10, 12–17, 19, 20	103	Smith	1, 2, 4, 5, 7–10, 12–17, 19, 20	

¹² Patent Owner does not proffer any objective indicia of nonobviousness.

Claim(s)	35 U.S.C. §	Reference(s)	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
1, 2, 4–10, 12–17, 19, 20	103	Sommer	1, 6 ¹³	
Overall Outcome			1, 2, 4–10, 12–17, 19, 20	

IV. ORDER¹⁴

For the reasons given, it is:

ORDERED, based on a preponderance of evidence, that claims 1, 2, 4–10, 12–17, 19, and 20 of U.S. Patent 9,785,926 B2 are *unpatentable* as obvious under 35 U.S.C. § 103 as set forth in the table above; and

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

¹³ As noted above, because we find that claims 2, 4, 5, 7–9, 11–17, 19, and 20 are unpatentable over Smith, we do not reach whether those same claims would have been unpatentable over Sommer.

¹⁴ 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. 16,654 (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).

IPR2022-00707
Patent 9,785,926 B2

PETITIONER:

John S. Artz
Michael N. MacCallum
James K. Cleland
Michael D. Saunders
Steven Caloiaro
DICKINSON WRIGHT, PLLC
jsartz@dickinsonwright.com
mmacallum@dickinson-wright.com
jcleland@dickinson-wright.com
msaunders@dickinson-wright.com
scaloiaro@dickinsonwright.com

PATENT OWNER:

James P. Murphy
Tam Thanh Pham
POLSINELLI PC
jpmurphy@polsinelli.com
tpham@polsinelli.com