

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.

IPR2023-00095
Patent 10,255,755 B2

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

SHAH, *Administrative Patent Judge.*

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

I. INTRODUCTION

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”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 requesting an *inter partes* review of claims 1–13 and 16–20 (“the Challenged Claims” of U.S. Patent No. 10,255,755 B2 (Ex. 1001, “the ’755 patent”). Paper 1 (“Pet.”). Beteiro, LLC (“Patent Owner”) is identified as the owner of the ’755 patent. Paper 12. On May 11, 2023, we instituted this *inter partes* review as to all Challenged Claims and all grounds presented in the Petition.¹ Paper 14 (“Institution Decision” or “Inst. Dec.”).

After institution, Patent Owner filed a Response to the Petition. Paper 18 (“PO Resp.”). Petitioner filed a Reply. Paper 20 (“Pet. Reply”). An oral hearing was held on February 13, 2024 and the transcript is entered into the record. Paper 27.

We have jurisdiction under 35 U.S.C. § 6. This is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the Challenged Claims of the ’755 patent. For the reasons discussed below, we determine Petitioner has not established by a preponderance of the evidence that any of the Challenged Claims are unpatentable.

¹ 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. 52. 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).

A. RELATED MATTERS

Petitioner identifies related patents US 9,965,920 B2 (“the ’920 patent”), US 10,043,341 B1 (“the ’341 patent”), and US 10,147,266 B2 (“the ’266 patent”), and contemporaneously filed Petitions IPR2023-00092, IPR2023-00093, and IPR2023-00094 challenging the ’920 patent, the ’341 patent, and the ’266 patent, respectively. Pet. 57.²

The Parties note that Patent Owner has asserted infringement of the ’755 patent in the following proceedings:

Beteiro, LLC v. Betfair Interactive US LLC et al., 1:22-cv-00577 (DNJ);
Beteiro, LLC v. DraftKings, Inc., 1:21-cv-20148 (DNJ);
Beteiro, LLC v. PointsBet USA, Inc., 1:21-cv-20155 (DNJ);
Beteiro, LLC v. BetMGM, LLC et al., 1:21-cv-20156 (DNJ);
Beteiro, LLC v. Hard Rock Tristate AC, LLC et al., 1:21-cv-20157 (DNJ);
Beteiro, LLC v. Hillside New Jersey, LLC, 1:21-cv-20158 (DNJ);
Beteiro, LLC v. Kindred Group, PLC et al., 1:22-cv-01536 (DNJ);
Beteiro, LLC v. Elys Game Technology Corp., 6:21-cv-01147 (WDTX);
Beteiro, LLC v. Morris Mohawk Gaming Group, 6:21-cv-01149 (WDTX); and
Beteiro, LLC v. PlayUp Ltd., 6:21-cv-01150 (WDTX).
Pet. 1, 56–57; Paper 12, 2.

² Petitioner’s mandatory notices appear on unnumbered pages beginning after page 55 of the Petition. We consider the page beginning with the section titled “VIII. MANDATORY NOTICES UNDER 37 C.F.R. §42.8” as page 56 and proceed from there in numerical order.

B. REAL PARTIES-IN-INTEREST

Petitioner states that the real parties in interest are “Petitioners, 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.”
Pet. 1, 56.

Patent Owner identifies only itself, Beteiro, LLC, as the real party-in-interest. Paper 12, 2.

C. OVERVIEW OF THE '755 PATENT

The '755 patent is titled “Apparatus and Method for Facilitating Gaming Activity and/or Gambling Activity,” and issued on April 9, 2019, from U.S. Patent Application No. 16/163,140. Ex. 1001, codes (21), (22), (45), (54), (63). The '755 patent refers back to Provisional Application No. 60/384,707, filed May 31, 2002. *Id.* at code (60).

The '755 patent describes a method that includes the following steps:

detecting, with a computer, a posting of information regarding a gaming activity, gambling activity, or sporting event; generating a notification message regarding the same; initiating a communication link with, and transmitting the notification message to, a first communication device as an electronic transmission, or transmitting the notification message as an electronic mail message; receiving a bet message transmitted from the first communication device or a second communication device, wherein the first communication device or the second communication device comprises a global positioning device which determines a position or location of the first communication device or second communication device, wherein the bet message contains information regarding a bet to be placed regarding the activity or event, and information regarding the position or location of the first communication device or second communication device; and determining

whether the bet is allowed or disallowed using the position or location information.

Ex. 1001, code (57).

The apparatus comprises a computer and communication devices. *See id.* at 35:61–36:6, 94:25–67.

Figure 1, reproduced below, provides a block diagram view of an apparatus according to the preferred embodiment of the '755 patent.

Ex. 1001, 27:24–25, 35:61–63.

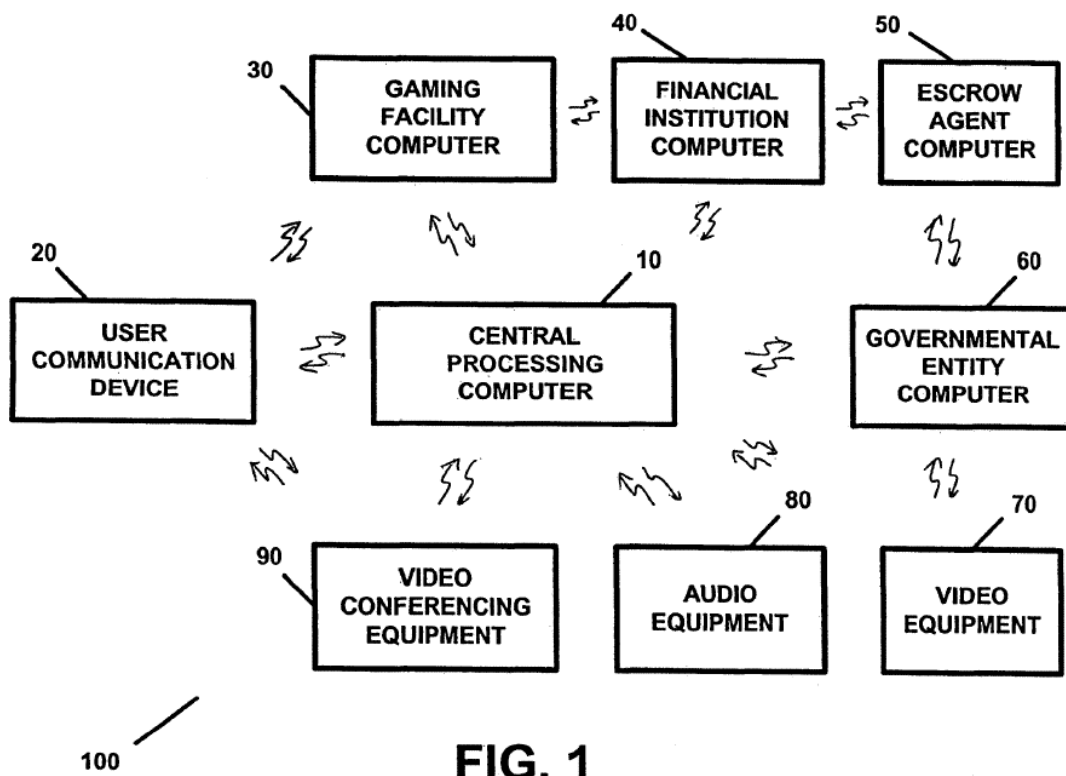
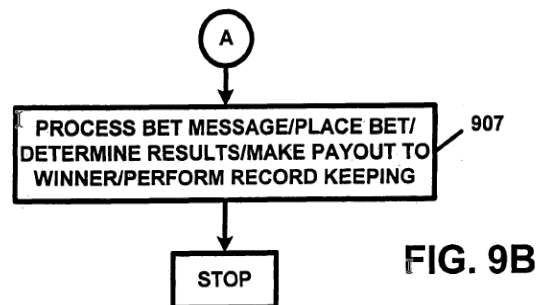
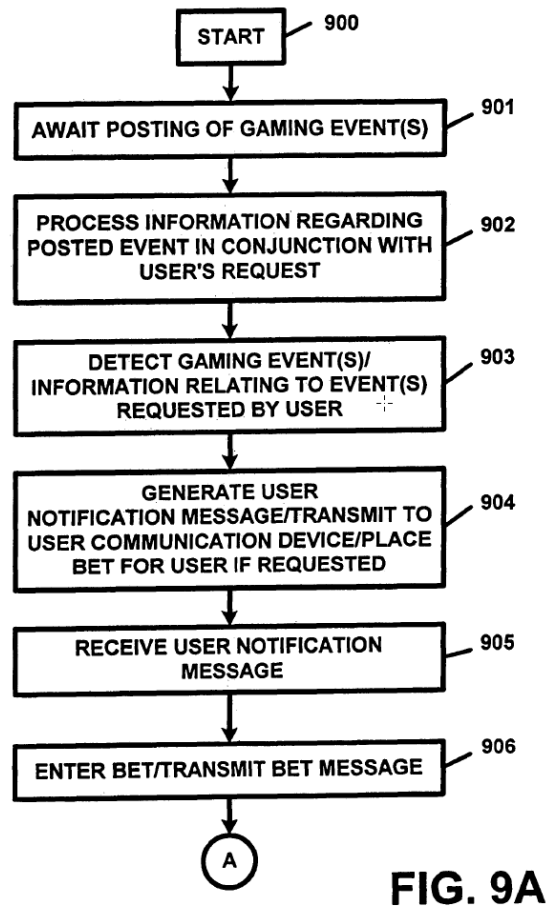


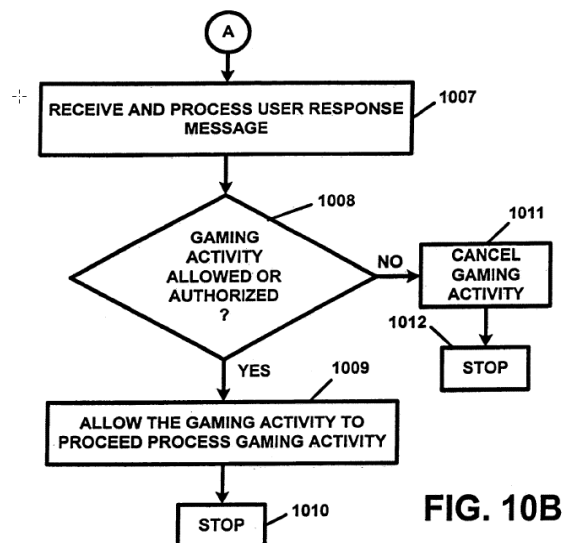
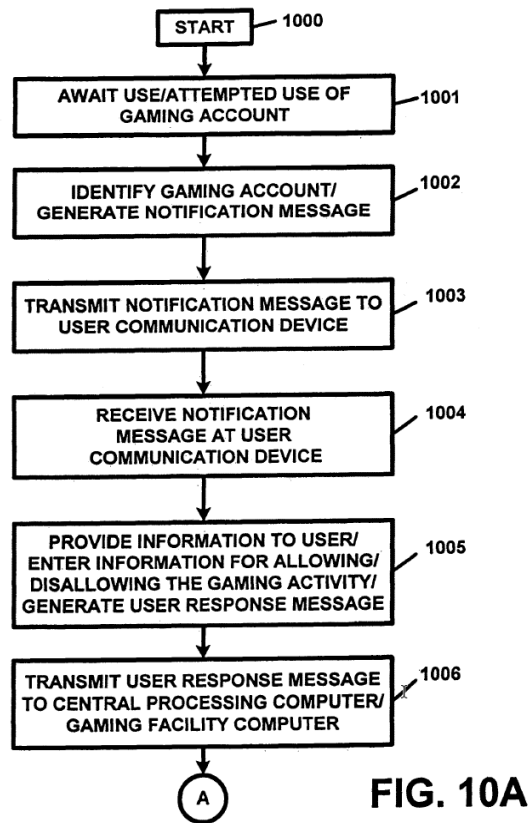
Figure 1 illustrates apparatus 100 having central processing computer 10, user communication device 20, gaming facility, financial institution, escrow agent, and governmental entity computers 30, 40, 50, and 60, respectively, and video, audio, and video conferencing equipment 70, 80, and 90, respectively. *Id.* at 35:63–65, 36:16–23.

Central processing computer 10 “can be comprised of one computer or computer system and/or can be comprised of a plurality of computers or computer systems” and “is/are capable of performing any of and all of the processing routines and/or functionality described herein as being performed by the apparatus 100 of the present invention.” Ex. 1001, 36:7–15. User communication device 20 is any device capable of communicating over a network such as any kind of computer, kiosk, any kind of telephone, interactive television, or hand-held device, and can also include or be utilized with a network computer used to receive e-mail messages for, or on behalf of a user. *Id.* at 36:37–48. “In any and/or all of the embodiments described herein, 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 36:44–54.

The claimed methods of the '755 patent are shown in flowcharts of the steps in Figures 9A, 9B, 10A, and 10B. Ex. 1001, 57:14–60:3. Figures 9A and 9B are reproduced below.



Figures 9A and 9B “illustrate another preferred embodiment method for utilizing the apparatus and method of the present invention, in flow diagram form.” Ex. 1001, 27:41–43. Figures 10A and 10B are reproduced below.



Figures 10A and 10B “illustrate still another preferred embodiment method for utilizing the apparatus and method of the present invention, in flow diagram form.” Ex. 1001, 27:44–46. Figures 9A and 9B provide for the 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, 57:14–25, 32–38. 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 57:38–44. 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 57:45–59. 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 58:13–37.

Figures 10A and 10B provide steps of “await[ing] use or attempted use of the gaming account” in step 1001, and upon detection of the use or attempted use, the computer “identif[ies] the gaming account being utilized and generate[s] a notification message containing information regarding the use of the gaming account” in step 1002. 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 58:67–59:34. 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 59:35–47. If the gaming is allowed or authorized, the process continues to step 1009 where the computer will allow the gaming to proceed and would continue processing the information and cease operations at step 1010. *Id.* at 59:47–59. If the gaming is determined to be disallowed, the process proceeds from step 1008 to step 1011 where the computer cancels the gaming activity and then ceases operation at step 1012. *Id.* at 59:60–64.

D. ILLUSTRATIVE CLAIM

Of the Challenged Claims, claims 1, 2, and 18 are independent. Claims 3–13, 16, and 17 depend, directly or indirectly, from independent claim 2, and claims 19 and 20 depend directly from independent claim 18. Claim 1 is illustrative of the claimed subject matter and is reproduced with certain reformatting:

1. An apparatus, comprising:

a computer, wherein the computer is specially programmed for processing information for providing for a placement of a bet on or regarding a gaming activity, a gambling activity, or a sporting event,

wherein the computer detects a posting of information regarding the gaming activity, the gambling activity, or the sporting event, and further wherein the computer generates a notification message regarding the gaming activity, the gambling activity, or the sporting event,

wherein, in response to a generating of the notification message, the computer initiates a communication link with a first communication device and transmits the notification message to

the first communication device as an electronic transmission, or the computer transmits the notification message as an electronic mail message, wherein the electronic mail message is received by or received at a first communication device, wherein the first communication device is associated with an individual,

wherein the computer receives a bet message transmitted from the first communication device or from a second communication device, wherein the second communication device is associated with the individual, and

further wherein the first communication device or the second communication device comprises a global positioning device, wherein the global positioning device determines a position or location of the first communication device or the second communication device,

wherein the bet message contains information regarding a bet to be placed on or regarding the gaming activity, the gambling activity, or the sporting event, and information regarding the position or location of the first communication device or the second communication device,

wherein the computer determines if the bet is allowed or disallowed using the information regarding the position or location of the first communication device or the second communication device and, if the bet is allowed, the computer processes information for placing the bet for or on behalf of the individual, or, if the bet is disallowed, the computer processes information for disallowing the bet.

Ex. 1001, 94:25–67. Independent claims 2 and 18 recite substantially similar subject matter as claim 1 and each is directed to a method comprising steps for performing the functions of the apparatus recited in claim 1.

Ex. 1001, 95:1–42, 97:51–98:30. Claim 18 further recites determining the location information from a global positioning device. Ex. 1001, 98:12–18,

E. REFERENCES AND TESTIMONY

Petitioner relies on the testimony of Mr. Garry Kitchen in support of its contentions. Patent Owner does not provide expert testimony. Below is an abbreviated summary of the qualifications of Mr. Kitchen.

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

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.³

References and Witness Testimony	Date	Ex. No.
U.S. Patent Application Publication No. US 2001/0047291 (“Garahi”)	Nov. 29, 2001	Ex. 1004
U.S. Patent Application Publication No. US 2001/0037211 A1 (“McNutt”)	Nov. 1, 2001	Ex. 1005
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
U.S. Patent Application Publication No. US 2002/0169835 A1 (“Paul”)	Nov. 14, 2002	Ex. 1009
Declaration of Garry Kitchen	Oct. 28, 2022	Ex. 1003
Deposition Transcript of Garry Kitchen	Feb. 13, 2024	Ex. 2001

³ 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).

F. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner challenges the patentability of claims 1–13 and 16–20 of the '755 patent on the following grounds (Pet. 5–6):

Claim(s) Challenged	35 U.S.C. §	References
1, 2, 4, 5, 8–10, 16–20	103(a) ⁴	Garahi, McNutt
6, 11, 12	103(a)	Garahi, McNutt, Rowe
3, 7	103(a)	Garahi, McNutt, Thomas
13	103(a)	Garahi, McNutt, Paul

II. ANALYSIS

A. LEGAL STANDARDS

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

Whether the Challenged Claims would have been obvious over the cited references is at issue in this proceeding. 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.” *KSR Int'l Co.*

⁴ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. § 103, effective March 16, 2013. Because the application from which the '755 patent issued is the result of a series of continuation applications going back at least to July 14, 2008, the pre-AIA version of § 103 applies. *See* Ex. 1001, code (63).

v. Teleflex Inc., 550 U.S. 398, 406 (2007). The legal 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) when in evidence, objective evidence of obviousness or nonobviousness.⁵ *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966). Whether a patent claiming the combination of prior art elements would have been obvious is determined by “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *KSR*, 550 U.S. at 417. One seeking to establish obviousness based on more than one reference also must articulate sufficient reasoning with rational underpinnings to combine teachings. *See Id.* at 418.

To show obviousness, it is not enough to merely show that the prior art includes separate references covering each separate limitation in a challenged claim. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). “This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *KSR*, 550 U.S. at 418–419. Moreover, in determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158,

⁵ The record does not include allegations or evidence of objective indicia of obviousness or nonobviousness.

164 (Fed. Cir. 1985) (“It is elementary that the claimed invention must be considered as a whole in deciding the question of obviousness.”); *see also Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537 (Fed. Cir. 1983) (“[T]he question under 35 U.S.C. § 103 is not whether the differences *themselves* would have been obvious. Consideration of differences, like each of the findings set forth in *Graham*, is but an aid in reaching the ultimate determination of whether the claimed invention as a whole would have been obvious.”).

An obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; *accord In re Translogic Tech., Inc.*, 504 F.3d 1249, 1259 (Fed. Cir. 2007). However, a petitioner cannot satisfy its burden of proving obviousness by employing “mere conclusory statements.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). Instead, a petitioner must articulate a reason why a person of ordinary skill in the art would have combined or modified the prior art references. *In re NuVasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016); *see also Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1366 (Fed. Cir. 2017) (“In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious without identifying any reason why a person of skill in the art would have made the combination.”); *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (“[O]bviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the

combinations or modifications of prior art to arrive at the claimed invention.”) (citing *InTouch Techs., Inc. v. VGO Commc’ns, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014)). As a factfinder, we also must be aware “of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.” *KSR*, 550 U.S. at 421.

Applying these general principles, we consider the evidence and arguments of the parties.

B. LEVEL OF ORDINARY SKILL

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 at the time of the invention (“POSITA,” “PHOSITA,” or “skilled artisan”) “would be a person having 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. 4 (citing Ex. 1003 ¶¶ 45–46). Patent Owner does not dispute Petitioner’s definition of the person of ordinary skill in the art. *See* PO Resp.

We find that the ’755 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 ’755 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. 15.

C. CLAIM CONSTRUCTION

In this *inter partes* review, we apply the same claim construction standard that would be used in a civil action under 35 U.S.C. § 282(b). 37 C.F.R. § 42.100(b). In applying this standard, we generally give claim terms their ordinary and customary meaning as would be understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc).

In the Petition, the only claim term for which Petitioner proposes an express construction is the term “or.” Pet. 7. In its Response, Patent Owner argues that there are “several apparent claim construction issues which must be addressed.” PO Resp. 12. The terms addressed by Patent Owner are “detect a posting,” “generates the notification message,” and “initiates a communication link,” as recited in claim 1, and “use message,” as recited in claim 7. PO Resp. 12–14.

We only address the term “initiates a communication link.” We find no additional claim term requires express construction. *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))).

Patent Owner asserts that “the phrase ‘initiates a communication link’ should be given its plain and ordinary meaning, which includes a construction of ‘initiates’ to mean simply: ‘to cause a process or action to begin.’” PO Resp. 13. Patent Owner disagrees with the construction provided by Petitioner “which would suggest ‘initiates a communication link’ is satisfied by the mere joining of a communication network.” *Id.* (citing Ex. 2001, 115:15–23).

Petitioner disagrees with Patent Owner and asserts that the ’755 patent “is silent as to this phrase, disclosing only the word ‘initiative’ with respect to a user’s actions at the user communication device, not the sports betting computer as claimed.” Pet. Reply 3 (citing Ex. 1001, 85:64–67, 86:47–55, 91:7–10, 91:45–49). According to Petitioner, the ’755 patent does not “suggest that a step to ‘join’ cannot be an initiating step” as evidenced by the disclosure “providing electronic communication transmissions and messages via networks quite thoroughly and repeatedly.” *Id.* at 3–4 (citing Ex. 1001, 5:22–36, 8:30–54, 10:5–10, 13:41–49, 19:36–45, 19:56–59, 41:30–54, 54:44–49, 55:45–49, 57:45–55, 59:17–23, 66:7–19, 70:27–30). Thus, Petitioner argues that Patent Owner’s “attempted narrowing of the term ‘initiates a communication link’ should be rejected as solely attorney argument and instead be understood under its plain and ordinary meaning.” *Id.* at 4. Petitioner does not specify what it believes to be the “plain and ordinary meaning” of “initiat[ing] a communication link.” See Pet. Reply 3–4.

The ’755 patent only uses the term “initiate” in the Abstract in describing the method as including, in relevant part, “initiating a communication link with, and transmitting the notification message to,” a

communication device, and in the claims. In describing the methods depicted in Figures 9 and 10, the '755 patent provides that after detecting a posting for which the user would like to be notified, in step 904 the gaming facility computer 30 generates a user notification message and transmits that message to the user communication device 20, in real time or otherwise, as a pager, beeper, pre-recorded, instant, facsimile, and/or email message and/or a telephone call. Ex. 1001, 57:38–55, 59:4–22. A general dictionary definition of “initiate” is “to cause or facilitate the beginning of: set going.” Merriam-Webster On-line Dictionary, available at <https://www.merriam-webster.com/dictionary/initiate> (last visited May 1, 2024) (Ex. 3001).

Thus, after evaluating the parties’ claim construction arguments regarding the term, we agree with Patent Owner and construe the term “initiates a communication link” by its plain and ordinary meaning of causing or facilitating the beginning of a communication link.

D. SCOPE AND CONTENT OF THE PRIOR ART

To demonstrate the unpatentability of claims 1–13 and 16–20 of the '755 patent, Petitioner relies on Garahi, McNutt, Rowe, Thomas, and Paul.

1. *Summary of Garahi – Exhibit 1004*

Garahi discloses “[a]n interactive wagering application . . . that allows users to place parimutuel wagers on future events.” Ex. 1004, code (57); *see also id.* ¶ 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.* at 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.* at 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.

Garahi’s wagering system 10 “may be used to provide an interactive wagering service to users of various user equipment” via an interactive wagering application (Ex. 1004 ¶ 30) and is shown in Figure 1, which is reproduced below.

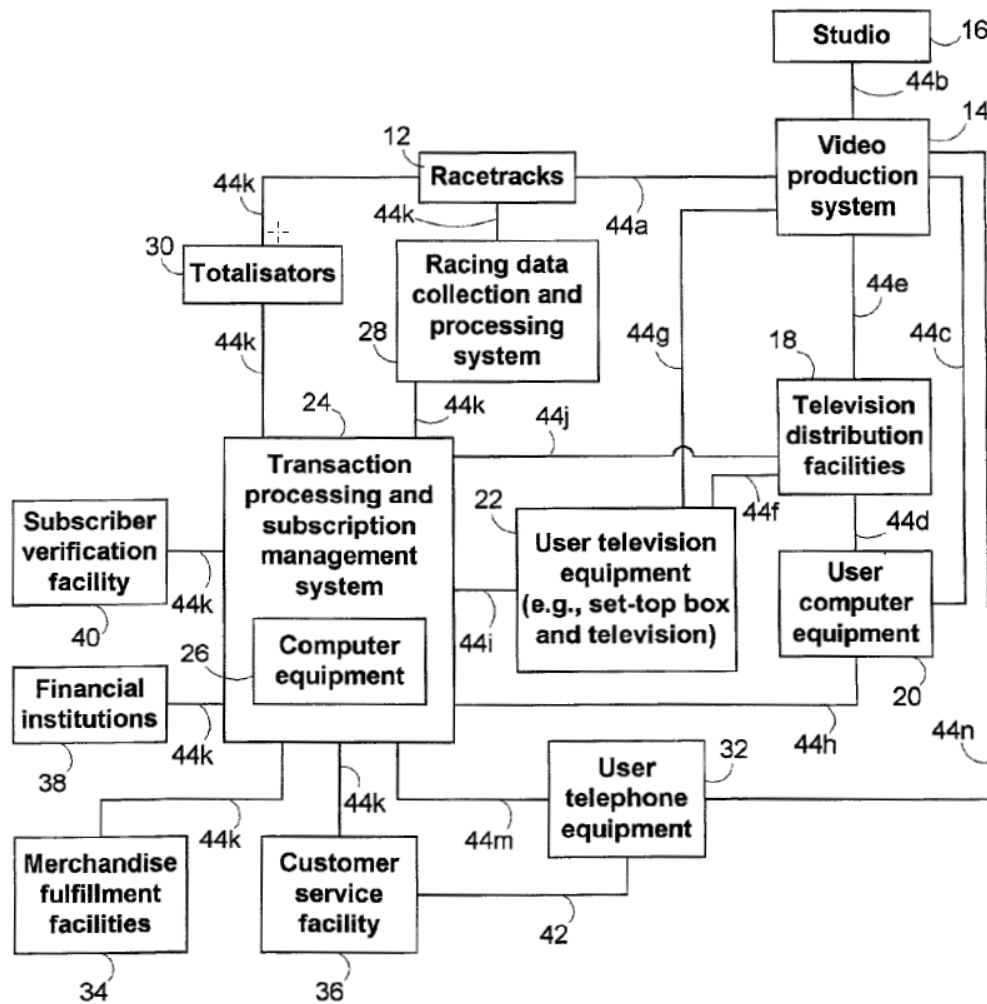


FIG. 1

Figure 1 “is a schematic diagram of an illustrative interactive wagering system in accordance with one embodiment of the present invention” (Ex. 1004 ¶ 15) 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). Ex. 1004 ¶ 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. Ex. 1004 ¶ 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 a wager, and to interact with the wagering service through interactive screens provided by the service. Ex. 1004 ¶¶ 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.” Ex. 1004 ¶ 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.” Ex. 1004 ¶ 88.

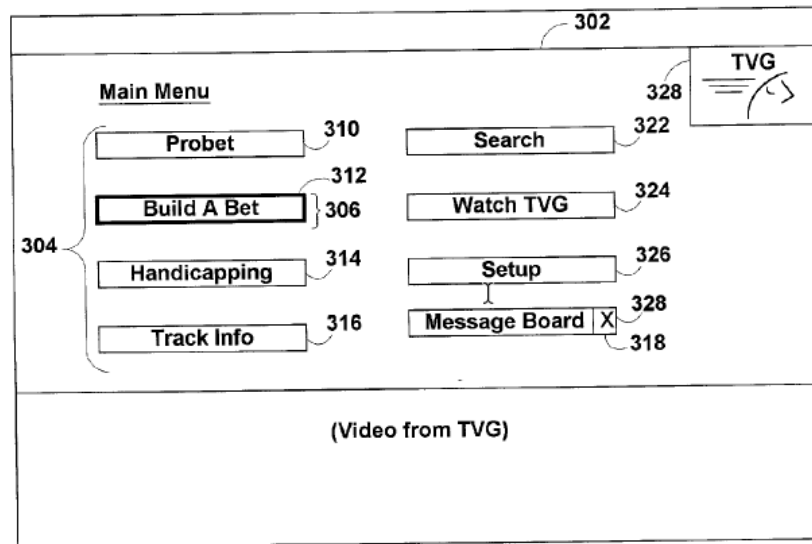


FIG. 3

Figure 3 illustrates a “main menu display screen that may be provided in accordance with one embodiment of the present invention” (Ex. 1004 ¶ 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 (Ex. 1004 ¶¶ 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. Ex. 1004 ¶ 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	
<u>FUTURE RACES</u>					
306			1200		
WAGERING POOLS					
1202 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.

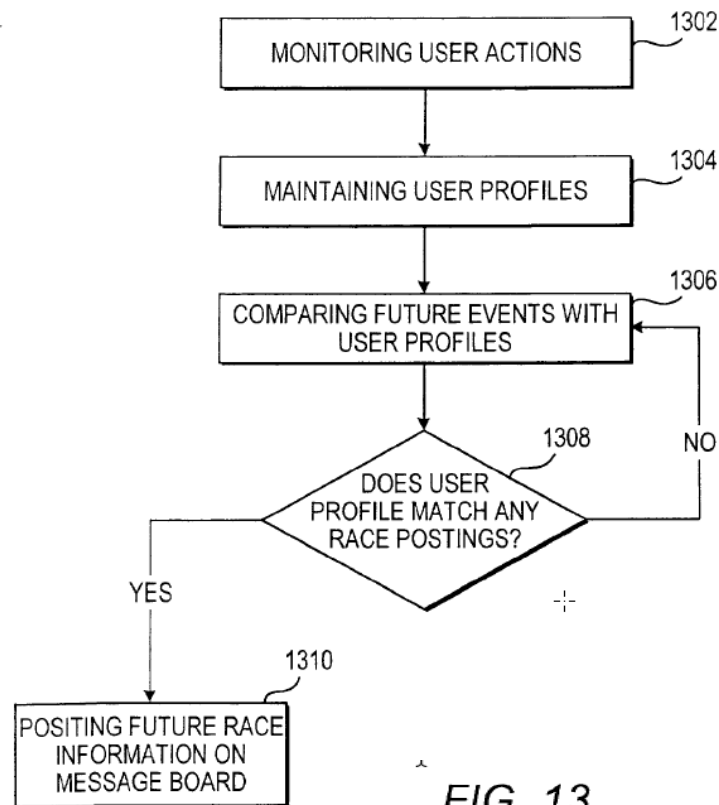


Figure 13 “is a flowchart of illustrative steps involved in associating future race information with a user in accordance with one embodiment of the present invention.” Ex. 1004 ¶ 27.

At step 1302, the interactive wagering application may monitor user activity. Ex. 1004 ¶ 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 McNutt – Exhibit 1005*

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.” Ex. 1005, 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 (Ex. 1005 ¶ 33) and is shown in Figure 1, which is reproduced below.

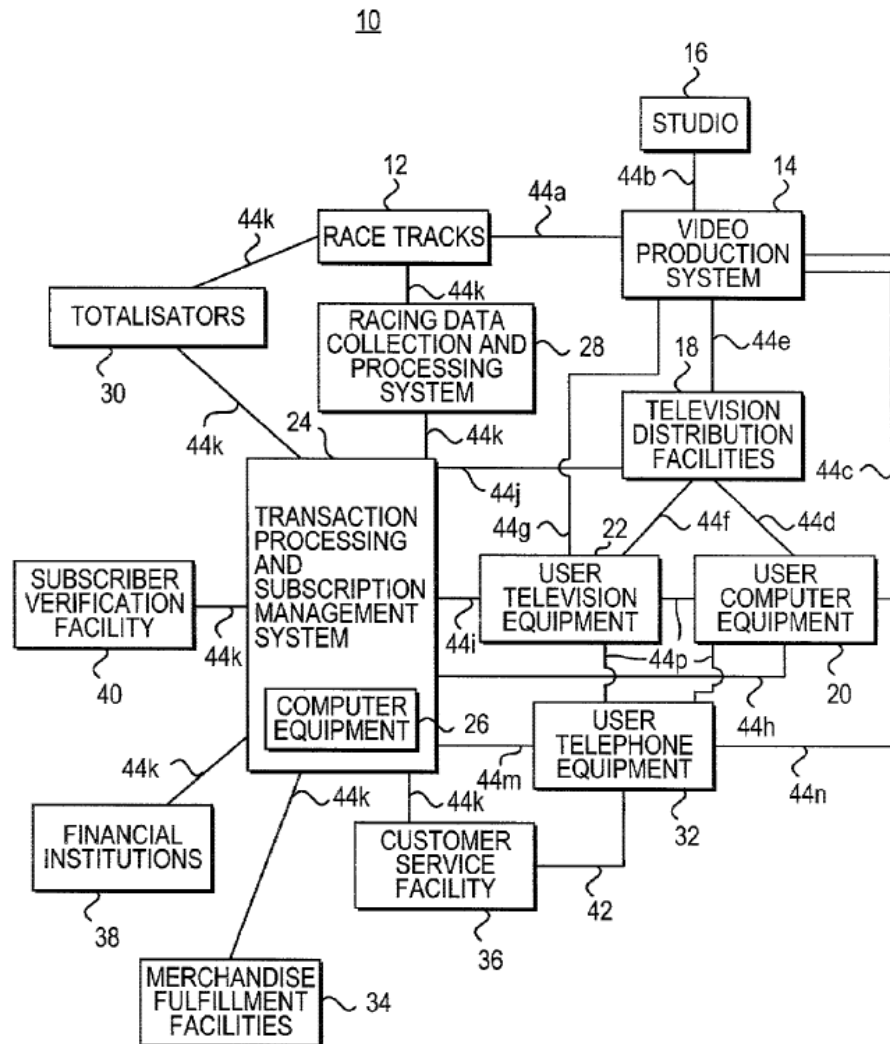


FIG. 1

Figure 1 “is a schematic diagram of an illustrative interactive wagering system in accordance with one embodiment of the present invention” (Ex. 1005 ¶ 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 [(‘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). Ex. 1005 ¶ 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. Ex. 1005 ¶ 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 a wager, and to interact with the wagering service through interactive screens provides by the service. Ex. 1005 ¶¶ 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.” Ex. 1005 ¶ 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.” Ex. 1005 ¶ 111. The process of restricting access in this way is shown in Figure 12, reproduced below.

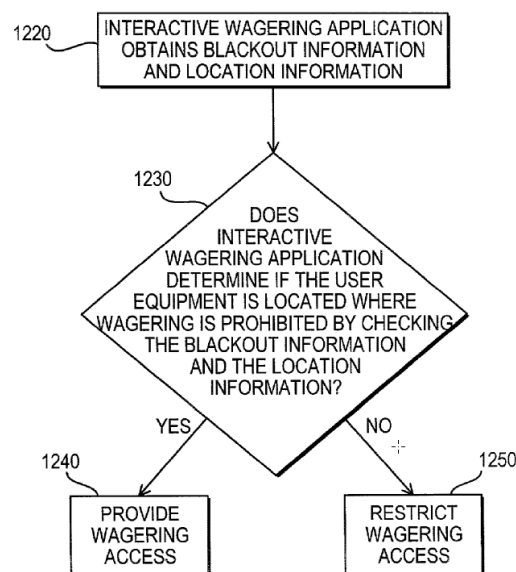


FIG. 12

Figure 12 “is a flow chart of illustrative steps involved in restricting wagering access based on the user equipment location.” Ex. 1005 ¶ 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. Ex. 1005 ¶ 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 (*id.* ¶ 117) 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.” Ex. 1005 ¶ 28.

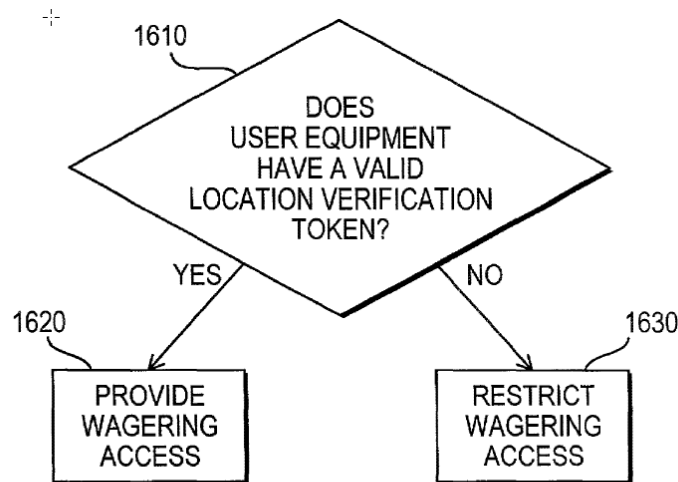


FIG. 16

McNutt’s Figure 16 illustrates the “steps involved in providing wagering access based on a location verification token.” Ex. 1005 ¶ 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.” *Id.* 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.” Ex. 1005 at 13 (claim 1).

3. *Summary of Rowe – Exhibit 1007*

Rowe, titled “METHOD AND APPARATUS FOR MONITORING PLAYER LOSS IN A GAMING ENVIRONMENT,” discloses “[m]ethods and apparatus for facilitating and monitoring player financial transactions, including the tracking of player losses.” Ex. 1007, codes (54), (57), ¶ 11.

Rowe discloses the following:

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.*

4. *Summary of Thomas – Exhibit 1008*

Thomas, titled “SYSTEMS AND METHODS FOR PRESENTING A LOTTERY INTERFACE IN AN INTERACTIVE WAGERING APPLICATION,” discloses that “[i]nteractive wagering systems and

methods are provided for giving a user the ability to participate in lotteries using user equipment.” Ex. 1008, codes (54), (57). Thomas discloses that “the interactive wagering application may run using a client-server or distributed architecture” (*id.* ¶ 32) and depicts a system similar to those of Garahi and of McNutt (*compare* Ex. 1004, Fig. 1 *with* Ex. 1005, Fig. 1 *and* Ex. 1008, Fig. 1). 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. “[W]hen 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.*

5. *Summary of Paul – Exhibit 1009*

Paul, titled “E-MAIL COMMUNICATIONS SYSTEM, METHOD AND PROGRAM,” discloses an “Internet-based method of communicating [that] interacts with a plurality of members each having a computer-based communications system with an email-facility.” Ex. 1009, codes (54), (57). Paul’s system comprises a database of member records, which sponsors access through specific applications using a login command and password, facilitating personalized e-mail communications with members for marketing purposes. *Id.* ¶ 33. “The member can customize the kind and amount of information present in the member record database.” *Id.* ¶ 34.

For example, when the sponsor is a lottery, the member can indicate they want to receive information regarding lotteries, and the sponsor lottery can send e-mail communications 202 to members including a hyperlink to sponsor lottery webpage 212. *Id.* ¶¶ 34, 96.

E. ALLEGED OBVIOUSNESS OVER GARAHİ AND MCNUTT OF CLAIMS 1, 2, 4, 5, 8–10, AND 16–20

1. *Discussion*

Petitioner asserts that Garahi teaches an apparatus comprising a specially programmed computer that teaches or suggests most of the limitations of claims 1, 2, 4, 5, 8–10, and 16–20. Pet. 9–24, 31–41. Petitioner cites McNutt when addressing the limitations of “wherein the bet message contains information regarding a bet to be placed on or regarding the gaming activity, the gambling activity, or the sporting event, and information regarding the position or location of the first communication device or the second communication device” and of

wherein the computer determines if the bet is allowed or disallowed using the information regarding the position or location of the first communication device or the second communication device and, if the bet is allowed, the computer processes information for placing the bet for or on behalf of the individual, or, if the bet is disallowed, the computer processes information for disallowing the bet[,]

as recited in independent claim 1 and similarly recited in each of independent claims 2 and 18. *Id.* at 24–31. Petitioner also relies on McNutt when addressing the limitation of dependent claim 5 regarding “processing information for determining a state, a political subdivision, or a country, in which the first communication device or the second communication device

is or was located at a time of the transmission of the bet message.” *Id.* at 34–35; Ex.1001, 95:58–65.

Patent Owner disputes Petitioner’s assertions that Garahi teaches the computer detecting a posting of information regarding the activity or event, generating a notification regarding that activity or event, and initiating a communication link with a first communication device, as recited in claims 1, 2, and 18. PO Resp. 20–28. Patent Owner also disputes that Petitioner has established that the combination of Garahi and McNutt renders obvious the bet message containing information regarding the position or location of a communication device. *Id.* at 28–34. For the dependent claims, Patent Owner relies on the arguments presented for claim 1. *Id.* at 35–37.

The Parties’ arguments raise a number of different disputes regarding Petitioner’s contention that claim 1 would have been obvious over Garahi and McNutt. These arguments relate to whether Petitioner has adequately shown that: (1) Garahi renders obvious the computer detects a posting of information regarding the activity or event; (2) Garahi renders obvious the computer generating a notification message regarding the activity or event; (3) Garahi renders obvious the computer initiating a communication link with a first communication device; and (4) the combination of Garahi and McNutt renders obvious the bet message containing information regarding the position or location of the communication device. PO Resp. 20–37. Because we find them dispositive, we focus our discussion on the disputes regarding Petitioner’s contentions that Garahi renders obvious the computer initiating a communication link with a first communication device and that the combination of Garahi and McNutt renders obvious the bet message

containing information regarding the position or location of the communication device. *See id.* at 24–37.

a) “wherein, in response to a generating of the notification message, the computer initiates a communication link with a first communication device and transmits the notification message to the first communication device as an electronic transmission, or the computer transmits the notification message as an electronic mail message, wherein the electronic mail message is received by or received at a first communication device, wherein the first communication device is associated with an individual”

Petitioner alleges that Garahi’s communication link 44i and user television equipment 22 meet the claimed communication link with a first communication device associated with an individual. Pet. 16–17. Petitioner contends as follows:

it would have further been obvious and a PHOSITA would have been motivated to configure TPSMS to initiate a communication link 44i with the user television equipment 22 in response to generating the notification message according to known techniques and transmit messages to the user television equipment 22 for display on message board screen 1200. . . . Communication link 44i is a medium that passes electrical signals, such as “a telephone line, digital subscriber line, ISDN line.” . . . Thus, any message transmitted from the TPSMS to user television equipment 32 would at least qualify as an electronic transmission since it is transmitted as an electrical signal.

Id. at 19 (quoting Ex. 1004 ¶ 70; citing Ex. 1003 ¶¶ 125, 127, 128).

Further, Petitioner alleges that “[i]nitiating communication links and transmitting messages via cellular communication networks was [sic] routine and well understood for many years prior to the ’755 Patent,” and “would have predictably resulted [in] the transmission of the notification

message to the user television equipment 32.” Pet. 19 (citing Ex. 1003 ¶ 128). Petitioner argues “[t]herefore, it would have been within the skill of a PHOSITA to initiate communication link 44i with the user television equipment 22 and transmit the notification message as an electronic transmission so that it can be displayed on the user’s message board screen 1200” and a skilled artisan “would have had a reasonable expectation of success configuring Garahi’s processing system to operate in this manner.” *Id.* at 19–20 (citing Ex. 1003 ¶¶ 127–128). Petitioner also argues that Patent Owner “does not address—much less refute—the reasons Petitioners and Mr. Kitchen give for modifying Garahi’s system, which embodies well-known and understood cellular communications technologies that initiate communication links for transmitting messages.” Pet. Reply (citing Pet. 18–20; Ex. 1003 ¶¶ 125–128).

Patent Owner asserts that “Petitioner first confirms the fact that Garahi fails to disclose the initiation of a communication link in accordance with [this limitation].” PO Resp. 25 (citing Pet. 18–19). Patent Owner argues that Petitioner’s “claim[] that ‘a PHOSITA would have been motivated to configure TPSMS to initiate a communication link 44i with the user television equipment 22 in response to generating the notification message according to known techniques’” is incorrect. *Id.* (quoting Pet. 19). Rather, Patent Owner argues, “the approach contemplated in Garahi has no use for the step of initiating a communication link for the purpose of transmitting a notification message,” because “unless and until the user logs into the server, he will never see the new posting” on Garahi’s message board having an icon alerting the user of new information. *Id.* at 25–26 (citing Ex. 1004 ¶¶ 89, 107, 110). Further, Patent Owner contends that

“[n]othing in Garahi suggests a need to initiate any communication with the user device directly, and certainly not over TPSMS, given the fact that Garahi is premised on an application-based model” such that “there is no communication outside the context of a user log-in.” *Id.* at 26.

We agree with Patent Owner that Garahi’s posting of the message board does not meet the claimed “computer initiat[ing] a communication link with a first communication device.” As discussed above in Section II.C, the initiating of a communication link requires causing or facilitating the beginning of a communication link.

Mr. Kitchen testifies, regarding this limitation, that Garahi teaches: (1) the user’s device “displays messages specific to the user/individual” in posting to the user’s message board the future races determined to match the user’s profile (Ex. 1003 ¶ 125); (2) “Garahi’s TPSMS (i.e., ‘the computer’) communicates with user television equipment 22 (i.e., ‘a first communication device’) via communications link 44i” (*id.* ¶ 126); and (3) “Garahi’s [] wagering application ‘notif[ies] the user of new information postings by displaying an indication icon such as icon 318 on message board option 328 of FIG. 3’” (*id.* (quoting Ex. 1004 ¶ 107) (alteration in original)). Mr. Kitchen reasons that it would have been obvious to a person of ordinary skill the art “to configure the TPSMS (i.e., ‘computer’) to perform Figure 13 including generating a notification message regarding the sporting event.” *Id.* (citing Ex. 1003 ¶¶ 111–119). Mr. Kitchen further testifies as follows:

Because these notification messages are displayed on the user television equipment 22, it would have been obvious and a person having ordinary skill in the art would have been motivated to configure TPSMS to initiate a communication link via communication path 44i with the user television equipment 22 according to known techniques and transmit messages to the user

television equipment 22 for display on message board screen 1200.

Id. 1003 ¶ 126.

Mr. Kitchen appears to acknowledge that Garahi does not specifically teach the computer initiating the communication link with the user device and testifies as follows:

To the extent that patent owner argues that Garahi does not disclose the TPSMS initiating communication link 44i, it would have at the very least been obvious to a person having ordinary skill in the art to program the TPSMS to initiate communication link 44i according to known techniques and transmit messages to the user television equipment 22 for display on message board screen 1200. Having the TPSMS establish the communication link would have been obvious because doing so would allow the sending of wagering information to a user. A person having ordinary skill in the art would have readily understood that any message transmitted from the TPSMS to user television equipment 22 via the message board display would at least qualify as an “electronic transmission” because it is transmitted through one of the exemplary mediums that passes data as electrical signals, such as “a telephone line, digital subscriber line, ISDN line.”

Ex. 1003 ¶ 127.

Mr. Kitchen further testifies that “[t]he known technique of initiating a communication link and transmitting electronic transmissions would have predictable resulted [sic] in the transmission of the notification message to the user television equipment 22.” *Id.* ¶ 128 (citing Ex. 1004 ¶ 70). Also, Mr. Kitchen testifies that “since initiating communication links and transmitting messages via telephone, digital subscriber, and ISDN lines was routine and well understood for many years prior to the ’755 Patent, a person having ordinary skill in the art would have had a reasonable expectation of

success configuring Garahi's processing system to operate in this manner." *Id.* ¶ 128.

Petitioner's position, as supported by Mr. Kitchen, suggests that posting the notice to the interface via communications link 44i is initiating transmission to the user device, i.e., the TV associated with the individual. *See* Pet. 19. However, Garahi's communication link to the TV exists prior to its "new information postings," and Petitioner fails to show how Garahi teaches that "the computer initiates a communication link," which is "in response to a generating of the notification message," as required by claims 1, 2, and 18. We agree with Patent Owner that "initiating" a communication link in Garahi only occurs when the user using the equipment logs into the system. *See* PO Resp. 26.

To the extent Petitioner argues it would have been obvious to modify Garahi's system to initiate a communication link (Pet. 19–20; Pet. Reply 9), Petitioner does not provide adequate evidence or reasoning to establish how or why a skilled artisan would have modified Garahi's system to initiate a communication link and transmit the message to the user's device. Although Mr. Kitchen testified that it was old and well known at the time of the '755 patent to initiate a communication link and that there would have been a reasonable expectation of success to configure Garahi's system to do so, Mr. Kitchen does not explain why one of ordinary skill in the art would have been motivated to or would have benefited from such a modification of Garahi's system.

Mr. Kitchen testifies that "[h]aving the TPSMS establish the communication link would have been obvious because doing so would allow the sending of wagering information to a user." Ex. 1003 ¶ 127. Yet,

Garahi's system already allows for the sending of wagering information to the user in posting the generated notification message to a "Message Board." Ex. 1004 ¶¶ 89, 107, 110. The existence of a new message is indicated by a display icon 318 next to the option "Message Board" in interface 300 having multiple options. Ex. 1004 ¶¶ 89, 107, 110, Figs. 3, 12, 13. In order to receive the message, the user must first access the Message Board by selecting the related option, after which the information is displayed to the user. *Id.* That it was well-known in the art to have initiated a communication link does not explain how or why a skilled artisan would have modified Garahi's system that notifies a user of wagering information by posting on a message board to notify a user by initiating a communication link to the user. Simply because a skilled artisan could have modified Garahi's system to incorporate initiating the communication link does not explain why they would have had reason to do so. *See In re NuVasive*, 842 F.3d at 1382; *Belden*, 805 F.3d at 1073.

Thus, the preponderance of evidence does not show that Garahi's posting or transmitting race information to the user's Message Board, alone or in combination with the well-known technique of initiating a communication link, would have made it obvious to have the claimed computer initiate a communication link with a first communication device in response to generating the notification message.

b) “wherein the bet message contains information regarding a bet to be placed on or regarding the gaming activity, the gambling activity, or the sporting event, and information regarding the position or location of the first communication device or the second communication device”

Petitioner asserts that Garahi teaches wagering data containing information regarding a sporting event that meets the claimed bet message containing information regarding a bet on or regarding a gaming or gambling activity or sporting event. Pet. 23–24 (citing Ex. 1004 ¶¶ 56, 94–101, Figs. 6a–d, 7, 8, 9).

With regards to the bet message containing information regarding the position or location of the communication device, 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.” Pet. 24. Petitioner asserts that “it would have been obvious to a PHOSITA to configure Garahi to include the second communication device’s location information in the wagering data (i.e., *the bet message*) as taught by McNutt.” *Id.* (citing Ex. 1003 ¶ 143); *see also* Pet. Reply 10.

Petitioner directs attention to the allegedly identical nature of Garahi’s and McNutt’s systems and asserts that “McNutt teaches restricting wagering access based on the user’s location” by determining the user’s location based on a location device, such as by a global positioning satellite receiver in a cellular phone, transmitting that location data to the TPSMS with the bet message, and determining, by the TPSMS, whether the user equipment is located in an area where wagering is prohibited. Pet. 24–26 (citing Ex. 1004, Fig. 1; Ex. 1005, code (57), ¶¶ 57, 63, 111, 114, 119, 129, Fig. 1).

Petitioner asserts that “[b]ased on McNutt’s teachings, it would have been obvious to a PHOSITA to similarly configure Garahi to transmit the location information of the user telephone equipment 32 (i.e., information regarding the position or location of . . . the second communication device) to the TPSMS with the wagering data (i.e., the bet message).” *Id.* at 26 (citing Ex. 1003 ¶ 148). Petitioner alleges a PHOSITA would have been motivated to modify Garahi with McNutt “to include the user’s location information with the wagering data transmitted to the TPSMS” because “[s]uch a person would have recognized that verifying the user’s location at the point when the user attempts to create a new wager was a well-known and predictable way of ensuring that the wagering system is complying with local gaming regulations.” *Id.* (citing Ex. 1003 ¶ 148).

As such, Petitioner contends “any software modifications needed to accommodate sending the user device’s location information with a bet message in Garahi’s system would have been easy for a PHOSITA to understand and configure.” Pet. Reply 10. And, Petitioner contends “that a PHOSITA would have been motivated to make the modification because such a modification would have predictably improved the Garahi system to be 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, e.g., the state of Oklahoma.” *Id.* (citing Pet. 25–27; Ex. 1003 ¶¶ 145–149; Ex. 1005 ¶¶ 111, 114).

Patent Owner asserts that Petitioner “confirms the fact that Garahi fails to disclose the transmission of a bet message which contains both bet information and location information of the user device” as recited in this limitation. PO Resp. 29 (citing Pet. 24; Ex. 2001, 124:3–7). Patent Owner

contends that “neither Garahi nor McNutt discloses a ‘bet message’ as claimed.” *Id.* Asserting that any location verification in Garahi is from the perspective of the system “obtaining such information from the cellular network or the device as part of the subscriber verification process,” Patent Owner argues that “[i]n this regard, Garahi plainly does not contemplate a scenario where the user communication device transmits location information as part of a bet message.” *Id.* (citing Ex. 1004 ¶ 50).

Turning to McNutt, Patent Owner argues that McNutt teaches that its 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. 30 (citing Ex. 1005 ¶¶ 6, 8, 137, Fig. 16). Patent Owner also asserts that McNutt teaches the location information being “‘obtained’ by the wagering system ‘when the user initiates the wager creation process’” that is “‘initiated’ . . . when the user selects the ‘CREATE WAGER’ option from the selection menu.” *Id.* at 31 (quoting and citing Ex. 1005 ¶ 129, Fig. 6; Ex. 2001, 135:22–25). As such, Patent Owner argues, the evidence does not support Petitioner’s contention that “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,” and that “no ‘token’ accompanies an actual wager in McNutt.” *Id.* at 30–32 (citing Ex. 1005 ¶ 97, Figs. 6, 9, 18).

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. 1005 ¶ 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.” *Id.* ¶ 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.

Neither Garahi nor McNutt teaches including the location information in the bet/wagering message. Mr. Kitchen testifies that “Garahi certainly doesn’t” disclose a bet message having location information. Ex. 2001, 140:19–141:8. Further, Mr. Kitchen testifies that “McNutt does not disclose a bet message,” and therefore, does not alone teach including location information in a bet message. *Id.* at 136:8–24. Petitioner’s argument, as Mr. Kitchen explains, is premised on combining “location which is obtained by McNutt at the institution of the bet,” not at the placement of the bet, with the wagering data transmitted by Garahi. *See* Ex. 2001, 136:8–137:7. 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. 1005 ¶ 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 it would have been obvious to include McNutt’s location data “*with*” Garahi’s bet message, i.e., wagering data comprising the type and desired amount of wager. Pet. 26. However, Petitioner has not explained why a skilled artisan would modify Garahi’s bet message to include the location data of McNutt. Petitioner contends that a skilled artisan would do so “to be 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, e.g., the state of Oklahoma.” Pet. Reply 10 (citing Pet. 25–27; Ex. 1003 ¶¶ 145–149; Ex. 1005 ¶¶ 111, 114).

We agree with Patent Owner that Petitioner fails to persuasively identify any “deficiency in Garahi which McNutt purportedly solves in as much as Garahi already discloses obtaining” and using the location of the user to discern the legality of a placed bet at the user’s location. PO Resp. 33; Ex. 1004 ¶ 50. Petitioner has not provided any further benefit to add location information into Garahi’s bet message having wagering data. Further, 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 disclosure of the ’755 patent. The ’755 patent specifically provides that transmitting “information regarding the

position or location of the first communication device or second communication device” is for “determining whether the bet is allowed or disallowed using the position or location information.” Ex. 1001 code (57); *see also id.* at 7:8–15, 80:24–81–18, Fig. 20A (discussing a process for determining whether the bet is allowed based on the user’s location). To the extent that Garahi teaches transmitting a message with wagering data, and that McNutt teaches 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. *Conclusion for Alleged Obviousness over Garahi and McNutt*

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 and McNutt teaches every limitation of claims 1, 2, and 18 and why one of ordinary skill in the art would have had sufficient reason to combine Garahi and McNutt, with a reasonable expectation of success in doing so.

Petitioner’s reliance on Garahi for dependent claims 4, 8, 9, 10, 16, 17, 19, and 20 and on the combination of Garahi and McNutt for dependent claim 5 does not resolve the deficiencies in Petitioner’s contentions regarding claims 2 and 18. Thus, for the same reasons as discussed above regarding claims 2 and 18, we determine that Petitioner has not shown by a preponderance of the evidence that the combination of Garahi and McNutt teaches every limitation of claims 4, 8, 9, 10, 16, 17, 19, and 20 and that an

ordinarily skilled artisan would have had reason to combine Garahi and McNutt with a reasonable expectation of success.

In conclusion, based on our review of the evidence and arguments cited by Petitioner, we find that on this record, Petitioner has not demonstrated by a preponderance of evidence obviousness of claims 1, 2, 4, 5, 8–10, and 16–20 based on Garahi and McNutt.

F. ALLEGED OBVIOUSNESS OVER GARAH, McNUTT, AND ROWE OF CLAIMS 6, 11, AND 12

1. *Discussion*

Petitioner challenges dependent claims 6, 11, and 12 as unpatentable under 35 U.S.C. § 103 over Garahi, McNutt, and Rowe. Pet. 41–44; Pet. Reply 12–14. Petitioner’s contentions are supported by the testimony of Mr. Kitchen. *Id.*; Ex. 1003 ¶¶ 185–189. Patent Owner disputes Petitioner’s contentions. PO Resp. 37–41.

Claims 6, 11, and 12 depend directly or indirectly from independent claim 2. Ex. 1001, 95:66–96:2, 96:44–97–2. Petitioner asserts Rowe teaches processing information for “effectuating a payment to the country.” “paying withholding taxes or income taxes on winnings for or on behalf of the individual,” “withholding income taxes for the individual and for paying withholding taxes to a taxing authority.” Pet. 42–44 (citing Ex. 1007 ¶¶ 11, 173, 174, 203). Petitioner contends that “it would have been obvious to a PHOSITA to configure Garahi’s TPSMS to similarly process information for effectuating a payment to the country.” *Id.* at 42 (citing Ex. 1003 ¶ 185). A skilled artisan, Petitioner argues, “would have understood that governments at the time of the ’755 Patent required players to pay taxes on winnings including winnings from wagers on sporting events,” and “would

have further recognized that configuring the TPSMS to determine tax withholdings due based on the user’s winnings and transferring the withholdings to an IRS account would have predictably removed this burden from the user and ensured that the user complies with applicable tax laws.” *Id.* at 42–43 (citing Ex. 1003 ¶¶ 185, 187).

Petitioner also asserts that a skilled artisan “would have understood that systems deducting taxes from various forms of income have been well known for decades” and that “the process of deducting taxes and effectuating payment to the government on behalf of an individual is well known and very well understood.” Pet. 43 (citing Ex. 1003 ¶¶ 188, 189). Thus, Petitioner concludes “there would have been a reasonable expectation of success configuring Garahi’s TPSMS to similarly processing information for effectuating a payment to the country as taught by Rowe.” *Id.* (citing Ex. 1003 ¶ 189).

Patent Owner argues that claims 6, 11, and 12 would not have been obvious for the reasons provided for claims 1, 2, and 18 over Garahi and McNutt. PO Resp. 37–38. Additionally, Patent Owner argues that “Petitioner fails to cite art which, either alone or in combination, renders [the limitations of claims 6, 11, and 12] obvious.” *Id.* at 38. And, Patent Owner contends that Petitioner’s reasoning is based on impermissible hindsight. *Id.* at 38–40.

Petitioner’s reliance on Rowe for teaching “processing information for effectuating a payment to the state, the political subdivision, or the country” (Ex. 1001, 95:66–96:2) does not cure the deficiencies of Petitioner’s contention that claim 2 is unpatentable. *See supra* Section II.E. Thus, for the same reasons as discussed above regarding claim 2, we determine that

Petitioner has not shown by a preponderance of the evidence that the combination of Garahi, McNutt, and Rowe teaches every limitation of claims 6, 11, and 12 and that an ordinarily skilled artisan would have had reason to combine Garahi, McNutt, and Rowe with a reasonable expectation of success.

2. *Conclusion of Alleged Obviousness over Garahi, McNutt, and Rowe*

Based on our review of the evidence and arguments cited by Petitioner, we find that on this record, Petitioner has not demonstrated by a preponderance of evidence obviousness of claims 6, 11, and 12 based on Garahi, McNutt, and Rowe.

G. ALLEGED OBVIOUSNESS OVER GARAH, MCNUTT, AND THOMAS OF CLAIMS 3 AND 7

1. *Discussion*

Petitioner challenges dependent claims 3 and 7 as unpatentable under 35 U.S.C. § 103 over Garahi, McNutt, and Thomas. Pet. 44–48; Pet. Reply 15–17. Petitioner’s contentions are supported by the testimony of Mr. Kitchen. *Id.*; Ex. 1003 ¶¶ 192–200. Patent Owner disputes Petitioner’s contentions. PO Resp. 42–45.

a) *Claim 3*

Claim 3 depends from independent claim 2. Ex. 1001, 95:43–46. Petitioner asserts that “Thomas describes an interactive wagering system ‘giving a user the ability to participate in lotteries using user equipment.’” Pet. 45 (citing Ex. 1008 ¶ 7, Abstract; Ex. 1003 ¶ 192). According to Petitioner, because “Garahi discloses that that its invention applies to various different types of wagering,” a skilled artisan “would have understood that a

lottery is merely another form of wagering, and thus would have been motivated to allow users of the Garahi-McNutt system to wager on lotteries.” *Id.* (citing Ex. 1004 ¶ 28; Ex. 1003 ¶ 193). Petitioner contends that this “would have amounted to no more than a simple substitution of one known element (wagering on lotteries) for another (wagering on races) to obtain predictable results (allowing users to wager using the interactive wagering system).” *Id.* Petitioner also contends that the skilled artisan “would have had a reasonable expectation of success for modifying Garahi’s teachings to allow users to wager on lotteries because Garahi and Thomas disclose nearly identical interactive wagering system[s].” *Id.* (citing Ex. 1003 ¶ 194).

Patent Owner does not raise any arguments directed specifically to claim 3 aside from the arguments Patent Owner directs to claim 2. *See* PO Resp. 36, 42.

Petitioner’s reliance on Thomas for teaching the activity or event being a lottery (Ex. 1001, 95:43–46) does not cure the deficiencies of Petitioner’s contention that claim 2 is unpatentable. *See supra* Section II.E. Thus, for the same reasons as discussed above regarding claim 2, we determine that Petitioner has not shown by a preponderance of the evidence that the combination of Garahi, McNutt, and Thomas teaches every limitation of claim 3 and that an ordinarily skilled artisan would have had reason to combine Garahi, McNutt, and Thomas with a reasonable expectation of success.

b) Claim 7

Claim 7 depends from independent claim 2. Ex. 1001, 97:3–16. Petitioner contends that Thomas describes an interactive wagering system

and discloses that if “the user creates a bet, but does not finalize the bet, the interactive wagering application may remind the user of the unfinalized bet.” Pet. 46 (citing Ex. 1008 ¶ 108). According to Petitioner, Thomas’s disclosure that when the bet is not finalized, “the interactive wagering application may provide the user with a reminder,” “teaches generating and transmitting a reminder message regarding the usage of the account to create a bet that needs to be finalized.” *Id.* at 46–47 (citing Ex. 1008 ¶¶ 108, 110, Fig. 13).

Petitioner asserts that it would have been obvious to configure Garahi’s system based on the teachings of Thomas, because “Garahi’s system would also benefit from messages reminding them to finalize bets that they have used their accounts to create.” *Id.* at 47 (citing Ex. 1003 ¶ 199). Petitioner asserts, moreover, the skilled artisan would have “appreciated that the message would be transmitted to Garahi’s user television equipment (i.e., the first communication device) to display it as a pop-up window on the display of the television equipment as taught by Thomas.” *Id.*

For these reasons, Petitioner asserts that a skilled artisan “would have been motivated to improve Garahi’s TPSMS to detect a use of a sports betting account, of or associated with the individual; generate a sports betting account use message; and transmit the sports betting account use message to the first communication device,” as required by claim 7. *Id.* at 48. Petitioner contends that Garahi’s “base” TPSMS “would have been readily improvable with the technique as taught by Thomas,” because their interactive wagering systems are “comparable” and “would have only required minor software changes and would not have changed Garahi’s

principle of operation in any way,” with a reasonable expectation of success. *Id.* (citing Ex. 1003 ¶ 200).

Patent Owner asserts that “Petitioner employs pure hindsight,” and disagrees that Thomas teaches the elements of claim 7. PO Resp. 43. Patent Owner contends that the term “use message” means “a message informing the user that his gaming account has been accessed for attempted use,” and Thomas’s “reminder” does not inform of attempted access. *Id.* at 44–45. According to Patent Owner, Thomas’s “reminder is provided in order to allow the user an opportunity to finalize his lottery entry prior to the drawing,” which “defeats the purpose of the ‘use message’ of Challenged Claim [7], inasmuch as the ‘reminder’ is useless in preventing completion of an unwanted transaction and, in any event, never materializes except in the limited circumstance of an incomplete entry.” *Id.* at 45.

Petitioner replies that Patent Owner’s assertions as to any “differences in purpose” are insufficient to “negate obviousness” because Patent Owner’s “argument lacks reasons refuting those provided by Petitioners.” Pet. Reply 15 (citing Pet. 44). Petitioner also replies that Patent Owner’s arguments fail because they are based on a claim construction that “improperly narrows ‘use message’ from a single preferred embodiment.” *Id.* (citing Ex. 1001, 58:63–64; *SuperGuide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004)).

Because Petitioner’s reliance on Thomas for teaching the activity or event being a lottery (Ex. 1001, 95:43–46) does not cure the deficiencies of Petitioner’s contention that claim 2 is unpatentable, as discussed above, (*see supra* Section II.D.3), we determine that Petitioner has not shown by a preponderance of the evidence that the combination of Garahi, McNutt, and

Thomas teaches every limitation of claim 7 and that an ordinarily skilled artisan would have had reason to combine Garahi, McNutt, and Thomas with a reasonable expectation of success.

2. *Conclusion of Alleged Obviousness over Garahi, McNutt, and Thomas*

Based on our review of the evidence and arguments cited by Petitioner, we find that on this record, Petitioner has not demonstrated by a preponderance of evidence obviousness of claims 3 and 7 based on Garahi, McNutt, and Thomas.

H. ALLEGED OBVIOUSNESS OVER GARAH, MCNUTT, AND PAUL OF CLAIM 13

1. *Discussion*

Petitioner challenges dependent claim 13 as unpatentable under 35 U.S.C. § 103 over Garahi, McNutt, and Paul. Pet. 49–51. Petitioner’s contentions are supported by the testimony of Mr. Kitchen. *Id.*; Ex. 1003 ¶ 204. Patent Owner does not raise any arguments directed specifically to claim 13 aside from the arguments Patent Owner directs to claim 2. *See generally* PO Resp.

Claim 13 depends from independent claim 2. Ex. 1001, 97:3–10. Petitioner asserts that Paul’s “marketing and advertising solution” provides “information for promoting gaming activities including lotteries,” i.e., information for promoting the activity or event. Pet. 49 (citing Ex. 1009 ¶¶ 33, 34). According to Petitioner, based on Paul’s disclosure it would have been obvious to “configure Garahi’s TPSMS to similarly provide information for promoting or for advertising sporting events including the

sporting event and a second sporting event.” *Id.* at 50 (citing Ex. 1003 ¶ 204).

Petitioner asserts that it also would have been “beneficial to promote special racing events,” beyond Garahi’s disclosure “of whether the racing event matches a user’s profile,” and to promote or advertise these “events to prospective gamblers.” *Id.* at 50–51 (citing Ex. 1003 ¶ 204). Petitioner contends the skilled artisan “would have been motivated to apply Paul’s known technique of providing information for promoting or for advertising gaming events to Garahi’s interactive wagering system to yield the predictable result of informing users of available wagering opportunities.” *Id.* at 51. According to Petitioner, the skilled artisan “would have understood that this modification would have predictably improved Garahi’s interactive wagering system by potentially increasing the number of users wagering on sporting events thereby increasing profits,” and “would have had a reasonable expectation of success incorporating this feature into Garahi” because “advertising and promotions are a common sense and non-technological aspect of every business.” *Id.*

However, Petitioner’s reliance on Paul for transmitting promotional material does not cure the deficiencies in Petitioner’s contentions regarding claim 2. Thus, for the same reasons as discussed above regarding claim 2, we determine that Petitioner has not shown by a preponderance of the evidence that the combination of Garahi, McNutt, and Paul teaches every limitation of claim 13 and that an ordinarily skilled artisan would have had reason to combine Garahi, McNutt, and Paul with a reasonable expectation of success.

2. *Conclusion of Alleged Obviousness over Garahi, McNutt, and Paul*

Based on our review of the evidence and arguments cited by Petitioner, we find that on this record, Petitioner has not demonstrated by a preponderance of evidence obviousness of claim 13 based on Garahi, McNutt, and Paul.

III. CONCLUSION

After reviewing the evidence and arguments presented, we determine for the reasons discussed above that Petitioner has not established that any challenged claim is not patentable based on any of the asserted grounds.

The outcome for the Challenged Claims in this proceeding is set forth in summary as follows:

Claim(s) Challenged	35 U.S.C. §	References/ Basis	Claim(s) Shown Unpatentable	Claim(s)Not Shown Unpatentable
1, 2, 4, 5, 8–10, 16–20	103(a)	Garahi, McNutt		1, 2, 4, 5, 8–10, 16–20
6, 11, 12	103(a)	Garahi, McNutt, Rowe		6, 11, 12
3, 7	103(a)	Garahi, McNutt, Thomas		3, 7
13	103(a)	Garahi, McNutt, Paul		13
Overall Outcome				1–13, 16–20

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner has not shown by a preponderance of the evidence that any of claims 1–13 and 16–20 of the '755 patent is unpatentable based on obviousness over the asserted prior 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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