

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ENTAIN CORPORATE SERVICES LTD., BETMGM, LLC,
POINTSBET USA, INC., DRAFTKINGS INC.,
HILLSIDE NEW JERSEY, LLC, BETFAIR INTERACTIVE US LLC,
TSG INTERACTIVE US SERVICES LTD. CORP., and
ODS TECHNOLOGY LP,
Petitioner,

v.

BETEIRO, LLC,
Patent Owner.

IPR2023-00092
Patent 9,965,920 B2

Before NEIL T. POWELL, JAMES A. TARTAL, and AMEE A. SHAH,
Administrative Patent Judges.

TARTAL, *Administrative Patent Judge.*

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
35 U.S.C. § 318(a)

We have jurisdiction to conduct this *inter partes* review under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) (2018) and 37 C.F.R. § 42.73 (2021). Entain Corporate Services Ltd., BetMGM, LLC, PointsBet USA, Inc., DraftKings Inc., Hillside New Jersey, LLC, Betfair Interactive US LLC, TSG Interactive Services Ltd. Corp., and ODS Technology LP (collectively, “Petitioner”) bears the burden of proving unpatentability of each claim it has challenged by a preponderance of the evidence, and the burden of persuasion never shifts to Beteiro, LLC (“Patent Owner”). *See* 35 U.S.C. § 316(e) (2018); 37 C.F.R. § 42.1(d); *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). For the reasons discussed below, we determine Petitioner has not shown by a preponderance of the evidence that any of claims 1–14 and 16–20 (“the Challenged Claims”) of U.S. Patent No. 9,965,920 B2 (Ex. 1001, “the ’920 patent”) is unpatentable.

I. INTRODUCTION

A. *Summary of Procedural History*

Petitioner filed a Petition (Paper 1, “Pet.”) pursuant to 35 U.S.C. §§ 311–319 requesting an *inter partes* review of the Challenged Claims.¹ We instituted an *inter partes* review of the Challenged Claims on all grounds

¹ Petitioner identifies Flutter Entertainment PLC, FanDuel, Inc., FanDuel SG LLC, FanDuel Group, Inc., PointsBet USA Holding, Inc., PointsBet Holding, Ltd., SBTech (Global) Limited, MGM Resorts International, and DK Crown Holdings, Inc. as additional real parties in interest. Pet. 73.

of unpatentability asserted in the Petition.² Paper 14. Patent Owner filed a Response.³ Paper 18 (“PO Resp.”). Petitioner filed a Reply to the Patent Owner Response. Paper 20 (“Pet. Reply”). Following oral argument, we entered a transcript of the hearing in the record. Paper 27 (“Tr.”).

B. Related Proceedings

Petitioner identifies three other concurrent *inter partes* reviews directed to patents related to the ’920 patent in IPR2023-00093 (US 10,043,341 B1), IPR2023-00094 (US 10,147,266 B2), and IPR2023-00095 (US 10,255,755 B2). Pet. 74.⁴ In each of these three related *inter partes* reviews, final written decisions are concurrently entered with this Decision determining no challenged claim was shown to be unpatentable.

The Parties also identify the ’920 patent as a subject of the following United States District Court cases: *Beteiro, LLC v. Betfair Interactive US LLC et al.*, No. 1:22-cv-00577 (D.N.J.); *Beteiro, LLC v. DraftKings, Inc.*, No. 1:21-cv-20148 (D.N.J.); *Beteiro, LLC v. PointsBet USA, Inc.*, No. 1:21-cv-20155 (D.N.J.); *Beteiro, LLC v. BetMGM, LLC et al.*, No. 1:21-cv-20156 (D.N.J.); *Beteiro, LLC v. Hard Rock Tristate AC, LLC et al.*, No. 1:21-cv-20157 (D.N.J.); *Beteiro, LLC v. Hillside New Jersey, LLC*, No. 1:21-cv-

² Prior to institution of *inter partes* review, Petitioner argued that we “should not exercise discretion to deny institution under 35 U.S.C. § 314 based on the District Court’s finding of invalidity under § 101.” Pet. 70. In this Decision we do not consider whether any Challenged Claim recites patentable subject matter under § 101. *See* 35 U.S.C. § 311 (b) (limiting the scope of *inter partes* review to grounds of alleged unpatentability based on anticipation or obviousness under section 102 or 103).

³ Patent Owner identifies no additional real parties in interest. Paper 12, 2.

⁴ Petitioner did not include page numbers on page of the Petition after numbered page 72. For our citations, we refer to subsequent pages of the Petition beginning with number 73 and proceed in numerical order.

20158 (D.N.J.); *Beteiro, LLC v. Kindred Group, PLC et al.*, No. 1:22-cv-01536 (D.N.J.); *Beteiro, LLC v. Elys Game Technology Corporation*, No. 6:21-cv-01147 (W.D.TX); *Beteiro, LLC v. Morris Mohawk Gaming Group*, No. 6:21-cv-01149 (W.D.TX); and *Beteiro, LLC v. PlayUp Limited*, No. 6:21-cv-01150 (W.D.TX). Pet. 73–74; Paper 12, 2.

II. BACKGROUND

A. The '920 Patent

The '920 patent, titled “Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity,” issued on May 8, 2018, from U.S. Patent Application No. 14/987,286, filed January 4, 2016. Ex. 1001, codes (21), (22), (45), (54), (63). The '920 patent refers back to Provisional Application No. 60/384,707, filed May 31, 2002. *Id.* at code (60). The '920 patent describes an apparatus as follows:

a processor, specially programmed to detect a posting of information regarding a sporting event for which a bet can be placed, which detects the posting regarding the sporting event and generates a notification message containing information regarding the sporting event. The apparatus initiates a communication link with a first user communication device and transmits the notification message to the first user communication device via the communication link; a receiver which receives a bet message, containing information regarding a bet on or regarding the sporting event, transmitted from the first user communication device or a second user communication device; and a transmitter. The apparatus or processor processes information for placing the bet and the transmitter transmits video information or audio information regarding, and obtained at, the sporting event to the first user communication device, the second user communication device, or a third user communication device.

Id. at code (57).

Figure 1 of the '920 patent is reproduced below.

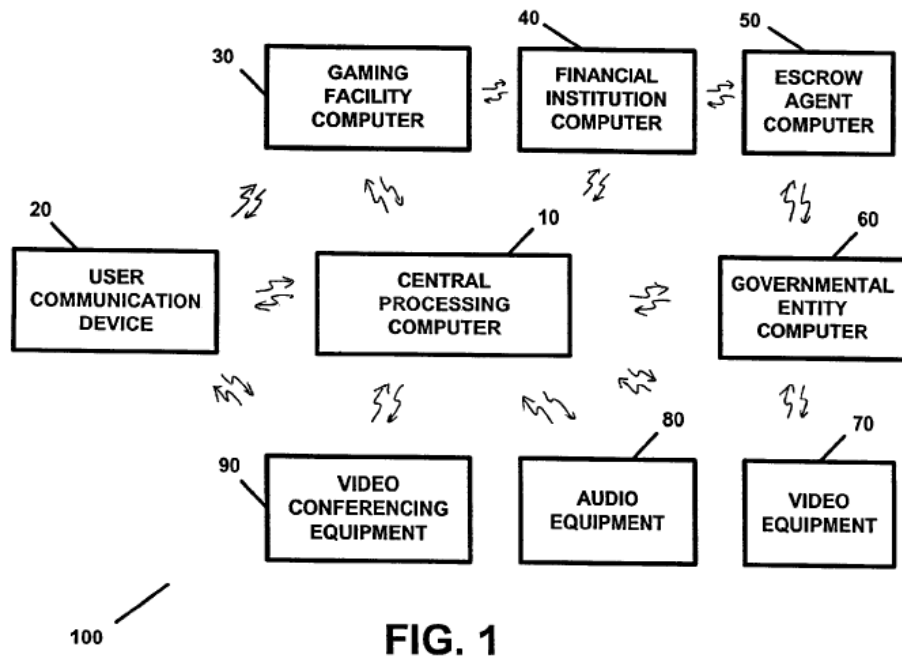


Figure 1 of the '920 patent is a block diagram depicting an apparatus according to a preferred embodiment of the '920 patent. *Id.* at 27:7–8, 35:43–45. Apparatus 100 includes user communication device 20, which interfaces with central processing computer 10. *Id.* at 35:65–67, 36:3–9. Central processing computer 10 may be one or more computer systems that performs “any of and all of the processing routines and/or functionality described herein as being performed by the apparatus 100.” *Id.* at 35:56–64. User communication device 20 may be a computer, telephone, interactive television, cellular telephone, or any other communication device. *Id.* at 36:10–19. Figure 1 also depicts gaming facility, financial institution, escrow agent, and governmental entity computers 30, 40, 50, and 60, respectively, and video, audio, and video conferencing equipment 70, 80, and 90, respectively. *Id.* at 36:43–62, 37:15–39:9. According to the '920 patent, “the respective network computer can also automatically transmit or ‘push’ an e-mail message or e-mail messages to a user communication

device 20 as soon as same are received and/or in real-time,” and “can also serve as a conventional e-mail server which can allow a user to request or ‘pull’ an e-mail message or e-mail messages to a user communication device 20 when requested by the user or other authorized individual.” *Id.* at 36:20–37.

Figures 9A and 9B of the ’920 patent are reproduced below.

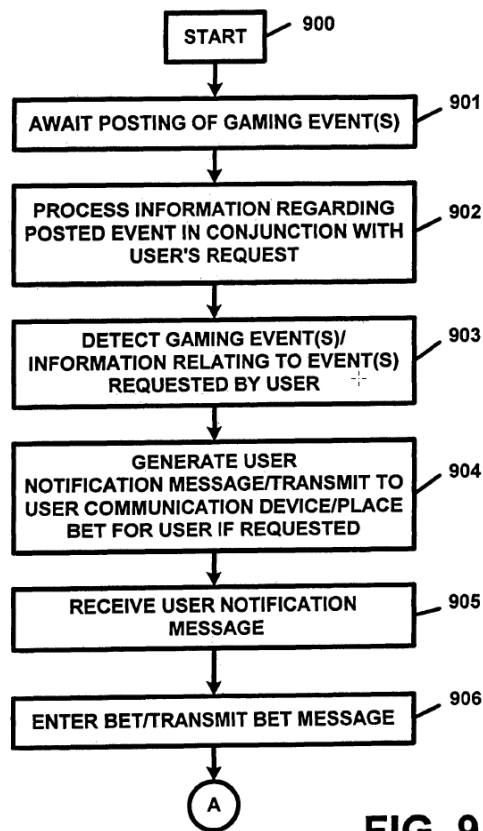


FIG. 9A

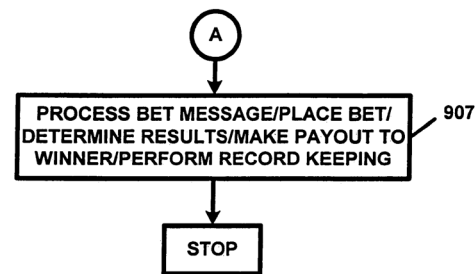
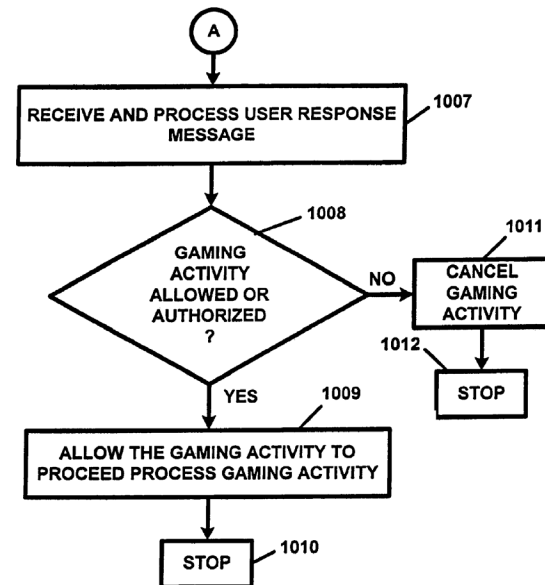
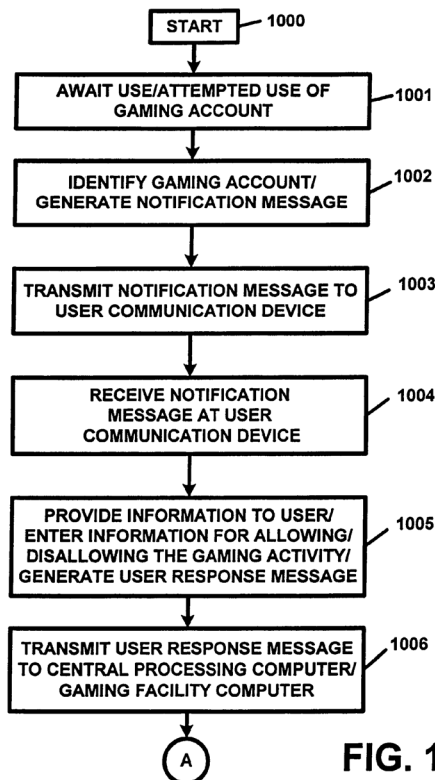


FIG. 9B

Figures 9A and 9B are flow diagrams illustrating a method for utilizing apparatus 100. *Id.* at 56:62–64. Figures 9A and 9B show steps of “await[ing] a posting regarding a gaming event or gaming events” (step 901), and “[u]pon the detection of a posting of a gaming event or gaming events, the central processing computer 10 and/or the gaming facility computer 30 will process the information regarding the posting of the gaming event or gaming events” (step 902). Ex. 1001, 56:64–57:19.

At step 903, the computer “detect[s] a gaming event or gaming events for which the user has desired to be notified” and “can also search for and detect a change of odds for a gaming event for which the user desired to be notified.” *Id.* at 57:19–25. Upon detecting at least one gaming event “for which the user desires to be notified,” at step 904, the computer “generate[s] a user notification message and transmit[s] same to the user communication device 20” and can also place a user’s bet. *Id.* at 57:26–40. At step 905, the user receives and reviews the user notification message and if the user decides to place a bet, at step 906, the entered user’s information is transmitted to the computer where it is processed and placed (step 907). *Id.* at 57:61–58:18.

Figures 10A and 10B are reproduced below.



Figures 10A and 10B are flow diagrams and provide steps of awaiting use or attempted use of the gaming account in step 1001, and, upon detection of the

use or attempted use, identifying the gaming account being utilized and generating a notification message containing information regarding the use of the gaming account, in step 1002. *Id.* at 58:44–59. The computer then, in step 1003, transmits that message to the user communication device, and in step 1004, the user receives that message. *Id.* at 58:59–59:6. After receiving a user-generated message containing information entered by the user for allowing, authorizing, or disallowing gaming activity in steps 1005 and 1006, the computer processes the information to determine if the gaming activity is allowed or authorized in steps 1007 and 1008. *Id.* at 59:6–30. If the gaming is allowed or authorized, the process continues to step 1009 where the computer will allow the gaming to proceed and will continue processing the information and cease operations at step 1010. *Id.* at 59:30–40. If the gaming is determined to be disallowed, the process proceeds from step 1008 to step 1011, such that the computer cancels the gaming activity and then ceases operation at step 1012. *Id.* at 59:41–47.

B. Illustrative Claim

Petitioner challenges claims 1–14 and 16–20 of the '920 patent. Pet. 2. Claims 1, 7, and 16 are independent. Claim 1 is illustrative of the claimed subject matter and is reproduced below.

1. An apparatus, comprising:
 - a sports betting computer, wherein the sports betting computer further comprises:
 - a first receiver for receiving a request to notify an individual regarding a sporting event for which a bet can be placed on, over, or via, the Internet or the World Wide Web or for which a bet can be placed on-line;
 - a memory for storing information regarding the request to notify the individual regarding the sporting event for which the bet can be placed on, over, or via, the Internet

- or the World Wide Web or for which the bet can be placed on-line; and
- a first processor, wherein the first processor is specially programmed to detect a posting of information regarding the sporting event and to generate a notification message regarding the sporting event, wherein the first processor detects the posting of the information regarding the sporting event and generates the notification message regarding the sporting event; and
- a user communication device, wherein the user communication device is associated with the individual, and further wherein the user communication device is specially programmed for use in an Internet or a World Wide Web sports betting activity or in an on-line sports betting activity, and further wherein the user communication device is associated with a sports betting account, and further wherein the sports betting account is associated with the individual, wherein the user communication device further comprises:
 - a second processor;
 - a global positioning device, wherein the global positioning device automatically determines a position or location of the user communication device;
 - a display, wherein the display is capable of displaying sports betting information regarding the sporting event, and further wherein the display is capable of displaying the sporting event;
 - a second receiver; and
 - a transmitter, wherein the transmitter automatically transmits the position or location information to the sports betting computer,
- wherein the sports betting computer, in response to a generating of the notification message by the first processor, initiates a communication link on, over, or via, a communication network with the user communication device, and further wherein the sports betting computer transmits the notification message to the user

communication device via the communication link, wherein the user communication device transmits a bet message to the sports betting computer, wherein the bet message contains information regarding a bet to be placed on or regarding the sporting event and information regarding the position or location of the user communication device at a time of transmission of the bet message from the user communication device, wherein the sports betting computer determines if the bet is allowed or disallowed and, if the bet is allowed, the sports betting computer processes information for placing the bet for or on behalf of the individual, or, if the bet is disallowed, the sports betting computer processes information for disallowing the bet.

Ex. 1001, 94:10–95:5. Similar to claim 1, independent claims 7 and 16 also are directed to an apparatus that includes a “receiver” that receives a “bet message” that contains “information regarding the position or location” of a user communication device. *Id.* at 95:36–96:18, 96:65–98:8.

C. References and Testimony

Below we provide an abbreviated summary of the qualifications of Mr. Garry Kitchen, who offered testimony in support of Petitioner. Patent Owner did not provide expert testimony. Additionally, in the table below we identify the primary references relied upon by Petitioner, as well as the exhibits corresponding to the declaration and deposition testimony in the record for Mr. Kitchen.⁵

Mr. Kitchen received a Bachelor of Science degree in Electrical Engineering in 1980. Ex. 1003 ¶ 2. Mr. Kitchen has over 35 years of

⁵ The table identifies only a select number of documents particularly pertinent to this Decision. A complete identification of the papers and exhibits that form the record of this case is available in the docket of this proceeding. *See also, e.g.*, PO Resp., vii (Patent Owner’s List of Exhibits); Paper 26 (Petitioner’s Updated Exhibit List).

experience in the “electronic entertainment/video game” industry. *Id.* ¶ 3. In 1982, he “designed and programmed the Atari 2600 adaptation of the hit arcade game Donkey Kong.” *Id.* ¶ 6. Throughout his career, Mr. Kitchen had held the roles of Senior Designer for Activision, Inc., co-founder, Chairman, President, and CEO of Absolute Entertainment, Inc., co-founder, Chairman, President, CEO, and COO of Skyworks Technologies, Inc., and Vice President of Game Publishing for Viacom Media Network. *Id.* ¶¶ 7–11.

Mr. Kitchen has received numerous accolades in the areas of video games and entrepreneurship, and software. Ex. 1003 ¶¶ 8, 13. Mr. Kitchen has “served numerous times as a technical expert in matters regarding patent issues in video games and electronic entertainment products,” for such clients as “Nintendo, Hasbro, Konami Digital Entertainment, Ubisoft, Apple and Zynga,” and “as an expert in the areas of video game development, online and mobile gaming and interactive advertising at many industry events.” *Id.* ¶¶ 12, 14.

Mr. Kitchen states he has “worked on numerous entertainment software titles designed to simulate real-money wagering (for amusement purposes only), including video poker, slot machine software and multiplayer online poker.” Ex. 1003 ¶ 16. Mr. Kitchen also states that he has “extensive experience designing entertainment software on portable devices with GPS capability, such as the iPhone and iPad platforms” and has “recently served as a technical consultant for a leading supplier of location-based, real-money wagering machines related to historical horseracing.” *Id.*

References and Witness Testimony	Date	Ex. No.
U.S. Patent Application Publication No. US 2001/0047291 (“Garahi”)	Nov. 29, 2001	Ex. 1004
Australian Patent No. 751533 (“Stadelmann”) ⁶	Sept. 6, 1999	Ex. 1005
U.S. Patent Application Publication No. US 2001/0037211 A1 (“McNutt”)	Nov. 1, 2001	Ex. 1006
U.S. Patent Application Publication No. US 2002/0039921 A1 (“Rowe”)	Apr. 4, 2002	Ex. 1007
U.S. Patent Application Publication No. US 2001/0036853 A1 (“Thomas”)	Nov. 1, 2001	Ex. 1008
International Pub. No. WO 01/55941 A2, published (“Monical”) ⁷	Aug. 12, 2001	Ex. 1009
Declaration of Garry Kitchen	Oct. 28, 2022	Ex. 1003
Deposition Transcript of Garry Kitchen	Feb. 13, 2024	Ex. 2001

D. Asserted Grounds of Unpatentability

Petitioner asserts that the Challenged Claims are unpatentable based on the following grounds:

Claims Challenged	35 U.S.C. §	References/Basis
1, 2, 4, 6–8, 10, 12, 14, 16–18	103(a)	Garahi, Stadelmann, McNutt
3, 9	103(a)	Garahi, Stadelmann, McNutt, Rowe
5, 13, 19	103(a)	Garahi, Stadelmann, McNutt, Thomas
11, 20	103(a)	Garahi, Stadelmann, McNutt, Monical

Pet. 6.

⁶ In this Decision we cite to the original page numbers of Stadelmann.

⁷ In this Decision we cite to the original page numbers of Monical.

III. ANALYSIS

A. *Legal Standards for Obviousness*⁸

A patent claim is unpatentable for obviousness 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. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). In *Graham v. John Deere Co.*, 383 U.S. 1 (1966), the Supreme Court set out a framework for assessing obviousness that requires consideration of four factors: (1) the “level of ordinary skill in the pertinent art,” (2) the “scope and content of the prior art,” (3) the “differences between the prior art and the claims at issue,” and (4) “secondary considerations” of nonobviousness such as “commercial success, long felt but unsolved needs, failure of others, etc.” *Id.* at 17–18; *KSR*, 550 U.S. at 407.

“Whether an ordinarily skilled artisan would have been motivated to modify the teachings of a reference is a question of fact.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1327 (Fed. Cir. 2016) (citations omitted). “[W]here a party argues a skilled artisan would have been motivated to combine references, it must show the artisan ‘would have had a reasonable expectation of success from doing so.’” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1360–61 (Fed. Cir. 2017) (quoting

⁸ The Leahy-Smith America Invents Act (“AIA”) included revisions to 35 U.S.C. § 103 that became effective on March 16, 2013. We apply the pre-AIA version of § 103 here because the earliest provisional application identified in the ’920 patent was filed before the effective date of the AIA. *See* Ex. 1001, code (60). No issue in this proceeding turns on the applicable version of the statute and the outcome of this Decision would be the same regardless of which version of the statute applies.

In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig., 676 F.3d 1063, 1068–69 (Fed. Cir. 2012)).

B. Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citation omitted). Petitioner contends that a person of ordinary skill in the art would have had “a Bachelor of Science Degree in Electrical Engineering or Computer Engineering or equivalent, and at least two years of experience in the design and development of video game-related hardware and software.” Pet. 5 (citing Ex. 1003 ¶¶ 43–44). Patent Owner does not dispute Petitioner’s definition of the person of ordinary skill in the art. *See* PO Resp.

We find that the ’920 patent and the cited prior art references reflect the appropriate level of skill at the time of the claimed invention and that the level of appropriate skill reflected in these references and in the ’920 patent is consistent with the level of skill proposed by Petitioner. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). Accordingly, we adopt Petitioner’s proposed definition for a person of ordinary skill in the art, which is consistent with the definition we adopted in our Decision to Institute. *See* Inst. Dec. 10–11.

C. Claim Construction

We apply 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). Under that standard, claim terms “are generally given their

ordinary and customary meaning” as would have been understood by a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

“In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). Extrinsic evidence is “less significant than the intrinsic record in determining ‘the legally operative meaning of claim language.’” *Phillips*, 415 F.3d at 1317.

Petitioner states in the Petition that it “appl[ies] the ordinary and customary meaning of the claim terms as understood by a [person of ordinary skill in the art].” Pet. 7. Petitioner contends that the Challenged Claims include sequences of terms separated by the disjunctive “or,” which designates that the sequences of terms describe alternatives. *Id.* (citing *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1199–1200 (Fed. Cir. 2013); *Schumer v. Lab. Comput. Sys., Inc.*, 308 F.3d 1304, 1311 (Fed. Cir. 2002)). Petitioner also contends that it “need only show the prior art discloses one of the recited alternatives for each disjunctive sequence.” *Id.* (citing *Fresenius USA, Inc. v. Baxter Intern., Inc.*, 582 F.3d 1288, 1298 (Fed. Cir. 2009)).

In its Response, Patent Owner raises a number of claim construction issues. PO Resp. 14–18. According to Patent Owner, the terms “detect a posting” and “generates the notification message” of claim 1 “have distinct meanings.” *Id.* at 15. Patent Owner further “emphasizes” that the terms “detects” and “receives” have “distinct and separate meanings.” *Id.* (citing Ex. 2001, 73:14–23). Patent Owner also addresses the terms “automatically

transmits,” “initiates a communication link,” and “use message.” *Id.* at 15–18.

We find no claim term requires express construction, because, for the reasons provided below, resolving the Parties’ patentability dispute in this case does not require construing any claim language. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe 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))).

D. Scope and Content of the Asserted Prior Art

Petitioner relies on Garahi, Stadelmann, McNutt, Rowe, Thomas, and Monical in asserting that the Challenged Claims are unpatentable. Pet. 6. We briefly summarize each reference in relevant part below.

1. Summary of Garahi

Garahi, titled “Systems and Methods for Placing Parimutuel Wagers on Future Events,” is directed to “an interactive wagering system in which an interactive wagering application allows a user to place parimutuel wagers on future events.” Ex. 1004, code (54), ¶ 9. Garahi’s “interactive wagering system may enable the user to place a wager on the future event by providing multiple wagering pools,” and when a pool is closed, “final odds and payouts may be determined for that wagering pool and a new wagering pool, for the same future event, may be made available.” *Id.* code (57), ¶ 10. The application “may also monitor the user’s activities to create a user profile,” “use the user profile to find future race events that may be of interest to the user,” and “provide the user with the ability to search for future races according to the future race date, race name, or any other suitable criteria.” *Id.* code (57), ¶¶ 12–14. The objective of Garahi’s

invention is “to provide systems and methods for placing parimutuel wagers on future events while reducing the likelihood of the odds from changing too drastically.” *Id.* ¶ 8.

Figure 1 of Garahi is reproduced below.

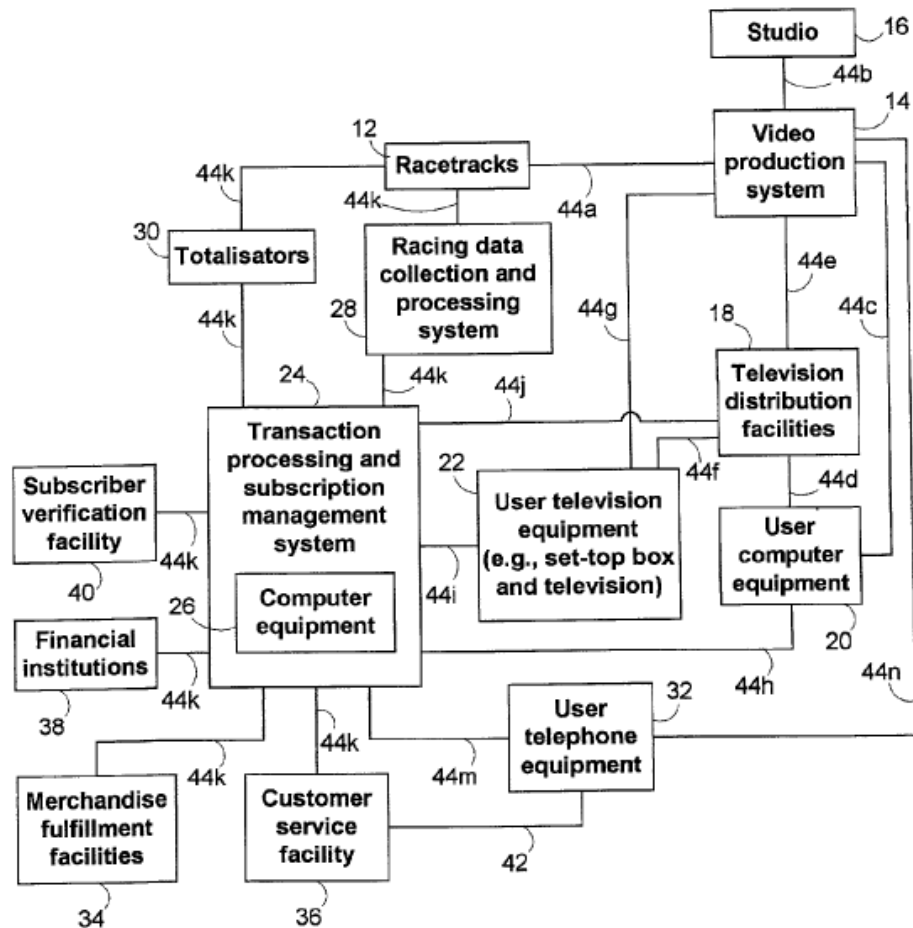


FIG. 1

Figure 1 “is a schematic diagram of an illustrative interactive wagering system in accordance with one embodiment of the present invention” (*id.* ¶ 28) and depicts, in relevant part, transaction processing and subscription management system 24 that includes computer equipment 26, racing data collection and processing system 28, user television, telephone, and computer equipment 22, 32, and 20, respectively, and subscriber verification facility 40.

“Transaction processing and subscription management system 24 [(‘TPSMS’)] may contain computer equipment 26 and other equipment for supporting system functions such as transaction processing” (such as “handling tasks related to wagers” and “adjusting the amount of funds in user accounts based on the outcomes of wagers”), data distribution, and subscriber management (such as opening and closing accounts, allowing users to add or withdraw funds or change their address or personal identification number). *Id.* ¶ 37. “Databases within transaction processing and subscription management system 24 or associated with system 24 may be used to store racing data, wagering data and other transaction data, and subscriber data.” *Id.* Videos and other services such as interactive advertisements that provide information to the user upon being selected by the user may be provided “using servers and other equipment located at” the TPSMS. *Id.* ¶ 38.

Information including “[a]ny suitable data related to racing” may be provided to the TPSMS by racing data collection and processing system 28 (“RDCPS”) or by totalisators 30. *Id.* ¶ 46. RDCPS collects and provides statistical racing data (such as race numbers and times, jockey and runner names, and number of wins and losses) and weather conditions at various tracks. *Id.* ¶ 40. The RDCPS can collect data from totalisators 30 regarding wagering odds. *Id.* The TPSMS provides the racing data and other information to users via any communication link such as a modem, network or Internet path, telephone lines, or wireless data paths, in a continuous stream, periodically, or as requested. *Id.* ¶¶ 70, 76.

User television equipment 22 may include a television or other monitor and a set-top box used to receive the television wagering service, to provide wagering data to place wager, and to interact with the wagering

service through interactive screens provided by the service. *Id.* ¶¶ 34, 55, 56. “User computer equipment 20 may be any suitable computer equipment that supports an interactive wagering application,” such as a personal, mainframe, networked, laptop, or notebook computer, or a handheld computing device. *Id.* ¶ 33. User telephone equipment 32 may be any telephone such as a conventional, cordless, cellular, portable wireless, “or any other suitable telephone equipment.” *Id.* ¶ 48. “If desired, the user may interact with the wagering service using more than one platform,” such as by cellular phone, televisions, and personal computers. *Id.* ¶ 80. Subscriber verification facility 40 checks the user’s identity and “may be used to ensure that the user lives in a geographic area in which wagering is legal, that the user is of a legal age, and that the identification information (e.g., the user’s social security number) matches the name provided by the user.” *Id.* ¶ 50. The user’s physical location may be determined by using a global positioning system (GPS). *Id.*

Figure 3, reproduced below, illustrates a “display screen that may be provided by the interactive wagering application.” *Id.* ¶ 88.

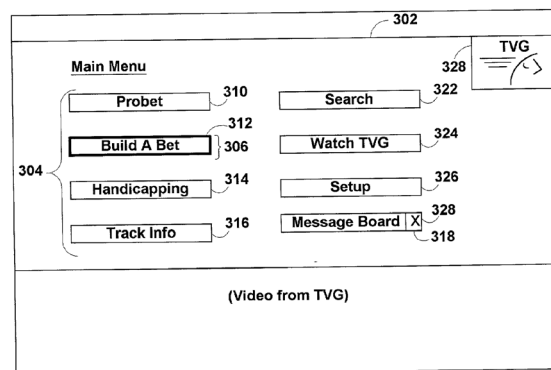


FIG. 3

Figure 3 illustrates a “main menu display screen that may be provided in accordance with one embodiment of the present invention” (*Id.* ¶ 17) and

depicts screen 300, main menu 301, menu options 304 selectable by the user using highlight region 306, options of “Probet” 310, “Build A Bet” 306, “Handicapping” 314, “Track Info” 316, “Search” 322, “Watch TVG” 324, “Setup” 326, and “Message Board” 328, and icon 318 indicating that information is available for a user (*id.* ¶¶ 88–89; *see also id.* ¶ 107). After the user selects a desired wager type, the user may be shown odds, wager, and pools information (*id.* ¶¶ 96–98, 101–104) and prompted to make selections and enter wager amounts (*id.* ¶¶ 99, 100).

The interactive wagering system may maintain a user profile that may be used to match future events with the user’s interests. *Id.* ¶ 107. The system “may automatically post or display the future race information to the user” and “may notify the user of new information postings by displaying an indication icon such as icon 318 on message board option 328 of FIG. 3.” *Id.* Figure 12, reproduced below, depicts a message board display screen when the “Message Board” option of Figure 3 is selected.

1200

MESSAGE BOARD			Dec. 12, 2000 10:00 A		
			Main Menu		
FUTURE RACES					
306					
WAGERING POOLS					
RACETRACK	DATE	RACE #	OPEN	CLOSE	PREV. POOLS
GULFSTREAM	12/16/00	1	12/13 9:00 A	12/14 5:00 P	AVAILABLE
AQUEDUCT	12/16/00	2	12/13 10:00 A	12/14 10:00 A	NONE AVAILABLE
GULFSTREAM	12/16/00	5	12/14 10:00 A	12/15 10:00 A	NONE AVAILABLE
DEL MAR	1/3/01	2	12/30 9:00 A	12/31 2:00 P	AVAILABLE

1204 1206 1208 1212 1214 1216

FIG. 12

Figure 12 shows “an illustrative message board display screen 1200 that the interactive wagering application may display to provide the user with future race information” and “any other suitable race information” upon the user selecting the “Message Board” option 328 of Figure 3. Ex. 1004 ¶ 107.

Figure 13, reproduced below, “is a flowchart of illustrative steps that may be involved in associating future races with the user for the purpose of notifying the user of relevant race information.” *Id.* ¶ 110.

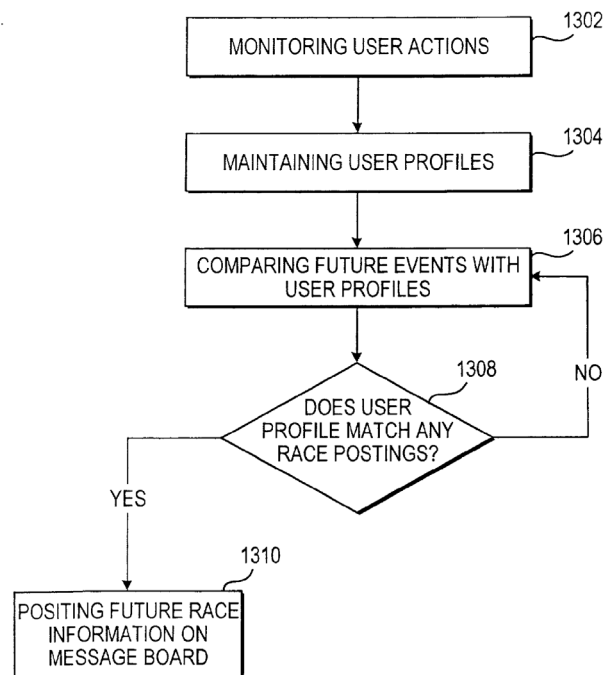


FIG. 13

Figure 13 “is a flowchart of illustrative steps involved in associating future race information with a user in accordance with one embodiment of the present invention.” Ex. 1004 ¶ 27. At step 1302, the interactive wagering application may monitor user activity. *Id.* ¶ 110. The application may create and store a user profile at step 1304, the profile used at step 1306 to compare with future events such as races to determine at step 1308 whether a match exists with the available event/race. *Id.* “If no match exists, then

the interactive wagering application may not post the future race information to the user and continue to monitor and compare the future events with the user profile.” *Id.* If at least one match exists, “the interactive wagering application may post the future races to the user, for example, on the user’s message board (as shown in display screen 1200 of FIG. 12) at step 1310.” *Id.* The user accesses the message board to retrieve future event/race information and determine interest in participating in the wagering pool. *Id.*

2. *Summary of Stadelmann*

Stadelmann, titled “Game System, Corresponding Method and Adapted Devices,” is directed to “a game system in which a plurality of participants transmit to at least one central play station, through a telecommunications network, participant game data for taking part in at least one game, the central play station carrying out games according to predefined game rules and transmitting central game data to said participants.” Ex. 1005, code (54), 1:2–7. Figure 1 of Stadelmann is reproduced below.

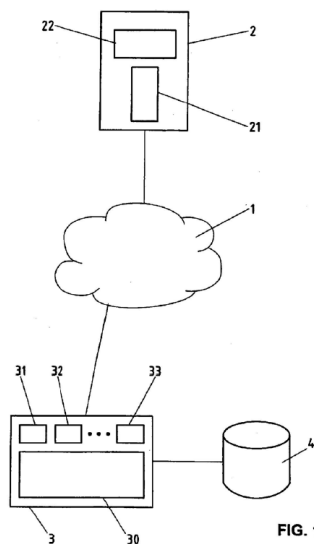


Figure 1 of Stadelmann illustrates a gaming system according to the exemplary embodiment. *Id.* at 3b:1–7. A participant using mobile radio

device 2 (e.g., mobile phone) opens a game account with the operator of central play station 3 and deposits currency into the account. *Id.* at 3b:8–10; *see also id.* at 6:28–29 (disclosing that “central play station 3 preferably comprises a server with . . . central service unit 30 for handling special short messages”). A participant wanting to take part in game 31, 32, 33 uses their mobile radio device 2 to transmit a registration message to central play station 3 via mobile radio network 1. *Id.* at 4:20–25. Central play station 3 receives the message and registers the participant in database 4. *Id.* at 4:29–31; *see also id.* at 5:7–10 (disclosing that “the participant indicates . . . during the registration in which games 31, 32, 33 he wishes to take part, for example a number lottery or betting on a horse race, and the respective game is likewise entered together with the participant in the table of the registered players by the central play station 3”).

3. *Summary of McNutt*

McNutt, titled “Interactive Wagering Systems and Methods for Restricting Wagering Access,” is directed to “an interactive wagering application that may restrict wagering access based on particular criteria[, such as] . . . the location of the user equipment, user-defined wagering restrictions, or any other suitable criteria.” Ex. 1006, code (54), ¶ 6. McNutt “provide[s] for an interactive wagering application that restricts wagering access,” the restrictions “based on user-defined restrictions on the location of the user equipment or any other suitable criterion.” *Id.* at code (57). The application compares blackout and user equipment information and when they match, wagering access is restricted. *Id.* An objective of McNutt’s invention is “to provide an interactive wagering application that restricts wagering access based on particular criteria.” *Id.* ¶ 5.

McNutt's wagering system 10 "may be used to provide an interactive wagering service to users of various user equipment" via an interactive wagering application (*id.* ¶ 33) and is shown in Figure 1, which is reproduced below.

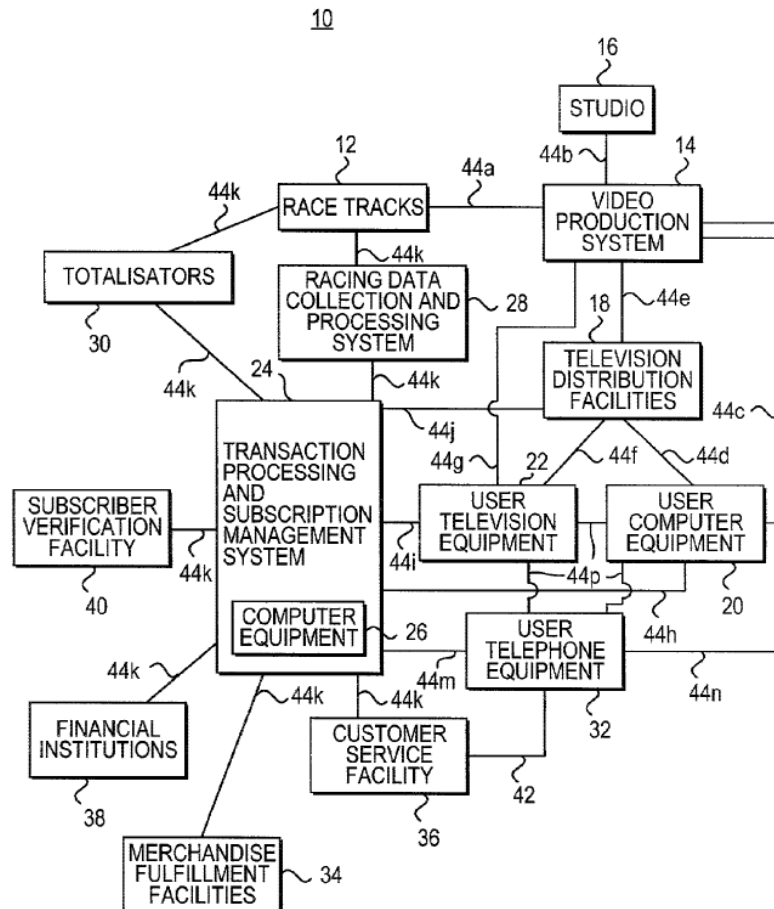


FIG. 1

Figure 1 "is a schematic diagram of an illustrative interactive wagering system in accordance with one embodiment of the present invention" (*id.* ¶ 13) and depicts, in relevant part, transaction processing and subscription management system 24 that includes computer equipment 26, racing data collection and processing system 28, user television, telephone, and computer equipment 22, 32, and 20, respectively, and subscriber verification facility 40.

“Transaction processing and subscription management system 24 may contain computer equipment 26 and other equipment for supporting system functions such as transaction processing” (such as “handling tasks related to wagers” and “adjusting the amount of funds in user accounts based on the outcomes of wagers”), data distribution, and subscriber management (such as opening and closing accounts, allowing users to add or withdraw funds or change their address or personal identification number). *Id.* ¶ 48.

“Databases within transaction processing and subscription management system 24 or associated with system 24 may be used to store racing data, wagering data and other transaction data, and subscriber data.” *Id.*

Videos and other services such as interactive advertisements that provide information to the user upon being selected by the user may be provided “using services and other equipment located at” the TPSMS. *Id.* ¶ 49. Information including “[a]ny suitable data related to racing” may be provided to the TPSMS by racing data collection and processing system 28 or by totalisators 30. *Id.* ¶¶ 51–52. The TPSMS provides the racing data and other information to users via any communication link such as a modem, network or Internet path, telephone lines, or wireless data paths, in a continuous stream, periodically, or as requested. *Id.* ¶¶ 70, 76.

User television equipment 22 may include a television or other monitor and a set-top box used to receive the television wagering service, to provide wagering data to place wager, and to interact with the wagering service through interactive screens provides by the service. *Id.* ¶¶ 37, 44, 62. User computer equipment “may be based on a personal computer 80 or any other suitable computing device.” *Id.* ¶ 45. User telephone equipment 32 may be any telephone such as a conventional, cordless, cellular, portable wireless, “or any other suitable telephone equipment.” *Id.* ¶ 57. Subscriber

verification facility 40 checks the user's identity and may be "used to ensure that the user lives in a geographic area in which wagering is legal, that the user is of a legal age, and that the identification information (e.g., the user's social security number) matches the name provided by the user." *Id.* ¶ 63. The user's physical location may be determined by using a global positioning system (GPS) (*id.*) or "in any suitable way" (*id.* ¶ 119). "[T]he interactive wagering application may restrict wagering access based on the geographical location of the user equipment" or "based on blackout information and location information." *Id.* ¶ 111. The process of restricting access in this way is shown in Figure 12, reproduced below.

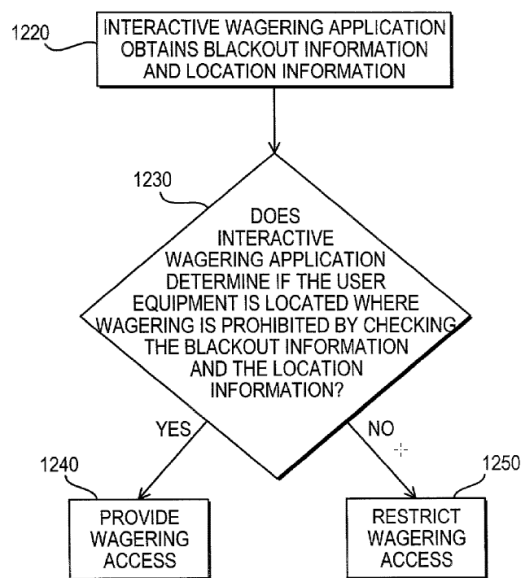


FIG. 12

Figure 12 "is a flow chart of illustrative steps involved in restricting wagering access based on the user equipment location." *Id.* ¶ 113. "At step 1220, the interactive wagering application may obtain blackout information and location information," the information indicating, for example, that certain states prohibit wagering and in what state the user equipment is located. *Id.* ¶ 114. At step 1230, the application checks the

blackout and location information to determine the locations where wagering is prohibited and determine if the user is in one of those locations. *Id.* ¶ 115. If the blackout and location information match, wagering access is restricted (*id.* ¶ 116), and “messages (e.g., in the form of overlays) may be displayed by the interactive wagering application to indicate to the user that wagering access is restricted” (*id.* ¶ 142). If the locations do not match, the wagering access is allowed (step 1240) (*id.* ¶ 116) and the system directs the application to store on the user equipment a location verification token, such as “a signature, a key, or any other suitable element that provides the interactive wagering application with verification that the user is located in an area where wagering is legal” (*id.* ¶ 126).

Figure 16 of McNutt, reproduced below, “is a flow chart of illustrative steps involved in using a token-based scheme in restricting wagering access in accordance with one embodiment.” *Id.* ¶ 28.

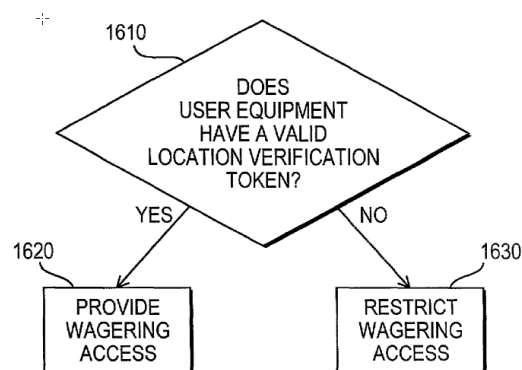


FIG. 16

McNutt’s Figure 16 illustrates the “steps involved in providing wagering access based on a location verification token.” *Id.* ¶ 137. “At step 1610, the interactive wagering application may determine if the user equipment has a valid location verification token,” which “may serve to verify that the user is in a location where wagering is legal.” *Id.* At step 1620, wagering access is

provided if a valid location verification token is detected by the application. *Id.* This access may be to “create wagers, view racing statistics, view odds, view results, or access any other wagering-related features.” Otherwise, if a valid location verification token is not detected on the user equipment, the application may restrict wagering access at step 1630. *Id.*

McNutt’s claim 1 recites a method comprised of restricting wagering access that includes “determining a geographic location of the user equipment; checking whether wagering is allowed in the geographic location of the user equipment; and restricting wagering access when wagering is not allowed in the geographic location of the user equipment.” *Id.* at 13 (claim 1).

4. *Summary of Rowe*

Rowe, titled “Method and Apparatus for Monitoring Player Loss in a Gaming Environment,” is directed to “methods and apparatus for effectuating financial and reward transactions in a casino or gaming environment.” Ex. 1007, code (54), ¶ 11. Rowe provides the following disclosure:

system 100 may include a game server 138 which generates game play information and receives or accepts game play input from a remote player. The game server is preferably in communication with the gateway 122 or other communication interface so that game play information may be transmitted to a player over a dedicated line or the Internet. A player’s input may be transmitted from the player’s location to the game server 138. The player’s location may comprise a remote dedicated station, a desktop or laptop computer or the like.

Id. ¶ 173. Rowe also discloses “that the invention may be used to determine a player’s winnings or financial gain as a result of game play,” and “a determination of win may be used for a variety of criteria.” *Id.* ¶ 200. For

example, “a casino may deduct taxes due from a winning directly from the player’s account.” *Id.* ¶ 203. In particular, “[u]pon a win, the casino may determine the tax liability and transfer the withholding to a withholding account or directly transfer it to an IRS deposit account.” *Id.*

5. *Summary of Thomas*

Thomas, titled “Systems and Methods for Presenting a Lottery Interface in an Interactive Wagering Application,” is directed to “an interactive wagering application that gives a user the ability to participate in lotteries electronically using user equipment.” Ex. 1008, code (54), ¶ 7. Thomas discloses that “the interactive wagering application may run using a client-server or distributed architecture.” *Id.* ¶ 32. Thomas discloses that in one embodiment, “the interactive wagering application may allow the user to create a lottery bet, but before the lottery bet is entered, the user may need to finalize or confirm the bet,” either at the time of creating the bet or later. *Id.* ¶ 107. “When the user creates a bet, but does not finalize the bet, the interactive wagering application may remind the user of the unfinalized bet at any suitable time before the time of the lottery.” *Id.* ¶ 108. “The reminder may take any suitable form,” such as an overlay window that pops up during a television program, “an icon that may be part of an on-screen interface, an e-mail message, an instant message, a telephone message, a beeper page, or any other suitable form of a reminder.” *Id.*

6. *Summary of Monical*

Monical, titled “System and Method for User-To-User Online Wagering,” is directed to “an online gaming system which permits bettors to place wagers with one another under conditions which they determine.” Ex. 1009, code (54), 2:7–8. Monical discloses wagering system 20 implemented on a server system and configured to communicate with

users 10 via communication software. *Id.* at 3:18–20; *see also id.* at 3:12–15 (disclosing that users 10 may use personal computers to communicate with wagering system 20 via the Internet). Users 10 may participate in community wagering activities that involve other users, such as discussion group wagering. *Id.* at 13:18–23. To facilitate discussion group wagering, wagering system 20 may provide interest-based chat rooms and instant messaging services for users 10 to communicate with one another. *Id.* at 13:24–31. Monical further explains the following:

Under these arrangements, when in the course of a discussion between two users 10 one would like to make a bet with another, he can actuate a control on his discussion group communication software to bring up an unmatched wager entry screen . . . , fill it in with the appropriate bet parameters, and indicate that it is to be a private wager, i.e., offered only to the other user 10. The other user 10 then may or may not match the wager at her discretion.

Id. at 14:1–5.

E. Alleged Obviousness Over Garahi, Stadelmann, and McNutt

Petitioner contends the subject matter of claims 1, 2, 4, 6–8, 10, 12, 14, and 16–18 of the '920 patent would have been obvious over the combination of Garahi, Stadelmann, and McNutt. Pet. 7–58, Pet. Reply 6–19. Petitioner's contentions are supported by the testimony of Mr. Kitchen. *Id.*; Ex. 1003 ¶¶ 111–231.

Patent Owner raises a number of arguments in opposition; however, because we find it dispositive, we focus our discussion below on limitations directed to the information that must be contained in a “bet message.” *See* PO Resp. 23–50. For the reasons that follow, we determine that Petitioner has not shown by a preponderance of the evidence that the subject matter of

any of claims 1, 2, 4, 6–8, 10, 12, 14, and 16–18 would have been obvious over the asserted combination of Garahi, Stadelmann, and McNutt.

1. Independent Claims 1, 7, and 16

Petitioner relies in substantial part on Garahi when addressing many of the limitations of independent claims 1, 7, and 16. Pet. 9–46, 49–54, 56–58. For example, according to Petitioner, Garahi teaches an apparatus including an interactive wagering application for users to place wagers on future events. *Id.* at 10 (citing Ex. 1004 ¶¶ 9, 28, Fig. 1; Ex. 1003 ¶ 111). Petitioner contends that Garahi’s interactive wagering application uses a client-server architecture including “transaction processing and subscription management system 24 (‘TPSMS’),” which is implemented using “computer equipment 26 and other equipment for supporting system functions such as transaction processing (e.g., handling tasks related to wagers, product purchasing, adjusting the amount of funds in user accounts based on the outcomes of wagers, video clip ordering, etc.).” *Id.* (citing Ex. 1004 ¶¶ 30, 37, 76) (emphasis omitted). Petitioner further asserts that Garahi’s TPSMS receives data from user equipment via communication paths 44, which may include Internet transmissions. *Id.* at 11–12 (citing Ex. 1004 ¶¶ 64, 78, Fig. 1).

Petitioner further contends that Garahi’s TPSMS 24 includes a first processor (computer equipment 26) programmed to detect information posted regarding the sporting event and generate a notification message for a user regarding the sporting event. *Id.* at 16–21 (citing Ex. 1004 ¶¶ 37, 107, 110, Figs. 1, 13; Ex. 1003 ¶ 126). According to Petitioner, Garahi discloses user telephone equipment 32 (e.g., a cellular telephone), which represents a user communication device. *Id.* at 21 (citing Ex. 1004 ¶ 48, Fig. 1). Petitioner further contends that users may operate user telephone

equipment 32 to interact with TPSMS to view racing data and place wagers. *Id.* at 21–22 (citing Ex. 1004 ¶¶ 48, 55–56, 77, 86–87, 110, Figs. 1, 12).

Petitioner contends that Garahi’s user telephone equipment 32 includes processing circuitry 52, corresponding to a second processor. *Id.* at 26 (citing Ex. 1004 ¶¶ 58–59, Fig. 2). Petitioner also argues that Garahi’s user telephone equipment 32 includes a global positioning system (GPS) receiver for determining its location. *Id.* at 27 (citing Ex. 1004 ¶ 50). Petitioner contends that Garahi’s user telephone equipment 32 includes display 56 and includes a transmitter, because it transmits information via a wireless data link. *Id.* at 30 (citing Ex. 1003 ¶ 158; Ex. 1004 ¶¶ 58, 77, Fig. 2).

Each of independent claims 1, 7, and 16 requires a user communication device that transmits a “bet message” to the sports betting computer containing both “information regarding a bet to be placed” and “information regarding the position or location” of the user communication device. Ex. 1001, 94:10–95:5, 95:36–96:18, 96:65–98:8. Petitioner contends that Garahi, in combination with McNutt, teaches a “bet message” that contains not only “information regarding a bet to be placed,” but also “information regarding the position or location” of the user communication device, as required by the Challenged Claims.⁹ Pet. 39–42; Pet. Reply 16–18. Petitioner shows that Garahi teaches that “[w]hen the user has made appropriate selections to define a desired wager, the . . . user telephone equipment may transmit wagering data for the wager to transaction

⁹ Petitioner only relies on its analysis of this limitation as to claim 1 (identified by Petitioner as limitation “1(c)(iii)”) with regard to its analysis of the corresponding limitations in claim 7 (identified by Petitioner as limitation “7(b)(iii)”) and claim 16 (identified by Petitioner as limitation “16(c)(iii)”). Pet. 52, 57, Claims Listing Appendix.

processing and subscription management system 24.” Pet. 39 (emphasis omitted) (quoting Ex. 1004 ¶ 56). Petitioner contends “Garahi’s wagering data” corresponds to “the bet message.” *Id.*

Petitioner further asserts that “Garahi discloses using the location information of the user telephone equipment to verify that the user is located in a geographic area where wagering is legal,” but Petitioner acknowledges that “Garahi does not specify exactly how or when this verification [that the user is located in a geographic area where wagering is legal] occurs or whether the location information is transmitted to the TPSMS with the wagering data.” *Id.* at 40. Notwithstanding Petitioner’s suggestion that there is ambiguity as to whether Garahi may include position or location information in its “wagering data,” the evidence advanced by Petitioner is unequivocal on this point. When asked whether Garahi, alone, discloses a bet message that contains position or location information, Mr. Kitchen testified on behalf of Petitioner that “Garahi certainly doesn’t.” Ex. 2001, 140:19–141:8; *see also* Pet. Reply 18 (stating that Mr. Kitchen testified “only that ‘Garahi certainly doesn’t’ disclose the transmission of location information with a bet”) (citing Ex. 2001, 139:12–141:5); Ex. 2001, 124:3–7 (Mr. Kitchen confirming that Garahi does not disclose everything in “element 1(c)(iii)”).

Petitioner, accordingly, relies on McNutt, in combination with Garahi, and asserts that “it would have been obvious” to a person of ordinary skill in the art to have configured “Garahi to include the user communication device’s location information in the wagering data (i.e., the bet message) as

taught by McNutt.”¹⁰ Pet. 40 (citing Ex. 1003 ¶ 173). Petitioner, however, provides no persuasive evidence that McNutt teaches including “location information” in “wagering data” that corresponds to a “bet message.” To the contrary, Mr. Kitchen testified that “McNutt does not disclose a bet message,” and therefore, does not, alone, teach including location information in the wagering data as a part of a bet message. Instead, as Mr. Kitchen explains, Petitioner’s argument is premised on combining “location which is obtained by McNutt at the institution of the bet” with the wagering data transmitted by Garahi. *See* Ex. 2001, 136:8–24.

Thus, according to Petitioner, McNutt teaches that “[w]hen the user travels into a location where wagering is prohibited (e.g., according to the received blackout information), the interactive wagering application may prevent user access to the wagering service until the user travels to a location that allows wagering.” Pet. 41 (quoting Ex. 1006 ¶ 111). Petitioner further relies on McNutt’s teaching that “‘when the user initiates the wager creation process,’ the system ‘obtain[s] the location information to determine whether the user equipment location permits wagering.’” *Id.* (quoting Ex. 1006 ¶ 129). From this, Petitioner asserts that “McNutt teaches a bet message containing information regarding the position or location of the user communication device at a time of transmission of the bet message from the user communication device.” *Id.* (emphases omitted) (citing Ex. 1003 ¶ 175).

¹⁰ Petitioner does not rely on any teaching of Stadelmann in regard to a “bet message” that contains “information regarding the position or location” of the user communication device, as required by the Challenged Claims. Pet. 39–42.

Given Mr. Kitchen’s testimony that McNutt does not teach a bet message, we find no sufficient evidence in support of Petitioner’s assertion. In short, there is no evidence identified by Petitioner that McNutt teaches or suggests transmitting position or location information in a bet message. *See* Ex. 2001, 136:8–137:10 (Mr. Kitchen testifying that “McNutt, in combination with Garahi, teaches a message containing information regarding the position and location,” that “McNutt doesn’t do it because McNutt does not disclose a bet message,” that “Garahi discloses the bet message,” and that “the combination discloses the bet message, including the location which is obtained by McNutt at the initiation of the bet”); 136:25–137:10 (Mr. Kitchen testifying that McNutt obtains location information at the initiation of the wager creation process, not at the placement of the bet, which is “far more advantageous than using the location information that was picked up automatically every hour, two hours, once a week, once a month,” and that “[it]’s during the bet process,” “[a]nd most importantly, it is sent with the best [sic] information as required by the claim”).¹¹

Petitioner also reasons that “[b]ased on McNutt’s teachings, it would have been obvious to a [person of ordinary skill in the art] to similarly configure Garahi to transmit the location information of the user telephone equipment 32 to the TPSMS with the wagering data (i.e., the bet message).”

¹¹ Mr. Kitchen’s testimony at 137:8–10 appears as “[a]nd most importantly, it is sent with the best information as required by the claim.” Since no claim requires “the best information,” we find it likely Mr. Kitchen referred to “the *bet* information.” Petitioner, however, suggests that Mr. Kitchen’s testimony should be understood to have been “the best [location] information.” Pet. Reply 18. The transcript filed as Exhibit 2001 does not include a correction to the testimony as suggested by Petitioner.

Pet. 41. (emphases omitted) (citing Ex. 1003 ¶ 176). According to Petitioner, a person of ordinary skill in the art would have understood that a user’s “location may have changed to a location that prohibits wagering,” and “would have recognized that verifying the user’s location at the point when the user attempts to create a new wager, rather than using previously acquired location data would be a more effective way of ensuring that the wagering system is complying with local gaming regulations.” *Id.* at 41–42; *see also id.* at 42 (arguing that the asserted combination would have been obvious because it would have improved “similar remote gaming systems in the same way”). Further, according to Petitioner, “configuring Garahi’s user telephone equipment 32 to transmit the location information with the wagering data would only have required minor software changes and would not have changed Garahi’s principle of operation in any way,” and “[a]s such, there would have been a reasonable expectation of success.” *Id.* at 42 (citing Ex. 1003 ¶ 178); *see also* Pet. Reply 17 (arguing that “the Garahi/McNutt combination sends location information ‘when the user initiates the wager creation process,’ i.e., with the wagering data”) (citing Pet. 40–41; Ex. 1003 ¶¶ 173, 175, 176; Ex. 1006 ¶¶ 111, 114).

Patent Owner argues that Petitioner fails to show that Garahi or McNutt, alone or in combination, teaches a “bet message” containing “the position or location” of the user communication device. PO Resp. 39–45. Beginning with Garahi, Patent Owner argues that “to the extent Garahi discusses location verification at all, it does so from the perspective of the system (specifically the ‘subscriber verification facility 40’) obtaining such information from the cellular network or the device as part of the subscriber verification process.” *Id.* at 40–41 (citing Ex. 1004 ¶ 50). From this, Patent Owner argues that “Garahi plainly does not contemplate a scenario where

the user communication device transmits location information as part of a bet message.” *Id.*

Turning to McNutt, Patent Owner argues that McNutt’s objective of “an interactive wagering application that may restrict wagering access based on particular criteria . . . is achieved through the use of ‘location verification tokens’ which are exchanged *prior to allowing the user to access the wagering platform.*” PO Resp. 41–42 (citing Ex. 1005 ¶¶ 6, 8, 137, Fig. 16). According to Patent Owner, “there is zero evidence upon which to find McNutt teaches the transmission of location information as part of a bet message, given the fact that the betting platform is not even available to the user at the time any location verification token is obtained.” *Id.* at 42.

Patent Owner also argues that Petitioner’s reliance on McNutt’s teaching of “an embodiment wherein location information is ‘obtained’ by the wagering system ‘when the user initiates the wager creation process’” is in error. *Id.* (citing Pet. 41; Ex. 1006 ¶ 129; Ex. 2001, 135:22–25). According to Patent Owner, “[t]he ‘wager creation process’ is ‘initiated’ by McNutt when the user selects the ‘CREATE WAGER’ option from the selection menu,” as illustrated as item 652 in Figure 6 of McNutt. *Id.* at 42–43; *see also* Ex. 1006 ¶ 97 (stating that “option 652 may be used to provide the user with the ability to create a wager”). Patent Owner argues that “[a]s such, and because McNutt teaches (at best) obtaining location information prior to granting access to the wager creation functionality in the first instance, McNutt does not disclose any embodiment where location information is transmitted with the bet message as claimed, and clearly no ‘token’ accompanies an actual wager in McNutt.” *Id.* at 43. Patent Owner further argues that Mr. Kitchen admitted “the simple initiating step of accessing the ‘Create Wager’ feature is only a starting point for a multi-step

process of actually executing a wager and transmitting a bet message.” *Id.* at 43–44 (citing, *e.g.*, Ex. 2001, 130:14–132:21). Patent Owner also directs us to the following testimony of Mr. Kitchen:

Q. Do you believe McNutt is an improvement over Garahi?

A. Certainly to the extent that what we’re describing here. Adding the McNutt determination of access or no access to the wagering application, and fetching that information at the point of initiating the bet process is an obvious improvement to Garahi, which never teaches when the location information is accessed.

So, yes, it’s – it’s -- combining the two would be obvious, it would be advantageous to the system, and it would have a high -- high chance of working because it’s the same infrastructure.

. . .

Q. Well, they weren't capturing geo location at the time of bet placement, were they?

MS. REDMOND: Same objection.

THE DEPONENT: I'm not sure of the relevance of that unless you're flying in an airplane.

If you're talking about a difference of 30 or 45 seconds, do we really believe that someone would move out of a jurisdiction in that amount of time, while they're in the process of betting? I -- I just don't put as much stock in that as you appear to.

BY MR. FULLER:

Q. Well, nevertheless, claim 1 of the 920 patent requires that a bet message contains position or location information of the user communication device at a time of transmission of the bet message, right?

A. Right

Q. And neither Garahi nor McNutt disclose that individually, do they?

A. I don't know that for certain that they don't.

Q. Well, Garahi –

A. I mean Garahi certainly doesn't. But McNutt talks about at the -- I don't have the exact wording in front of me. But at the initiation of the bet.

Ex. 2001, 139:12–141:8. From this, Patent Owner argues that Mr. Kitchen explained that “the cited art fails to disclose the transmission of location information at the time of transmission of a bet message, which he views as irrelevant.” PO Resp. 44.

In its Reply, Petitioner argues that McNutt’s description of a “location verification token” pertains to “*one* embodiment,” and that “Petitioner does not rely upon it.” Pet. Reply 17 (citing PO Resp. 41; Ex. 1006 ¶ 137). According to Petitioner, “Mr. Kitchen testified as to how McNutt’s wager creation process works and that Garahi does not teach transmission of location information, which evidences all the more Petitioners’ rationale for the Garahi/McNutt combination teaching claim 1(c)(iii).” *Id.* at 18 (citing Ex. 2001, 80:10–24, 136:8–137:10, 139:12–141:5).

In weighing the evidence before us, we begin by recognizing that both Garahi and McNutt teach determining the user’s location information, such as by using a global position receiver and using that information to “verify that the user is located in a geographic area where wagering is legal.”

Ex. 1004 ¶ 50; Ex. 1006 ¶ 63.

Garahi states as follows:

If the user is using a cellular telephone or handheld computing device, the user's present physical location may be determined by determining which general part of the cellular telephone network is being accessed by the user or by using the cellular network or a handset-based location device such as a

global positioning system (GPS) receiver in the body of the cellular telephone to pinpoint the user's location. This location information may be used to verify that the user is located in a geographic area where wagering is legal.

Ex. 1004 ¶ 50.

McNutt states as follows:

If the user is using a cellular telephone or handheld computing device, the user's present physical location may be determined by determining which general part of the cellular telephone network is being accessed by the user. In another suitable approach, the user's present physical location may be determined by using the cellular network or a handset-based location device, such as a global positioning satellite (GPS) receiver in the body of the cellular telephone, to pinpoint the user's location. This location information may be used to verify that the user is located in a geographic area where wagering is legal.

Ex. 1006 ¶ 63. As Mr. Kitchen testified, “McNutt teaches when the location information is obtained and is essentially a similar or the same system as Garahi.” Ex. 2001, 138:19–21; *see also id.* at 125:8–16 (Mr. Kitchen stating that “it's important to note that McNutt and Garahi share the same inventors, and disclose a somewhat similar system”).

McNutt further describes, in the embodiment described in Figure 12, a process of “restricting wagering access based on the user equipment location.” Ex. 1006 ¶ 113. In this embodiment, McNutt's application obtains blackout and location information, such as that “the state of Oklahoma prohibits wagering” and “the user equipment is located in Oklahoma.” *Id.* ¶ 114. If the blackout and determined location information match, the application may restrict wagering access. *Id.* ¶ 116; *see also id.* ¶ 126. McNutt discloses that the location information can be obtained “at any suitable time,” such as “when the user initiates the wager creation

process, interactive wagering system 10 may obtain the location information to determine whether the user equipment location permits wagering,” or automatically at regular periods (daily, weekly, etc.). *Id.* ¶ 129.

While we understand that Petitioner relies on Garahi and McNutt in combination in regard to the bet message limitation, and we recognize that asserted prior art must not be considered in isolation, but for all that it teaches in the asserted combination, missing from Petitioner’s contentions is any persuasive evidence that a person of ordinary skill in the art would have had reason to include position or location information based on McNutt in the wagering data of Garahi that Petitioner contends corresponds to a “bet message.” There is no persuasive evidence that the mere fact that McNutt teaches that location information may be obtained “when the user initiates the wager” would have been understood by a person of ordinary skill in the art to have taught or suggested including that location information with the wagering data of Garahi in a single “bet message,” as required by the Challenged Claims. To the contrary both Garahi and McNutt describe systems that first determine whether a bet may be placed from a location before allowing a user to transmit wagering data corresponding to “information regarding a bet to be place.” *See, e.g.*, Ex. 1004 ¶ 50; Ex. 1006 ¶ 111, Fig. 12; Ex. 2001, 135:3–25, 137:11–22 (Mr. Kitchen testifying that in McNutt, the location information is obtained at the creation of the bet, i.e., when the user initiates the wager creation process, and allows or prevents access to the gambling apparatus).

Petitioner contends that a skilled artisan would have done so to have been able to “discern the legality of a placed bet as McNutt discloses if a user of Garahi’s system moves to a wager-prohibitive location.” Pet. Reply 17 (citing Pet. 40–41; Ex. 1003 ¶¶ 173, 175, 176; Ex. 1006 ¶¶ 111,

114). However, we agree with Patent Owner that Petitioner fails to persuasively identify any “deficiency in Garahi which McNutt purportedly solves, inasmuch as Garahi already discloses obtaining location information” and using that information to discern the legality of a placed bet at the user’s location. PO Resp. 44; Ex. 1004 ¶ 50. Petitioner has not provided any further benefit to be obtained by adding location information into Garahi’s bet message having wagering data. Petitioner has not shown a sufficient reason supported by a preponderance of the evidence to modify Garahi based on the teachings of McNutt, outside of hindsight based on the disclosures of the ’920 patent, which, itself, explains that a determination of whether a bet is allowed or disallowed is based on the position or location of the user communication device having been transmitted as part of a bet message with information regarding a bet to be placed. *See, e.g.*, Ex. 1001, 59:16–47, 94:53–95:5. In sum, we find that a preponderance of the evidence fails to show that Garahi and McNutt, in combination with Stadelmann, teaches or suggests including position or location information in a bet message, as required by the Challenged Claims. To the extent that Garahi teaches transmitting a message with wagering data, and McNutt teaches that location information may be obtained “when the user initiates the wager,” Petitioner has shown no persuasive reason why a person of ordinary skill in the art would have had reason to include the location information of McNutt with the wagering data of Garahi in a single bet message, as required by the Challenged Claims.

2. *Dependent Claims 2, 4, 6, 8, 10, 12, 14, 17, and 18*

When addressing dependent claims 2, 4, 6, 8, 10, 12, 14, 17, and 18, Petitioner does not cure the deficiencies in its challenge of independent claims 1, 7, and 16 as allegedly obvious over Garahi, Stadelmann, and

McNutt. Pet. 46–48, 54–56, 58; Pet. Reply 1–18. Accordingly, Petitioner does not demonstrate by a preponderance of the evidence that any of claims 2, 4, 6, 8, 10, 12, 14, 17, and 18, would have been obvious over Garahi, Stadelmann, and McNutt.

3. *Conclusion for Claims 1, 2, 4, 6–8, 10, 12, 14, and 16–18*

Based on our review and consideration of Petitioner’s arguments and evidence, we find that based on the record, Petitioner has not established by a preponderance of the evidence that the asserted combination of Garahi, Stadelmann, and McNutt teaches every limitation of any of claims 1, 2, 4, 6–8, 10, 12, 14, and 16–18 and why one of ordinary skill in the art would have had sufficient reason to combine Garahi, Stadelmann, and McNutt, with a reasonable expectation of success in doing so.

F. *Alleged Obviousness Over Garahi, Stadelmann, McNutt, and Other Prior Art*

Petitioner contends that the subject matter of dependent claims 3 and 9 would have been obvious over Garahi, Stadelmann, McNutt, and Rowe. Pet. 58–62. These claims include additional limitations generally directed to the sports betting computer processing location information for a user communication device to determine a state, political subdivision, or country to which a payment is made. Ex. 1001, 95:13–20, 96:28–35.

Petitioner contends that the subject matter of dependent claims 5, 13, and 19 would have been obvious over Garahi, Stadelmann, McNutt, and Thomas. Pet. 62–66. These claims include additional limitations generally directed to the sports betting computer detecting the use of a sports betting account, and generating and transmitting a sports betting account use message to a user communication device. Ex. 1001, 95:26–32, 96:48–55, 97:29–36.

Petitioner contends that the subject matter of dependent claims 11 and 20 would have been obvious over Garahi, Stadelmann, McNutt, and Monical. Pet. 66–69. These claims include additional limitations generally directed to processing information concerning a private bet placed between first and second individuals. Ex. 1001, 96:42–44, 97:37–40.

When addressing dependent claims 3, 5, 9, 11, 13, 19, and 20 under these additional grounds, Petitioner does not cure the deficiencies in its challenge of independent claims 1, 7, and 16 as allegedly obvious over Garahi, Stadelmann, and McNutt. Pet. 58–69; Pet. Reply 20–25.

Accordingly, Petitioner does not demonstrate by a preponderance of the evidence that any of claims 3, 5, 9, 11, 13, 19, and 20 would have been obvious over Garahi, Stadelmann, McNutt, and the other asserted prior art.

IV. CONCLUSION

The outcome of this case is summarized as follows:

Claims	35 U.S.C. §	References/Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1, 2, 4, 6–8, 10, 12, 14, 16–18	103(a)	Garahi, Stadelmann, McNutt		1, 2, 4, 6–8, 10, 12, 14, 16–18
3, 9	103(a)	Garahi, Stadelmann, McNutt, Rowe		3, 9
5, 13, 19	103(a)	Garahi, Stadelmann, McNutt, Thomas		5, 13, 19
11, 20	103(a)	Garahi, Stadelmann, McNutt, Monical		11, 20
Overall Outcome				1–14, 16–20

IV. ORDER

Upon consideration of the record before us, it is:

ORDERED that Petitioner has not shown by a preponderance of the evidence that any of claims 1–14 and 16–20 of the '920 patent is unpatentable based on obviousness over the asserted art; and,

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

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