

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DRAFTKINGS INC., A DELAWARE CORPORATION,
Petitioner,

v.

AG 18, LLC,
Patent Owner.

IPR2022-01446
Patent 9,978,205 B2

Before JOSIAH C. COCKS, GEORGE R. HOSKINS, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

JUDGMENT

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

ORDER

Denying Petitioner's Motion to Exclude Evidence
37 C.F.R. § 42.64(c)

I. INTRODUCTION

DraftKings Inc., a Delaware corporation (“Petitioner”) filed a Petition (Paper 13, “Pet.”)¹ pursuant to 35 U.S.C. §§ 311–319 for *inter partes* review of U.S. Patent No. 9,978,205 B2 (Ex. 1001, “the ’205 patent”), claims 1–30. We issued an Institution Decision (Paper 15, “Inst. Dec.”) instituting the petitioned review.

AG 18, LLC d/b/a Arrow Gaming (“Patent Owner”) then filed a Patent Owner Response (Paper 22, “PO Resp.”) to the Petition. Petitioner filed a Reply (Paper 26, “Pet. Reply”) to the Patent Owner Response. Patent Owner filed a Sur-reply (Paper 27, “PO Sur-reply”) to the Reply.

An oral hearing was held on December 13, 2023, for which the transcript was entered into the record (Paper 35, “Tr.”).

Petitioner filed a Motion to Exclude Evidence proffered by Patent Owner (Paper 31). Patent Owner filed an Opposition (Paper 32), and Petitioner filed a Reply (Paper 33). We *deny* Petitioner’s Motion to Exclude Evidence, for reasons provided below.

We have jurisdiction under 35 U.S.C. § 6(b)(4) and § 318(a). This Decision is a final written decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 as to the patentability of claims 1–30 of the ’205 patent. We determine Petitioner has shown by a preponderance of the evidence that claims 1–17 and 19–30 are unpatentable, but has not shown claim 18 is unpatentable.

¹ With prior Board approval, Petitioner’s original petition (Paper 1) was replaced by a revised Petition (Paper 13). *See* Paper 11; Paper 12, 2–3.

II. BACKGROUND

A. Real Parties-in-Interest and Related Proceedings

Petitioner identifies itself (i.e., DraftKings Inc., a Delaware corporation) as well as DraftKings Inc., a Nevada corporation, and Crown Gaming Inc., as real parties-in-interest. *See* Pet. 16. Patent Owner identifies itself (i.e., AG 18, LLC d/b/a Arrow Gaming) as a real party-in-interest. *See* Paper 3, 1.

There are four other IPR proceedings challenging patents related to the '205 patent. They are IPR2022-01442 (U.S. Patent No. 10,497,220 B2); IPR2022-01445 (U.S. Patent No. 11,024,131 B2); IPR2022-01447 (U.S. Patent No. 9,613,498 B2); and IPR2022-01448 (U.S. Patent No. 10,614,657 B2).

There is a U.S. District Court litigation in which Patent Owner has asserted the five related patents against Petitioner. *See AG 18, LLC d/b/a Arrow Gaming v. DraftKings Inc.*, Case No. 2:21-cv-15737 (D. N.J.) (“District Court Litigation”); Pet. 16; Paper 3, 1. The District Court Litigation has been stayed pending the outcome of the five related IPR proceedings. *See AG 18 v. DraftKings*, Doc. No. 79.

B. The '205 Patent Specification

The '205 patent is directed to systems and methods for peer-to-peer gaming, including wagers placed by the players on game results. *See* Ex. 1001, 1:15–20, 2:27–39. Figure 1 of the '205 patent is reproduced below.

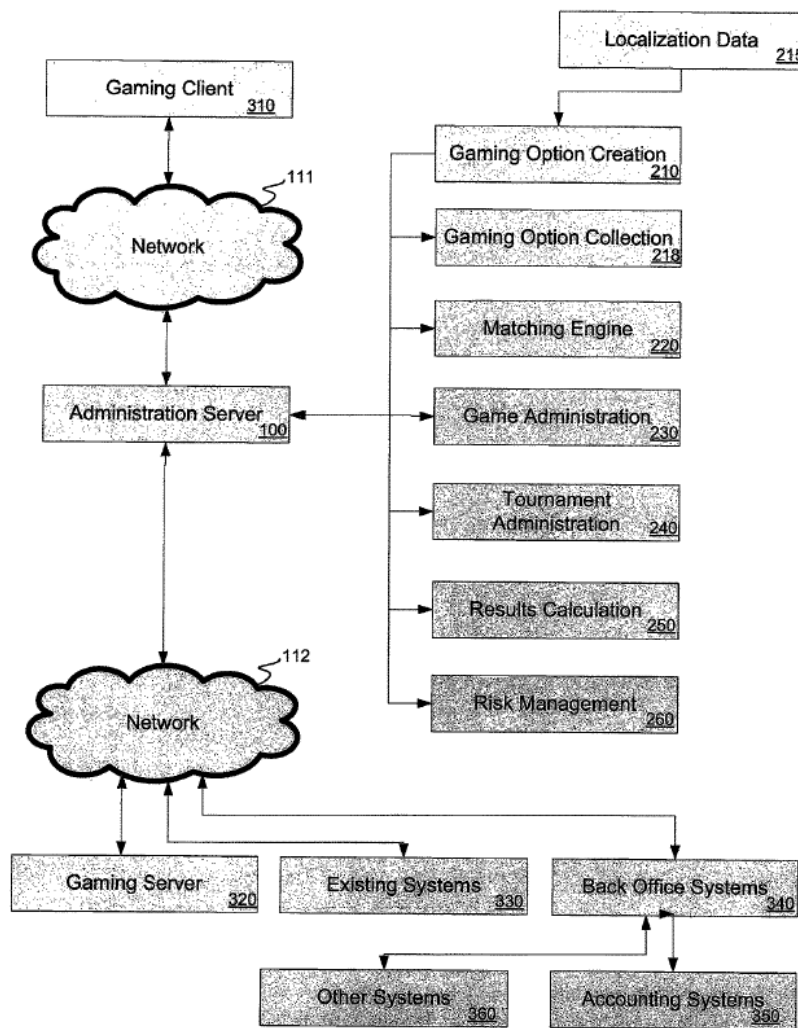


Figure 1

The '205 Patent, Figure 1.

Figure 1 illustrates a high level network architecture of a peer-to-peer gaming system. *See id.* at 3:4–5. Each player utilizes a respective gaming client 310 to access administration server 100 via network 111 to play games. *See id.* at 3:47–53, 4:7–8. Exemplary gaming clients 310 include kiosks, PDAs, and wireless tablets. *See id.* at 3:53–56. Thus, gaming client 310 may be a mobile device that the player can carry between various legal jurisdictions, having different limitations on game play. *See id.* at 4:50–58, 6:46–58.

Administration server 100 is connected to gaming server 320, which contains the games that are played by the players. *See id.* at 4:42–44. Administration server 100 also is connected to various other systems 330, 340, 350, and 360 to perform other tasks, such as the transfer of funds involved in accepting game wagers and paying out winnings. *See id.* at 4:37–42, 5:22–25. Administration server 100 accordingly includes a number of modules 210, 215, 218, 220, 230, 240, 250, and 260, to perform these tasks. *See id.* at 5:34–39.

Gaming option creation module 210 takes information from localization data module 215 to determine which games are available on administration server 100. *See id.* at 5:39–42. Module 210 creates a list of available game options, “us[ing] information about the location of the user, such as legal jurisdiction and casino location, to determine which game options are presented to the player.” *Id.* at 6:46–54. The “list may include which games are available, such as Poker or 9-Ball,” as well as “the wager amounts available for each game.” *Id.* at 6:54–58, 8:26–34 (Fig. 3 shows exemplary user-interface screens for a player to select a game to be played within a specific betting range), 10:27–33, 11:10–21. In one embodiment: “Before presenting a player with gaming options, the system determines which gaming options are available to the player,” for example which options are “legal” based on “limits on wagers or types of games allowed.” *Id.* at 9:18–33. The system then “remove[s] [from the list] any gaming options that are not available” so “the player will not be able to select” unavailable gaming options. *Id.*

Gaming option collection module 218 collects a selection of gaming options by the player, from the list of gaming options presented to the player. *See id.* at 5:42–44, 6:59–62.

Matching engine module 220 matches players for playing games together, using information obtained from the players, including the list of gaming options selected by each player. *See id.* at 5:44–45, 7:1–6, 10:37–51.

The remaining modules 230, 240, 250, and 260 administer the games being played, calculate the results of the games, and distribute winnings. *See id.* at 5:45–51, 8:47–56.

C. The Challenged Claims of the '205 Patent

The Petition challenges claims 1–30 of the '205 patent, which include independent claims 1, 12, 19, and 28. *See* Pet. 13; Ex. 1001, 15:48–19:19. We reproduce illustrative claim 12 here, adding Petitioner's limitation identification scheme, which Patent Owner also uses. *See* Pet. 21–22; *e.g.*, PO Resp. 20 (referring to “limitation[s]” 12[a], etc.).

[pre] 12. A gaming system comprising:

[a] at least one processor;

[b] at least one communication interface; and

[c] a memory containing a plurality of program instructions configured to cause the at least one processor to:

[d] create a list of player gaming options for a player at a current location,

[e] wherein the list of player gaming options restricts limits on wagers or types of games allowed in the current location of the player;

[f] transfer the list of player gaming options to a player gaming client through the communication interface;

- [g] receive a selection of player gaming options from the player gaming client through the communication interface;
- [h] initiate a game based on the selection of player gaming options; and
- [i] compensate the player with player winnings.

Ex. 1001, 17:11–28.

D. Asserted Prior Art

Petitioner relies principally on the following references. *See* Pet. 27.

Name	Reference	Pub. Date	Exhibit No.
Frenkel	US 2007/0015584 A1	Jan. 18, 2007	1007
Amaitis	US 2007/0054739 A1	Mar. 8, 2007	1005
Schlottmann	US 2007/0298857 A1	Dec. 27, 2007	1006
Bryson	US 8,460,109 B2	June 11, 2013	1004

Petitioner asserts these references are prior art to the '205 patent because each was published or filed prior to the '205 patent's earliest claimed priority date of June 20, 2008. *See* Pet. 31 (priority date), 35–36 (Bryson), 38 (Amaitis), 39 (Frenkel and Schlottmann). Patent Owner does not dispute this assertion, and we find it is supported by the evidence. *See* Ex. 1001, codes (60) and (63); Ex. 1004, code (22) (Bryson filed Apr. 24, 2007); Ex. 1005, code (43) (Amaitis published Mar. 8, 2007); Ex. 1007, code (43) (Frenkel published Jan. 18, 2007); Ex. 1006, code (22) (Schlottmann filed June 8, 2007).

E. Asserted Grounds

Petitioner asserts the following six grounds of unpatentability against the challenged claims. *See* Pet. 27.

Ground	Claims Challenged	35 U.S.C. § ²	Reference(s)
1	12, 13, 18–22, 27, 28, 30	102(e)	Bryson
2	12, 13, 18–22, 27, 28, 30	103(a)	Bryson, Knowledge of Person of Ordinary Skill in the Art
3	15–17	103(a)	Bryson, Schlottmann
4	1, 4–11, 14, 23, 29	103(a)	Bryson, Amaitis
5	2, 3	103(a)	Bryson, Amaitis, Frenkel
6	24–26	103(a)	Bryson, Amaitis, Frenkel, Schlottmann

F. Testimonial Evidence

Petitioner relies on the testimony of Mark C. Nicely (Exhibit 1003) as a proffered expert witness. Patent Owner relies on the testimony of Stephen H. Lane, Ph.D. (Exhibits 1068 and 2005) as a proffered expert witness.

² The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. §§ 102 and 103 that became effective in March 2013. The ’205 patent was filed on February 28, 2017, but asserts continuation priority to a parent application filed on June 19, 2009. *See* Ex. 1001, codes (22) and (63). Petitioner applies pre-AIA law (*see* Pet. 31, 36, 38, 39), which Patent Owner has not opposed. Therefore we also apply pre-AIA law.

III. ANALYSIS OF PETITIONER'S GROUNDS

A. *Statement of Law*

1. *Petitioner's Burden of Proof*

Petitioner bears the burden of proving unpatentability of the challenged claims, and this burden of persuasion never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). Petitioner must prove unpatentability by a preponderance of the evidence. *See* 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

2. *Law of Anticipation*

A patent claim is unpatentable as anticipated under 35 U.S.C. § 102 “if each and every limitation is found either expressly or inherently in a single prior art reference.” *WhitServe, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 21 (Fed. Cir. 2012) (quoting *Celeritas Techs., Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998)). An anticipatory reference must further “disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)).

3. *Law of Obviousness*

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406

(2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations of nonobviousness, if placed at issue which has not happened here. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Person of Ordinary Skill in the Art

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1354–55 (Fed. Cir. 2001) (citing *Al-Site Corp. v. VSI Int’l, Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999)). “This reference point prevents . . . factfinders from using their own insight or, worse yet, hindsight, to gauge obviousness.” *Id.* at 1355. “The person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant art” at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In finding the level of ordinary skill in the art, we may consider various factors, including: “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Best Med. Int’l, Inc. v. Elekta Inc.*, 46 F.4th 1346, 1353 (Fed. Cir. 2022) (citations omitted). “The patent’s purpose can also be informative.” *Id.* (citation omitted).

Petitioner contends a person having ordinary skill in the art pertaining to the ’205 patent “would be a person with a bachelor’s degree in computer

engineering, electrical engineering, computer science, applied mathematics, or a similar field, and at least two years of experience in the development of gambling game hardware or software functionality.” Pet. 31 (citing Ex. 1003 ¶ 46). Further: “A person with less education but more relevant practical experience may also meet this standard.” *Id.* at 31–32.

Prior to institution, Patent Owner argued a person having ordinary skill in the art would have a “Bachelor of Science degree in an engineering discipline, and at least two years of programming experience developing games and game-related software and systems.” Paper 14, 25–26 n.3. In the Institution Decision, we noted “[t]he parties’ positions appear to be substantively equivalent” and we “adopt[ed] Petitioner’s assessment as reasonable and consistent with the prior art and the ’205 patent.” Inst. Dec. 15. The post-institution Patent Owner Response does not address the level of ordinary skill in the art. *See, e.g.*, PO Resp. 1 (defining the term “POSITA”).

Based on the record presented, we find Petitioner’s undisputed formulation of ordinary skill in the art reflects the appropriate level of skill, as demonstrated by the ’205 patent and the prior art of record. Therefore, we adopt and apply Petitioner’s formulation here. We note further that the outcome of this Decision would not change, even if we were to apply Patent Owner’s pre-institution formulation of ordinary skill.

C. Petitioner’s Motion to Exclude Evidence

Petitioner moves to exclude Exhibit 2005, the declaration testimony of Dr. Lane submitted with the Patent Owner Response, from evidence. *See* Paper 31, 1. Petitioner asserts: (1) Dr. Lane is not qualified as a person of

ordinary skill in the art, on the alleged basis that he has inadequate gambling knowledge and inadequate experience in developing gambling technology (*see id.* at 1, 3–7); (2) Dr. Lane’s testimony is unsupported by evidence and is unreliable (*see id.* at 1, 7–10); and (3) Dr. Lane’s testimony assesses obviousness at the wrong time frame (*see id.* at 1, 10–11). Petitioner also, in its Reply, asks that we give Dr. Lane’s testimony “no weight” due to his alleged lack of expert qualifications. *See* Pet. Reply 25–26.

Patent Owner disputes each of Petitioner’s assertions in the Motion (*see* Paper 32), and opposes Petitioner’s request to give Dr. Lane’s testimony no weight even if it is admitted (*see* PO Sur-reply 24–25). Petitioner replies in support of the Motion (*see* Paper 33).

We have considered Petitioner’s arguments, and we determine they go to the weight we should give Dr. Lane’s testimony, not its admissibility. *See Microfinancial, Inc. v. Premier Holidays Int’l*, 385 F.3d 72, 81 (1st Cir. 2004) (“When the factual underpinning of an expert’s opinion is weak, it is a matter affecting the weight and credibility of the testimony—a question to be resolved by the [factfinder].”). As Petitioner notes, we have adopted Petitioner’s proffered level of ordinary skill in the art, which is a “bachelor’s degree in computer engineering, electrical engineering, computer science, applied mathematics, or a similar field, and at least two years of experience in the development of gambling game hardware or software functionality.” Pet. 31 (citing Ex. 1003 ¶ 46). Further, we have agreed “[a] person with less education but more relevant practical experience may also meet this standard.” *Id.* at 31–32.

We note Dr. Lane has several years of education and experience in game design and development. *See* Ex. 2002. This includes his over two

decades as a professor at the University of Pennsylvania and his current role as Professor of Practice and the Director of the Computer Graphics and Game Technology (CGGT) Masters Program. *Id.* at 1. Although Dr. Lane does not have experience in gambling games per se, we note that there need not be a perfect match between the expert's qualifications and the patent at issue. *See SEB S.A. v. Montgomery Ward & Co.*, 594 F.3d 1360, 1373 (Fed. Cir. 2010). It is not necessary for Dr. Lane to demonstrate that he is an expert in poker or any specific wager-based games. Indeed, to testify as an expert under Fed. Rule Evid. 702, a person need not be one of ordinary skill, but may be “qualified in the pertinent art.” *B/E Aerospace, Inc. v. MAG Aerospace Indus. LLC*, IPR2014-01511, Paper 104 at 13–14 (Final Written Decision) (declining to exclude the testimony of expert witness that lacked hands-on experience with the claimed subject matter).

We agree with Patent Owner that Dr. Lane's education, his experience as a “professor who teaches gaming at the University of Pennsylvania,” and his “25-years of experience researching, developing and commercializing technology for use in Interactive Entertainment” provide him sufficient experience and knowledge of the claimed subject matter for his opinion to remain of record. Paper 34, 1–3 (citing Ex. 2001 ¶ 17; Ex. 2005 ¶¶ 5–7, 12; Ex. 1068, 21:22–26:8). As Dr. Lane explains, he is familiar “with the knowledge, skill and experience of those skilled in the art of developing game software and systems” and has been involved in the development of many games including:

[the] development of an Olympics Decathlon PC game developed for AT&T to be played in conjunction with the 1996 Olympics that was held in Atlanta, GA. This project involved development not only of the game software, but also a network

interface that enabled players to compete in various events concurrently with those being held at the Olympics and upload their scores to a server to determine the winner in each event.

Ex. 2005 ¶ 12.

Moreover, we take into account the qualifications of an expert witness — and any shortcomings revealed through cross-examination — when evaluating the weight to be given that witness’s testimony. To the extent Dr. Lane’s testimony lacks reliability or applies the wrong invalidity analysis, we have afforded that testimony little to no weight. Conclusory and/or unsupported testimony is entitled to little weight. *See* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) (“Lack of factual support for expert opinion to factual determinations, however, may render the testimony of little probative value in a validity determination.”) (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985)). However, the wholesale exclusion of a witness’s declarations is rarely called for in a proceeding before the Board. For the instant proceeding, we have considered Dr. Lane’s qualifications and the underlying bases for his statements in determining the weight to be given his testimony. Instead of disregarding Dr. Lane’s testimony in its entirety, we evaluate each of his assertions on their own, in light of the explanation offered, his answers on the specific topics under cross-examination, and the other evidence of record.

Thus, we *deny* Petitioner’s Motion to Exclude Dr. Lane’s testimony.

D. Claim Construction

We interpret the '205 patent claims “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b). This “includ[es] 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.” *Id.*

We consider the term “betting range” in claim 1, below in Section III.G.3(b)(i). We consider the term “monitor” in claim 19, below in Section III.E.4(a). We consider several “module” limitations in claims 15, 16, 23–26, and 29, below in Section III.G.1.

We conclude no other explicit construction of any claim term is needed to resolve the issues presented by the arguments and evidence of record. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

E. Ground One — Anticipation by Bryson

In Ground One, Petitioner argues claims 12, 13, 18–22, 27, 28, and 30 of the '205 patent are unpatentable as anticipated by Bryson. *See* Pet. 27, 35–38, 40–62. Patent Owner opposes. *See* PO Resp. 8–27.

We conclude a preponderance of the evidence supports Petitioner’s assertions as to all challenged claims. We begin our analysis with a brief

summary of Bryson, then we address the parties' contentions as to anticipation.

1. Bryson

Bryson discloses devices and methods for providing networked wagering games. *See* Ex. 1004, 1:6–7. Bryson discusses “controlling many aspects of a player’s gaming experience, including game themes presented, game denomination, pay models, content and promotions.” *Id.* at 1:30–36. In “[s]ome implementations,” this involves “creat[ing] subsets of customers, often referred to . . . as ‘communities’” of “players having similar characteristics and preferences.” *Id.* at 1:36–45. Thus, Bryson provides apparatuses configured for: “determining a player community”; “selecting wagering games and wagering game characteristics according to the player community”; and “provid[ing] selected wagering games having selected wagering game characteristics.” *Id.* at 1:46–52.

Bryson contemplates implementing its methods on mobile gaming devices such as laptop computers, cellular telephones, or PDAs. *See id.* at 1:56–60, 12:42–47 (Fig. 6). Therefore, Bryson’s system may include an “apparatus for determining a device location” so “[t]he selecting apparatus may be configured for selecting wagering games and/or wagering game characteristics according to the device location.” *Id.* at 2:16–19, 2:59–62. In particular: “Determining the device’s location allows an online casino to identify the corresponding jurisdiction and to comply with the regulations of that jurisdiction.” *Id.* at 6:9–13. As one example, “[t]he operator (and/or the central system) may provide wagering games, wagering game attributes, etc., according to a player’s community, location and/or device type.” *Id.* at

5:45–47; *see also id.* at 7:49–56 (describing step 125 in Fig. 1). As another example, “the presentation may depend on device location” such that “wagering games and/or wagering game attributes may be provided according to the legal requirements of a device’s jurisdiction” including “[w]agering limits.” *Id.* at 8:24–29.

2. *Independent Claim 12*

Petitioner argues and Mr. Nicely testifies that independent claim 12 is unpatentable as anticipated by Bryson. *See* Pet. 40–49; Ex. 1003 ¶¶ 154–165, 174–196. Patent Owner and Dr. Lane disagree. *See* PO Resp. 19–23; Ex. 2005 ¶¶ 89–94. We discuss the parties’ opposing contentions on an element-by- element basis.

a) 12[pre] — “A gaming system comprising:”

For the preamble 12[pre], Petitioner contends that to the extent the preamble is limiting, Bryson discloses a gaming system. *See* Pet. 40–41 (citing Ex. 1004, Fig. 6, 1:46–55, 12:23–30); Ex. 1003 ¶¶ 174, 210. We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson’s Figure 6 illustrates gaming system 600 which “may provide wager-based gaming services.” Ex. 1004, 12:23–27.

b) 12[a] — “at least one processor”

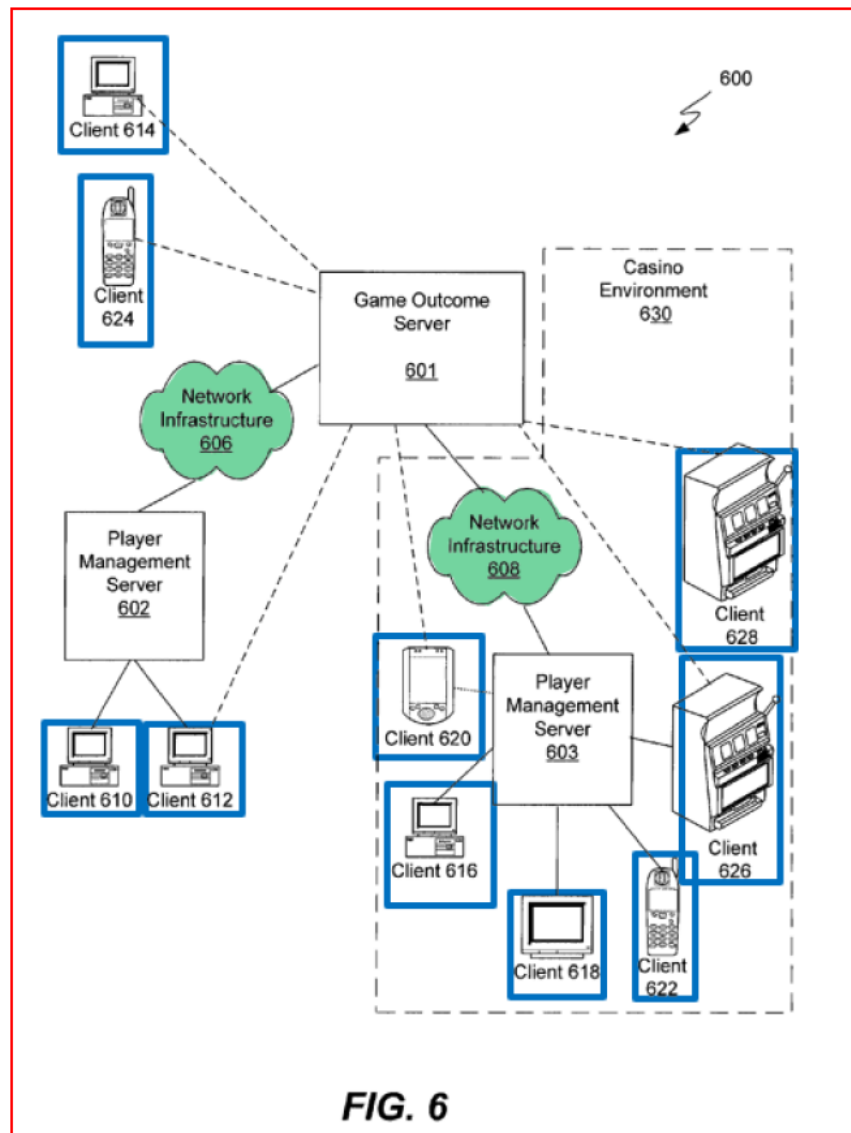
Petitioner contends Bryson’s gaming system 600 includes at least one processor. *See* Pet. 41 (citing Ex. 1004, 5:8–12, 5:32–39); Ex. 1003 ¶ 175. We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson’s gaming

system 600 has one or more processors at game outcome server 601 and player management servers 602 and 603, to implement games played on various client devices 610, 612, 614, 616, 618, 620, 622, 624, 626, and 628. *See* Ex. 1004, Fig. 6, 5:8–12, 5:36–39, 12:23–30.

c) 12[b] — “at least one communication interface”

Petitioner contends Bryson’s gaming system 600 includes at least one communication interface. *See* Pet. 41–42. Patent Owner disagrees. *See* PO Resp. 21–23. We find Petitioner’s contention is supported by a preponderance of the evidence, despite Patent Owner’s opposition, for the following reasons.

Petitioner annotates Bryson’s Figure 6, as reproduced below, to illustrate Petitioner’s argument.

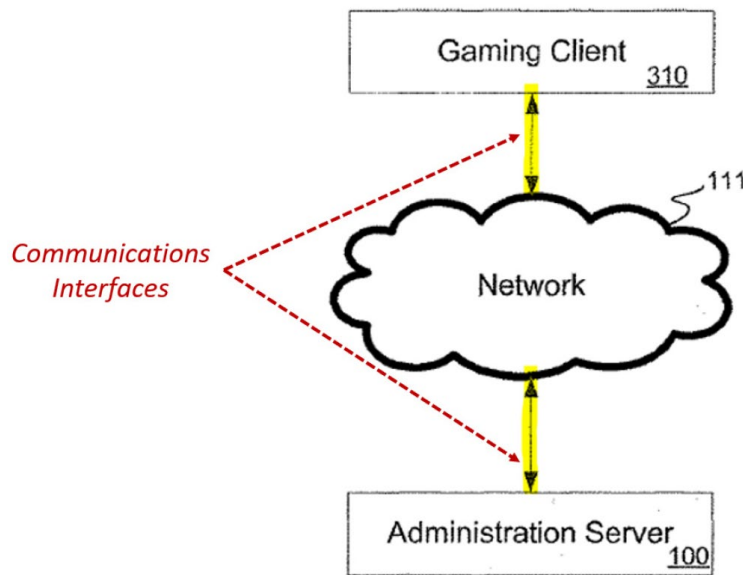


Bryson, Figure 6 (Annotated at Pet. 42).

Figure 6 is a block diagram of gaming system 600, which includes game outcome server 601 and two player management servers 602 and 603, to provide wager-based gaming services on various client devices 610–628 via network infrastructure 606 and 608. *See* Ex. 1004, 12:23–30. Petitioner contends Bryson’s network infrastructure 606 and 608 (colored green above) “allow[s] clients and servers to communicate with one another’ via ‘various combinations of wireless and wired communication links,’ which are each a

communication interface for components of Bryson’s gaming system.”
Pet. 41–42 (citing Ex. 1004, 12:56–13:2); Ex. 1003 ¶ 176. Petitioner further contends Bryson discloses another “communication interface” per claim 12, in that each client device 610–628 (outlined blue above) includes “an interface that allows a user to participate in a game” such as “a display device for viewing the game and input mechanism for making choices’ including for ‘select[ing] a game.’” Pet. 42 (citing Ex. 1004, 12:31–41); Ex. 1003 ¶ 177.

Patent Owner disagrees. *See* PO Resp. 21–23; Ex. 2005 ¶¶ 89–94. Patent Owner asserts a person of ordinary skill in the art “would understand that the recited ‘communications interface’ is an interface of a server-based system for communicating with” the player gaming client of claim 12. *Id.* at 21 (citing Ex. 1001, 4:14–20); Ex. 2005 ¶¶ 89–91. In this context, Patent Owner urges, the server and the client “each has its own communications interface (*e.g.*, network interface) through which they connect ***to the network.***” PO Resp. 21–22 (citing Ex. 1001, Fig. 1); Ex. 2005 ¶ 92. To illustrate this contention, Patent Owner annotates an excerpt of Figure 1 of the ’205 patent, as reproduced below.



The '205 Patent, Figure 1 (Excerpt, Annotated at PO Resp. 22).

Figure 1 shows a high level network architecture of a peer-to-peer gaming system. *See* Ex. 1001, 3:4–5. Patent Owner annotates the figure in yellow to identify two double-headed arrows, which illustrate data communication between gaming client 310 and administration server 100 via network 111, and Patent Owner equates the arrows to “Communications Interfaces” as recited in claim 12. *See* Ex. 1001, 3:47–53, 4:7–24; PO Resp. 21–22; Ex. 2005 ¶¶ 91–92, 139–140.

According to Patent Owner, Petitioner maps the “communication interface” of claim 12 to Bryson as either: (1) “a **network itself**, i.e., network infrastructure 606/608, as opposed to a network interface”; or (2) “a user interface on a display device, i.e., client devices 610–628.” PO Resp. 22 (citing Pet. 41–42; Ex. 1003 ¶¶ 176–177). Patent Owner asserts “a **network**” cannot be the “communications interface” of claim 12, because “the ’205 Patent is clear that communication interfaces **connect devices (e.g., clients and servers) to a network.**” *Id.* at 22–23 (citing Ex. 1001, Fig. 1, 4:18–21; Ex. 2006, 900–901); Ex. 2005 ¶¶ 93–94.

Petitioner replies that the Petition “identifies Bryson’s disclosure of ‘network infrastructure 606’ as facilitating (1) transferring a list of games to a client (limitation 12[f]) and (2) receiving a selection of game options from a client (limitation 12[g]).” Pet. Reply 7 (citing Pet. 41–42, 46–48). Petitioner asserts “the Petition did not map the claimed communication interface to a ‘network itself’” as Patent Owner has suggested, but rather mapped it to “Bryson’s ‘network *infrastructure* 606.’” *Id.* (citing Pet. 41–42). That mapping is supported by Bryson, according to Petitioner, because Bryson’s “infrastructure” term refers to “hardware *devices*, ‘that *allow the clients and servers to communicate with one another*,’” which even agrees with Patent Owner’s understanding of a communication interface. *Id.* at 7–8 (citing Ex. 1004, 12:56–59; PO Resp. 23). Petitioner further argues Dr. Lane “admitted that communication interfaces are ‘*necessarily*’ part of *any network*” and that networked servers like Bryson’s servers “*must also* include communication interfaces.” *Id.* at 8 (citing Ex. 1068, 53:21–54:5, 54:12–14).

Patent Owner’s Sur-reply does not return to the foregoing “communication interface” disputes. *See* PO Sur-reply 10–11 (argument concerning claim 12).

There is no apparent dispute between the parties as to the meaning of “communication interface.” The parties seemingly agree it is composed of components that connect devices, such as a gaming client and an administration server, to a network. *See* PO Resp. 21–23; Pet. Reply 7–8. Bryson correspondingly discloses, as Petitioner points out, that its network infrastructure 606 and 608 “allow[s] the clients and servers to communicate with one another” and “may comprise various combinations of wireless and

wired communication links.” Ex. 1004, 12:56–59; *see* Pet. 41–42; Pet. Reply 7–8. In our view, there is nothing unreasonable or ambiguous in Petitioner’s identification of Bryson’s network infrastructure 606 and 608 as constituting the claimed “communication interface.” Patent Owner’s contention that Petitioner relies on a “network itself” as the communication interface is not an accurate characterization of Petitioner’s actual position as set forth in the Petition.

Furthermore, Dr. Lane’s testimony is consistent with our reading of Bryson. Dr. Lane testified under cross-examination that a person of ordinary skill in the art would generally understand communication interfaces to be part of any network. Ex. 1068, 53:21–54:5, 54:12–14. In other words, the interfaces are generally part of the *infrastructure* of a network. *See id.* That being so, Petitioner’s citation to Bryson’s “network infrastructure” is more specific than a general “network” and refers to the infrastructure of a network, which Dr. Lane acknowledges includes interfaces. Thus, we determine Petitioner has accounted adequately for the claimed “communication interface” based on Bryson’s disclosure.

Accordingly, we find a preponderance of the evidence shows Bryson discloses “at least one communication interface” per claim 12.

d) 12[c] — “*a memory containing a plurality of program instructions configured to cause the at least one processor to:*”

Petitioner contends Bryson’s gaming system 600 includes a memory containing a plurality of program instructions configured to cause the at least one processor to perform the actions specified in claim 12. *See* Pet. 43. Patent Owner disagrees. *See* PO Resp. 19–21. We find Petitioner’s

contention is supported by a preponderance of the evidence, despite Patent Owner’s opposition, for the following reasons.

Petitioner asserts “Bryson teaches that its gaming system [600] is implemented as ‘software stored in a machine readable medium,’ which is a memory.” Pet. 43 (citing Ex. 1004, 3:14–30, 12:25–27). Petitioner further asserts Bryson’s “‘software may comprise instructions for controlling at least one device in a gaming network to perform’ the operations of the disclosed ‘gaming system,’ including to ‘provide wager-based gaming services on a number of different clients.’” *Id.*; Ex. 1003 ¶ 178.

Patent Owner argues Petitioner fails to establish Bryson’s gaming system 600 includes the memory of claim 12. *See* PO Resp. 19–21. Patent Owner asserts “the Petition impermissibly jump[s] between different embodiments of Bryson’s gaming systems and methods and completely lack[s] a clear and unequivocal mapping” to show Bryson discloses “the claimed limitations as arranged in Claim 12.” *Id.* at 20; *see also id.* at 9–10 (“The law . . . requires that the ‘prior art reference must **clearly and unequivocally disclose** the claimed invention or direct those skilled in the art to the invention **without any need for picking, choosing, and combining various disclosures not directly related to each other** by the teachings of the cited reference.”) (quoting *Net MoneyIN*, 545 F.3d at 1371 (emphasis by Patent Owner)).

Patent Owner cites claim 12’s requirement that the memory must contain instructions for the processor to perform specified actions (limitations 12[d] through 12[i]). *See id.* at 20–21. Patent Owner particularly cites the actions of transferring gaming options to a player gaming client through the communication interface (limitation 12[f]), and

receiving a selection of gaming options from the gaming client through the communication interface (limitation 12[g]). *See id.* Patent Owner asserts Petitioner maps the “processor” of claim 12 to Bryson’s “general” disclosures of a processor (i.e., Ex. 1004, 5:8–12), and Petitioner maps the “communication interface” of claim 12 to Bryson’s “network infrastructure 606 / 608” illustrated in Figure 6. PO Resp. 20. Patent Owner urges this alleged mapping requires the “memory” of claim 12 “to be resident in game outcome server 601” in order for the memory to contain instructions for the processor to perform the specified actions (limitations 12[d] through 12[i]). *Id.* Patent Owner argues Petitioner instead “points to different method steps in Fig. 1 of Bryson, which do not themselves correspond to” the claimed actions, and “Petitioner makes *no clear and unequivocal* showing of these Fig. 1 method steps as disclosed in Bryson as they would relate to” transferring and receiving gaming options through the network infrastructure 606 and 608 of Figure 6. *Id.* at 20–21.

Petitioner replies: “[T]he fact that Bryson also discloses an illustrative flow chart in Fig. 1 does not undermine the Petition’s mapping to the processor, memory, and gaming clients of [the system illustrated in Figure 6] that execute those steps as meeting the relevant limitations of challenged system claims.” Pet. Reply 7 (citing Pet. 41–46).

Patent Owner’s Sur-reply does not add anything new to the foregoing “memory” disputes. *See* PO Sur-reply 10–11 (argument concerning claim 12).

We disagree with Patent Owner’s position that Petitioner’s overall mapping of claim 12 to Bryson requires the entire “memory” of claim 12 to reside solely in Bryson’s game outcome server 601, to the exclusion of

Bryson’s player management servers 602 and 603. As discussed above in Sections III.E.2(a)–(c), Petitioner maps the “at least one processor” of claim 12 to the processors of Bryson’s servers 601, 602, and 603 (as a group), and Petitioner maps the “at least one communication interface” of claim 12 to the components of network infrastructure 606 and 608 that allow clients 610–628 and servers 601, 602, and 603 to communicate with one another. Those contentions do not require that the “memory” containing instructions to perform the actions specification in limitations 12[d] through 12[i] must reside solely on server 601. Moreover, Patent Owner does not argue, from a claim construction perspective, that claim 12 requires the memory to reside on a single server. *See* PO Resp. 19–21.

Further, for the reasons provided below in Sections III.E.2(e)–(j), we find that Bryson’s servers 601, 602, and 603 (as a group) include memory containing instructions to perform the actions specified in limitations 12[d] through 12[i]. Accordingly, we find a preponderance of the evidence shows Bryson discloses the memory recited in claim 12.

Finally, we disagree with Patent Owner’s reading of Bryson as failing to disclose the elements of claim 12 arranged as in the claim. Bryson clearly links the method described in Figure 1 together with the gaming system illustrated in Figure 6, as an exemplary apparatus for performing the method. In particular, Bryson describes Figure 1 as illustrating “a flow chart that outlines some methods *of the invention*” and describes Figure 6 as illustrating “an example of a gaming system that *may be used in some embodiments of the invention.*” Ex. 1004, 4:27–28, 4:37–38 (emphases added). The detailed description then again links the method of Figure 1 and the apparatus of Figure 6 together. *See id.* at 5:48–54. Thus, in our further

discussion of the remaining limitations of claim 12 below, we refer to both Figures 1 and 6 when addressing the claim requirements.

e) 12[d] — “create a list of player gaming options for a player at a current location”

Petitioner contends Bryson’s gaming system 600 creates a list of player gaming options for a player at a current location. *See* Pet. 43–45 (citing Ex. 1004, Fig. 1, 1:11–36, 2:16–19, 2:59–62, 5:40–47, 6:9–11, 6:30–39, 7:49–53, 8:18–23, 8:30–39, 23:4–8, 24:4–8); Ex. 1003 ¶¶ 179–186. Petitioner particularly contends Bryson’s system 600 includes a “central system” that determines a player’s location to “provide wagering games, wagering game attributes, etc., according to the player’s community, **location**, and/or device type.” Pet. 43 (quoting Ex. 1004, 5:40–47 (emphasis by Petitioner)); Ex. 1003 ¶ 179. Petitioner asserts Bryson’s gaming system determines the location of the player’s device so “‘wagering games and/or wagering game characteristics’ can be presented to a player ‘according to the device location.’” Pet. 43–44 (quoting Ex. 1004, 2:16–19) (citing Ex. 1004, 2:59–62, 6:9–11, 8:18–23, 8:30–39); Ex. 1003 ¶¶ 180, 182. Petitioner moreover contends “the determined ‘wagering games and wagering game attributes’ are presented as a list of available games in a ‘wagering game presentation,’ which is shown at step 125 of Figure 1,” such that “Bryson teaches dynamically creating a custom list of games based on the location of the player in compliance with the legal requirements of the player’s jurisdiction.” Pet. 45 (citing Ex. 1004, Fig. 1, 7:49–50, 8:25–26, 24:4–8); Ex. 1003 ¶¶ 181–183.

Prior to institution, Patent Owner had objected that Petitioner erroneously relies on Bryson as disclosing a processor that creates a list of

player gaming options for a player at a current location. *See* Inst. Dec. 25–27 (summarizing Patent Owner’s pre-institution arguments). However, Patent Owner did not carry these arguments forward into the post-institution Patent Owner Response, so they have been waived. *See, e.g.*, Paper 16, 10 (Scheduling Order cautioning “that any arguments for patentability not raised in the [Patent Owner Response] may be deemed waived”).

We find Petitioner’s contentions, which Patent Owner does not now oppose, are supported by a preponderance of the evidence. In particular, Bryson’s Figure 1 provides a flow chart 100 illustrating some methods whereby a “central system” — such as the servers 601, 602, and 603 of gaming system 600 illustrated in Figure 6 — “may provide wagering games, wagering game attributes, etc., *according to* a player’s community, *location* and/or device type.” Ex. 1004, 4:27–28, 5:40–54 (emphases added), 12:23–30. In step 101, player and device information is received by Bryson’s servers, including “device . . . location determination” such that “[d]etermining the device’s location allows [the servers] to identify the corresponding jurisdiction and to comply with the regulations of that jurisdiction.” *Id.* at 5:55–61, 6:9–27. In step 120, “wagering games associated with the player community are determined” including “[w]agering game characteristics, such as denomination, volatility, etc.” as well as “[o]ther aspects of game and content presentation associated with the player community.” *Id.* at 7:9–16. In step 125, “[a] determined wagering game presentation is then provided to the player.” *Id.* at 7:49–50. In step 130, “a player’s wagering game selections and credit are received,” and in step 135, “[s]elected wagering games are provided.” *Id.* at 8:57–60.

Thus, in context, the “wagering game presentation” determined in step 125 corresponds to a list of player gaming options presented to the player, to be selected in step 130 and played in step 135. We therefore focus on Bryson’s description of step 125. According to Bryson: “Step 125 may vary according to various factors, including the characteristics of the player community, the type and location of the device used for gaming and the provisioning mode.” *Id.* at 7:50–53. This disclosure contemplates that Bryson’s servers provide wagering games according to the player’s community *and* the player device’s location, as separate and cumulative considerations. This is reinforced by Bryson’s earlier description that “[t]he operator (and/or the central system) may provide wagering games, wagering game attributes, etc., according to a player’s community, location and/or device type.” *Id.* at 5:45–47.

For the foregoing reasons, we find Bryson plainly refers to the player device’s location being used in the presentation of player gaming options in step 125. Indeed, in further describing step 125, Bryson states “*the presentation may depend on device location.*” *Id.* at 8:24–25 (emphasis added). Bryson then provides an example of why this might be done — to provide “wagering games and/or wagering game attributes . . . according to the legal requirements of a device’s jurisdiction” including “[w]agering limits . . . according to jurisdictional requirements.” *Id.* at 8:25–29. As another example, “[e]ven within the same legal jurisdiction, the presentation may depend on device location,” for example to prevent playing of “X-rated slots . . . in a family-oriented area” such as a casino hotel pool. *Id.* at 8:30–39.

Accordingly, we find a preponderance of the evidence shows Bryson discloses that servers 601, 602, and 603 of gaming system 600 include memory containing instructions configured to cause at least one processor to create a list of player gaming options for a player at a current location, per claim 12.

f) 12[e] — “wherein the list of player gaming options restricts limits on wagers or types of games allowed in the current location of the player”

Petitioner contends Bryson’s list of player gaming options restricts limits on wagers or types of games allowed in the current location of the player. *See* Pet. 45–46 (citing Ex. 1004, 8:24–29, 23:4–8); Ex. 1003 ¶¶ 183–187. We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson describes how “wagering game attributes may be provided according to the legal requirements of a device’s jurisdiction,” including “[w]agering limits” as well as “types of games that can be played.” Ex. 1004, 8:24–29, 23:4–8.

g) 12[f] — “transfer the list of player gaming options to a player gaming client through the communication interface”

Petitioner contends Bryson’s servers 601, 602, and 603 transfer the list of player gaming options to a player gaming client through the communication interface. *See* Pet. 46–47 (citing Ex. 1004, Fig. 6, 7:53–56, 12:34–41); Ex. 1003 ¶¶ 176–177, 188–190). We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson indicates “[a] determined wagering game presentation is then provided to the player” on the player’s client device 610, 612, 614, 616, 618, 620, 622, 624, 626, or 628, as implemented by game outcome server 601 via player management servers 602 and 603 and

network infrastructure 606 and 608. Ex. 1004, 7:49–50 (describing Fig. 1), 12:23–41 (describing Fig. 6).

h) 12[g] — “receive a selection of player gaming options from the player gaming client through the communication interface”

Petitioner contends Bryson’s servers 601, 602, and 603 receive a selection of player gaming options from the player gaming client through the communication interface. *See* Pet. 47–48 (citing Ex. 1004, Fig. 1, 8:57–58, 12:31–39); Ex. 1003 ¶¶ 191–192. We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson’s servers receive “a player’s wagering game selections” from the player’s client device 610, 612, 614, 616, 618, 620, 622, 624, 626, or 628, via player management servers 602 and 603 and network infrastructure 606 and 608. Ex. 1004, 8:57–58 (describing Fig. 1, step 130), 12:23–41 (describing Fig. 6).

i) 12[h] — “initiate a game based on the selection of player gaming options”

Petitioner contends Bryson’s servers 601, 602, and 603 initiate a game based on the selection of player gaming options. *See* Pet. 48–49 (citing Ex. 1004, Fig. 1, 8:57–60, 12:37–39); Ex. 1003 ¶¶ 193–194. We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson’s servers provide selected wagering games to the player’s client device 610, 612, 614, 616, 618, 620, 622, 624, 626, or 628. *See* Ex. 1004, 8:58–60 (describing Fig. 1, step 135), 12:23–41 (describing Fig. 6).

j) 12[i] — “*compensate the player with player winnings*”

Petitioner contends Bryson’s servers 601, 602, and 603 compensate the player with player winnings. *See* Pet. 49 (citing Ex. 1004, 13:3–15, 23:19–34); Ex. 1003 ¶¶ 195–196. We find this contention, which Patent Owner does not oppose, is supported by a preponderance of the evidence. In particular, Bryson’s servers “allow a remote client to provide game play of games where a monetary balance [in a player account] is adjusted based upon the outcome of the game.” Ex. 1004, 13:3–15.

k) *Conclusion Regarding Claim 12*

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claim 12 is unpatentable as anticipated by Bryson, which discloses each and every claim limitation arranged as in the claim.

3. *Dependent Claim 18*

Claim 18 depends from claim 17, which depends from claim 16, which depends from claim 15, which depends from independent claim 12. *See* Ex. 1001, 17:36–48 (claims 15–18). Of these claims, Petitioner challenges only claims 12 and claim 18 under Ground One as anticipated by Bryson. *See* Pet. 27.

We conclude the contentions in the Petition as to claim 18 fail to establish Bryson discloses the “tournament administration module” of the intermediate claims 15, 16, and 17. *See id.* at 50–51. Instead, the Petition addresses only the “non-monetary based wagering” limitation added by claim 18 to its parent claims. *See id.* The Petitioner Reply essentially acknowledges this deficiency of Ground One against claim 18, and seeks to

add claim 18 to Ground Three to cure the deficiency. *See* Pet. Reply 9 n.5; PO Sur-reply 11. Thus, we conclude Petitioner has failed to show claim 18 is unpatentable as anticipated by Bryson per Ground One, because there is no suggestion in the record of this proceeding that Bryson discloses the tournament administration module of claim 18 so as to anticipate the claim.

We also deny Petitioner’s request to add claim 18 to Ground Three, as exceeding the proper scope of a Petitioner Reply. Petitioner improperly seeks to add a new prior art reference against claim 18 (i.e., Schlottmann) to fill a *prima facie* gap in the Petition as to claim 18. *See, e.g., Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1376–78 (Fed. Cir. 2023).

4. *Independent Claim 19 and Dependent Claim 22*

Petitioner argues and Mr. Nicely testifies that independent claim 19 and its dependent claim 22 are unpatentable as anticipated by Bryson. *See* Pet. 52–58 (claim 19), 59 (claim 22); Ex. 1003 ¶¶ 201–224, 227–229. Patent Owner and Dr. Lane disagree. *See* PO Resp. 6–7, 10–19; Ex. 2005 ¶¶ 29–32, 80–88.

We reproduce claims 19 and 22 here, adding Petitioner’s limitation identification scheme for claim 19, which Patent Owner also uses. *See* Pet. 23; *e.g.*, PO Resp. 10 (referring to “limitations 19[h]–19[j]”).

[pre] 19. A gaming system comprising:

[a] at least one gaming client, wherein the at least one gaming client is configured to:

[b] present only gaming options that include limits on wagering amounts or types of games to prevent a player from unlawful or prohibited play in a current location;

- [c] accept a selection of at least one gaming option from a player; and
- [d] allow the player to play a game based on the selection of the at least one gaming option;
- [e] an administration server, wherein the administration server is configured to:
 - [f] receive the selection of the at least one gaming option from the at least one gaming client; and
 - [g] initiate the game for the player based on the selection of the at least one gaming option; and
- [h] at least one gaming server, wherein the at least one gaming server is configured to:
 - [i] monitor the game; and
 - [j] transmit data about the game to the administration server.

22. The gaming system of claim 19, wherein the administration server and the at least one gaming server are the same device.

Ex. 1001, 17:49–18:3 (claim 19), 18:10–12 (claim 22).

Concerning elements 19[pre]–19[g], Petitioner’s mapping of the claim to Bryson is not opposed by Patent Owner. *See* Pet. 52–56; PO Resp. 10–14 (Patent Owner’s opposition to Ground One as to claim 19). We conclude a preponderance of the evidence establishes Bryson supports Petitioner’s contentions in these regards. In particular, we find Bryson discloses a gaming system comprising at least one *gaming client* (i.e., client device 622) that is configured as set forth in limitations 19[a]–19[d], and an *administration server* (i.e., player management server 603) that is configured as set forth in limitations 19[e]–19[g], for the reasons set forth in the Petition which we adopt as our own in this Decision. *See* Pet. 52–56; Ex. 1003 ¶¶ 201–214.

Concerning the remaining limitations 19[h]–19[j] of claim 19 and of claim 22, which concern a *gaming server*, we note there is some tension in the claim language. Specifically, claim 19 recites the gaming server *transmits data to* the administration server, whereas claim 22 recites those two servers are the *same device*. Petitioner accordingly presents two alternative contentions for anticipation by Bryson, whereby Bryson discloses the gaming server of claims 19 and 22 as *either* game outcome server 601 *or* player management server 603.³ See Pet. 56–58 (claim 19), 59 (claim 22); Pet. Reply 1–3; Ex. 1003 ¶¶ 215–224.

Patent Owner opposes these contentions. See PO Resp. 10–14 (claim 19), 14–19 (claim 22); Ex. 2005 ¶¶ 80–88.

To resolve the parties’ disputes in these regards, we first construe the meaning of the claim term “monitor” in limitation 19[i], then we consider Bryson’s disclosure.

a) Claim Construction — “Monitor the Game”

Claim 19 recites a gaming server configured to “monitor the game.” Ex. 1001, 17:66–18:3.

Patent Owner argues: “The proper construction of ‘monitor’ is ‘to *continually* oversee and keep track of.’” PO Resp. 6 (emphasis added); Ex. 2005 ¶¶ 29–32. Patent Owner asserts the ’205 patent specification reflects that “[t]he purpose of monitoring the game is to ensure that players are not cheating, and this requires checking whether player activity or

³ Patent Owner argues the Petition articulates neither of these two alternative theories, which instead are improperly presented as new theories in the Petitioner Reply. See PO Sur-reply 1–4, 7–8 & n.7. We disagree. In our view, the Petition articulates both alternative theories. See Pet. 56–58.

behaviors demonstrate prohibited activity.” PO Resp. 6–7 (citing Ex. 1001, 7:49–8:3); Ex. 2005 ¶ 30. Patent Owner concludes “[d]etecting player cheating requires that the game be continually overseen and kept track of.” PO Resp. 7; Ex. 2005 ¶ 31. Patent Owner further cites the *Oxford English Dictionary*’s definition of the word “monitor” as meaning “to observe, supervise, or keep under review; to measure or test at intervals, esp. for the purpose of regulation or control.” Ex. 2007 (def. (c.)); PO Resp. iv, 7; Ex. 2005 ¶ 32.

Petitioner replies that Patent Owner “merely cites to examples in the ’205 Patent specification directed to monitoring for the specific purpose of ‘prevent[ing] collusion,’” which Petitioner asserts “do not constitute disclaimer or disavowal of the term ‘monitor.’” Pet. Reply 12 (citing Ex. 1001, 7:49–8:53). Petitioner argues that in the Institution Decision we preliminarily agreed with Petitioner’s position, and that Patent Owner “provides no basis for the Board to reach a different conclusion” now. *Id.* at 12–13 (citing Inst. Dec. 35; PO Resp. 7). For example, according to Petitioner, Patent Owner’s proffered dictionary definition of the term “monitor” contradicts Patent Owner’s proffered construction, because it “defines the word ‘monitor’ as ‘to measure or test at *intervals*.’” *Id.* at 13 (citing Ex. 2007 (def. (c.))). Petitioner concludes the term “‘monitor’ is not limited to ‘continuous’ monitoring,” as is confirmed by another dictionary definition. *Id.* (citing Ex. 1070, 1).

Patent Owner replies that “Petitioner’s argument that Patent Owner’s construction requires disavowal misses the mark, as the construction provides the plain and ordinary meaning of the [‘monitor’] term.” PO Sur-reply 5 & n.5. Patent Owner asserts its proffered dictionary definition (Exhibit 2007)

is not inconsistent with Patent Owner’s claim construction, because:

“‘Intervals’ require multiple test points, which ‘to measure or test’ requires continual overseeing/tracking.” *Id.* at 5. Patent Owner contends Petitioner’s dictionary definition (Exhibit 1070) “only solidifie[s] the soundness of Patent Owner’s construction,” because it refers to the “example of ‘regularly check its development or progress’” which corresponds to “the continual nature of the act of monitoring.” *Id.* at 5–6 (quoting Ex. 1070).

We begin with the language of claim 19. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). Claim 19 pertinently recites a “gaming server” that is configured to “monitor the game” played by a player on a gaming client. Ex. 1001, 17:49–18:3. The claim is silent as to whether the “gaming server” monitors the game continuously or not. Thus, we fail to see any support for Patent Owner’s construction in the language of claim 19.

We turn next to the ’205 patent specification. *See Phillips*, 415 F.3d at 1315 (noting “the specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’”). To begin, we note the passages of the ’205 patent cited by the Patent Owner do not indicate a game is monitored continuously. For example, in columns 7 and 8 of the specification, the ’205 patent discloses:

The next software module in FIG. 2 is a Risk Management module 260. This *module could monitor player activity in order to prevent collusion or other prohibited or illegal behavior*. For example, the Risk Management module 260 may use account information in order to determine if some players are violating rules of the system. In one embodiment, *the Risk Management module 260 could monitor*

playing behaviors of users to detect possible collusion. In another embodiment, the Risk Management module 260 could determine which gaming options are available to the player. For example, in Solitaire tournaments where all players are given the same starting board, the module could monitor to see if a certain group of players are consistently playing in the same Solitaire tournaments. Similarly, in car racing games for more than two players, the module could monitor to ensure that a certain group of players aren't consistently competing in the same races in order to work together and reach an unfair advantage. In another embodiment, the Risk Management module 260 may eliminate a player if the module detects prohibited behavior. For example, after a game, the risk management module may eliminate a player before giving the player any winnings. In another example, the module may eliminate the player during the game.

Ex. 1001, 7:51–8:5. Here, the '205 patent provides broad examples of how risk management module 260 may (1) use account information to determine collusion, (2) eliminate a player before giving the player any winnings, (3) eliminate a player during the game, or (4) monitor players who consistently play a certain way. *See id.* The specification does not, however, provide any support for excluding monitoring that is not continuous oversight or tracking. In fact, the '205 patent states “[n]one of these options are exclusive, a Risk Management module 260 consistent with the present invention could include all or none of these example functions and could include other functions as well.” *Id.* at 8:5–8.

We also are not persuaded otherwise by Patent Owner's dictionary evidence. Outside of the intrinsic evidence, extrinsic evidence is generally viewed “as less reliable than the patent [itself] and its prosecution history in determining how to read claim terms.” *Phillips*, 415 F.3d at 1318. Patent Owner's dictionary definition of “monitor” does not support Patent Owner's

position. Exhibit 2007, which is an excerpt from the Oxford English Dictionary, second edition (1989), defines “monitor” as “to observe, supervise, or keep under review; to measure or test at intervals, esp. for the purpose of regulation or control.” Ex. 2007, 2 (def. (c.)), 3. This definition does not require continuous overseeing or tracking. Rather, the term is defined as measuring or testing *at intervals*. *Id.* at 2. Petitioner’s proffered extrinsic dictionary evidence is consistent with Patent Owner’s. In Exhibit 1070, the definition for “monitor” includes “to watch or check on (a person or thing).” Ex. 1070, 2. Neither of these definitions requires *continuous* oversight and tracking.

We are also not persuaded by Dr. Lane’s testimony in this regard. *See* Ex. 2005 ¶¶ 29–32. Dr. Lane cites to the same intrinsic evidence regarding risk management module 260, and the same extrinsic dictionary definition (Exhibit 2007), discussed above. We, however, are not persuaded this evidence supports Patent Owner’s narrower construction or Dr. Lane’s testimony in support of the same.

Accordingly, although we may agree with Patent Owner that the plain and ordinary meaning of “monitor” is “to oversee or keep track of,” we find the intrinsic evidence and extrinsic evidence do not require the recited gaming server to “monitor the game” *continuously*, and we decline to adopt Patent Owner’s construction that requires *continuous* oversight. Additionally, to the extent Patent Owner construes “monitor” to mean checking, measuring, or testing more than once (*see* PO Resp. 34), we decline to construe this term to require a specific type or manner of monitoring by way of time period, frequency, etc. The claim language and ’205 patent specification, as discussed above, do not limit or describe

“monitor” this way. Nor does the extrinsic dictionary evidence require a specific number of checks or measures. *See* Ex. 2007. Beyond these clarifications, we find no other express construction of the term “monitor” is warranted.

b) Bryson’s Disclosure Regarding a Gaming Server

As noted above, Petitioner argues Bryson’s gaming system includes the gaming server of claim 19 (limitations 19[h]–19[j]) as *either* game outcome server 601 *or* player management server 603. *See* Pet. 56–58; Pet. Reply 1–3; Ex. 1003 ¶¶ 215–224.

In Patent Owner’s view, this alternative mapping of claim 19 to Bryson renders the Petition fatally unclear, as lacking “a coherent or unified discussion” to demonstrate the “limitations are clearly and unequivocally disclosed by Bryson.” PO Resp. 10–11 (citing Pet. 40, 52; Ex. 1003 ¶¶ 174, 201). Patent Owner additionally asserts that “[i]f one had to guess what anticipation theory or theories were attempted to be proffered” by Petitioner and Mr. Nicely, then “Patent Owner’s best guess is Petitioner alleged a *combination* of Bryson’s” servers 601 and 603 (emphasis added) “acts as the ‘*server*’ of a central system to meet the” gaming server limitations in claims 19 and 22. *Id.* at 11–12 (citing Pet. 57, lines 1–2; Ex. 1003 ¶ 216); PO Sur-reply 3 (citing Ex. 1003 ¶¶ 216, 218, 224).

We disagree with Patent Owner’s foregoing arguments. We conclude the Petition clearly articulates two alternative mappings of the claimed gaming server to Bryson’s disclosure, as *either* game outcome server 601 *or* player management server 603. *See* Pet. 56–58; Pet. Reply 1–3. Mr. Nicely similarly testifies that each of Bryson’s servers 601 and 603, separately and

on their own, satisfy the gaming server of limitations 19[h]–19[j]. *See* Ex. 1003 ¶¶ 215–224. No doubt, Mr. Nicely postulates various mappings of the claimed administration server and gaming server to *either* Bryson’s game outcome server 601 *or* Bryson’s player management server 603, and this at times gets confusing. *See id.* Nonetheless, Mr. Nicely does not rely on the “combination” of Bryson’s servers 601 and 603 as together mapping to the claimed gaming server, as Patent Owner would have it. *See id.* Therefore, we need not address Patent Owner’s arguments against an alleged combination of Bryson’s servers 601 and 603 as meeting the claimed gaming server (*see* PO Resp. 12 (line 6) – 13 (line 16); PO Sur-reply 3 (line 17) – 4 (line 5)), because Petitioner does not in fact rely on such a combination.

We now consider each of Petitioner’s two alternative mappings of the gaming server limitations of claims 19 and 22 to Bryson’s disclosure.

(i) *Claimed Gaming Server as Bryson’s Game Outcome Server 601*

Petitioner asserts Bryson’s game outcome server 601 corresponds to the gaming server of claim 19, because server 601 is configured to monitor a game played on Bryson’s gaming client 622, and transmit data about the game to Bryson’s administration server 603. *See* Pet. 57–58 (citing Ex. 1004, 2:8–15, 6:30–39, 21:23–42); Pet. Reply 1 (lines 9–14), 2 (line 13) – 3 (line 3); Ex. 1003 ¶¶ 216–224. As to game monitoring, Petitioner asserts “Bryson discloses that ‘game outcome server 601 may be configured to maintain a current state of the game during game play . . . when the game is being played on a client.’” Pet. 57 (quoting Ex. 1004, 21:5–8); Ex. 1003 ¶¶ 217–220. As to transmitting game data to the administration server,

Petitioner asserts Bryson’s game outcome server 601 generates game outcome data as well as account balance data based the game outcome, and transmits this data to Bryson’s administration server 603. Pet. 57–58 (citing Ex. 1004, 18:66–19:10, 21:24–42); Ex. 1003 ¶¶ 221–224.

Patent Owner argues Petitioner’s showing for Bryson’s game outcome server 601 monitoring the game is “a scant three lines relying on Bryson’s teaching of ‘maintain[ing] a current state of the game during game play.’”⁴ PO Resp. 34 (citing Pet. 57; Ex. 1004, 21:5–8). Patent Owner asserts Bryson does not disclose *continuous* game monitoring per Patent Owner’s proffered claim construction, because Bryson “maintain[s] a game-state as a singular snapshot, and not as continued oversight and tracking.” *Id.* at 34–35 (citing Ex. 1004, 21:5–13).

Petitioner replies that, “even if ‘continuous’ monitoring [is] required” by claim 19, “Bryson discloses it” by “maintain[ing] a current state of the game during game play” because “[c]ontinuous monitoring is necessary to maintain the ‘current’ state of a game.” Pet. Reply 13 (citing Pet. 57; Ex. 1004, 21:5–8). Otherwise, according to Petitioner, “the maintained state would not be current—it would be a prior game state.” *Id.* at 13–14.

Patent Owner’s Sur-reply maintains that Bryson’s game outcome server 601 does not perform the *continuous* monitoring required by Patent Owner’s claim construction. *See* PO Sur-reply 6.

We find a preponderance of the evidence establishes that Bryson’s game outcome server 601 satisfies the gaming server limitations 19[h]–19[j] of claim 19. In particular, Bryson’s server 601 monitors the game per

⁴ This argument is presented in the context of Ground Two, but it clearly also applies to Ground One, so we consider it here.

limitation 19[i], because it “maintain[s] a current state of the game during game play” so that, if a connection with a client device is lost, the game may be restored to its state prior to the lost connection. Ex. 1004, 21:5–13.

Patent Owner’s opposition that this monitoring is insufficient because it is not continuous rests on an unclaimed limitation, for reasons provided above in Section III.E.4(a). Bryson’s server 601 also transmits data about the game to Bryson’s administration server (i.e., player management server 603) per limitation 19[j], including player account balance information resulting from gaming activities. *See id.* at 18:66–19:10.

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claim 19 is unpatentable as anticipated by Bryson, applying Petitioner’s first mapping of the claimed gaming server to Bryson’s game outcome server 601. However, this mapping does not result in anticipation of claim 22 by Bryson, because Bryson’s server 601 is *not* the same device as Bryson’s administration server (i.e., player management server 603). *See* Ex. 1004, Fig. 6.

(ii) *Claimed Gaming Server as Bryson’s Player Management Server 603*

Petitioner alternatively asserts Bryson’s player management server 603 corresponds to the gaming server of claim 19, because server 603 is configured to monitor a game played on Bryson’s gaming client 622, and transmit data about the game to Bryson’s administration server. *See* Pet. 56–58; Pet. Reply 1 (line 15) – 2 (line 7); Ex. 1003 ¶¶ 216–224. In support, Petitioner asserts Bryson’s server 603 “performs administrative and gaming tasks” and “hosts a ‘web-site that provides a portal that allows the player to access their account and to play games’” via game outcome server 601.

Pet. 57–58 (citing Ex. 1004, 2:8–15, 6:30–39, 13:43–48, 19:4–10, 21:24–42); Ex. 1003 ¶¶ 215–224. Petitioner acknowledges this argument results in Bryson’s server 603 being *both* the administration server and the gaming server of claim 19, but contends this is expressly contemplated by dependent claim 22 which recites those two servers are “the same device.” Ex. 1001, 18:10–12; *see* Pet. 56–57 (“Bryson’s ‘player management server’ is a single device that includes both an administration server and gaming server[.]”); Ex. 1003 ¶¶ 215–220.

Further concerning claim 22, Petitioner argues: “Bryson teaches a ‘central system’ that includes a ‘server’ that performs administrative and gaming tasks, such as a single physical server embodying multiple server instances on the same device in an ‘integrated casino software platform.’” Pet. 59 (citing Ex. 1004, 2:8–15, 6:30–39, 15:40–43); Ex. 1003 ¶¶ 227–228.⁵

Patent Owner argues Petitioner erroneously asserts Bryson discloses “a single physical server embodying multiple server instances on the same device.” PO Resp. 14 (section heading modified, quoting Pet. Reply 59). In support, Patent Owner quotes the Bryson disclosures cited by Petitioner, adding emphasis to certain portions as supporting Patent Owner’s view. *See*

⁵ Petitioner additionally asserts a person of ordinary skill in the art “would readily appreciate that all of Bryson’s server instances could be installed on a single physical server.” Pet. 59; Ex. 1003 ¶¶ 228–229. We do not rely on that assertion in this Decision, because it appears to provide an obviousness theory per Ground Two rather than an anticipation theory per Ground One (which the Petition groups together), even though the Petitioner Reply suggests this assertion is an anticipation theory. *See* Pet. 40 (Section IV.B. heading); Pet. Reply 3–6. Therefore, we likewise do not address Patent Owner’s opposition to Petitioner’s assertion. *See* PO Resp. 17 (line 31) – 19 (line 5); PO Sur-reply 6–10; Ex. 2005 ¶¶ 86–88.

PO Resp. 14–17 (quoting Ex. 1004, 2:8–15, 6:30–39, 15:34–51); Ex. 2005 ¶¶ 83–85.

Petitioner replies that claim 22 “does not expressly require that the administration and gaming servers are *installed* on the same device or that they share the same physical computing resources,” and instead claim 22 merely requires that the two servers “must *be* the same device” meaning the “*same thing*.” Pet. Reply 1–2. Petitioner maintains Bryson’s player management server 603 correspondingly is “a single device . . . that both monitors games *and* provides administrative functions as claimed.” *Id.* at 2; *see also id.* at 3 n.2 (“Claim 22 is also disclosed by Bryson under the theory . . . where Bryson’s player management server provides game monitoring and administration functions on the ‘same device.’”).

Patent Owner’s Sur-reply does not add anything materially new with respect to the foregoing disputes. *See* PO Sur-reply 6–10.

We find a preponderance of the evidence establishes that Bryson’s player management server 603 satisfies the gaming server limitations 19[h]–19[j] of claim 19, and the additional limitation of claim 22. In particular, Bryson’s server 603 monitors the game per limitation 19[i], because it intermediates between gaming client 622 and game outcome server 601 to provide game play on the former, and to maintain a current state of the game during game play to restore the game if the intermediary connection is lost. *See* Ex. 1004, Fig. 6, 13:43–48, 19:4–10, 21:5–13. Patent Owner’s opposition that this monitoring is insufficient because it is not continuous rests on an unclaimed limitation, for reasons provided above in Section III.E.4(a). Bryson’s server 603 also transmits data about the game to Bryson’s administration server per limitation 19[j], including player account

balance information resulting from gaming activities, because server 603 is the “same device” per dependent claim 22. *See* Ex. 1004, 18:66–19:18; Ex. 1001, 18:10–12 (claim 22).

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claims 19 and 22 are unpatentable as anticipated by Bryson, applying Petitioner’s second mapping of the claimed gaming server to Bryson’s player management server 603.

5. *Independent Claim 28*

Petitioner argues and Mr. Nicely testifies that independent claim 28 is unpatentable as anticipated by Bryson. *See* Pet. 59–60; Ex. 1003 ¶¶ 232–242. Patent Owner disagrees. *See* PO Resp. 19–24.

Independent claim 28 recites a gaming system, and includes many identical or similar limitations as claim 12 which is discussed above in Section III.E.2. *Compare* Ex. 1001, 17:11–28 (claim 12), *with id.* at 18:52–15 (claim 28). The most significant substantive differences between these claims are that: (1) claim 28 does not recite a “communication interface” as claim 12 does; (2) claim 28 recites “present[ing] the player gaming options on a display of a player gaming client” which claim 12 does not recite; and (3) claim 28 recites that “the game is an arcade game, a video game, a puzzle game, a word game, a trivia game, or a card game,” whereas claim 12 refers only to a generic “game.” *Id.*

Petitioner, in addressing claim 28, relies on arguments we have already considered above in Section III.E.2 in relation to anticipation of claim 12 by Bryson. *See* Pet. 59–60 (addressing claim 28, and repeatedly referring back to “§ IX.B.1” of the Petition which concerns claim 12).

Petitioner also argues Bryson presents player gaming options on a display of a player gaming client per claim 28, and Bryson's games include a card game per claim 28. *See id.* at 60 (referring back to "§ IX.B.4(b)" of the Petition which concerns claim 19, and "§ IX.B.2" of the Petition which concerns claim 13); *id.* at 53–54 (arguing claim 19); *id.* at 49–50 (arguing claim 13).

In opposition, Patent Owner firstly asserts "limitations 28[d]–28[j] of Claim 28 do not recite the same features as limitations 12[d]–12[i]," and so concludes Petitioner "failed to prove anticipation of Claim 28 by Bryson." PO Resp. 23. However, Patent Owner does not identify any *specific* difference between claim 12 and claim 28 that Petitioner allegedly fails to address sufficiently. *See id.* Subsequent briefing suggests Patent Owner relies on an alleged difference in meaning between claim 12's *creating* a list of gaming options, and claim 28's *identifying* player gaming options. *See* Pet. Reply 8; PO Sur-reply 10. However, we have been unable to discern any meaningful difference between those two terms, or otherwise between claims 12 and 28, that Petitioner fails to address, as discussed above in our summary of claim 28 and Petitioner's argument.

Patent Owner secondly appears to argue that Petitioner's analysis for claim 28 contains the same alleged deficiencies that Patent Owner argues for claim 12, as considered above in Section III.E.2. *See* PO Resp. 19–20, 23–24. However, for the reasons provided above, we resolve the parties' disputes in these regards in Petitioner's favor.

Thus, based on the record presented, we conclude a preponderance of the evidence establishes independent claim 28 of the '205 patent is unpatentable as anticipated by Bryson, for the reasons set forth above in

Section III.E.2 in relation to the similar claim 12, and based further on Petitioner's contentions concerning the different subject matter recited in claim 28 which we adopt as our own in this Decision. *See* Pet. 59–60.

6. *Dependent Claims 13, 20, 21, 27, and 30*

Petitioner provides arguments and evidence in support of contending dependent claims 13, 20, 21, 27, and 30 are each unpatentable as anticipated by Bryson. *See* Pet. 49–50 (claim 13), 58 (claims 20 and 21), 59 (claim 27), 61–62 (claim 30). Patent Owner does not oppose Petitioner's contentions as to these claims, apart from arguments we have already considered above in relation to their respective parent independent claims. *See* PO Resp. 14 (claims 20, 21, and 27), 24 (claims 13 and 30).

We conclude a preponderance of the evidence establishes claims 13, 20, 21, 27, and 30 of the '205 patent are unpatentable as anticipated by Bryson, for the reasons set forth above in Sections III.E.2, III.E.4, and III.E.5 in relation to the parent independent claims 12, 19, and 28, and based further on Petitioner's unopposed contentions concerning the subject matter added by these dependent claims which we adopt as our own in this Decision. *See* Pet. 49–50, 58, 59, 61–62.

F. *Ground Two — Obviousness over Bryson and the Knowledge of a Person of Ordinary Skill in the Art*

In Ground Two, Petitioner argues claims 12, 13, 18–22, 27, 28, and 30 of the '205 patent are unpatentable as having been obvious over Bryson and the knowledge of a person of ordinary skill in the art. *See* Pet. 27, 35–38, 40–62. Patent Owner opposes. *See* PO Resp. 27–36.

1. *Claims 12, 13, 19–22, 27, 28, and 30*

For the reasons set forth above in Section III.E, we conclude claims 12, 13, 19–22, 27, 28, and 30 are unpatentable based on Ground One (anticipation by Bryson). Therefore, we decline to address Ground Two (obviousness over Bryson) as to these claims. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding a petitioner “is entitled to a final written decision addressing all of the claims it has challenged”); *Bos. Sci. Scimed, Inc. v. Cook Grp. Inc.*, 809 F. App’x 984, 990 (Fed. Cir. 2020) (recognizing the “Board need not address issues that are not necessary to the resolution of the proceeding,” and agreeing the Board has “discretion to decline to decide additional instituted grounds once the petitioner has prevailed on all its challenged claims”).

2. *Claim 18*

Claim 18 has survived Ground One (anticipation by Bryson). *See supra* Section III.E.3. We therefore consider claim 18 in the context of Ground Two (obviousness over Bryson).

We conclude the contentions in the Petition as to claim 18 fail to establish the obviousness of claim 18 over Bryson and the knowledge of a person of ordinary skill in the art, per Ground Two. *See* Pet. 50–51. Petitioner’s argument in the Petition fails entirely to address the “tournament administration module” recited in claim 18 by virtue of its dependency from claims 15, 16, and 17, whether via disclosure by Bryson or obviousness over Bryson and the knowledge of a person of ordinary skill in the art. *See id.*; *supra* Section III.E.3. The Petitioner Reply essentially acknowledges this deficiency of Ground Two against claim 18, and seeks to add claim 18 to

Ground Three to cure the deficiency. *See* Pet. Reply 9 n.5; PO Sur-reply 11. As noted above, that is improper in the context of the Petitioner Reply. Thus, we conclude Petitioner has failed to show claim 18 is unpatentable as having been obvious per Ground Two, which fails entirely to address the “tournament administration module” recited in claim 18. Further, we deny Petitioner’s request to add claim 18 to Ground Three, as discussed above in Section III.E.3.

G. Grounds Three Through Six — Obviousness over Bryson and One or More of Schlottmann, Amaitis, and Frenkel

In Grounds Three through Six, Petitioner argues claims 1–11, 14–17, 23–26, and 29 of the ’205 patent are unpatentable as having been obvious over Bryson and one or more of Schlottmann, Amaitis, and Frenkel. *See* Pet. 27. In considering these Grounds, we firstly address claim construction of several “module” limitations found in claims 15, 16, 23–26, and 29, then we turn to the Grounds.

1. Claim Construction — “Module” Limitations of Claims 15, 16, 23–26, and 29

Petitioner addresses the claim construction of several “module” limitations found in claims 15, 16, 23–26, and 29, including “tournament administration module” (claims 15, 16, 24, and 25), “gaming option collection module” (claims 23 and 29), “matching engine module” (claims 23 and 29), “game administration module” (claims 23 and 29), “results calculation module” (claims 23 and 29), “gaming option creation module” (claims 24 and 26), “payment initiation module” (claim 24), and “risk management module” (claim 24). *See* Pet. 32–35. Petitioner refers to these limitations as the “Module Terms.” *Id.* at 32.

a) The Module Terms Generally

Petitioner asserts the Module Terms “are either ‘configured to’ perform, or . . . ‘oversee,’ certain recited functionality, without reciting sufficient structure for performing those functions.” Pet. 32. Petitioner contends these terms therefore means-plus-function limitations subject to 35 U.S.C. § 112 ¶ 6. *See* Pet. 32 (citing *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015)); Ex. 1003 ¶ 147. Petitioner provides a table “that identifies what Petitioner infers Patent Owner’s construction to be for each of” the Module Terms, including the “Claimed Function” and citations to where the claimed “Function [is] Described in Specification.” *Id.* at 32–35. Petitioner argues the ’205 patent specification “shows the administration server as including all of the above claimed modules except the ‘payment initiation module,’ which is not disclosed in the specification,” and Petitioner concludes “a server performs each of the above modules’ functionalities.” *Id.* at 35 (citing Ex. 1001, Fig. 1); Ex. 1003 ¶ 148.

Patent Owner appears to argue the Module Terms of the ’205 patent “should be construed according to their plain and ordinary meaning.” PO Resp. 6; Ex. 2005 ¶ 28.

Patent Owner also argues “Petitioner’s handling of the ‘module’ terms . . . is defective for not identifying the corresponding structure of these elements and, if the corresponding structure were deemed a server as the Board suggest[ed in the Institution Decision], silence on the *algorithmic* structure described in the specification.” PO Resp. 3 (emphasis added). Patent Owner suggests Petitioner’s claim construction analysis “actively avoids addressing ‘corresponding structure’ for these limitations” in an attempt to preserve an indefiniteness defense in the District Court Litigation.

Id. at 54. For example: “Petitioner never even uses the word ‘structure’ in setting forth its proposed constructions for the” Module Terms. *Id.* (citing Pet. 32–35).

Patent Owner further argues the Institution Decision erred in its claim construction of the Module Terms, when concluding a “server” is the corresponding structure in the ’205 patent specification, for two reasons. *See id.* at 54–58 (citing Inst. Dec. 19). First, Patent Owner asserts Petitioner did not take this position in the Petition, although Mr. Nicely “does suggest the corresponding structure includes the administration server.” *Id.* at 54, 55 n.5 (citing Pet. 32–35; Ex. 1003 ¶ 148). Patent Owner contends Mr. Nicely “then plays coy on the issue of *algorithmic* structure” in the ’205 patent specification, and Mr. Nicely’s declaration is “deliberately opaque” in this regard. *Id.* at 54–55 (emphasis added) (citing Ex. 1003 ¶¶ 148–149, 152).

Second, Patent Owner asserts a server alone cannot be the corresponding structure in a means-plus-function claim construction, as a matter of law. *See id.* at 55–58 (citing and discussing several Federal Circuit and Board decisions). Patent Owner argues: “A server is a general-purpose computer, and it is well-established that a general-purpose computer by itself is not sufficient corresponding structure for a computer-implemented means term.” *Id.* at 55–56. Patent Owner emphasizes the corresponding structure must be “*the special purpose computer programmed to perform the disclosed algorithm.*” *Id.* at 56. Patent Owner also asserts that if the only corresponding structure for the Module Terms in the ’205 patent specification is a server, then the subject claims may be indefinite under 35 U.S.C. § 112, but the Board “cannot

possibly conduct a proper invalidity analysis” to hold the claims unpatentable under 35 U.S.C. § 103. *Id.* at 56–58.

Next, Patent Owner selects one of the Module Terms — the “results calculation module” of claims 23 and 29 — and identifies disclosures in the ’205 patent specification that Patent Owner asserts provide a corresponding algorithm. *See* PO Resp. 58–60 (citing Ex. 1001, Fig. 6, 12:60–67). Patent Owner does not discuss any allegedly corresponding algorithm(s) of the ’205 patent specification for any of the other Module Terms. *See, e.g., id.* at 58 (“Although Petitioner’s constructions for all the ‘module’ terms exhibit this failing [of not identifying an algorithm], Patent Owner discusses the ‘results calculation module’ term . . . as an example.”).

Petitioner replies that the “the Petition identifies the *distinct corresponding algorithmic structure*, to the extent it exists, *for each Module Term* as a server implementing the functionality disclosed in the specification as identified in *each corresponding row* of the table on pages 32–3[5] of the Petition.” Pet. Reply 21 (also citing Ex. 1003 ¶¶ 148, 152). Petitioner asserts “[t]his is all that is required for claim construction of such terms.” *Id.* at 21–22 (citation omitted). Petitioner additionally opposes Patent Owner’s identification of an algorithm for the “results calculation module” of claims 23 and 29. *See id.* at 23–24.

Patent Owner responds by reiterating arguments from the Patent Owner Response. *See* PO Sur-reply 17–19. Patent Owner also asserts that the fourth column of Petitioner’s table “is deliberately vague and problematic,” because the title of the column (“Function Described”) “is equally consistent with (a) the ‘functionality’ being disclosed only in functional terms as it is with (b) the functionality being described with the

kind of algorithmic structure the law requires for computer-implemented means terms.” *Id.* at 19–20 (citing *Aristocrat Techs. Australia Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008); *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1317 (Fed. Cir. 2012)).

Upon review of the foregoing, we note as an overarching consideration that the parties’ competing arguments concerning construction of the Module Terms are not a model of clarity. As we noted in the Institution Decision, the lack of clarity on Petitioner’s behalf arises at least in part from Petitioner’s attempt to have its cake in this proceeding by asserting the claims are unpatentable under 35 U.S.C. § 103, and to eat its cake in the District Court Litigation by asserting the claims are invalid under 35 U.S.C. § 112 due to indefiniteness of the Module Terms. *See* Inst. Dec. 18–19; Pet. 32 (“Without conceding that the claim limitations reciting these terms satisfy 35 U.S.C. § 112, Petitioner provides the claim chart below that identifies what Petitioner infers Patent Owner’s construction to be for each of these limitations.”). Yet, as we also noted in the Institution Decision: “Whether Petitioner’s equivocation . . . successfully preserves an indefiniteness defense in District Court, despite Petitioner’s demonstrated ability to proffer a means-plus-function construction in the Petition, is a potential issue to be decided later by a different tribunal.” Inst. Dec. 19. Now, we conclude based on the record presented in this proceeding that the Petition proffers a complete means-plus-function construction of the Module Terms, as follows. *See* Pet. 32–35.

First, because the subject claims do not use the word “means,” we apply a rebuttable presumption that § 112 ¶ 6 does not apply. *See Williamson*, 792 F.3d at 1348–49. Nonetheless, as Petitioner argues, the

Module Terms each recite a “module” that is configured to perform or to oversee certain recited functionality, without reciting sufficient structure for performing that functionality. *See* Pet. 32. Further, as in *Williamson*, the word “module” in the context of the ’205 patent claims and specification is a “nonce” word, used “in a manner that is tantamount to using the word ‘means.’” *Williamson*, 792 F.3d at 1350–51. We therefore agree with Petitioner’s position that the rebuttable presumption against application of § 112 ¶ 6 is overcome in this case, because the Module Terms are not understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure. *See Williamson*, 792 F.2d at 1349 (“The standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.”). Patent Owner’s and Dr. Lane’s apparent disagreement with this conclusion in the context of the ’205 patent is unaccompanied by any argument seeking to establish that the Module Terms might be understood to recite a sufficiently definite meaning as the name for structure. *See* PO Resp. 6; Ex. 2005 ¶ 28.

Second, the Petition identifies the claimed function of each of the Module Terms, which Patent Owner does not dispute. *See* Pet. 32–35 (“Claimed Function” column); PO Resp. 6, 54–64 (arguments concerning the Module Terms). We are persuaded by Petitioner’s contentions in these regards, with the following exceptions. In claim 24, Petitioner does not address the “payment initiation module,” for which we find the claimed function is compensating the player based on the results of the game. *See* Ex. 1001, 18:37–38; Pet. 24–25 (listing claim 24), 33–34 (not addressing

limitation 24[c]).⁶ In claim 25, Petitioner mistakenly repeats the tournament administration module of the parent claim 24, to which claim 25 adds that the tournament is a “delayed” tournament. *See* Ex. 1001, 18:33–36 (claim 24), 18:42–44 (claim 25); Pet. 34. In claim 26, Petitioner overlooks that the gaming option creation module functions “to include or exclude certain gaming options from the list of gaming options based on a licensing status of the certain gaming options.” Ex. 1001, 18:45–48; *see* Pet. 34.

Third, Petitioner and Mr. Nicely identify portions of the ’205 patent specification that provide *algorithms* corresponding to the claimed functions, with the potential exception of the results calculation module of claims 23 and 29 which we discuss in the next section below. *See* Pet. 32–35 (“Function Described in Specification” column); Ex. 1003 ¶ 149. Patent Owner disagrees with this conclusion, on the basis that the fourth column in Petitioner’s table is entitled “Function” rather than “Algorithm” or “Structure.” *See, e.g.*, PO Sur-reply 18–20. However, during oral argument, Petitioner indicated the “intent” of this column was to identify the corresponding structure for the Module Terms in the ’205 patent specification. *See* Tr. 22:6–25:5. Therefore, we maintain our initial reading of the Petition as set forth in the Institution Decision — that is, the fourth column in the table “describes the structure [i.e., the algorithm to be applied by a processor] corresponding to [the] claimed function.” Inst. Dec. 19; *see also* Ex. 1003 ¶ 149 (Mr. Nicely testifying that the “*structure*” of each

⁶ Petitioner’s table for claim 24 also mistakenly repeats two Module Terms that were addressed previously in the table. *See* Pet. 33–34 (discussing “24[b] ‘game administration module’” and “24[d] ‘gaming option creation module’”).

Module Term “must include an *algorithm* that performs the corresponding function described in” Petitioner’s table (emphases added)). Mr. Nicely’s testimony provides further support for this conclusion, where he spells out the ’205 patent specification’s “algorithm[s]” that correspond to the various Module Terms, as cited in the fourth column of the table in the Petition. Ex. 1004 ¶ 149; *compare id.*, with Pet. 32–35.

Fourth, we conclude the corresponding *structure* of the ’205 patent specification for the Module Terms is a general purpose processor, such as a server, that is programmed to perform the disclosed algorithm(s).⁷ See Pet. 35 (citing Ex. 1001, Fig. 1); Ex. 1003 ¶ 148; *Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1266 (Fed. Cir. 2021) (holding that when “the corresponding structure amounts to nothing more than a general-purpose computer” and “a recited function requires special programming, then the specification must disclose the algorithm that the computer performs to accomplish that function”).

Patent Owner’s reliance on the decision in *Cochlear Bone Anchored Sols. AB v. Oticon Med. AB*, 958 F.3d 1348 (Fed. Cir. 2020), does not persuade us otherwise. See PO Resp. 56–58. In *Cochlear*, the meaning of the means-plus-function limitations at issue was “*entirely unknown*” because the challenged patent’s specification “fail[ed] to recite a corresponding structure,” so it was “*impossible* to conduct a prior-art analysis.” *Cochlear*, 958 F.3d at 1358–59 (emphases added); *see also id.* at 1361 (J. Newman

⁷ In the related IPR2022-01442 proceeding, Petitioner challenged U.S. Patent No. 10,497,220 B2 (“the ’220 patent”), a continuation-in-part of the ’205 patent at issue here. We note that the specifications of these two patents differ somewhat in their descriptions of corresponding structure. *Compare* Ex. 1001, 6:31–39, *with* IPR2022-01442, Ex. 1001, 8:55–9:57.

“concur[red] in the court’s decision” in this regard). The present case is not such a case. In particular, as discussed above, the fourth column of Petitioner’s table identifies where each corresponding algorithm is found in the ’205 patent specification. Furthermore, even assuming there is a question of indefiniteness in Petitioner’s various identifications of corresponding algorithms, our reviewing court has instructed “it is not always impossible to adjudicate a prior-art challenge, one way or the other, just because some aspect of a claim renders the claim indefinite.” *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813 (Fed. Cir. 2021) (citing *Samsung Electronics America, Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342, 1355 (Fed. Cir. 2020)). In other words, indefiniteness or the potential indefiniteness of a term does not always preclude a prior-art analysis.

Our foregoing conclusions suffice to resolve the claim construction disputes presented in the record. Patent Owner argues only that Petitioner’s construction is deficient for failing to identify an algorithm *at all*. See PO Resp. 54–58. Patent Owner does not raise the issue of whether the ’205 patent specification disclosures listed in the fourth column of Petitioner’s table might be an inadequate algorithm to satisfy the definiteness requirement. See *id.* Patent Owner touches upon the edges of such an argument in its Sur-reply. See PO Sur-reply 17–19. However, the argument there is premised solely on the title of the fourth column being problematic, as opposed to a meaningful effort to grapple with the ’205 patent specification disclosures cited in that column. See *id.*

In summary, we conclude the Module Terms of claims 15, 16, 23–26, and 29 are means-plus function limitations. The claimed functions are identified in the third column of Petitioner’s table (“Claimed Function”), as

modified above with respect to claims 24, 25, and 26. The corresponding structure of the '205 patent specification is a general purpose processor, such as a server, that is programmed to perform the algorithms identified in the fourth column of Petitioner's and Mr. Nicely's table, with the exception of the "results calculation module" of claims 23 and 29 which we discuss in the next section below.

b) The "Results Calculation Module" of Claims 23 and 29

As briefly noted above, Patent Owner argues the "results calculation module" of claims 23 and 29 has a corresponding algorithm in the '205 patent specification as "a sequence[] of steps . . . perform[ed] in order to calculate the results of a game." PO Resp. 58–60 (citing Ex. 1001, Fig. 6, 12:60–67). Patent Owner faults Petitioner's claim construction position for this term (*see* Pet. 33, 35) as failing to include this sequence of steps. *See* PO Resp. 60.

Petitioner replies that Patent Owner's identification of an allegedly corresponding algorithm in the '205 patent specification for the results calculation module fails for the following three reasons. *See* Pet. Reply 23. First, Patent Owner's construction improperly imports functions that are unnecessary to perform the claimed function of calculating results, namely, "determining player and competitor 'objectives' and 'initiat[ing] payout.'" *Id.* at 23–24. According to Petitioner, the results calculation module simply "calculates results from games and how to distribute winnings." *Id.* at 22 (citing Ex. 1001, 5:47–49). Second, Patent Owner's construction includes steps that are recited in different limitations of claim 29, thereby improperly rendering those other limitations superfluous. *See id.* at 24. Third, Patent

Owner's construction "fails to demonstrate any 'link' between the claimed functions and the disclosed algorithm." *Id.* (citing *Default Proof Credit Card Sys., Inc. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291, 1298 (Fed. Cir. 2005)).

Patent Owner replies to Petitioner's three arguments as follows. First, "Petitioner's 'unnecessary' charge has no basis from the '205 patent and no support from a technical expert." PO Sur-reply 22. Second, it is unclear what claim limitations are allegedly rendered superfluous by Patent Owner's argument, and "nothing would preclude both the game administration module and results calculation module from receiving data about the game or from using the same game data received by the game administration module." *Id.* Third, there is a clear link between the claimed functions and the algorithm identified by Patent Owner. *See id.* at 23–24.

We find the claimed function of the results calculation module of claim 23 is "to calculate results of the game, wherein the results are based on the data about the game received from the gaming server through the game administration module." Ex. 1001, 18:25–28; *see* Pet. 33 ("23[d]"). We find the claimed function of the results calculation module of claim 29 is "to calculate results of the game." Ex. 1001, 19:14–15; *see* Pet. 35 ("29[d]"). Patent Owner does not argue otherwise. *See, e.g.*, PO Resp. 58–60 (arguing only the algorithm disclosed in the '205 patent specification).

As to the corresponding structure of the '205 patent specification, Patent Owner relies on the illustration in Figure 6 of "one method of determining and paying a player's winnings after a game has been played," specifically steps 1610, 1620, and 1630 shown therein. Ex. 1001, 3:17–18; *see* PO Resp. 58–59; PO Sur-reply 22–23. In step 1610, "to compensate the

player, the system first determines which objectives the player achieved in the game.” Ex. 1001, 12:60–62. In step 1620, the system “determines which objectives any competitors achieved in the game.” *Id.* at 12:62–63. In step 1630, the system “calculates any winnings for the player . . . based on objectives achieved and other information, including but not limited to: the rules of the game, and any selected gaming options.” *Id.* at 12:63–67.

Upon our review of the foregoing disputes, we first conclude that the algorithm corresponding to the claimed function of the results calculation module includes *at least* calculating results of the game, and how to distribute winnings, per Petitioner’s contentions. *See* Pet. 33 (“23[d]”), 35 (“29[d]”) (both citing Ex. 1001, 5:47–49, 7:27–30); Pet. Reply 22; Ex. 1003 ¶ 149 (table rows “23[d]” and “29[d]”). The ’205 patent specification correspondingly states: “The Results Calculation module 250 calculates results from games and how to distribute winnings.” Ex. 1001, 5:47–49. The specification further states: “In some embodiments, the Results Calculation module 250 will receive the final result” whereas “[i]n other embodiments, the Results Calculations module 250 will have to calculate the winner based on received game information.” *Id.* at 7:27–30. Thus, we conclude that the module may calculate results of the game either by receiving the results, or by calculating the results based on received game information. *See id.*; Ex. 1003 ¶ 149 (table rows “23[d]” and “29[d]”).

To the extent we are able to discern any meaningful difference between the foregoing algorithmic steps and Patent Owner’s algorithmic claim construction, it is that Patent Owner would additionally require the algorithm to *determine objectives achieved* by a player and the player’s

competitors, as part of calculating the results of the game.⁸ *See* PO Resp. 59 (citing Ex. 1001, Fig. 6, 12:60–67); PO Sur-reply 22–23. We agree with this additional component of the algorithm. That is, the ’205 patent specification correspondingly states, right after introducing results calculation module 250: “At the end of a game, the system must determine which objectives each player achieved.” Ex. 1001, 7:20–22; *see also id.* at 12:60–62 (“Now referring to FIG. 6, to compensate the player, the system first determines which objectives the player achieved in the game 1610. Then it determines which objectives any competitors achieved in the game 1620. The system then calculates any winnings for the player 1630 based on objectives achieved and other information.”).

In summary, for the reasons provided above in Section III.G.1(a), we conclude the results calculation module of claims 23 and 29 is a means-plus function limitation, with the respectively claimed functions as set forth above in this section III.G.1(b), and with the corresponding structure of the ’205 patent specification being a general purpose processor, such as a server, that is programmed to perform an algorithm. That algorithm is:
(1) calculating results of the game, including objectives achieved by a player and the player’s competitors; and (2) calculating how to distribute winnings.

⁸ Petitioner suggests Patent Owner’s construction additionally includes *initiating payout*. *See* Pet. Reply 23–24. We disagree. Patent Owner’s discussion of the corresponding ’205 patent specification disclosures expressly omits the final step 1640 of Figure 6, which is to initiate payout. *See* PO Resp. 59 (citing Ex. 1001, 12:60–67); Ex. 1001, Fig. 6, 12:67 (ending the discussion of step 1630, and beginning the discussion of step 1640). Moreover, Patent Owner does not rely on initiating payout as being an algorithmic step that might be missing in the prior art (i.e., Bryson and Amaitis). *See* PO Resp. 61–62.

Further, the first calculation step may be performed either by receiving the results, or by calculating the results based on received game information.

2. *Ground Three — Obviousness over Bryson and Schlottmann*

In Ground Three, Petitioner argues claims 15–17 of the ’205 patent are unpatentable as having been obvious over Bryson and Schlottmann. *See* Pet. 27, 35–38, 39, 62–66. Patent Owner opposes. *See* PO Resp. 46–49, 54–64.

We conclude a preponderance of the evidence supports Petitioner’s assertions as to all challenged claims. We begin our analysis with a brief summary of Schlottmann, then we consider the parties’ contentions as to obviousness.

a) *Schlottmann*

Schlottmann discloses a gaming system implemented by a central server which provides tournament game play on a plurality of gaming machines over the Internet. *See* Ex. 1006, code (57), ¶¶ 12–13. In one embodiment, the tournament is “self-scheduled” whereby “multiple players compete in the tournament at overlapping or different times” of their own choosing, “during a designated time period (such as a day, a week, or a month).” *Id.* ¶¶ 34, 69. “At the end of the designated time period . . . the gaming system determines a winner based [on] the determined game parameters, such as the winner is the player with the highest combined point total.” *Id.* ¶ 34.

b) Claims 15–17

Claim 15 recites: “The gaming system of claim 12, further comprising a tournament administration module to oversee tournament play.” Ex. 1001, 17:36–38. Claim 16 depends from claim 15, and adds “the tournament administration module oversees a delay tournament where players are single players trying to get a highest score.” *Id.* at 17:39–41. Claim 17 depends from claim 16, and adds “the delay tournament automatically ends after a period of time has expired.” *Id.* at 17:42–44. As construed above in Section III.G.1(a), these tournament administration module limitations are means-plus-function limitations.

Petitioner relies on Bryson as anticipating the parent independent claim 12 per Ground One, as discussed above in Section III.E.2. For the reasons provided above, we conclude Petitioner’s contentions in this regard are supported by a preponderance of the evidence.

Petitioner then argues “Bryson and Schlottmann each contemplate tournament play in server-based and online gaming systems.” Pet. 62, 64 (citing Ex. 1004, 2:44–48, 11:34; Ex. 1006, code (57), ¶¶ 5–9); Ex. 1003 ¶¶ 246, 251. Petitioner asserts Schlottmann additionally provides “tournaments where games are played within a certain period of time and scores are compared to determine a winner” — that is, a “delayed tournament” as recited in claims 16 and 17 — in a remote networked environment utilizing a central server. Pet. 62–63, 64–65 (citing Ex. 1001, 14:35–36; Ex. 1006, code (57), ¶¶ 5–9, 12, 34, 69, 121); Ex. 1003 ¶¶ 247–249, 251, 253–254. Petitioner contends a person of ordinary skill in the art would have been motivated to combine Schlottmann’s “disclosure of delayed tournaments with Bryson’s teaching to conduct tournament game

play of individual games that are well-suited for the delayed tournament structure, such as solitaire, blackjack, and other similar games that involve . . . trying to get the best score possible.” Pet. 62, 63–64 (citing Ex. 1001, 1:53–56, 7:59–66, 14:34; Ex. 1004, 13:55–56); Ex. 1003 ¶¶ 249, 254–255. Petitioner concludes “[t]he combination would have yielded the predictable result of enabling delayed tournaments in Bryson’s system and would have merely entailed software implementation well within the level of skill in the art.” Pet. 64; Ex. 1003 ¶ 249.

Applying a means-plus-function analysis, Petitioner asserts the combined Bryson-Schlottmann gaming system performs the functions recited in claims 15–17 because it administers tournaments and oversees tournament play (per claim 15) in a delay format with players trying to get a highest score (per claim 16) that automatically ends after a period of time has expired (per claim 17). *See* Pet. 64–65 (claim 15), 65–66 (claim 16), 66 (claim 17); Ex. 1003 ¶¶ 251, 253–256. Petitioner contends this combination further provides the corresponding structure of the ’205 patent specification for the tournament administration module, by employing a central server to implement the tournament using the algorithmic steps of the ’205 patent specification. *See* Pet. 65 (citing Ex. 1006 ¶¶ 12–13); Ex. 1003 ¶¶ 249, 252.

Petitioner alternatively asserts that, if § 112 ¶ 6 does not apply to the tournament administration module of claims 15–17, then “the claims are still rendered [unpatentable] by the functionality disclosed in” Bryson and Schlottmann. Pet. 32 n.3.

Patent Owner responds that Petitioner’s argument “is completely unclear with respect to how Schlottmann’s ‘central server’ would be integrated into Bryson’s system,” so Petitioner has failed to establish a

reasonable expectation of success in the combination. PO Resp. 46–47 (citing Pet. 65); Ex. 2005 ¶¶ 117–119. Patent Owner asserts “Petitioner does not meaningfully address *how* Schlottmann’s central server would be included in Bryson’s server-based gaming system,” particularly with respect to Bryson’s game outcome server 601 and player management servers 602 and 603. PO Resp. 47–48 (citing Ex. 1004, 44–64); Ex. 2005 ¶ 118. Patent Owner argues Petitioner similarly fails to establish the combination “would have yielded predictable results.” PO Resp. 48–49 (citing Pet. 64; Ex. 1003 ¶ 249); Ex. 2005 ¶ 119.

Patent Owner next contends Petitioner fails to show how the combination of Bryson and Schlottmann “discloses the same or equivalent structure to the algorithmic structure” of the ’205 patent specification for the tournament administration module. PO Resp. 60–61, 63–64. Patent Owner asserts “the Petition does not *meaningfully* address corresponding structure at all.” *Id.* at 61 (citing Pet. 83–85).

Petitioner replies that the Petition clearly articulates the combination, and establishes the requisite reasonable expectation of success. *See* Pet. Reply 17–18 (citing Pet. 62–64; Ex. 1003 ¶¶ 246–253). Specifically, Petitioner “proposes combining Schlottmann’s tournament administration server software with Bryson’s similar server-based gaming system,” and a person of ordinary skill in the art “would not be deterred by adding the supporting software taught by Schlottmann to a server and storing data in memory” in Bryson. *Id.* at 18. Further according to Petitioner, Bryson and Schlottmann “teach[] the function and structure of the [tournament administration module] with even greater detail than the ’205 Patent.” *Id.* at 22.

Patent Owner responds that the additional argument in the Petitioner Reply still does not explain “*how* Schlottmann’s central server would be included in Bryson’s server-based gaming system” with a reasonable expectation of success. PO Sur-reply 15–16.

We conclude Petitioner has established a reasonable expectation of success in the proposed combination of Bryson and Schlottmann. The “amount of explanation needed [to support motivation and reasonable expectation of success for obviousness] will vary from case to case, depending on the complexity of the matter and the issues raised in the record.” *Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 991–92 & 993–94 (Fed. Cir. 2017)).

Here, we are persuaded by Mr. Nicely’s testimony that the similar server-based environments of Bryson’s and Schlottmann’s respective gaming systems would have enabled their predictable combination by implementing Schlottmann’s delayed tournament play in Bryson’s gaming system. *See, e.g.*, Ex. 1003 ¶¶ 246–247, 249. Dr. Lane’s opposing testimony, by contrast, provides no explanation to support his terse conclusions. *See* Ex. 2005 ¶¶ 117–119. In particular, Dr. Lane’s focus on implementing “Schlottmann’s central server” in Bryson’s gaming system misses the mark (*id.* ¶¶ 118–119), because the test for obviousness is not whether the features of one reference (such as Schlottmann) may be bodily incorporated into the structure of the other reference (such as Bryson), but rather is “what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Further, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton,” and “in many cases a person of

ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *KSR*, 550 U.S. at 420–421.

We also conclude Petitioner provides a meaningful analysis that addresses both the claimed function, and the corresponding structure, of the tournament administration module limitations of claims 15–17, which is supported by Mr. Nicely’s testimony. *See* Pet. 64–66 (separately addressing the “Function” and the “Structure” aspects of the claims); Ex. 1003 ¶¶ 149, 251–252. Particularly concerning structure, we are persuaded by Petitioner’s contention and Mr. Nicely’s testimony that a person of ordinary skill in the art would have implemented Schlottmann’s tournament play within one of Bryson’s servers. *See* Pet. 65; Pet. Reply 17–18; Ex. 1003 ¶¶ 149, 252.

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claims 15–17 of the ’205 patent are unpatentable as having been obvious over Bryson and Schlottmann.

3. *Ground Four — Obviousness over Bryson and Amaitis*

In Ground Four, Petitioner argues claims 1, 4–11, 14, 23, and 29 of the ’205 patent are unpatentable as having been obvious over Bryson and Amaitis. *See* Pet. 27, 35–39, 66–86. Patent Owner opposes. *See* PO Resp. 49–64.

We conclude a preponderance of the evidence supports Petitioner’s assertions as to all challenged claims. We begin our analysis with a brief summary of Amaitis, then we address the parties’ contentions as to obviousness.

a) *Amaitis*

Amaitis provides a gaming system incorporating a wireless network to permit users to participate in games using a mobile communication device. *See* Ex. 1005 ¶¶ 1–3, 22. This includes peer-to-peer gaming, in which multiple users interactively compete in the same gaming activity at the same time from disparate locations using remote gaming devices, such as cell phones or PDAs. *Id.* ¶¶ 8, 24. Figure 9 is reproduced below.

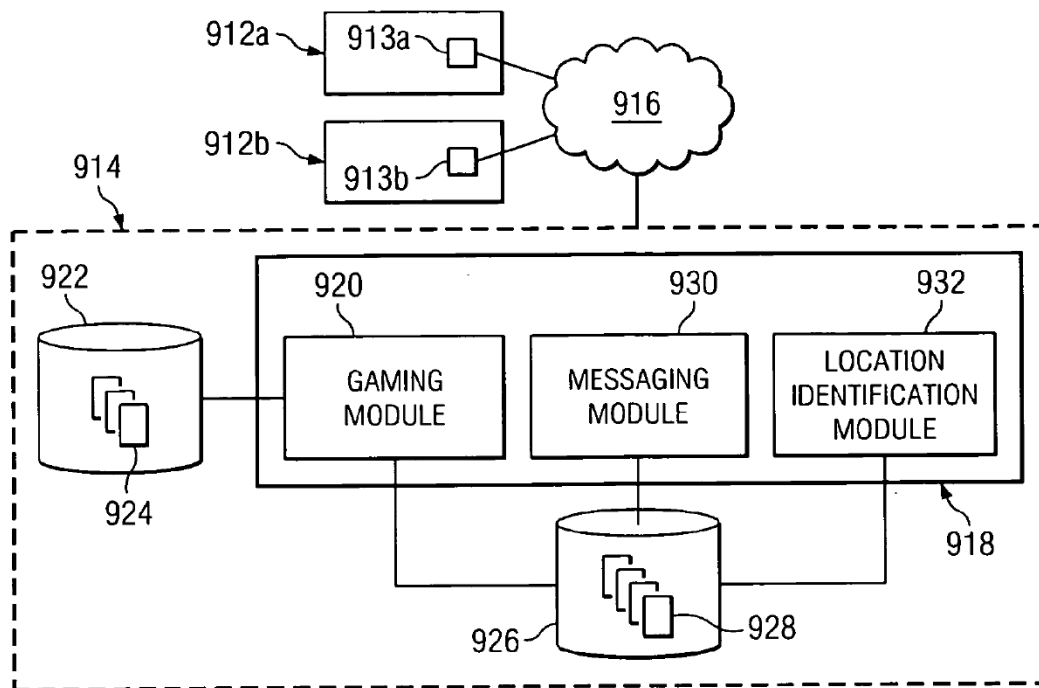


FIG. 9
Amaitis Figure 9.

Figure 9 illustrates peer-to-peer gaming system 910 accessed by users 912a and 912b by way of respective mobile gaming devices 913a and 913b. *See id.* ¶ 31. Gaming devices 913 utilize data network 916 to transmit and receive gaming information to and from gaming service provider 914 so that users 912 may participate interactively in a single gaming activity. *See id.* ¶¶ 31–32.

Gaming service provider 914 includes processor 918 which has gaming module 920 that operates as a gaming server for gaming devices 913 to participate in games, using database 922 of gaming applications 924. *See id.* ¶¶ 34–36. Each user 912 may enter various parameters corresponding to gaming characteristics that interest the user, such as betting minimums or limits, and gaming module 920 uses these parameters as search criteria to identify a menu of gaming activities to be displayed to the user for selection. *See id.* ¶ 47. Gaming module 920 may store these user-specified gaming characteristics and other data concerning the user in database 926 of customer profiles 928. *Id.* ¶¶ 48–49. Gaming module 920 may “identify additional players that may be willing to play with a first user 912a” by querying the data in customer profiles 928 to identify a second user 912b who might be “interested in . . . games of the type initiated by” first user 912a, and “send an invite to second user 912b that invites second user 912b to join in the gaming activity.” *Id.* ¶ 50.

b) Independent Claim 1

Claim 1 is reproduced here, adding Petitioner’s limitation identification scheme which Patent Owner also uses. *See* Pet. 18; *e.g.*, PO Resp. 50 (referring to “limitation 1[g]”).

[pre] 1. A method comprising:

[a] creating a list of player gaming options for a player in a current location,

[b] wherein the list of player gaming options is limited to legal gaming options in the current location of the player;
and

- [c] wherein the legal gaming options include limits on wagering amounts or types of games to prevent the player from unlawful play in the current location of the player;
- [d] presenting a player with the list of player gaming options, wherein the list of player gaming options is presented to the player at a player gaming client;
- [e] collecting a selection of player gaming options from the player;
- [f] determining a game type that the player selected, wherein the game type is based on the selection of player gaming options;
- [g] matching the player with an at least one competitor,
 - [h] wherein matching the player with the at least one competitor is performed by an administration server;
- [i] collecting a bet from the player,
- [j] wherein the bet is within a betting range identified in the selection of player gaming options;
- [k] initiating a game for the player, wherein the game is based on the selection of player gaming options;
- [l] collecting results of the game, wherein the results of the game are received at the administration server; and
- [m] compensating the player with player winnings, wherein the player winnings are based on the results of the game.

Ex. 1001, 15:49–16:13.

We first construe the meaning of the claim term “betting range” in limitation 1[j], then we turn to the parties’ disputes concerning obviousness of claim 1 over Bryson and Amaitis.

(i) *Claim Construction — “Betting Range”*

Claim 1 recites “the bet is within *a betting range* identified in the selection of player gaming options.” Ex. 1001, 16:3–5 (emphasis added).

Patent Owner argues: “The proper construction of ‘betting range’ is ‘both a minimum and a maximum bet.’” PO Resp. 7; Ex. 2005 ¶¶ 33–36.

Patent Owner cites the ’205 patent specification’s description that:

[A] player could select a betting range before selecting a game and/or competitor. For example, a player who is willing to risk less could select a lower **betting range such as \$5–\$50** so they know he or she will find competitors willing to play for lower amounts. Conversely, a player who is only interested in playing for larger amounts could select a higher **betting range such as \$200–500**.

Ex. 1001, 11:10–21 (emphases by Patent Owner); *see* PO Resp. 8; Ex. 2005 ¶ 34.

Patent Owner also cites Figure 3 of the ’205 patent, as reproduced below with Patent Owner’s annotations in yellow.

Poker - Lobby					
Table	Stakes	Type	Players	Join	ETC ...
Table 1	\$1/\$2	PL	6/9	(Join)	
Table 2	\$5/\$10	NL	9/9		
ETC ...					

The ’205 Patent, Figure 3 (Excerpt, Annotated at PO Resp. 8).

Figure 3 illustrates a user interface screen for a player to select a poker game with designated “stakes” “within a specific betting range.” Ex. 1001, 3:9–10, 8:26–34. Patent Owner has accordingly annotated in yellow the “Stakes” column in Figure 3, identifying an option to select “\$1/\$2” stakes in a “PL” type poker game, or “\$5/\$10” stakes in a “NL” type poker game. *See id.* at Fig. 3. According to Patent Owner, Figure 3 “demonstrates two ranges, \$1/\$2 PL and \$5/\$10 NL Poker.” PO Resp. 8, 52; Ex. 2005 ¶ 35.

Petitioner disagrees with Patent Owner's claim construction. *See* Pet. Reply 19–20. Petitioner contends the “Stakes” column in Figure 3 of the '205 patent “is showing the ‘small’ and ‘big’ blinds for each” poker game, “while the ‘Type’ column describes the corresponding betting limits as ‘PL’ for ‘Pot-Limit’ and ‘NL’ for ‘No-Limit,’ respectively.” Pet. Reply 20.⁹ Petitioner asserts that in pot-limit games “the maximum bet fluctuates based on the size of the pot,” and in no-limit games there is “no maximum bet,” so Patent Owner's claim construction “is inapposite with” Figure 3. *Id.*

Patent Owner' Sur-reply does not return to the construction of “betting range” in claim 1. *See* PO Sur-reply 16–17 (arguments concerning Ground Four and claim 1).

Turning to the claim language, we find claim 1 does not require the “betting range” to have both a minimum and maximum. Ex. 1001, 16:4–5. Further, although the '205 patent teaches an embodiment that has lower and higher betting ranges (Ex. 1001, 11:10–21), the '205 patent specification disclosures cited by Patent Owner and Dr. Lane do not limit the plain and ordinary meaning of the term “range” to require both a minimum bet and a maximum bet. *See* Ex. 1001, Fig. 3, 8:30–33, 10:27–33, 11:10–21. We must be careful not to read a particular embodiment appearing in the specification into the claim if the claim language is broader than the embodiment. *See Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1117 (Fed. Cir. 2004) (“particular embodiments

⁹ Petitioner cites “*Contra* EX[1003] Page 47” here, without explanation. We believe Petitioner refers to Mr. Nicely's “Glossary” of “Poker Terms” (Ex. 1003 pgs. 41, 45), including a “Fixed Limit” betting restriction wherein “a ‘\$2/\$4’ game means that the minimum in-game bet is \$2, and the maximum in-game bet is \$4” (*id.* at pg. 47).

appearing in the written description will not be used to limit claim language that has broader effect”); *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (“[L]imitations are not to be read into the claims from the specification.”). Indeed, the ’205 patent specification contradicts Patent Owner’s claim construction, in stating that “*a betting range could be single value* rather than a range of values (e.g., players willing to bet \$10 . . .).” Ex. 1001, 11:17–21.

We find the intrinsic evidence is unambiguous that “betting range” does not require a minimum bet and a maximum bet as Patent Owner proposes. We decline to adopt Patent Owner’s construction. Based on the complete record, we further find that no other express construction of “betting range” is necessary.

(ii) *Obviousness of Claim 1 over Bryson and Amaitis*

In asserting the obviousness of claim 1 over Bryson and Amaitis, Petitioner relies on Bryson as disclosing the subject matter recited in claim 1, except for limitations 1[g] and 1[h], in substantially similar fashion as discussed above in Ground One in relation to other claims. *See* Pet. 68–73. Patent Owner’s sole opposition in this regard is whether Bryson discloses the betting range limitation 1[j]. *See* PO Resp. 49–53 (Patent Owner’s opposition to Ground Four as to claim 1). We conclude a preponderance of the evidence establishes Bryson supports Petitioner’s unopposed contentions in this regard, for the reasons set forth in the Petition which we adopt as our own in this Decision. We accordingly find Bryson discloses the preamble 1[pre] and limitations 1[a]–1[f], 1[i], and 1[k]–1[m].

As to the player matching limitations 1[g] and 1[h], Petitioner relies on the combination of Bryson and Amaitis (*see* Pet. 69–71), which is opposed by Patent Owner as we discuss below. As to the betting range limitation 1[j], Petitioner relies on Bryson and alternatively on Amaitis (*see id.* at 71–72), which is opposed by Patent Owner as we discuss below. We ultimately conclude a preponderance of the evidence supports Petitioner’s contentions as to limitations 1[g], 1[h], and 1[j], despite Patent Owner’s opposition.

Player Matching Limitations 1[g] and 1[h]

Concerning the player matching limitations 1[g] and 1[h], Petitioner relies on Amaitis as disclosing matching a player with a competitor by an administration server, and contends it would have been obvious to implement this player matching in Bryson. *See* Pet. 69–71. In support of this combination, Petitioner contends Bryson and Amaitis both “teach systems for remote and mobile gaming” including “multiplayer games” such as poker, blackjack, and sports wagering. Pet. 66–67, 68 (citing Ex. 1004, 8:18–23, 13:51–56; Ex. 1005 ¶¶ 22, 24, 27, 33); Ex. 1003 ¶¶ 257–258, 261. However, according to Petitioner, “Bryson does not expressly disclose details of *matching players* for multi-player gaming.” Pet. 67 (emphasis added); Ex. 1003 ¶ 258.

Petitioner then contends Amaitis “expressly teaches those [player matching] details and provides an express motivation to combine them with Bryson,” by “enabling multi-player or ‘peer-to-peer’ gaming where ‘multiple players [] participate in the same gaming activity,’” “***particularly***” poker, blackjack, and horse racing. Pet. 67 (citing Ex. 1005 ¶ 24); Ex. 1003

¶ 259. Petitioner asserts a person of ordinary skill in the art would have been motivated “to improve Bryson’s system by including [Amaitis’s] competitor matching and ‘buddy lists’ of competitors,” thereby making it easier and more enjoyable for players to participate in multi-player games, and thereby increase player patronage and profits for the game provider.

Pet. 67–68 (citing Ex. 1004, code (57), 1:11–36, 5:32–36); Ex. 1003

¶¶ 259–260). Petitioner further argues Bryson and Amaitis have a “similar architecture” including servers to run the games on remote client devices.

See Pet. 68 (citing Ex. 1004, 13:51–56, 8:18–23; Ex. 1005 ¶¶ 22, 27);

Ex. 1003 ¶¶ 261–262.

Patent Owner responds that Petitioner’s argument “is unclear . . . what the combination would be,” so Petitioner has failed to establish a reasonable expectation of success in the combination. PO Resp. 49–50 (citing Pet. 68; Ex. 1003 ¶ 262); Ex. 2005 ¶¶ 112–116. Patent Owner asserts Petitioner does not identify the features of Amaitis’s gaming server that would be employed in Bryson’s gaming system, or how such features would be integrated into Bryson’s gaming system. PO Resp. 50–51 (citing Pet. 67–70; Ex. 1003 ¶¶ 259–260, 271–274). Patent Owner further asserts Petitioner wrongly suggests “Bryson’s ‘server-based gaming server’ has ‘similar architecture’ as Amaitis’ peer-to-peer system.” *Id.* at 51 (citing Ex. 1004, Fig. 6, 14:44–15:20); Ex. 2005 ¶¶ 112–115.

Petitioner maintains in reply that “Bryson and Amaitis are similar systems in terms of games offered, geolocation features, and server-based architecture,” making the proposed combination predictably successful and “merely entail[ing] routine software implementation” in Bryson’s server.

Pet. Reply 18–19 (citing Pet. 43, 66–68; Ex. 1003 ¶¶ 179–180, 257–261; Ex. 1004, 8:18–23, 13:51–56; Ex. 1005 ¶ 24).

Patent Owner responds that the additional argument in the Petitioner Reply still does not explain “*how* Amaitis’ ‘features’ would be included in Bryson’s server-based gaming system” with a reasonable expectation of success, in the face of “the disharmony between Amaitis’ decentralized peer-to-peer system and Bryson’s centralized architecture.” PO Sur-reply 16–17.

We conclude Petitioner has established a reasonable expectation of success in the proposed combination of Bryson and Amaitis. The “amount of explanation needed [to support motivation and reasonable expectation of success for obviousness] will vary from case to case, depending on the complexity of the matter and the issues raised in the record.” *Personal Web*, 848 F.3d at 991–92 & 993–94. Here, we are persuaded by Mr. Nicely’s testimony that the similar server-based environments of Bryson’s and Amaitis’s respective gaming systems would have enabled their predictable combination by implementing Amaitis’s player matching in Bryson’s gaming system, beneficially allowing Bryson’s remotely distributed players to find like-minded playing competitors. *See, e.g.*, Ex. 1003 ¶¶ 257–262, 271–274.

Dr. Lane’s opposing testimony misses the mark set by Petitioner’s reliance on Amaitis as disclosing a beneficial *player matching* technique for use in Bryson’s distributed system, by focusing on how Bryson and Amaitis differ in their technical implementations of providing gaming services to remote players. *See* Ex. 2005 ¶¶ 112–117. Even if Bryson’s system architecture is “centralized” and Amaitis’s system is “decentralized” as

Dr. Lane testifies, this difference does not explain why Bryson’s remotely distributed players would not benefit from the same player matching process that Amaitis provides to its remotely distributed players. Further, the test for obviousness is not whether the features of one reference (such as Amaitis’s alleged decentralized architecture) may be bodily incorporated into the structure of the other reference (such as Bryson’s alleged centralized architecture), but rather is “what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *Keller*, 642 F.2d at 425.

Thus, we conclude Petitioner has shown by a preponderance of the evidence that a person of ordinary skill in the art would have had a reasonable expectation of success in modifying Bryson’s system to incorporate the player matching process of Amaitis, per limitations 1[g] and 1[h].

Betting Range Limitation 1[j]

Petitioner asserts Bryson discloses collecting a bet “within *a betting range* identified in the selection of player gaming options,” per limitation 1[j] (emphasis added). *See* Pet. 71–72. In support, Petitioner contends Bryson applies “‘wagering limits’ to the gaming options presented to a player.” *Id.* at 71 (citing Ex. 1004, 8:24–29, 23:4–8); Ex. 1003 ¶ 279. Petitioner also asserts that Bryson, like the ’205 patent, explains betting ranges may be determined by local laws. Pet. 71 n.6 (citing Ex. 1004, 8:24–29; Ex. 1001, 10:32–33).

Petitioner further contends Amaitis similarly discloses user selection of gaming characteristic parameters, including “*betting minimums or*

limits,’ or a *betting range*” that the user would like to play. *Id.* at 72 (citing Ex. 1005 ¶¶ 47, 50); Ex. 1003 ¶ 280. Petitioner concludes a person of ordinary skill in the art would have been motivated to incorporate Amaitis’s user-selected minimum and maximum betting ranges into Bryson’s list of selectable gaming options, to facilitate legal compliance. *See* Pet. 72; Ex. 1003 ¶ 281.

Patent Owner responds that Petitioner’s reliance on Bryson as disclosing player selection of a “betting range” is misplaced, “because legal betting ranges do not *necessarily* require a minimum bet value for instances where a maximum bet value is required.” PO Resp. 52–53 (citing Pet. 71). Patent Owner asserts Petitioner’s reliance on Amaitis also is misplaced, because “Amaitis is directed to setting particular limits for a player” including “either a minimum *or* a maximum that a player would like to play—but not both.” PO Resp. 53 (citing Ex. 1005 ¶ 47). Patent Owner argues Petitioner takes Amaitis’s “alternative articulation using *or*, and modifies it to teach *and*.” *Id.* (citing Pet. 72).

Petitioner in reply maintains that Bryson discloses player selection of a betting range, because “Bryson teaches presenting wagering limits—*i.e.*, the ‘maximum’ allowable bet of a range starting at \$0—as game attributes based on jurisdictional requirements and receiving a selection of those attributes.” Pet. Reply 19–20 (citing Pet. 71). Petitioner also maintains that a person of ordinary skill in the art “would have been motivated to include Amaitis’s user-parameters including specific numerical minimum and maximum values as required” by Patent Owner’s claim construction of the term “betting range.” Pet. Reply 21 (citing Pet. 72); Ex. 1003 ¶¶ 280–281. Petitioner contends Patent Owner’s emphasis on “Amaitis’s use of ‘or’ in

disclosing ‘minimums *or* limits’ . . . ignores the combination proposed, which relies on incorporating *both* the ‘minimum’ and ‘maximum’ betting limits from Amaitis into Bryson’s game options.” Pet. Reply 21 (citing PO Resp. 53; Pet. 72).

Patent Owner’s Sur-reply does not return to whether the combination of Bryson and Amaitis discloses the “betting range” of claim 1. *See* PO Sur-reply 16–17 (arguments concerning Ground Four and claim 1).

We find a preponderance of the evidence indicates Bryson discloses collecting a bet that is within a betting range identified in a selection of player gaming options, per limitation 1[j]. In particular, Bryson indicates that game content presentation “may depend on device location,” for example “[w]agering limits . . . may be imposed according to jurisdictional requirements.” Ex. 1004, 8:18–29 (emphasis added); *see also id.* at 23:4–8 (“To play a wager-based game on a client, jurisdictional rules, such as age limits, locations where games can be played, types of games that can be played and *wagering rules* that are established by a gaming jurisdiction may need to be enforced.” (emphasis added)).

Patent Owner’s opposition that Bryson falls short because it does not disclose setting a minimum bet and a maximum bet rests upon an unclaimed limitation, as discussed above in Section III.G.3(b)(i). Moreover, even applying Patent Owner’s claim construction, there is no dispute that Amaitis discloses user-parameters with betting minimums or limits. *See* Pet. 72; PO Resp. 53 (“Amaitis teaches either a minimum *or* a maximum that a player would like to play.”). Indeed, Amaitis expressly teaches that “[u]ser parameters may also specify particular betting minimums or limits that the user 912 would like to play.” Ex. 1005 ¶ 47. We agree with Petitioner’s and

Mr. Nicely's reading of this disclosure, as contemplating using *both* a minimum bet ("betting minimum[]") *and* a maximum bet ("limit[]") at the same time in one game. *See* Pet. Reply 21; Ex. 1003 ¶ 280. Moreover, based on the record presented, we are persuaded by Mr. Nicely's testimony that a person of ordinary skill in the art would have included Amaitis's minimum and maximum bets in Bryson's list of gaming options to communicate the potential range of bets allowed in each game and to facilitate legal compliance in the combined system as taught by both references. *See* Ex. 1003 ¶281.

In sum, Petitioner has shown by a preponderance of the evidence that Bryson discloses the betting range limitation 1[j] per our claim construction. Petitioner also has shown alternatively that it would have been obvious to implement a betting range within Bryson's gaming system, based on Amaitis's disclosure, per Patent Owner's narrower claim construction.

Conclusion Regarding Claim 1

Based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claim 1 of the '205 patent is unpatentable as having been obvious over Bryson and Amaitis.

c) Dependent Claims 4–11 and 14

Petitioner provides argument and evidence in support of contending dependent claims 4–11 and 14 are each unpatentable as having been obvious over Bryson and Amaitis. *See* Pet. 73–82; Ex. 1003 ¶¶ 287–315. Patent Owner does not oppose Petitioner's contentions as to these claims, apart from arguments we have already considered above in relation to their

respective parent independent claims. *See* PO Resp. 49–53 (opposition to Ground Four as to these claims).

We conclude a preponderance of the evidence establishes claims 4–11 and 14 of the '205 patent are unpatentable as having been obvious over Bryson and Amaitis, for the reasons set forth above in Sections III.E.2 and III.G.3(b) in relation to the parent independent claims 1 and 12, and based further on Petitioner's unopposed contentions concerning the subject matter added by these dependent claims which we adopt as our own in this Decision. *See* Pet. 73–82.

d) Dependent Claims 23 and 29

Claim 23 depends from independent claim 19, to add that the administration server comprises a gaming option collection module, a matching engine module, a game administration module, and a results collection module, each of which is configured to perform specified functions. *See* Ex. 1001, 18:14–28. Claim 29 depends from independent claim 28, to add the same four modules as in claim 23 except that some of the claimed functions are somewhat different than in claim 23. *See id.* at 19:5–15. As construed above in Section III.G.1, these Module Terms are means-plus-function limitations.

Petitioner relies on Bryson as anticipating the parent independent claims 19 and 28 per Ground One, as discussed above in Sections III.E.4 and III.E.5. For the reasons provided above, we conclude Petitioner's contentions in this regard are supported by a preponderance of the evidence.

Petitioner then applies a means-plus-function analysis for the Module Terms of claims 23 and 29. Petitioner asserts Bryson's administration server

(i.e., player management server 603) both: (1) performs the claimed functions of the gaming option collection module, the game administration module, and the results calculation module; and (2) provides the corresponding structure of the '205 patent specification for these three Module Terms, because it is a server programmed to perform the corresponding algorithms of the '205 patent specification. *See* Pet. 83–86; Ex. 1003 ¶¶ 316, 319–325. Petitioner asserts Amaitis's gaming module 920 both: (1) performs the claimed functions of the matching engine module; and (2) provides the corresponding structure of the '205 patent specification for the matching engine module, because it is a server programmed to perform the corresponding algorithm of the '205 patent specification. *See* Pet. 83 (citing Ex. 1005 ¶¶ 34, 52); Ex. 1003 ¶¶ 317–318. Petitioner contends a person of ordinary skill in the art would have been motivated to employ a matching engine module within Bryson's administration server, for the reasons discussed above in Section III.G.3(b)(i) in relation to claim 1. *See* Pet. 66–68; Ex. 1003 ¶¶ 257–262.

Petitioner alternatively asserts that, if § 112 ¶ 6 does not apply to the Module Terms of claims 23 and 29, then “the claims are still rendered [unpatentable] by the functionality disclosed in” Bryson and Amaitis. Pet. 32 n.3.

Patent Owner firstly responds that Petitioner's argument for combining Bryson and Amaitis is unclear, so Petitioner has not established a reasonable expectation of success in that regard. *See* PO Resp. 49–51. We disagree, for the same reasons provided above in Section III.G.3(b) in relation to the combination of Bryson and Amaitis against claim 1.

Patent Owner secondly contends Petitioner fails to show how the combination of Bryson and Amaitis “discloses the same or equivalent structure to the algorithmic structure” of the ’205 patent specification for the Module Terms. PO Resp. 60–61, 63–64. Patent Owner asserts “the Petition does not *meaningfully* address corresponding structure at all.” *Id.* at 61 (citing Pet. 83–85). We disagree, for basically the same reasons provided above in Section III.G.2(b) in relation to the combination of Bryson and Schlottmann against claims 15–17. That is, Petitioner provides a meaningful analysis of the Module Terms in claims 23 and 29 that addresses both the claimed functions, and the corresponding structure, of the recited modules, which is supported by Mr. Nicely’s testimony. *See* Pet. 83–86 (separately addressing the “Function” and the “Structure” aspects of each Module Term); Ex. 1003 ¶¶ 149, 316–325. Particularly concerning structure, we are persuaded by Petitioner’s contention and Mr. Nicely’s testimony that Bryson and Amaitis both disclose a server programmed to perform the corresponding algorithms of the ’205 patent specification. *See* Pet. 83–86; Ex. 1003 ¶¶ 149, 316–325.

Patent Owner thirdly relies specifically on the “results calculation module” of claims 23 and 29, as being missing from Petitioner’s combination of Bryson and Amaitis. *See* PO Resp. 61–63. Patent Owner asserts “the Petition provides only [a] short excerpt . . . to address the structure of” this module limitation, which “merely points to the ‘player management server [603]’ without supporting evidence.” *Id.* at 61–62 (citing Pet. 84–85; Ex. 1003 ¶¶ 319–321). As to the function of this module limitation, Patent Owner asserts the Petition’s reliance on Bryson “does not accurately describe Petitioner’s proposed function (‘calculating results of a

game on a player's account balance') for Bryson's player management servers 602 and 603." *Id.* at 62 (citing Ex. 1004, 13:45–50).

Petitioner maintains in reply that Bryson's player management server 603 provides "the same, or equivalent, corresponding structure" as the '205 patent specification for the results calculation module, because it maintains and updates a player's account balance as a result of gaming activities. Pet. Reply 22 (citing Pet. 84; Ex. 1004, 13:43–50). Petitioner also asserts "the combination of Bryson and Amaitis teaches the same or equivalent structure under [Patent Owner's] construction because the combination teaches algorithmic structure at the same level of detail as the '205 Patent," with respect to "calculating results of a multi-player game" and "providing compensation based on the results." *Id.* at 24 (citing Pet. 66–67; Ex. 1005 ¶ 104; Pet. Reply 22).

Patent Owner responds that the Petitioner Reply belatedly "argues for the first time that 'Bryson teaches the same, or equivalent, corresponding structure for [the results calculation] module,'" which exceeds the proper scope of reply as bounded by the Petition. PO Sur-reply 20–21 (citing Pet. Reply 22). Patent Owner adds, on the merits, that "Petitioner's structural equivalence argument [based on Bryson] is completely superficial and conclusory." *Id.* at 21. Patent Owner similarly asserts that Petitioner's combination of Bryson and Amaitis as teaching the same or equivalent corresponding algorithmic structure for the Module Terms "is based on cobbled-together statements cherry-picked from disparate portions of the Petition and does not withstand scrutiny." *Id.* at 23 (citing Pet. 66–67; Pet. Reply 24).

We conclude Petitioner’s reliance on Bryson’s player management server 603 as incorporating a results calculation module per claim 23 is supported by a preponderance of the evidence. In particular, we find Bryson discloses the claimed function, because server 603 calculates results of the game based on data about the game received from Bryson’s gaming server through the game administration module of Bryson’s server 603. *See supra* Section III.G.1(b) (claim construction, including the claimed function of claim 23). Specifically, Bryson’s player management server 603 “host[s] a web-site that provides a portal that allows the player . . . to access their account and to play games” and also “maintain[s] and update[s] a player’s balance in their account as a result of their gaming activities.” Ex. 1004, 13:43–48, 13:66–14:10; *see* Pet. 84; Ex. 1003 ¶¶ 319–320. Moreover, Bryson’s game play may be provided by game outcome server 601 and sent to player management server 603, or alternatively provided by player management server 603 directly.¹⁰ *See* Ex. 1004, Fig. 6, 14:65–15:33, 16:60–17:13; Ex. 1003 ¶¶ 319–320.

We further find Bryson’s server 603 provides the corresponding structure of the ’205 patent specification for the results calculation module, because it is a server programmed to perform the corresponding algorithm of the ’205 patent specification. As discussed above in Section III.G.1(b), that algorithm is: (1) calculating results of the game, including objectives achieved by a player and the player’s competitors (performed either by

¹⁰ Thus, Bryson’s server 603 performs the claimed function regardless of whether the claimed gaming server is taken as Bryson’s game outcome server 301 per Petitioner’s first mapping, or Bryson’s player management server 603 per Petitioner’s second mapping. *See supra* Section III.E.4 (b) (discussing claim 23’s parent claim 19 as part of Ground One).

receiving the results, or by calculating the results based on received game information); and (2) calculating how to distribute winnings. This is clear from the Bryson disclosures cited in the previous paragraph, except for calculating results of objectives achieved by the player's competitors. As to that algorithmic step, Bryson creates player communities defined by the games to be played, and the games may be multiple-player games such as poker or bingo. *See* Ex. 1004, Fig. 6, 2:44–53, 6:52–61, 13:43–56; *see* Pet. 66–67; Ex. 1003 ¶¶ 258. In that context, Bryson's server 603 will calculate results of objectives achieved by the player's competitors, in addition to the player himself or herself.

We further conclude Petitioner's reliance on Bryson's player management server 603 as incorporating a results calculation module per claim 29 is supported by a preponderance of the evidence, for the same reasons as claim 23. The only difference here is that the function of claim 29 is more simply "to calculate results of the game" (*see supra* Section III.G.1(b)), which is disclosed by Bryson as discussed above.

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claims 23 and 29 of the '205 patent are unpatentable as having been obvious over Bryson and Amaitis.

4. *Ground Five — Obviousness over Bryson, Amaitis, and Frenkel*

In Ground Five, Petitioner argues claims 2 and 3 of the '205 patent are unpatentable as having been obvious over Bryson, Amaitis, and Frenkel. *See* Pet. 27, 35–39, 86–91. Patent Owner opposes. *See* PO Resp. 36–46.

We conclude a preponderance of the evidence supports Petitioner’s assertions as to both challenged claims. We begin our analysis with a brief summary of Frenkel, then we address the parties’ contentions as to obviousness.

a) Frenkel

Frenkel discloses a system for interactive gaming among several players, implemented with a host computer system and a plurality of remote player terminals. *See* Ex. 1007, code (57), ¶ 6. Frenkel’s system can “monitor[] actions taken by one or more of the plurality of players to thereby detect collusion among the players,” and also inhibit such collusion by employing countermeasures. *Id.* ¶¶ 10, 35, 44.

b) Claim 2

Claim 2 recites: “The method of claim 1, further comprising: performing risk management based on player information, wherein risk management is performed by the administration server.” Ex. 1001, 16:14–17.

Petitioner argues the parent independent claim 1 is obvious over the combination of Bryson and Amaitis, as discussed above in Section III.G.3(b). For the reasons provided above, we conclude Petitioner’s contentions in this regard are supported by a preponderance of the evidence.

Petitioner then argues a person of ordinary skill in the art “would have been intimately familiar with the concept of and need for risk management in casino environments,” “by analyzing customer behavior to reduce legal liability and manage cheating, player collusion, card counting, tampering, and other prohibited or illegal gaming behavior.” Pet. 86; Ex. 1003 ¶¶ 326–

327. Petitioner adds that in the specific “context of online gambling” such as implemented by Bryson and Amaitis, a person of ordinary skill in the art “would have understood that ‘cheating by other players’ was one of the ‘biggest concerns that players had’ and that ‘[t]he response of the operator to these issues played a major role in whether or not they were trusted in the long term.’” Pet. 86–87 (quoting Ex. 1056, 11); Ex. 1003 ¶ 328.

Petitioner then turns to Frenkel, which Petitioner contends implements “the well-known concept of risk management for a gaming operator in the context of networked gaming systems for peer-to-peer gaming.”¹¹ Pet. 87 (citing Ex. 1007 ¶ 35); Ex. 1003 ¶ 329. Petitioner asserts a person of ordinary skill in the art would have been motivated “to combine Frenkel’s teaching that a gaming network operator may employ collusion detection software that monitors player actions for the multi-player games specifically disclosed by Bryson, such as poker, and blackjack.” Pet. 87; Ex. 1003 ¶ 330. Petitioner contends this would have been done to “increas[e] player-trust and overall usage of the combined system” and to “prevent cheating and satisfy regulatory requirements.” Pet. 87 (citing Ex. 1056, 6, 11; Ex. 1004, 25:55–60); Ex. 1003 ¶ 330. Frenkel’s risk management method, according to Petitioner, would have been implemented in Bryson’s administration servers (i.e., player management servers 602 and 603) based on player information, per claim 2, “by detecting collusion among players.”

¹¹ Petitioner also relies on Bryson as disclosing one type of risk management, that is, preventing a player from gambling in excess of jurisdictional regulations. *See* Pet. 88 (lines 5–14). In the present Decision, we do not rely on this disclosure in Bryson as corresponding to the risk management recited in claim 2.

Pet. 88–90 (citing Ex. 1007, Fig. 3, ¶¶ 43–44; Ex. 1001, 7:47–49); Ex. 1003 ¶¶ 332–334, 336.

Patent Owner argues Petitioner fails to establish a motivation to combine the Bryson-Amaitis gaming system with Frenkel, to perform the risk management method of claim 2, with a reasonable expectation of success. *See* PO Resp. 2, 36–40. In particular, according to Patent Owner, there is no motivation to combine Frenkel’s collusion detection with Bryson’s administration server. *See id.* at 2. Patent Owner asserts Petitioner’s motivation arguments are insufficiently conclusory as to why performing risk management would have been performed in Bryson-Amaitis “based solely on the ideas—not the technology—taught by Frenkel.” *Id.* at 38–40 (citing Pet. 86–89; Ex. 1003 ¶¶ 326–342). Further according to Patent Owner, Petitioner “never explained *how* Bryson’s system would be modified . . . to incorporate Frenkel’s teaching.”¹² *Id.* at 38.

Patent Owner argues Mr. Nicely’s testimony in support of Petitioner’s contentions is unclear as to whether Frenkel’s collusion detection processor 318 would be incorporated in Bryson’s game outcome server 601, or in Bryson’s player management servers 602 and 603. *See* PO Resp. 44 (citing Ex. 1003 ¶ 336). To the extent it is the former, Patent Owner asserts Mr. Nicely’s testimony contradicts the Petition, which relies on Bryson’s

¹² Patent Owner further attempts to take advantage of clear typographical errors in Mr. Nicely’s Declaration where he mistakenly refers to Schlottmann in connection with Ground Five. *See* PO Resp. 39–40 (citing Ex. 1003 ¶ 330); Pet. Reply 15–16. The overall context of Mr. Nicely’s testimony for Ground Five is based clearly on Bryson, Amaitis, and Frenkel, not Schlottmann. *See* Ex. 1003 ¶¶ 326–330.

player management servers 602 and 603 as the “administration server” of claim 2. *See id.*

Patent Owner further argues that incorporating Frenkel’s collusion detection processor 318 in Bryson’s player management servers 602 and 603 would be inoperable to perform risk management based on player information. *See id.* at 38–39, 40–43 (citing Ex. 1007 ¶¶ 43–44, claim 7); Ex. 2005 ¶¶ 106–111. Specifically, according to Patent Owner and referring to Bryson’s Figure 6:

Bryson’s modified gaming system would not be able to prevent collusion between a player on Client 610 and a player on Client 616 since the multiple collusion detection processors 318 on player management server 602 and player management server 603, respectively, would not access or process data for the implementation of the multi-player game, which is the role of Bryson’s game outcome server 601.

PO Resp. 41–43 (annotating Ex. 1004, Fig. 6 for illustration) (citing Ex. 1004, 14:35–40, 14:65–15:4); Ex. 2005 ¶¶ 108–111.

Petitioner replies that Patent Owner “misapprehends the law of obviousness because ‘[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.’” Pet. Reply 14 (citing *Keller*, 642 F.2d at 425).

Petitioner asserts a person of ordinary skill in the art “would have had significant motivation to detect and prevent collusion in the combined system of Bryson and Amaitis by monitoring player gaming behavior and would have had a reasonable expectation of success in doing so in any of Bryson’s disclosed servers,” including Bryson’s player management servers 602 and 603. *Id.* at 14–15 (citing Pet. 89–90), 17; Ex. 1003 ¶ 336. Petitioner further argues Patent Owner’s contentions of inoperability in the

combination “fails [to] explain why the combination would fail to detect collusion between clients 616–628 of player management server 603.” Pet. Reply 16 (citing PO Resp. 42).

Patent Owner replies by reiterating arguments from the Patent Owner Response. *See* PO Sur-reply 13–15. As to alleged inoperability in the combination, Patent Owner asserts Petitioner ignores “Frenkel’s collusion detection means which is a hardware-based solution that requires a collusion detection processor.” *Id.* at 14 (citing PO Resp. 38–39). Patent Owner further argues that Petitioner’s focus in the Reply on Bryson’s clients 616–628 and player management server 603 “was neither presented in the Petition (or Nicely Declaration) nor supported in Petitioner’s Reply, whether by the prior art disclosures or corroboration by” Mr. Nicely. *Id.* at 15 (citing Pet. Reply 16).

Based on the record presented, we find Petitioner provides sufficient reasoning as to why and how a person of ordinary skill in the art would have combined the teachings of Bryson and Frenkel so as to arrive at the method of claim 2. *See* Pet. 86–90. In particular, Petitioner proposes that “Frenkel expressly discloses implementing the well-known concept of risk management for a gaming operator in the context of networked gaming systems for peer-to-peer gaming.” *Id.* at 87 (citing Ex. 1007 ¶ 35); Ex. 1003 ¶ 329. Petitioner also reasons:

It would have been obvious to a [person of ordinary skill in the art] to combine Frenkel’s teaching that a gaming network operator may employ collusion detection software that monitors player actions for the multi-player games specifically disclosed by Bryson, such as poker, and blackjack. EX[1003] ¶ 330. This would have yielded the predictable result of enabling Bryson’s system to perform risk management of the players and

their client devices in the gaming network, thereby increasing player-trust and overall usage of the combined system. *Id.* (citing EX[1056] 6, 11). Moreover, Frenkel’s collusion monitoring teachings would further one of Bryson’s stated goals to “prevent cheating and satisfy regulatory requirements.” *Id.* (citing EX[1004] 25:55–60).

Id. at 87.

Patent Owner’s opposing arguments are unpersuasive. Petitioner relies on components or aspects of Frenkel’s gaming system to simply operate as they are intended, in conjunction with Bryson’s gaming system. Although during oral argument Patent Owner expressed that it was not making a “bodily incorporation argument” (*see, e.g.*, Tr. 93:4–6), that is seemingly the thrust of Patent Owner’s position in condemning the Petition for not specifically identifying where particular components would be situated in a system based on the combined teachings of the prior art. There is no requirement, however, in an obviousness inquiry of a showing of how any particular feature may be directly or bodily incorporated into any particular system or device. *See Allied Erecting & Dismantling Co. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) (quoting *Keller*, 642 F.2d at 425).

Claim 2 does specify that the risk management “is performed by the administration server” of parent claim 1, which Petitioner maps to either of Bryson’s player management servers 602 and 603. Ex. 1001, 16:14–17; *see* Pet. 72–73 (discussing the administration server of claim 1, in Ground Four). However, Petitioner addresses this claim requirement, in stating: “A POSITA would have been motivated to modify *the player management server of Bryson* to include the ‘collusion detection processor’ of Frenkel.” Pet. 89 (emphasis added). We therefore focus on that contention, and find it

would lead to an operable system. In particular, implementing Frenkel's collusion detection at server 603 would enable collusion to be detected at least among Bryson's client devices 616–628, which are directly connected to server 603 and are controlled through server 603. *See* Ex. 1004, Fig. 6. Even if this specific focus on server 603 was not specifically argued until the Reply, we conclude this was a permissible reply to arguments raised in the Patent Owner Response.

More generally, even outside the specific context of the interaction between Bryson's server 603 and client devices 616–628, we reject Patent Owner's argument that a skilled artisan would not have reasonably expected success in implementing components or aspects of Frenkel into Bryson's system so as to function for their intended purpose. Patent Owner does not explain credibly why a person of ordinary skill in the art would have been unable to address routine implementation issues or technical difficulties that may arise in combining the teachings of the pertinent prior art, all of which are directed to similar matters of network based interactive gaming. Patent Owner's arguments made in challenging the propriety of combining the teachings of Bryson and Frenkel, and the declaration testimony of Dr. Lane on which Patent Owner relies, do not adequately account for the teachings of the prior art or of the level of ordinary skill in the art. *See* PO Resp. 36–40; PO Sur-reply 13–15; Ex. 2005 ¶¶ 106–111. We find more persuasive Petitioner's contentions (*see* Pet. 86–90) and credit Mr. Nicely's supporting testimony (Ex. 1003 ¶¶ 326–336), as Petitioner and Mr. Nicely's positions are more consistent with what a person of ordinary skill in the art, who is also a person of ordinary creativity (*see KSR*, 550 U.S. at 421) would have understood from the teachings of the prior art and how to amalgamate those

teachings. Specifically, we determine Petitioner has established a skilled artisan would have had adequate reason to combine the teachings of Bryson and Frenkel, and a reasonable expectation of doing so, to arrive at the method set forth in claim 2.

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claim 2 of the '205 patent is unpatentable as having been obvious over Bryson, Amaitis, and Frenkel.

c) Claim 3

Claim 3 recites:

3. The method of claim 2, wherein performing risk management based on player information comprises:
 - collecting player information, wherein the player information comprises player gaming behavior;
 - evaluating player gaming behavior for prohibited activity;
 - and
 - eliminating the player based on the prohibited activity.

Ex. 1001, 16:18–24.

Petitioner relies on its obviousness analysis for the parent claim 2. *See* Pet. 86–90; *supra* Section III.G.4(b). Petitioner then argues Frenkel’s risk management method collects player gaming behavior, evaluates the behavior for prohibited collusion activity, and eliminates the player based on the prohibited activity, all per claim 3.¹³ *See* Pet. 90–91 (citing Ex. 1007 ¶¶ 10, 35; Ex. 1001, 7:49–52); Ex. 1003 ¶¶ 338–342.

¹³ Petitioner also contends Bryson discloses at least the collecting of player information required by claim 3, which Patent Owner opposes. *See* Pet. 90 (lines 8–13); PO Resp. 45 (lines 6–15); Pet. Reply 17; PO Sur-reply 15. In

Patent Owner responds by reiterating its opposition as to claim 2, that incorporating Frenkel's collusion detection processor 318 in Bryson's player management servers 602 and 603 would result in an inoperable system. *See* PO Resp. 45–46 (citing Pet. 90; Ex. 1007 ¶ 44).

For the reasons provided above in Section III.G.4(b) in relation to claim 2, Patent Owner's argument is not persuasive. Further, Patent Owner does not oppose Petitioner's contentions as to how Frenkel's risk management method satisfies the requirements added by claim 3 to its parent claim 2. *See* PO Resp. 44–46.

We conclude a preponderance of the evidence establishes claim 3 of the '205 patent is unpatentable as having been obvious over Bryson, Amaitis, and Frenkel, for the reasons set forth above in Section III.G.4(b) in relation to claim 2, and based further on Petitioner's unopposed contentions concerning the subject matter added by claim 3, which we adopt as our own in this Decision. *See* Pet. 90–91.

5. *Ground Six — Obviousness over Bryson, Amaitis, Frenkel and Schlottmann*

In Ground Six, Petitioner argues claims 24–26 of the '205 patent are unpatentable as having been obvious over Bryson, Amaitis, Frenkel, and Schlottmann. *See* Pet. 27, 91–94. Patent Owner opposes. *See* PO Resp. 2–3, 46 (Section VII heading), 54–64 (arguments opposing Ground Six). We conclude a preponderance of the evidence supports Petitioner's assertions as to all challenged claims, for the following reasons.

the present Decision, we do not rely on this disclosure in Bryson as corresponding to the risk management recited in claim 3.

Claim 24 depends from claim 19, to add that the administration server further comprises a gaming option creation module, a tournament administration module, a payment initiation module, and a risk management module, each of which is configured to perform specified functions. *See* Ex. 1001, 18:29–41. Claim 25 depends from independent claim 24, to add further functionality for the tournament administration module. *See id.* at 18:42–44. Claim 26 depends from independent claim 24, to add further functionality for the gaming option creation module. *See id.* at 18:45–48. As construed above in Section III.G.1, these Module Terms are means-plus-function limitations.

Petitioner relies on the combination of Bryson and Amaitis as rendering the parent claim 23 obvious per Ground Four, as discussed above in Section III.G.3(d). For the reasons provided above, we conclude Petitioner’s contentions in this regard are supported by a preponderance of the evidence.

Petitioner then relies on Frenkel for the obviousness of implementing the tournament administration module of claims 24 and 25 in the Bryson-Amaitis system (per Ground Three), and of implementing the risk management module of claim 24 in the Bryson-Amaitis system (per Ground Five). *See* Pet. 91–94. For reasons provided above in the context of those earlier Grounds, we conclude Petitioner’s contentions are supported by a preponderance of the evidence, despite Patent Owner’s opposition.

Patent Owner contends Petitioner fails to show how the combination of Bryson, Amaitis, Frenkel, and Schlottmann “discloses the same or equivalent structure to the algorithmic structure” of the ’205 patent specification for the Module Terms. PO Resp. 60–61, 63–64. Patent Owner

asserts “the Petition does not *meaningfully* address corresponding structure at all.” *Id.* at 61 (citing Pet. 83–85). We disagree, for basically the same reasons provided above in Section III.G.2(b) in relation to the combination of Bryson and Schlottmann against claims 15–17. That is, Petitioner provides a meaningful analysis of the Module Terms in claims 24–26 that addresses both the claimed functions, and the corresponding structure, of the recited modules, which is supported by Mr. Nicely’s testimony. *See* Pet. 92–94 (separately addressing the “Function” and the “Structure” aspects of each Module Term); Ex. 1003 ¶¶ 149, 345–282.

We need comment further only regarding the claimed functions of the Module Terms in claims 24–26 being disclosed in the cited prior art, regarding which we did not adopt all of Petitioner’s assertions as part of our claim construction. *See supra* Section III.G.1(a).

In claim 24, we found the claimed function of the “payment initiation module” is compensating the player based on the results of the game. *See* Ex. 1001, 18:37–38. We find a preponderance of the evidence supports Petitioner’s contention that Bryson’s player management server 603 performs this function, in stating that server 603 “allow[s] a remote client to provide game play of games where a monetary balance is adjusted based upon the outcome of the game,” and “allow[s] funds to be deposited and transferred from the [player’s] account” via “credit cards, debit cards, bank accounts, wire transfers, etc.” Ex. 1004, 13:3–15; *see* Pet. 49, 92; Ex. 1003 ¶¶ 195, 350.

In claim 25, we found the claimed function of the tournament administration module is limited to overseeing a *delayed* tournament. *See* Ex. 1001, 18:42–44. For reasons provided above in Section III.G.2(b) in the

context of a similar limitation in claim 16, we conclude Petitioner’s reliance on Schlottmann in this regard is supported by a preponderance of the evidence.

In claim 26, we found the claimed function of the gaming option creation module is “to include or exclude certain gaming options from the list of gaming options based on a licensing status of the certain gaming options.” Ex. 1001, 18:45–48. We find a preponderance of the evidence supports Petitioner’s unopposed contentions that Bryson renders obvious the performing of this function via a central server. *See* Pet. 61–62 (discussing claim 30 in Ground Two), 94 (referring back to § “IX.B.10” (i.e., Pet. 61–62) for the function of claim 26); Ex. 1003 ¶¶ 243–245, 353.

Thus, based on the record presented, we conclude Petitioner has shown by a preponderance of the evidence that claims 24–26 of the ’205 patent are unpatentable as having been obvious over Bryson, Amaitis, Frenkel, and Schlottmann.

IV. SUMMARY OF CONCLUSIONS

In summary, we determine a preponderance of the evidence establishes claims 1–17 and 19–30 of the ’205 patent are unpatentable, but does not establish claim 18 of the ’205 patent is unpatentable, as shown in the following table:¹⁴

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

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
12, 13, 18–22, 27, 28, 30	102(b)	Bryson	12, 13, 19–22, 27, 28, 30	18
12, 13, 18–22, 27, 28, 30	103(a)	Bryson, Knowledge of Person of Ordinary Skill in the Art		18
15–17	103(a)	Bryson, Schlottmann	15–17	
1, 4–11, 14, 23, 29	103(a)	Bryson, Amaitis	1, 4–11, 14, 23, 29	
2, 3	103(a)	Bryson, Amaitis, Frenkel	2, 3	
24–26	103(a)	Bryson, Amaitis, Frenkel, Schlottmann	24–26	
Overall Outcome			1–17, 19–30	18

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Motion to Exclude Evidence (Paper 31) is *denied*;

FURTHER ORDERED that claims 1–17 and 19–30 of the ’205 patent have been proven by a preponderance of the evidence to be unpatentable;

FURTHER ORDERED that claim 18 of the ’205 patent has not been proven by a preponderance of the evidence to be unpatentable;

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).

FURTHER ORDERED that, because this is a final written decision, 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.

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