

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC. (FORMERLY DRAFTKINGS, INC.), A
DELAWARE CORPORATION,
Petitioner

v.

DIOGENES LIMITED, COLOSSUS (IOM) LIMITED,
Patent Owner

Case IPR2023-00261
Patent 8,721,439

**DECLARATION OF DWIGHT CREVELT IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
8,721,439**

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EXHIBIT LIST

Exhibit No.	Description
Ex.1001	U.S. Patent No. 8,721,439 (“the ’439 Patent”)
Ex.1002	Prosecution File History of the ’439 Patent
Ex.1003	File History for U.S. Patent No. 9,117,341
Ex.1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
Ex.1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
Ex.1006	U.S. Patent Application Publication No. 2012/0309503 A1 (“Scott”)
Ex.1007	Reserved
Ex.1008	<i>Curriculum Vitae</i> of Dwight Crevelt
Ex.1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
Ex.1010	Christiani Hugonii, The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated (printed 1741)
Ex.1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
Ex.1012	Jui-Pin Cheng, <i>The Origin of Probability and The Problem of Points</i> (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
Ex.1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)

Exhibit No.	Description
Ex.1014	Prakash Gorroochurn, <i>Thirteen Correct Solutions to the “Problem of Points” and Their Histories</i> , THE MATHEMATICAL INTELLIGENCER (Springer 2014)
Ex.1015	Keith Devlin, <i>The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern</i> (Basic Books 2008)
Ex.1016	Anders Hald, <i>A History of Probability and Statistics and Their Applications before 1750</i> (John Wiley & Sons 2003)
Ex.1017	Adam Prügel-Bennett, <i>The Probability Companion for Engineering and Computer Science</i> (Cambridge University Press 2019)
Ex.1018	Elizabeth A. Killick & Mark D. Griffiths, <i>In-Play Sports Betting: a Scoping Study</i> , 17 INT J MENT HEALTH ADDICTION 1456 (Apr. 16, 2018)
Ex.1019	<i>What is In-Play Betting: Live Betting Explained by William Hill</i> , WILLIAMHILL.COM (Apr. 20, 2021), https://news.williamhill.com/betting-guides/in-play-betting/
Ex.1020	Mark O’Haire, <i>The History of Betting</i> , TheSetPieces (2021), https://thesetpieces.com/latest-posts/the-history-of-betting/
Ex.1021	U.S. Patent No. 9,117,341 (“the ’341 Patent”)
Ex.1022	Chris Summers, <i>How Does a Betting Exchange Work?</i> , BBC News (Dec. 7, 2007)
Ex.1023	Landi, Gianluca, <i>Betting Exchange: The Sports Trading Revolution</i> (StreetLib 2017)
Ex.1024	Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 (Jun. 18, 2016)
Ex.1025	Vaughan Williams & Donald S. Siegal, <i>The Oxford Handbook of the Economics of Gambling</i> (Oxford University Press 2013)

Exhibit No.	Description
Ex.1026	Mark Davies <i>et al.</i> , <i>Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering</i> , 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005)
Ex.1027	U.S. Patent No. 7,909,694
Ex.1028	Betfair Trading Software, <i>About Bet Angel Software</i> (via The Wayback Machine dated Dec. 26, 2007)
Ex.1029	Green All Over Blog (Dec. 7, 2008)
Ex.1030	Dan Thomas, <i>Betfair's 'Cash Out' Trading Tool Used for the Millionth Time</i> , BETTFAIR (Sept. 13, 2011)
Ex.1031	Betfair Financial Statement (Jun. 29, 2011)
Ex.1032	Dan Thomas, <i>Cash Out Comes to Betfair Mobile</i> , Betfair (Dec. 19, 2011)
Ex.1033	Michael Taylor, <i>Cash In My Bet with William Hill</i> , WILLIAMHILL.COM (Dec. 18, 2012)
Ex.1034	Tal Grant <i>et al.</i> , <i>UK Gaming</i> , Credit Suisse (Aug. 14, 2017)
Ex.1035	James Conrey McMath, <i>Speculation and Gambling in Options, Futures and Stocks in Illinois</i> (Hawkins & Loomis 1921)
Ex.1036	LeRoy Gross, <i>The Conservative Investor's Guide to Trading Options</i> (Wiley 1999)
Ex.1037	Stuart Banner, <i>Speculation: A History of the Fine Line Between Gambling and Investing</i> (Oxford University Press 2017)
Ex.1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)
Ex.1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov't Printing Office 1952)
Ex.1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)
Ex.1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)

Exhibit No.	Description
Ex.1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
Ex.1043	Betfair Community, <i>Football Forum</i> (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader
Ex.1044	Betfair Community, <i>Golf Forum</i> at 1 (Apr. 9, 2010), https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53
Ex.1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
Ex.1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
Ex.1047	U.S. Patent Application Publication No. 2001/0136566 A1 (“Acres”)
Ex.1048	Exhibit 338.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1049	Exhibit 341.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1050	Exhibit 439.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1051	Exhibit 516.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1052	Exhibit 716.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

Exhibit No.	Description
Ex.1053	Exhibit 779.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1054	Exhibit 822.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1055	Exhibit 969.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1056	Memorandum Opinion, <i>Diogenes Ltd., et al. v. DraftKings, Inc.</i> , No. 1-21-cv-01695, Dkt. 55 (D. Del.)

I, Dwight Crevelt, declare as follows:

I. Introduction

1. I have been retained on behalf of DK Crown Holdings Inc. (formerly DraftKings, Inc.), a Delaware corporation (“DraftKings” or “Petitioner”) for the above-captioned *inter partes* review (IPR) proceeding. I am being compensated for my time in connection with this IPR at my standard hourly consulting rate. I understand that this proceeding involves U.S. Patent No. 8,721,439 (“the ’439 Patent”) titled “WAGERING APPARATUS, METHODS AND SYSTEMS” by Bernard J. Marantelli.

2. I have been asked to provide my technical review, analysis, insights, and opinions regarding the ’439 Patent and the prior art references that form the basis for the grounds of unpatentability set forth in the Petition for *Inter Partes* Review of the ’439 Patent.

II. Materials Considered

3. The analysis that I provide in this Declaration is based on my education, research, and experience, as well as the documents I have considered, including the ’439 Patent (Exhibit 1001) and its prosecution history (Exhibit 1002). I have reviewed and am familiar with the specification of the ’439 Patent. I have reviewed and am familiar with the file history of the ’439 Patent.

4. In preparing this Declaration, I have also reviewed and am familiar with the following prior art used in the Petition for *Inter Partes* Review of the '439 Patent and/or in my declaration below.

III. Qualifications

5. In formulating my opinions, I have relied upon my training, knowledge, and experience in the relevant art. A copy of my current *curriculum vitae* is provided as Ex.1008, and it provides a comprehensive description of my academic and employment history over the last forty-plus years. My work on this case is being billed at a flat rate of \$400 per hour, with reimbursement for actual expenses. My compensation is not contingent upon the outcome of this proceeding

6. I am an expert in the field of design and operation of gaming machines and systems for the casino industry.

7. I am the founder and presently president of Crevelt Computer System, Inc., a gaming business consulting and engineering development company that is located and incorporated in Las Vegas, Nevada. I founded Crevelt Computer in 1977. Although I discuss my expert qualifications in more detail below, I also attach as Ex.1008 a recent and complete curriculum vitae, which details my educational and professional background.

8. My formal, post-high school education started at the University of Las Vegas in 1973. I continued my education at the U.S. Naval Academy from 1975 to

1977. I then attended Iowa State University, where I received my Bachelor of Science degree in Computer Engineering in 1979.

9. My professional experience in the casino gaming industry started in 1974, when I joined Gamex Industries as a software engineer. As a software engineer, I designed and developed casino game management systems, including an on-line slot accounting and monitoring system, and I also maintained Gamex's on-line casino table game accounting system. I was also responsible for maintaining the system that monitored the play of table games and slot machines as installed in Caesar's Palace, Las Vegas.

10. In 1977, I started my own consulting company, Crevelt Computer System, Inc., and near the end of 1977 I worked at United Audio Visual as a software engineer developing audio/video controllers for multimedia shows.

11. From 1979 to 1980, I continued to work in the gaming industry as a computer engineer for Sircoma (later becoming IGT). At Sircoma, I developed various gaming machines, including video Poker, video Blackjack, video Red Dog and Whirlwin. I also had responsibility for maintaining the software for the video slot machines. I also acted as a technical gaming control liaison, which involved providing the Nevada Gaming Control Board staff with technical information regarding the company's gaming devices. The Nevada Gaming Control Board

regulates the gaming industry in Nevada, overseeing the licensing and compliance of casinos as well as manufacturers and the equipment used in gaming.

12. In 1981, I worked for Mills-Jennings as a Director of Corporate Research. In this role, I assembled and supervised a research and development team that designed a complete line of video casino gaming machines and an on-line casino accounting system.

13. From 1984 to 1986, as a consultant with Crevelt Computer System Inc., I worked with Electronic Data Technologies, where I designed and developed the first complete on-line Player Tracking System.

14. From 1988 to 1996, I worked for Electronic Data Technologies (EDT) and International Game Technologies (IGT). I was responsible for design, development and implementation of player tracking and accounting systems for casino games. Specifically, I was responsible for the development, deployment and support for over 150 installations of the SMART system and the first cashless system utilized by Caesar's Palace, Las Vegas. In 1995, I was promoted to Product Manager for Cashless Applications. In this role, I prepared business plans and strategies for implementing cashless gaming products, including IGT's first SMART card-based cashless gaming system installed at SBM in Monte Carlo. I also spent time evaluating casino-related intellectual property, particularly patents, especially those pertaining to cashless gaming and progressive systems.

15. As a consultant with Crevelt Computer Systems, I have worked with many gaming equipment manufacturers on the design and development of casino gaming devices, including slots, video games, Keno and Bingo systems. I also have provided independent laboratory analysis of games for regulators in New South Wales, Australia and the state of Mississippi. Additionally, I have conducted mathematical analyses for casino gaming devices.

16. From 1998- 2013, Crevelt Computer System was a Partner in FootTraffic Promotional Gaming LLC. As a Partner with FootTraffic Promotional Gaming LLC, I have designed, developed, managed and marketed a series of promotional games for casinos, retailers and trade shows. These are free-play games that are designed to bring or attract patrons to the casino with an opportunity to win cash and prizes. These games have been very successful and several have been incorporated into permanent promotions at several casinos, including Peppermill Casino (Reno), Casino Fandango (Carson City), and Silver Legacy (Reno).

17. In sum, I have over forty years of engineering and management experience in the gaming industry, both as a consultant and an employee. During this time, I have worked extensively with OEMs, casinos, casino gaming regulators and agencies worldwide, including the Nevada Gaming Control Board. I am also the co-author of two books that relate to the casino gaming industry – Slot Machine Mania and Video Poker Mania – which are still in publication twenty years after

they were first published. Additionally, I have been interviewed for numerous magazines, radio programs and television shows regarding gaming machines and the casino industry, including appearances on Secrets Revealed (a documentary on The Learning Channel) and High Rollers (a documentary on the Discovery Channel). Throughout my career, I have kept up to date with the latest developments in the casino industry by subscribing to casino-related trade publications and attending casino gaming shows. In addition, I am a named inventor on six United States patents related to casino gaming systems (*i.e.*, cashless and progressive gaming systems).

IV. Legal Understanding

A. My Understanding of Claim Construction

18. I understand that during an *inter partes* review proceeding, claims are to be construed in light of the specification as would be read by a person of ordinary skill in the relevant art at the time the application was filed. I understand that claim terms are given their ordinary and customary meaning as would be understood by a person of ordinary skill in the relevant art in the context of the entire disclosure. A claim term, however, will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the claim term in the specification. In this case, the claim term will receive the definition set forth in the patent.

B. My Understanding of Obviousness

19. I understand that a patent claim is invalid if the claimed invention would have been obvious to a person of ordinary skill in the art at the time the application was filed. This means that even if all the requirements of the claim cannot be found in a single prior art reference that would anticipate the claim, the claim can still be invalid.

20. To obtain a patent, a claimed invention must have, as of the priority date, been nonobvious in view of the prior art in the field. I understand that an invention is obvious when the differences between the subject matter sought to be patented 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.

21. I understand that to prove that prior art or a combination of prior art renders a patent obvious, it is necessary to: (1) identify the particular references that, singly or in combination, render the patent obvious; (2) specifically identify which elements of the patent claim appear in each of the asserted references; and (3) explain how the prior art references could have been combined in order to create the inventions claimed in the asserted claim.

22. I also understand that when considering the obviousness of a patent claim, one should consider whether a teaching, suggestion, or motivation to combine

the references exists so as to avoid impermissibly applying hindsight when considering the prior art. I understand this test should not be rigidly applied, but that the test can be important to avoiding such hindsight.

23. I understand that certain objective indicia can be important evidence as to whether a patent is obvious or nonobvious. Such indicia include: (1) commercial success of products covered by the patent claims; (2) a long-felt need for the invention; (3) failed attempts by others to make the invention; (4) copying of the invention by others in the field; (5) unexpected results achieved by the invention as compared to the closest prior art; (6) praise of the invention by the infringer or others in the field; (7) the taking of licenses under the patent by others; (8) expressions of surprise by experts and those skilled in the art at the making of the invention; and (9) the patentee proceeded contrary to the accepted wisdom of the prior art.

24. I also understand that “obviousness” is a legal conclusion based on the underlying factual issues of the scope and content of the prior art, the differences between the claimed invention and the prior art, the level of ordinary skill in the prior art, and any objective indicia of non-obviousness. For that reason, I am not rendering a legal opinion on the ultimate legal question of obviousness. Rather, my testimony addresses the underlying facts and factual analysis that would support a legal conclusion of obviousness or non-obviousness, and when I use the term

obvious, I am referring to the perspective of one of ordinary skill at the time of invention.

C. Level of Ordinary Skill in the Art

25. I understand that a person of ordinary skill in the relevant art (“POSITA”) is presumed to be aware of all pertinent art, thinks along conventional wisdom in the art, and is a person of ordinary creativity—not an automaton.

26. I have been asked to consider the level of ordinary skill in the field that someone would have had at the time the claimed invention was made. In deciding the level of ordinary skill, I considered the following:

- the levels of education and experience of persons working in the field;
- the types of problems encountered in the field; and
- the sophistication of the technology.

27. My opinion below explains how a POSITA would have understood the technology described in the references I have identified herein around the September 2012 timeframe.

28. Based on the disclosure of the ’439 Patent, a POSITA would be a person with a bachelor’s degree in electrical engineering, computer science, or a similar field; and at least two years of experience in the wager based gaming industry. A person with less education but more relevant practical experience may

also meet this standard. This description is approximate, and a higher level of education or skill may make up for less experience, and vice-versa.

V. Background of the Technology

29. I understand that analyzing the state of gaming systems during the years prior to the earliest possible priority date of the '439 Patent can provide valuable insight into what people of ordinary skill in the art were aware of at the time, and in what direction the industry was going.

A. Cash Out and the Problem of Points

30. At the heart of the '439 Patent is the concept of calculating and offering payouts, or “cash outs,” before a wagering event is complete:

[A unique differentiator of the product of the present disclosure may be that]¹ at any desired time after initiation of an event (such as at any time after a “ticket” is purchased until completion of an event, after each leg has been completed, between legs, including potentially as a leg is “in-play”, and/or during a designated span of time before, during and/or after any of the legs), any desired number of players who remain eligible for a prize (and potentially those still eligible for bonus and/or consolation prizes) or to win or have correct (win) predictions for each

¹ This bracketed language was removed in the '969, '822, and '779 Patents.

of the events or legs that are completed, may be offered a “buy-out” or an opportunity to sell their tickets (in whole or alternatively may be in part (*i.e.*, a fractional amount) to the game operator or through the game operator (or alternatively directly) to a third party (e.g., one or more system operator(s), business entity or entities such as a merchant(s), one or more other persons, other player(s), etc.).

'439 Patent at 2:32-47. Originally known as the “Problem of Points,”² this concept is as old as the theory of probability itself. In fact, it is the very foundation of the theory.

31. The Problem of Points was first identified as a mathematical thought experiment in 1400. *See* C.C. Heyde & E. Seneta, *Statisticians of the Centuries* at 5 (Springer 2001) (Ex. 1011); Jui-Pin Cheng, *The Origin of Probability and The Problem of Points* at 2 (2000),

² Today, this concept is known as “Expected Value.” *See, e.g.*, Vishal Jain & Jyoti Moy Chatterjee, *Machine Learning with Health Care Perspective* at 319 (Springer 2020) (Ex.1009); Christiani Huguenii, *The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated* at 2 (printed 1741) (Ex. 1010).

<https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html> (Ex.1012).

In a manuscript dated to this time, an unknown author correctly solved the problem of how to amicably settle a best-of-three wagering event before all three legs were completed. *Id.* at 6. And while the author could not solve this problem when a fourth leg was added, it remained a mathematical curiosity throughout the sixteenth century. *Id.*

32. The Problem of Points was more firmly embraced as a gambling concept, as well as one of probability, in 1654 when it was proposed to French mathematicians Pierre de Fermat and Blaise Pascal by the Chevalier de Méré, a well-known 17th century author and gambler. Nicholas Hammond, *The Cambridge Companion to Pascal* at 42-43 (Cambridge University Press 2003) (Ex.1013); Prakash Gorroochurn, *Thirteen Correct Solutions to the ‘Problem of Points’ and Their Histories*, *THE MATHEMATICAL INTELLIGENCER* at 56 (Springer 2014) (Ex.1014). The solution to the problem is borne out in a series of letters between Fermat and Pascal in which the two discuss how to fairly divide the wager in a six-throw game of dice when the game is stopped before the sixth throw. Keith Devlin, *The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern* at 2 (Basic Books 2008) (Ex.1015); Anders Hald, *A History of Probability and Statistics and Their Applications before 1750* at 55-56 (Wiley 2003) (Ex. 1016).

33. The solution ultimately involved counting combinations and summing binomial coefficients. *See* Hammond at 44; Devlin at 67. But, because the labor of calculating all of the different combinations was “excessive,” Pascal devised a “shortcut,” or “abridgement,” that involved a ground-breaking procedure for calculating expectations recursively. Hammond at 44; Hald at 59-60.

34. The final mathematical step in the path to solving the Problem of the Points was an extremely powerful mathematical formula developed nearly 100 years later by Thomas Bayes—an obscure eighteenth-century Presbyterian minister in England who studied mathematics as a hobby and is the namesake of Bayesian probability theory. Heyde at 68-69; Delvin at 135.

35. Although Bayes’ method went largely ignored for another 200 years because it too was computationally laborious, it has grown in popularity (and accuracy) since the 1970s alongside the computer and increased computing power, which have made it possible to run the process quickly and iteratively with large amounts of data. Devlin at 138-39; Adam Prügel-Bennett, *The Probability Companion for Engineering and Computer Science* at 188 (Cambridge University Press 2019) (Ex.1017). Thus, the use of computers to calculate a “cash out” value before a wagering event is complete has been well known since at least the 1970s.

B. Cash Out and In-Play Betting

36. “In-play” betting refers to wagering on an event that has already started but not yet finished. Elizabeth A. Killick & Mark D. Griffiths, *In-Play Sports Betting: a Scoping Study*, 17 INT J MENT HEALTH ADDICTION 1456, 1457 (Apr. 16, 2018) (Ex.1018); *What is In-Play Betting: Live Betting Explained by William Hill*, WILLIAMHILL.COM (Apr. 20, 2021), <https://news.williamhill.com/betting-guides/in-play-betting/> (Ex. 1019). This form of betting first appeared in the 1990s when bookmakers began taking bets over the telephone while a sporting event was in progress. Killick at 1457; Mark O’Haire, *The History of Betting*, TheSetPieces at 2 (2021), <https://thesetpieces.com/latest-posts/the-history-of-betting/> (Ex. 1020). It gained even more popularity with the birth and growth of the internet. *Id.*; O’Haire 2-3.

37. In-play betting is now more popular than pre-event wagering. *See* Killick at 1457 (“Bet365 reported that 80% of all their sports betting revenue is derived from in-play bets alone”); O’Haire at 2.

38. The rise of the internet and advances in computing also led to the advent of the betting exchange marketplace, which first appeared in 2000. Chris Summers, *How Does a Betting Exchange Work?*, BBC News at 1 (Dec. 7, 2007) (Ex.1022); Gianluca Landi, *Betting Exchange: The Sports Trading Revolution* at 17 (StreetLib 2017) (Ex.1023); *see also* Declaration of Bernard J. Marantelli, Australian Patent

Application No. 2013333573 at ¶ 2 (Jun. 18, 2016) (Ex. 1024) (“Around 2001 I was introduced to betting exchanges, primarily the leading exchange Betfair, which had launched in 2000.”). A betting exchange is a marketplace that allows bettors to “back” (*i.e.*, bet that an outcome will occur) and “lay” (*i.e.*, bet that an outcome will not occur) a wager on the outcome of an event. Summers at 2; Landi at 25. It is characterized by real-time online betting with attributes analogous to a modern stock exchange. Vaughan Williams & Donald S. Siegal, *The Oxford Handbook of the Economics of Gambling* at 138, 140 (Oxford University Press 2013) (Ex.1025). Betfair—the first such marketplace—is the most recognizable and popular example of a betting exchange. Williams at 140 (citing Mark Davies *et al.*, *Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering*, 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005) (Ex.1026)); Summers at 1.

39. Leveraging on the exchange, Betfair permitted a way to “Cash Out” that was called “greening up,” whereby bettors on the Betfair betting exchange were able sell, or trade back, their bets in the middle of a wagering event as the odds changed, thereby locking in profits before the wagering event concluded. Betfair Trading Software, *About Bet Angel Software* at 1, 3 (via The Wayback Machine

dated Dec. 26, 2007) (Ex.1028);³ Green All Over Blog at 8-9 (Dec. 7, 2008) (Ex.1029). Betfair subsequently rebranded this technology as “Cash Out” in February 2011 and released the technology on its mobile platform by December of that same year. See Dan Thomas, *Betfair’s ‘Cash Out’ Trading Tool Used for the Millionth Time*, BETTFAIR at 1-2 (Sept. 13, 2011) (Ex.1030); Betfair Financial Statement at 13 (Jun. 29, 2011) (Ex.1031); Dan Thomas, *Cash Out Comes to Betfair Mobile*, Betfair at 1-2 (Dec. 19, 2011) (Ex.1032). Others soon followed suit, with reputed betting company William Hill launching similar technology on their sportsbook in December 2012. See Michael Taylor, *Cash In My Bet with William Hill*, WILLIAMHILL.COM at 2 (Dec. 18, 2012) (Ex.1033); Tal Grant *et al.*, *UK Gaming*, Credit Suisse at 51 (Aug. 14, 2017) (Ex.1034). Thus, real-time cash-outs as part of in-play betting via a networked betting system were well known prior to the earliest claimed priority date of the Asserted Patents.

³ MPEP 2128 II E. Wayback Machine (“Prior art obtained via the Wayback Machine® sets forth a prima facie case that the art was publicly accessible at the date and time provided in the time stamp.”).

C. Partial Cash Outs

40. It is no coincidence that betting exchanges, like Betfair, operate like a modern stock exchange. Playing the stock market has long been likened to gambling, particularly options trading. *See, e.g.,* James Conrey McMath, *Speculation and Gambling in Options, Futures and Stocks in Illinois* at 3-5 (Hawkins & Loomis 1921) (Ex.1035); LeRoy Gross, *The Conservative Investor's Guide to Trading Options* at 96 (Wiley 1999) (Ex.1036); Stuart Banner, *Speculation: A History of the Fine Line Between Gambling and Investing* at 1, 73, 76, 83 (Oxford University Press 2017) (Ex.1037). And the concept of the partial exercise, or partial cash out, of a position in an option is as old as the concept of the option itself. *See, e.g.,* E.V. Smalley, *Northern Pacific Railroad Book of Reference* at 318-320 (E. Wells Sackett & Rankin 1883) (Ex.1038); Wesley A. Sturges *et al.*, *Stock Option and Stock Purchase Plans* at 47-48 (U.S. Gov't Printing Office 1952) (Ex.1039).

41. A “partial exercise” allows the owner of an option to sell, or cash out, a portion of his or her position before the strike date while holding the remainder until the actual strike date. *See, e.g.,* Smalley at 320; Michael C. Thomsett, *Getting Started in Options* at 322 (Wiley 2007) (Ex.1040); *see also, e.g.,* Lawrence G. McMillan, *McMillan on Options* at 595 (Wiley 2011) (Ex.1041) (“partial profits”). Betfair began allowing players to do this via its betting exchange at least as early as December 2007. Specifically, Bet Angel software allowed bettors to partially “green

up” on the Betfair betting exchange by selling, or trading back, a portion of a bet at a profit while allowing the remainder of the bet to play out until the conclusion of the wagering event. *See, e.g.,* Betfair Trading Software, *About Bet Angel Software* at 1, 3 (via The Wayback Machine dated Dec. 26, 2007) (Ex.1028); The Sports Trader, *The Diary of a Betdaq Trader* at 4 (Dec. 5, 2007), https://thesportstrader.typepad.co.uk/the_sports_trader/2008/09/index.html (Ex.1042); Betfair Community, *Football Forum* at 1 (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader (Ex.1043); Betfair Community, *Golf Forum* at 1 (Apr. 9, 2010), <https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53> (Ex.1044); Betfair Community, *General Betting Forum* at 2 (Dec. 10, 2010), https://community.betfair.com/general_betting/go/thread/view/94082/26488561/greening-up?liveView=0 (Ex.1045); Betfair Community, *General Betting Forum* at 3 (Jun. 8, 2011), https://community.betfair.com/general_betting/go/thread/view/94082/27736281/greening-up---does-it-really-pay-long-term?liveView=0&pg=2 (Ex.1046).

42. This concept also began appearing in patent applications at around the same time. For example, U.S. Patent Application Publication No. 2008/0311981 to Schugar (Ex.1047) (“Schugar”) discloses an instance in which a bettor “can be ‘winning’ before the game is over” and, therefore, “may wish to have a way to cash in on the winning state before completing the game.” Schugar at ¶ [0077]. Schugar discloses an example in which a bettor has made a \$100 wager on a Yankee’s game and by the fifth inning the expected payout of that wager is \$132. *Id.* at ¶ [0120]. In this example, the bettor “may use \$1 of that amount and make a second wager,” which will result in \$1.52 (*i.e.*, the adjusted value of that dollar based on the new odds) being “subtracted from the original \$100 wager to result in a \$98.48 wager remaining on the Yankees.” *Id.* Thus, Schugar discloses a partial cash out method similar to what was available in Betfair at the time. Schugar also makes clear that “the player need not be in a positive expectation situation in order to utilize the method of cashing in value for a current wager in progress in order to place a second wager.” *Id.*

43. In addition, Schugar explains that its partial cash out method “can be applied to all games, including live table games or live sporting events,” and that it also may be implemented in “any wagering machine game, such as a slot machine, video poker machine, or machine game which plays any game which can have multiple states (*e.g.*, games which a player can wager on a progression).” Schugar

at ¶¶ [0104], [0106]. Thus, real-time partial cash-outs also were well known prior to the earliest claimed priority date of the Asserted Patents.

VI. The '439 Patent

A. Priority Date

44. The application that led to the '439 Patent was filed August 2, 2013 as U.S. Patent Application No. 13/958,028 and is a continuation-in-part of U.S. Patent Application No. 13/605,813, which was filed September 6, 2012. *See generally* '439 Patent. For purposes of my analysis and opinions, I have assumed that the '439 Patent has the priority date of the earliest filed application to which it claims priority—September 6, 2012.

B. Overview

45. The '439 Patent, entitled “Wagering Apparatus, Methods, and Systems,” purports to be directed to a “wagering system hardware and network.” '439 Patent 3:62-64.

46. The only alleged “unique differentiator” identified in the '439 Patent is in the ability to offer a player a “‘buy-out’ or opportunity to sell their tickets (in whole or alternatively may be in part (i.e., a fractional amount) to the game operator or through the game operator (or alternatively directly) to a third party (e.g., one or more system operator(s), business entity or entities such as merchant(s), one or more other persons, other player(s), etc.).” '439 Patent at 2:32-47. As confirmed by the

prosecution history discussed in the following section, the method described in the '439 Patent may involve a system that initiates both of a "buy-out" offer and a "partial buy-out" (or "partial cash-in") offer to a player as alternatives, and thereby provides an opportunity for a user or player to sell their whole wagering ticket (buy-out) or a fractional amount of their wagering ticket and retain the unsold portion (partial buy-out). *Id.*; *see also id.* at 13:4-23. The "buy-out" and "partial buy-out" offer may be initiated when any number of players remain eligible for a prize "after initiation of an event (such as at any time after a 'ticket' is purchased until completion of an event, after each leg has been completed, between legs, including potentially as a leg is 'in-play', and/or during a designated span of time before, during and/or after any of the legs)." *Id.*

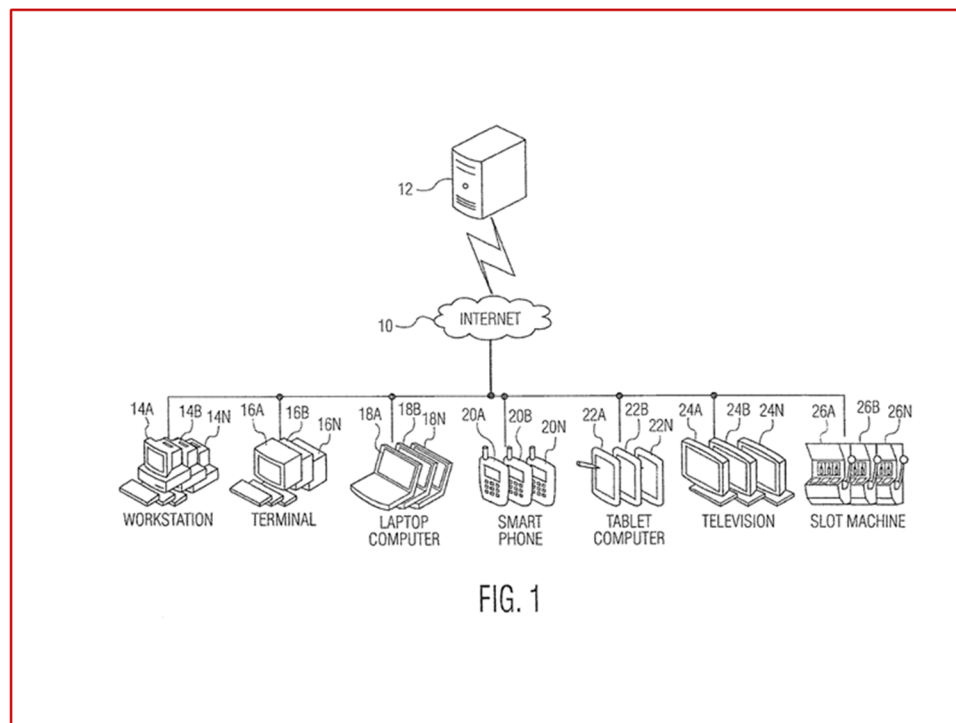
47. A player may have at least three options in responding to the buy-out and partial buy-out offer via an input at a wagering station: accept the offer to fully buy-out; accept the offer to partially buy-out; or reject both the offer to fully or partially buy-out. *Id.* 13:50-51. If the player accepts the full buy-out offer, the ticket is "cashed in (i.e. bought by system operator or third party) and all rights of the ticket will vest in the system operator." *Id.* 18:65-67. That is, the player will no longer be eligible to continue playing the remaining legs in a wagering game upon accepting a full "buy-out" offer. *Id.* If the player accepts the partial buy-out offer, however, the player retains a portion of the ticket and may continue to play the remaining legs

in a wagering game or participate in a bonus game, albeit with a reduced expected winning to account for the part of the ticket sold. *Id.* 20:14-26. And if the player rejects the offer to fully or partially buy-out, the wagering event simply continues as normal. *Id.*

48. The '439 Patent is broad and not directed to a specific application or betting context. On the contrary, it purports to be directed to “*a wide range of applications, including any event where betting may be utilized or even scenarios where play is just for fun, such as, and without limitation, any type of actual or virtual sporting event or any type of game.*” *Id.* 3:41-45 (emphasis added). Some examples include “sporting events” and “virtual and real” casino games such as “jacks, poker, blackjack, Texas hold ‘em, etc.,” “lotteries, racing, slot machines and other multi-leg/multi-events/multi-outcome or divisible games.” *Id.* 3:48-59. The concept of the buy-out offer, as the '439 Patent states, can be used in a wagering event that has a plurality of “legs.” *Id.* 2:32-47. A “leg,” which the '439 Patent states “should be broadly construed,” may comprise a “variety of different discrete events, [and] can include any of a variety of different discrete events (e.g., an auto race), partial events (e.g., an inning of a baseball game, a set in tennis), components of events (e.g., one or more at bats by a particular player in baseball game or numbers selected in a particular position in a lottery drawing), multiple independent events

(e.g., two football games that may occur sequentially or concurrently) and/or compilations of events (e.g., a championship series).” *Id.* 1:52-62, 4:13-51.

49. Similarly, the '439 Patent is not directed to a specific wagering system. Rather, while the '439 Patent describes an embodiment pertaining to a wagering system architecture in Figure 1, which includes wagering input devices 20N or gaming machines 26A and 26N, and a central server system 12 or system controller, each connected over network, the '439 Patent recognizes that such systems are well-known. *Id.* 3:62-4:6.



Id. FIG. 1.

50. In addition, as the '439 Patent states, the wager stations and wagering terminals may be a “conventional wager terminal” “as known in the art.” *Id.* 4:52-

57; *see also id.* 10:40-42 (“The embodiments as generally illustrated in FIG. 1 may include, ***as known in the art***, a display device which displays the betting options.”), 11:1-3 (“Any other suitable types of products or devices ***commercially known*** may also be utilized where desired in accordance with the needs of a particular implementation.”), 23:39-41 (“The present disclosure may be implemented in various configurations for gaming machines or wager terminals ***known in the art***.”). Similarly, the controller or server is described as being “one or more rack mounted server computers 120 each with at least one central processing unit (CPU) or other processing device and associated memory,” such as a known rack mounted server such as the “PowerEdge R420 Rack Chassis devices having a 300 GB hard drive, one or two Intel Xeon E5-2450 processors, 24 GB memories with RAID connectivity using a RAID controller card.” *Id.* 6:3-23. Notable with respect to my analysis and opinions herein, the ’439 Patent recognizes that its “present disclosure” may be implemented in the “gaming machines and their respective operations in both stand alone and pool or progressive games ... disclosed in detail in U.S. Patent No. 8,105,149, incorporated herein by reference,” which is the patent that issued from the application that published as the DeWaal reference that I have analyzed throughout this declaration. *Id.* 22:53-55.

51. In addition to the system components being conventional and well-known, the ’439 Patent also recognizes that many of the basic operations of the

wagering system for providing a wagering event, and the software for implementing those operations, were well-known in the prior art. For example, the '439 Patent states that the server “may include software programs for wagering software functionality such as registration, deposit tracking, withdrawals, account sections that may include current and previous bet histories, fixtures, results, historical data, rules and regulations,” but recognizes that “[t]hese types of software programs having these functionalities are in place in various totalizer facilities and are thus *known in the art.*” *Id.* 6:59-65; *see also id.* 7:2-5 (“The program for the *known functionality of a totalizer facility* noted above would be incorporated in the Micro Tote 408 program, as discussed further below.”).

C. Prosecution History

52. I have reviewed the prosecution history of the '439 Patent. In the first non-final office action, the Examiner asserted a nonstatutory double patenting rejection for claims 1-30. Ex.1002 ('439 File History) 107-108. Subsequently, the Examiner approved applicant's terminal disclaimer. *Id.* 47. Claims 1-30 were ultimately allowed without issuing a single prior art rejection. *Id.* 41-56.

53. The '439 Patent belongs to a family of patents that all stem from U.S. Patent Application No. 13/605,813, and I have also considered the prosecution history of several patents that are related to the '439 Patent and that share common claim terms. Specifically, in addition to the '439 Patent prosecution history, I have

also reviewed the prosecution history of the following U.S. Patents: 9,275,516 (“’516 Patent”); 9,117,341 (“’341 Patent”); 9,424,716 (“’716 Patent”); 9,704,338 (“’338 Patent”); 10,970,969 (“’969 Patent”); 10,997,822 (“’822 Patent”); and 11,200,779 (“’779 Patent”). All of these related patents were examined by the same patent Examiner, Adetokunbo Olusegun Torimiro.

54. Notably, U.S. Patent Application No. 14/275,136, which issued as the ’341 Patent is a Continuation of the ’439 Patent. EX[1056] (’341 Patent) at Cover. The claims of the ’341 Patent include limitations regarding presenting and/or initiating “at least one of a buy-out offer and [a] partial buy-out offer.” *See e.g.*, EX[1003] (’341 Patent FH) at 77 (Listing of claims in Dec. 18, 2014 Response to Office Action). Claims 1 and 26 of the ’439 Patent also recite these limitations regarding presenting and/or initiating “at least one of a buy-out offer and [a] partial buy-out offer.” Thus, the ’439 Patent and the ’341 Patent are directly related patents in the same family that share common limitations. During prosecution of the ’341 Patent, the Applicant made statements regarding these common limitations that are relevant to my analysis of the claims of the ’439 Patent and the prior art discussed herein.

55. By way of background, during prosecution of the ’341 Patent, the Examiner issued an Office Action on September 23, 2014 rejecting all pending claims of the ’341 Patent (claims 1-40) as “being clearly anticipated by Acres (US

2011/0136566)” under pre-AIA 35 U.S.C. § 102(b). EX[1003] (’341 Patent FH) at 104-110 (September 29, 2014 Non-Final Office Action). More specifically, regarding the common limitation discussed above, the Examiner found that “Acres discloses a wagering event for one or more players, wherein a player is presented with *at least one of a buy-out and partial offer* prior to completion of the wagering event,” and in particular, “Acres discloses initiating *at least a buy-out offer* to an eligible player based on the anticipated expected outcome of the player during the course of the game.” EX[1003] (’341 Patent FH) at 109 (September 29, 2014 Non-Final Office Action). Therefore, it appears that the Examiner interpreted the term “at least one of a buy-out offer and [a] partial buy-out offer” in the claims as being disjunctive, such that either a “buy-out offer” *or* a “partial buy-out offer” would satisfy the limitation, and the Examiner found the prior art satisfied the common limitation because it disclosed presenting and initiating a full “buy-out offer.”

56. The Applicant responded to the September 23, 2014 Office Action on December 18, 2014. *See* EX[1003] (’341 Patent FH) at 76-89 (Dec. 18, 2014 Response to Office Action). In the response, the Applicant argued that “Claim 1, for example, recites a unique ability to offer *both* a buy-out offer and a partial buy-out offer to any number of players that are involved in a wagering event.” EX[1003] (’341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). Applicant then argued that “Acres fails to disclose or even contemplate the claimed capability to

provide a ‘buy-out’ *and* ‘partial buy-out’ feature,” and that “Acres does not appear to disclose the claimed feature of a ‘partial buy-out’ *and* ‘buy-out’ that may be *offered as alternatives to players.*” EX[1003] (’341 Patent FH) at 86, 87 (Dec. 18, 2014 Response to Office Action). Therefore, in my opinion, a POSITA would understand that the Applicant took the position during prosecution that the claim limitation of “at least one of a buy-out offer and [a] partial buy-out offer” required “both” be provided and initiated “as alternatives to players.” This ability to offer a player both of an option to fully buy-out and an option to partially-buy out as alternatives is what the Applicant represented was the “innovation and utility of the claimed invention,” as opposed to either an offer to buy-out or partially buy-out individually. EX[1003] (’341 Patent FH) at 26 (May 27, 2015 Response to Office Action dated Mar. 12, 2015).

57. This understanding of the term “at least one of a buy-out offer and [a] partial buy-out offer” as requiring both of an option to buy-out and an option to partially buy-out as alternatives, rather than either one individually or on its own, is consistent with and confirmed by Applicant’s admissions regarding the prior art. Specifically, the Applicant admitted that “Acres discusses offering a player a *full buy-out offer* ... in return for the player surrendering his hand and the entirety of his potential win.” See EX[1003] (’341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). However, Applicant distinguished Acres from the claims by

explaining that “a buy-out offer for a player’s entire interest (as described in Acres) is not equivalent to purchasing only a portion of a player’s interest in potential winnings where the player retains an interest in the potential winnings.” EX[1003] (’341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). To the contrary, Applicant argued, “a ‘partial buy-out offer’ is defined in the specification as an offer to purchase a portion of a player’s interest in any potential winnings resulting from the wagering event, where the player retains any unsold portion in said interest and remains eligible to win at least a portion of an award.” EX[1003] (’341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). As such, according to Applicant’s statements regarding the claim scope, “Acres does not anticipate Claim 1” because “Acres (at a minimum) fails to disclose or even contemplate the claimed partial buy-out feature.” EX[1003] (’341 Patent FH) at 88 (Dec. 18, 2014 Response to Office Action). Based on the Applicant’s clarification or narrowing of the plain language of the claim, the Examiner found that “Applicant’s arguments ... are persuasive” and withdrew the anticipation rejection. EX[1003] (’341 Patent FH) at 69 (March 13, 2015 Office Action). No additional prior art rejections were made in any subsequent Office Action during the prosecution of the application leading to the ’341 Patent.

58. Therefore, according to the Applicant’s arguments to secure allowance of related patents to the ’439 Patent, prior art like Acres that discloses offering only

a full “buy-out offer” does not satisfy the claims. Had the Applicant not defined the limitations of presenting and initiating “at least one of a buy-out offer and [a] prior buy-out offer” to require presenting and initiating both a buy-out offer and a partial buy-out offer that a player can alternatively select and accept or reject, it appears that the Examiner would have maintained the anticipation rejection over Acres. If this term did not require an offer that includes both alternatives (fully buy-out and partially-buy out), then Applicant’s arguments regarding Acres’ purported failure to disclose a partial buy-out offer would have been irrelevant and unsuccessful because the claim could then be satisfied only with a full “buy-out” offer, which the Applicant admitted was disclosed in the prior art. Given the Applicant’s statements and the context in which they were made (e.g., in view of the anticipation rejection and the prior art applied thereunder), a POSITA would have understood that Applicant was representing that neither of a buy-out offer or partial buy-out offer individually is sufficient to satisfy the claims because the prior art admittedly disclosed presenting and initiating a full buy-out offer and the Applicant successfully argued that such prior art did not teach presenting and initiating “at least one of a buy-out offer and [a] partial buy-out offer” as recited in the claims because it did not disclose a partial buy-out offer.

VII. Claim Construction

59. I have been instructed that the challenged claims of the '439 Patent are to be given their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention in light of the specification and the prosecution history pertaining to the patent. I have followed these principles in my analysis set forth in this document.

60. Based on this understanding, it is my opinion that one term or phrase of the '439 Patent requires construction beyond its plain and ordinary meaning—"at least one of a buy-out offer and [a] partial buy-out offer." This term appears in at least independent claims 1 and 26 of the '439 Patent, and, at least by virtue of "claim dependency," this term also is in in dependent claims that depend from claims 1 and 26, including all challenged claims.

61. In my opinion, the limitations of presenting and initiating "at least one of a buy-out offer and [a] partial buy-out offer" should be construed as requiring presenting and initiating *both* a buy-out offer *and* a partial buy-out offer that a player can alternatively select or accept or decline, which I will refer to herein as "DraftKings' construction" or "Draftkings' position" on the interpretation of this term. In my opinion, a POSITA would understand that the Patent Owner's clear and unambiguous statements that the term presenting or initiating "at least one of a buy-out offer and [a] partial buy-out offer" requires presenting or initiating "both" of a

buy-out offer and a partial buy-out offer “as alternatives to a player,” as discussed above in the prosecution history section of my opinion above, to attempt to distinguish the claims from the prior art and the Examiner relied on Applicant’s arguments in granting the application. My opinion is based on, among others, the statements Applicant made to overcome an anticipation rejection during prosecution of the related but earlier ’341 Patent concerning the identical limitation, as described above. Therefore, the intrinsic evidence, and specifically the Applicant’s arguments and statements, support that the phrase “at least one of a buy-out offer and [a] partial buy-out offer” should be interpreted in the conjunctive, such that “both” are required.

62. I also understand that Patent Owner appears to apply a different construction of this term that, in my opinion, conflicts with the Applicant’s definition of this term and arguments over the prior art made during prosecution of the ’341 Patent as explained above. Specifically, despite clearly and unmistakably defining the term presenting or initiating “at least one of a buy-out offer and [a] partial buy-out offer” as requiring presenting or initiating “both” of a buy out offer and a partial buy-out offer “as alternatives to a player” during prosecution, Patent Owner has taken positions in litigation against DraftKings that contradict that definition. Specifically, Patent Owner appears to accuse a “Cash Out” feature of DraftKings’ SportsBook product that gives a player the opportunity to “close out” an active bet as satisfying the limitation of initiating “at least one of a buy-out offer and a partial

buy-out offer.” *See* EX[1050] (Patent Owner’s Initial Infringement Contentions Exhibit 439.A) 1-10. As the pictures in Patent Owner’s claim charts show, if a player elects to “Cash Out” an active bet, that bet is closed and it marked as “CASHED OUT.” *Id.* Therefore, as I understand that claim terms must be interpreted the same for both invalidity and infringement, it appears that Patent Owner is interpreting this claim limitation as being able to be satisfied by a full “buy-out offer” alone. I refer to this construction as “Patent Owner’s apparent construction” or “Patent Owner’s position” herein.

VIII. Overview of Prior Art

A. Overview of DeWaal (EX[1004])

63. U.S. Patent Publication No. 2008/0113765 A1 to Daniel DeWaal (hereinafter, “DeWaal”), entitled “Gaming System and Method Providing Venue Wide Simultaneous Player Participation Based Bonus Game,” was published on May 15, 2008. The application leading to DeWaal, U.S. Patent Application No. 11/558,683, was filed on November 10, 2006, and issued as U.S. Patent No. 8,105,149 on January 31, 2012. Based on my review and comparison, the specification of DeWaal and the specification of issued U.S. Patent 8,105,149 are identical. U.S. Patent No. 8,105,149, i.e., the U.S. Patent that issued from the DeWaal reference relied upon herein, is incorporated by reference in the ’439 Patent. EX[1001] (’439 Patent) 22:52-55.

64. DeWaal describes a gaming system and method that “simultaneously provides a multi-round bonus event to a plurality of players wherein each players’ input(s) determine, at least in part, an award, if any provided to that player for the bonus event.” DeWaal ¶ [0009]. Providing the ability for players to provide inputs or make choices that affect the award “provides increased excitement and enjoyment for players,” and satisfied a “continuing need” in the field “to provide new and different gaming machines and gaming systems as well as new and different ways to provide awards to players including bonus awards.” DeWaal ¶¶ [0013], [0008].

65. Among such choices or inputs that provide increased excitement and enjoyment for players is DeWaal’s “offer and acceptance feature.” *See e.g.*, DeWaal ¶¶ [0141], [0147], FIG. 7. For example, in DeWaal’s “multi-round” bonus game that has a “plurality of outcomes in each round,” and “players must pick a designated selection (i.e., a winning outcome) in each round to win all or a share of the award,” and players that pick the winning outcome in a round advance to a subsequent round and players that fail to pick the winning outcome in a given round are eliminated from the bonus event, the system “offers each advancing player an award to quit the bonus event” between each round. DeWaal ¶¶ [0128] (“The multi-round bonus event includes a plurality of outcomes in each round the bonus even includes a selection game and the plurality of outcomes include player selectable elements or selections”), [0130] (“During play of the selection bonus game, players who pick the

designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event.”), [0131] (“if a player does not make an input associated with the designated selection (i.e., a winning outcome) in an initial round, that player may be deemed ineligible for advancement to a subsequent round.”), [0141] (“four hundred players qualified to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round). Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event.”), [0147] (“This offer and acceptance process continues for a designated number of rounds.”).

66. Any player that accepts the “offer to quit” in exchange for the “additional award” between rounds is paid the award and is eliminated from the bonus event. DeWaal ¶ [0142] (“In this embodiment, one hundred players chose to quit and accept the offered second additional award The central controller provides those players with the second additional award and eliminates those players from the bonus event.”). In other words, players that accept the money are effectively selling 100% of their ticket for the offered amount, forfeiting their potential to win the jackpot. On the other hand, “[i]f the player rejects the offer, the player is advanced to the subsequent round.” DeWaal ¶ [0162]; *see also* DeWaal ¶ [0159] (“The central controller offers Players C, D and E to quit the bonus event

prior to the third round. If any of the players quit the bonus event, the central controller provides these players with the accumulated additional awards associated with the first and second rounds. If the players reject the offer, these players are risking the accumulated additional awards associated with the first and second rounds to play the third round of the bonus event.”).

67. This process of determining which players advance or are eliminated and offering the advancing players the option of selling out or quitting in exchange for an additional award in each round “continues for a designated number of rounds until a final round,” in which “the central controller determines one or more winning players” of the bonus event. DeWaal ¶ [0132]. In the final round, “if one of the eligible players makes an input associated with the winning outcome, the central controller provides that player with the award” for the bonus event. DeWaal ¶ [0133].

68. These features of DeWaal's bonus game can be implemented in “any bonus or secondary game or sequence,” such as, for example, “reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or games that include one or more rounds of game play.” DeWaal ¶ [0108].

B. Overview of Schugar (EX[1005])

69. U.S. Patent Publication No. 2008/0311981 A1 to David Schugar (hereinafter, “Schugar”), entitled “Wagering Game that Allows Player to Alter Payouts Based on Equity Position,” was published on December 18, 2008. The application leading to Schugar, U.S. Patent Application No. 12/099,778, was filed on April 8, 2008. Schugar is directed to “a wagering game that allows a player to alter payouts based on an equity position the player has in the wagering game.” Schugar ¶ [0003].

70. Thus, Schugar describes “equity concepts” for “any” multi-stage or multi-round game that has “variable states and is not over without an interval between states,” such as “a sporting event, a gambling game (e.g., card game etc.), any event that bettors have placed wagers on in the prior art.” Schugar ¶¶ [0075], [0122]; *see also* Schugar ¶ [0104] (“A machine game can be any wagering game, such as a slot machine, video poker machine, or machine game which plays any game that can have multiple states (e.g. games which a player can wager on a progression).”). For example, Schugar discloses that “[w]hen the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to cash in on the winning state before completing the game.” Schugar ¶ [0075]. In this regard, Schugar recognizes that “[a] player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation

situation for later redemption” so that “even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.” Schugar ¶ [0077]. “In this way,” as Schugar explains, “the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

71. Schugar, therefore, discloses a feature where a player is offered the ability of “cashing out a portion of a current bet in progress,” or “bank” it for later and continue to play the game but with a reduced expected potential winning to account for the portion of the wager that was sold or “cash[ed] out.” Schugar ¶ [0079], [0127]. Specifically, “[i]f the current game state has a positive expectation (or positive expected profit) for the player, then the method can proceed to operation 304, which determines whether the player chooses to bank his or her positive expectation. This can be prompted by an automatic pop up window which allows the player to choose whether he wishes to bank some or all of his recent gains in expectation for later redemption.” Schugar ¶ [0092].

72. As Schugar states, “[i]f the player chooses in operation 304 to bank his or her positive expectation, then the method can proceed to operation 306, which stores the value the player has banked for later use.” Schugar ¶ [0093]. Schugar provides flexibility in that “[e]ither the player can select how much positive expectation to bank, or the machine can automatically calculate an amount of

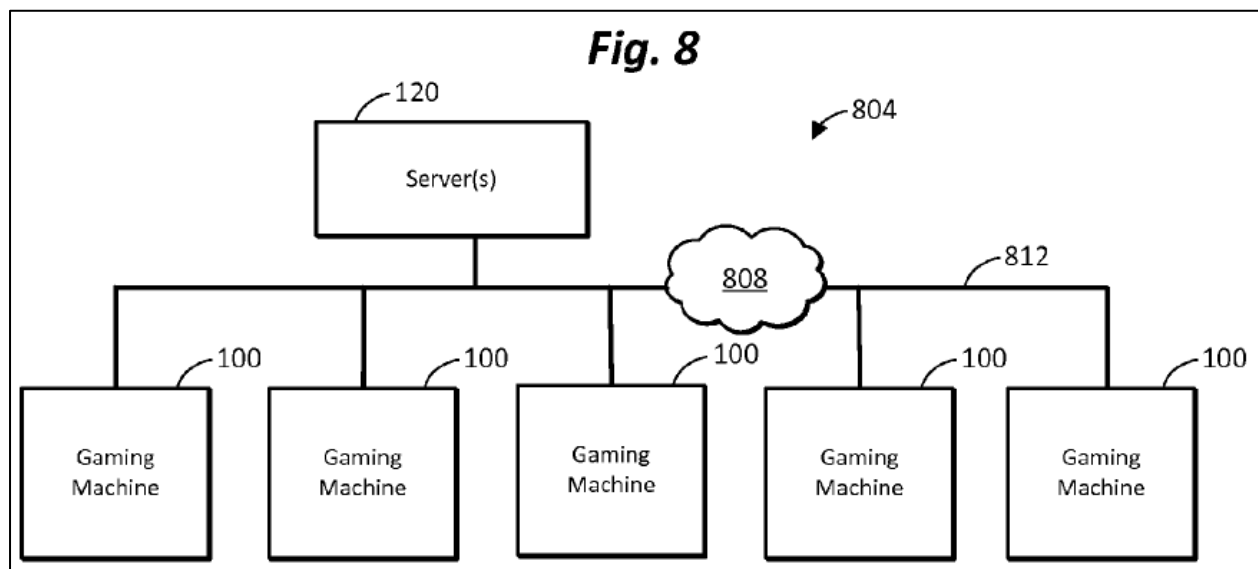
positive expectation to bank.” Schugar ¶ [0094]. Or, providing even greater flexibility, “when a player achieves a positive change in his or her expectation, a portion of the player’s increased expectation can be automatically banked for later redemption.” Schugar ¶ [0101].

73. By leveraging the equity concepts as disclosed in Schugar, i.e., by offering the player an ability to “cash[] out” a portion of their wager and keep playing with the remainder, the player can use the banked portion to, for example, place additional wagers. Schugar ¶¶ [0078], [0118], [0120], [0127] (“a player can still utilize the method described herein of cashing out a portion of a current bet in progress in order to pay for an additional wager”). By doing so, “[t]he house makes money .. and the player gets the peace of mind of the sure win.” Schugar ¶ [0078]. That is, the player can use the cashed out amount to put themselves in “a no-lose situation and can relax and enjoy the game without worry.” Schugar ¶ [0126].

C. Overview of Scott (EX[1006])

74. U.S. Patent Application Publication No. 2012/0309503 A1 to James R. Scott (hereinafter, “Scott”), entitled “Multiplayer System Providing Current Cash Value for Wagering Game Indicia,” was published on December 6, 2012. The application leading to Scott, U.S. Patent Application No. 13/420,031, was filed on March 14, 2012.

75. Scott is directed toward a “multiplayer gaming system for wagering games where non-final sets of indicia may be associated with an offer price for sale to other players.” Scott Abstract. The general structure of Scott’s multiplayer system is shown in FIG. 8 below.

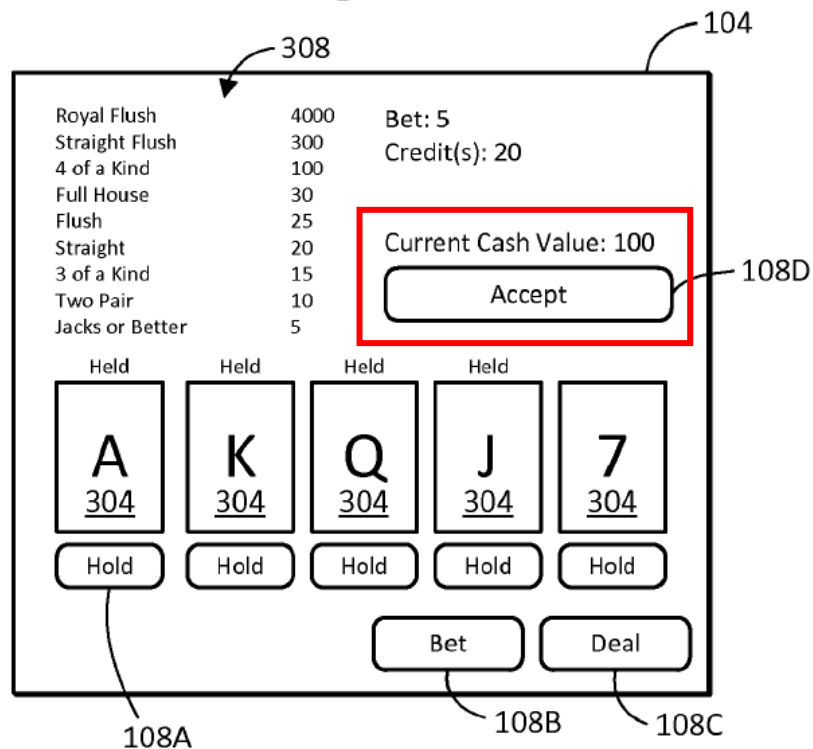


Scott FIG. 8.

76. More specifically, Scott is directed “particularly to a gaming machine configured to provide value for partial or incomplete game outcomes.” *Id.* ¶ [0003]. As Scott explains, “[t]he multiplayer gaming system allows non-final sets of wagering game indicia to be associated with an offer price for sale by one player to another player. The multiplayer system thus generates a marketplace for sale of non-final sets of indica. This is highly advantageous in that the ability to sell non-final sets of indicia provides another avenue for players to be rewarded for playing a wagering game.” *Id.* ¶ [0009].

77. When Scott refers to buying and selling “non-final” sets of wagering game indicia, a POSITA would understand it is referring to buying or selling a player’s wager before the wagering game is completed, or in other words, buying and selling wagers while the wagering game is live and the underlying event being wagered on “is not over.” *Id.* ¶ [0076].

78. Scott discloses that a player’s live wager can be bought by and sold to the system operator or other players of the gaming system. For example, with respect to a transaction with the system operator, the system operator may cause the current cash value to be displayed on the display device of a gaming machine, and “a player input device 108 in the form of an ‘accept’ button may be provided to allow a player to accept a current cash value presented on a display 104 by the value engine.” *Id.* ¶¶ [0048], [0060]. The player may “accept” or “decline” the current cash value offer by pressing the appropriate buttons on the gaming machine. *Id.* ¶¶ [0077]-[0078]. “If the player accepts the current cash value for his or her game symbols at decision step 432, the current cash value may be paid to the player at step 424. The game may then end.” *Id.* ¶ [0079]. This is illustrated, for example, in FIG. 3A below.

Fig. 3A

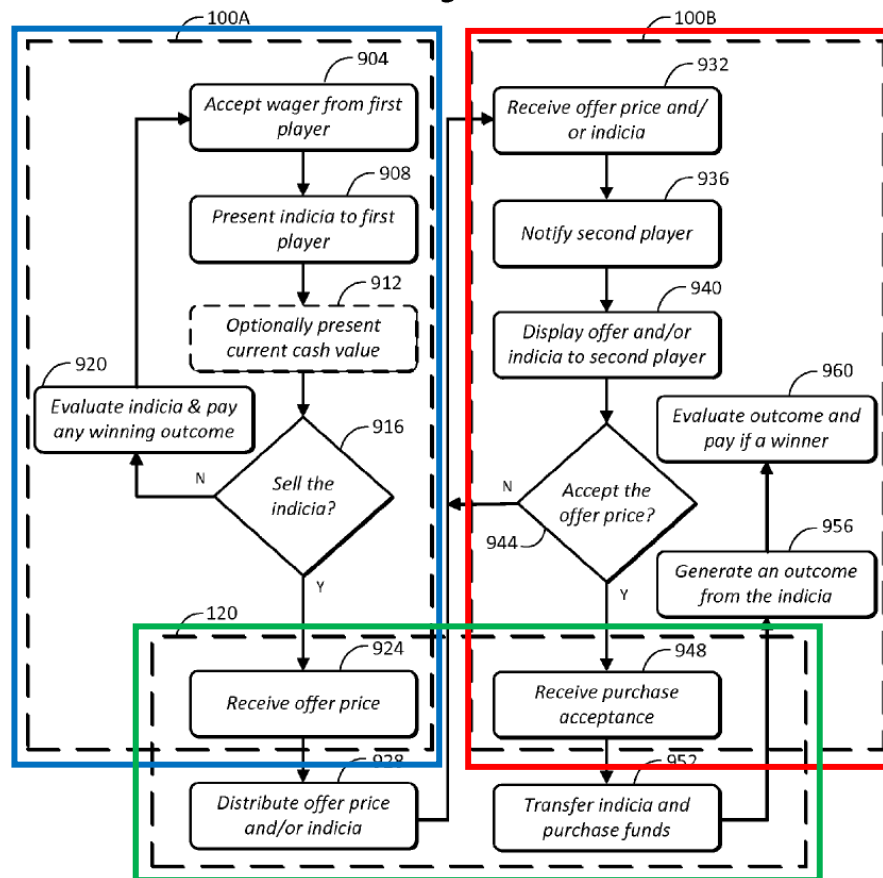
Id. FIG. 3A; *see also id.* ¶ [0094] (“The current cash value may then be presented to the player, such as via a display of the gaming machine. As described above, the player may then choose whether or not the accept the current cash value for his or her symbols. If the player accepts, the player will typically be paid the current cash value, and the game may subsequently end. If the player declines, the underlying wagering game will typically continue according to its rules.”).

79. With respect to buying and selling by other players of the system via an “electronic marketplace,” as Scott describes it, a player “may decide that he or she is better off selling the hand to another player than to take the current cash value or attempt to achieve a winning outcome from the symbols.” *Id.* ¶ [0099]. For

example, engaging a “sell” button or the like may cause the player’s wager to enter an “electronic marketplace for sets of symbols” and “solicit wagers or credits from other players who may purchase the symbols from the player.” *Id.* In this scenario, the selling player may utilize the current cash value displayed on their screen to set or designate an initial selling price for their wager, but the player may also “independently set a value or price for their indicia.” *Id.* ¶¶ [0125], [0127]. A second player, e.g., a “buying player,” on the marketplace may accept the initial offer price and purchase the ticket, or they may “propose his or her own different price or counter offer.” *Id.* ¶ [0139]. In typical fashion for a marketplace, “counter offers may continue to be made between the players until a counter offer is accepted or declined.” *Id.* If an offer or counter offer is accepted, “[t]he server may then transfer the non-final set of indicia from the first player to the second player” and “the tokens, credits, funds or other consideration used to purchase the non-final set of indicia may be transferred from the second player to the first player.” *Id.* ¶ [0140]. The first player “will no longer be able to play the non-final set of indicia,” but they “may be played to a conclusion or final set of indicia on the second gaming machine” after they are transferred to the second player. *Id.*

80. The general process for buying and selling indicia between players on the marketplace is illustrated in FIG. 9 below, where blue box represents the first player’s device, the red box represents the second player’s device, and the green box

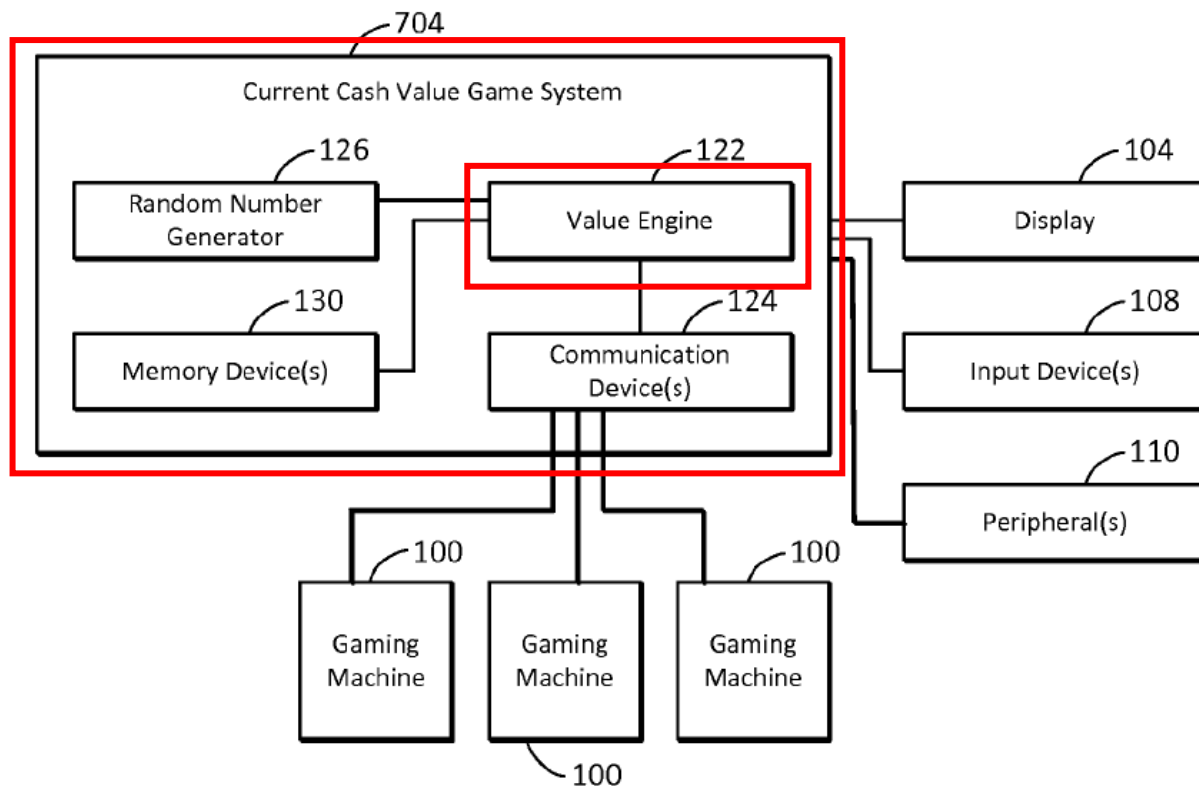
represents the server device. “The server 120 may be configured to facilitate transmission of counter offers as well as the acceptance or rejection of the counter offers.” *Id.* at [0139].

Fig. 9

Id. FIG. 9; *id.* ¶ [0122] (“For the purpose of explanation, the steps of FIG. 9 have been grouped according to the element of the multiplayer system that may perform such steps. For instance, steps within box 100A may be performed by a first gaming machine, steps within box 120 may be performed by a server, and steps within box 100B may be performed by a second gaming machine.”).

81. The offers may be based on a “current cash value” that is calculated by a “value engine” component of the multiplayer system. *See* Scott ¶ [0015] (“It is contemplated that a value engine configured to determine a current cash value for the non-final set of game indicia may be included in the system.”). The value engine’s incorporation in Scott’s system is shown below in FIG. 7, for example.

Fig. 7



Id. FIG. 7.

82. That is, “[i]n general, the value engine ... is configured to evaluate game outcomes at various stages of a game,” which involves “reevaluat[ing]” the wagering information as the event progresses. *Id.* ¶¶ [0039], [0041]; *see also id.* ¶¶

[0062] (“In operation, the value engine 122 may evaluate game information to determine a current cash value. For example, in one embodiment, the value engine 122 may receive game information identifying the game symbols or indicia the player currently has, the odds the player will win (or lose), the amount the player has wagered, or various combinations thereof.”), [0063]. As the evaluation occurs at various stages, “the current cash value is dynamic and may be based on the current situation of the game being played.” *Id.* ¶ [0069]. For example, “current cash value may be determined and presented after each card or other symbol is dealt to a player. This may occur in real time or in substantially real time. For example, as each individual playing card or slot symbol is revealed, a new current cash value may be calculated. This provides an animated presentation which may be engaging to players.” *Id.* ¶ [0070]. Notably, the current cash value offer may be presented to the user continuously, although dynamically changing, until the game ends by completing the game or accepting the offer. *See id.* ¶ [0084] (“It is noted that the process of presenting current cash value for a player’s game symbols may continue with newly presented game symbols until the game is over at decision step 412 or until the player accepts a current cash value for his or her set of symbols at decision step 432.”).

83. In my opinion, a POSITA would agree with Scott’s assessment that “[t]he value engine is advantageous in that it adds a new element to wagering games

that is compatible with a wide variety of wagering games.” *Id.* ¶ [0041]; *see also id.* ¶¶ [0043]-[0044] (“Since the value engine may be used with a variety of wagering games, it is also advantageous in that it can be used to enhance traditional games, such as to encourage new players to play or entice existing players to continue playing. In addition, the value engine provides feedback in the form of a current cash value for the player’s current set of game symbols or indica. This allows players to make a connection between their actions and the cash value presented by the value engine. Thus, players are able to actively play and participate in a game having the value engine. This gives players a sense of control which makes the game challenging and more entertaining. The value engine may also attract new players who are attracted to games where they can easily see the results of their actions.”).

IX. Grounds of Unpatentability

84. In this section, I will explain why claims 1-4, 7-8, 10-12, 15-17, 19-26, and 29 of the ’439 Patent are anticipated by the disclosure of DeWaal under Patent Owner’s apparent construction of the limitation “at least one of a buy-out offer and partial buy-out offer” and/or how those same claims are rendered obvious by the disclosure of DeWaal in combination with Schugar under DraftKings’ construction of that limitation. I will further explain why DeWaal in view of Schugar renders obvious claims 5, 13-14, 27, 28, and 29 and why claims 6, 9, and 18 are rendered obvious by DeWaal in view of Scott or in further combination with Schugar.

85. I note that in this discussion, I may focus on the particular language in specific claims, but it should be understood that my analysis applies to the corresponding limitations of all claims containing identical or substantially identical language.

A. Claims 1-30 are Anticipated by DeWaal, or Rendered Obvious by DeWaal in View of Schugar, DeWaal in View of Scott, and/or DeWaal in View of Scott and Schugar.

86. I incorporate by reference my discussion of the background of the technology and overview of the DeWaal, Schugar, and Scott references above. As is apparent from my overviews of those prior art patent publications, it would have been obvious to a POSITA to combine them by adding Schugar's ability to cash out a portion of a player's wager to DeWaal's multi-round bonus event that already provided the player with an offer to quit in exchange for an additional award during the bonus event and thereby cash out the entirety of their wager. Moreover, a POSITA would have had a reasonable expectation of success in applying these features within DeWaal's networked betting system, which was not only well-known at the time, but also very similar to Schugar's networked betting system. While I address in more detail the motivation to combine DeWaal and Schugar in the relevant limitations below and discuss the further combination with Scott in the specific sections below where Scott's teachings are applied (i.e., for claims 6, 9, and

18), I provide an overview of the motivation to combine DeWaal and Schugar at the outset here.

87. It is worth noting that there was an express motivation to combine DeWaal with these references. For example, DeWaal states that there was “*a continuing need to provide* new and different gaming machines and gaming systems as well as *new and different ways to provide awards to players including bonus awards.*” DeWaal ¶ [0008]. It would have been obvious that this could be accomplished by allowing players to cash out less than a full reward. For example, Schugar discloses “a wagering game that allows a player to alter payouts,” i.e., awards, “based on an equity position the player has in the wagering game,” including by “cash[ing] in on [a] winning state before completing the game.” Schugar ¶[0003], ¶[0077]. Therefore, a POSITA would have understood, based on the express statements in these references, that DeWaal and Schugar are directed toward solving the same problem.

88. In addition, a POSITA would have been motivated to combine these references in this way because Schugar teaches that the ability to cash out a portion of a player’s wager and continuing playing was a desirable compliment to the ability to cash out the entirety of a player’s wager and cease playing. That is, in addition to Schugar’s disclosed feature allowing a player to “surrender” their wager in its entirety for an award, it also discloses that the player “also” has the choice of

“bank[ing] a portion of the expected profit the player has earned for later use.” Schugar ¶ [0078]; *see also* Schugar ¶ [0127] (“the player can still utilize the method described herein of *cashing out a portion of a current bet in progress* in order to pay for an additional wager”). Schugar expressly describes why a POSITA would have been motivated to add its ability to “cash[] out a portion of a current bet in progress” to any suitable wagering system, and in particular wagering systems like DeWaal’s that are directed toward providing new and different ways for players to win awards. For example, Schugar recognizes that “[a] *player may find it attractive* to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption” because “even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.” Schugar ¶ [0077]. It also keeps players more engaged by being able to “continue to wager, but limit his [or her] losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079]. For example, the ability to cash out a portion of a current bet, as Schugar explains, allows players to place additional bets that can put them “in a no-lose situation” so that they “can relax and enjoy the game without worry.” Not only is such a feature beneficial for the player, but it also benefits the house—“[t]he house makes money ... and the player gets the peace of mind of a sure win.” Schugar ¶ [0078].

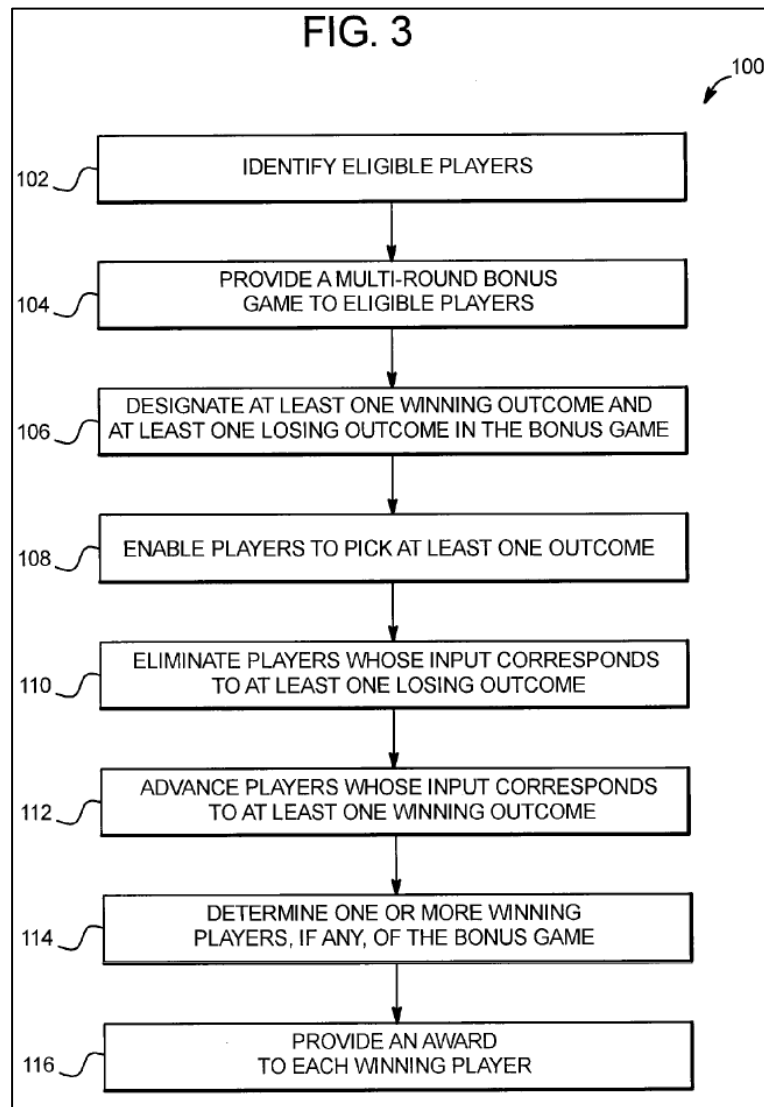
89. Therefore, a POSITA would have been motivated to make this combination of prior art techniques for providing additional or unique awards to players, and a POSITA would have understood, particularly in view of the teachings of Schugar, that DeWaal's system was ready for improvement by complimenting its ability to offer a full cash out of a wager via its "offer and acceptance feature" with Schugar's ability to offer "cashing out a portion of a current bet in progress."

1. Claim 1

- a. *1[a] – "A method of conducting a multi-outcome wagering event for one or more players, wherein the wagering event comprises a defined number of legs, and wherein at least one of the one or more players is presented with at least one of a buy-out offer and a partial buy-out offer prior to completion of all of the defined number of legs, the method comprising the steps of:"*

90. Limitation 1[a] is the preamble of claim 1 of the '439 Patent. In my opinion, and to the extent the preamble is limiting, DeWaal discloses limitation 1[a] of the '439 Patent under Patent Owner's apparent construction of the limitation "at least one of a buy-out offer and partial buy-out offer" (where just one of a buy-out or partial buy-out is required) and renders obvious this limitation in combination with Schugar under DraftKings' construction (where both full and partial buy-out offers is required). The remainder of limitation 1[a] is disclosed in DeWaal under either party's construction of that term.

91. DeWaal discloses “a method of conducting a[n] . . . event for one or more players” because DeWaal discloses a process for providing or conducting a bonus event. For example, DeWaal describes “a gaming system and *method*” for “provid[ing] a multi-round *bonus event* to a plurality of players.” DeWaal ¶ [0108]. The high-level process, or “method,” for conducting DeWaal’s bonus event is disclosed, for example, in FIG. 3, depicted below.



DeWaal at FIG. 3; *see also* DeWaal ¶ [0033] (“FIG. 3 is a flowchart of one embodiment of the gaming system disclosed herein illustrating an opportunity for one or more players to win an award in a bonus event.”), ¶ [0122] (“Referring now to FIG. 3, **a flowchart of an example process 100 for** substantially simultaneously **providing a bonus event** to a plurality of eligible players is illustrated.”). Exemplary embodiments further illustrating DeWaal’s process for conducting the bonus event are shown, for example, in FIG. 7 and FIG. 10. *See* DeWaal at FIG. 7, FIG. 10, ¶ [0141] (“FIG. 7 is a chart of one embodiment of a multi-round bonus event, wherein a plurality of players compete for an award at substantially the same time and the bonus event includes an offer and acceptance feature.”), ¶ [0157] (“FIG. 10 is a timeline representative of one embodiment of a multi-round bonus event,” including the offer and acceptance feature, “wherein a plurality of players compete for an award at substantially the same time and the award is provided to at least one of the players”). As DeWaal states, “[g]enerally, **the process 100 enables a central controller to cause the system gaming machine to provide a multi-round bonus event** to a plurality of players.” DeWaal ¶ [0124].

92. In my opinion, a POSITA would understand that DeWaal’s bonus event is a “wagering event” because it is subject to a separate wager. For example, DeWaal discloses that “the central controller determines which players are eligible for the bonus event in association with a **separate wager**.” DeWaal ¶ [0118]. DeWaal

further explains that that “separate wager” comprises a “*side-wager or entry fee that enables a player to participate in the bonus event.*” DeWaal ¶ [0118]. Even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is reserved to fund the progressive/bonus jackpots. *See, e.g.,* DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and was disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus event because a wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game. Moreover, in connection with the bonus event wager, DeWaal discloses that players of the bonus event also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). Because a user

submits a separate wager to be eligible to participate in the bonus event, a POSITA would understand that DeWaal's bonus event is a "wagering event."

93. In my opinion, a POSITA would understand that DeWaal's bonus event is also a "multi-outcome" event. For example, DeWaal discloses that "the bonus event includes a selection game and *the plurality of outcomes* include player selectable elements or selections." DeWaal ¶ [0128]. Further, in addition to DeWaal's description of a "plurality of outcomes in each round" referenced in the preceding paragraph, DeWaal further discloses that "the bonus event is a multi-round selection game that includes a plurality of rounds and *a number of available outcomes in each round.*" DeWaal ¶ [0119]; *see also* DeWaal ¶ [0128] ("The multi-round bonus event includes a plurality of outcomes in each round. Each round may include the same number of or different numbers of outcomes. At least one of the outcomes is designated as a winning outcome and at least one of the outcomes is designated as a losing outcome as indicated in block 106. In one embodiment, each round includes one winning outcome and a plurality of losing outcomes."). The potential outcomes of each round of DeWaal's multi-round bonus game include designated or "winning" outcomes and non-designated or "losing" outcomes. DeWaal ¶ [0012]. The presence of at least two outcomes, *e.g.*, winning and losing, for each round of the multi-round bonus game makes the bonus game "multi-

outcome.” In one example, “the multi-round selection games includes four rounds and *ten outcomes per round*.” DeWaal ¶ [0119].

94. DeWaal’s bonus event is clearly “for one or more players.” For example, DeWaal discloses that its gaming system and method “substantially simultaneously provides a multi-round bonus event *to a plurality of players*.” DeWaal ¶ [0108]. DeWaal further discloses that the system “preferably” identifies a “plurality of players who are eligible to play the bonus event.” DeWaal ¶ [0109]; *see also* DeWaal ¶ [0124]. Moreover, as discussed above, “the process 100” for providing the bonus game causes “the system gaming machine to provide a multi-round bonus event to *a plurality of players*.” DeWaal ¶ [0124].

95. In my opinion, a POSITA would understand that DeWaal’s bonus event “comprises a defined number of legs.” For example, DeWaal discloses that the bonus event is “multi-round” and that each of the multiple rounds are a component of the bonus event. DeWaal ¶ [0119] (“In one embodiment, the bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round. In one embodiment, the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event.”). This mapping of DeWaal’s multiple rounds to the claimed “legs” is consistent with the ’439 Patent specification, which states that “[t]he term ‘leg as used herein should be broadly construed and may

comprise any desired number of individual components of any type of event, such as any type of game or sporting event.” ’439 Patent at 4:13-16; *see also* ’439 Patent at 1:52-62 (“The present disclosure is directed ... a unique betting product where players make selections in a number of different legs which, as defined below, can include ***any variety of different discrete events*** ... partial events ... components of events ... multiple independent events ... and/or compilations of events.”).

96. Further overlapping with the ’439 Patent’s definition of “leg,” DeWaal discloses that “[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or ***games that include one or more rounds of game play***.” DeWaal ¶ [0108]. Many of these exemplary games are the same as those which the ’439 Patent admits have multiple “legs.” *See e.g.*, ’439 Patent at 4:28-34 (“a leg may comprise any desired number of individual components of any game or a game in its entirety, virtual and real, such as for instance, and without limitation, keno, jacks, poker, blackjack ... slot machines, lotteries.”).

97. Regarding the number of legs being a “defined number of legs,” DeWaal discloses that “the number of rounds ... may be ***set*** by the game

implementer to any suitable number.” DeWaal ¶ [0182]; DeWaal ¶ [0128] (“The number of outcomes, the number of rounds, and/or the number of winning or designated outcomes are set to any suitable manner by the implementer of the gaming system.”). By disclosing that the bonus event includes a “set” number of “rounds,” a POSITA would understand that DeWaal’s multi-round bonus event comprises a “defined number of legs,” where each round corresponds to a “leg.” Similarly, DeWaal discloses that the “bonus event ends after a *designated number of rounds* including a final round.” DeWaal ¶ [0011].

98. In my opinion, a POSITA would understand that during DeWaal’s bonus event, “a player is presented with at least one of a buy-out offer.” For example, as discussed in greater detail below with respect to limitation 1[f], my analysis of which is herein incorporated by reference, DeWaal’s bonus event includes an offer and acceptance feature that corresponds to “a buy-out offer.” *See e.g.*, DeWaal ¶ [0141], FIG. 7, FIG. 10. As DeWaal explains, “if the player picks the designated,” or winning, “selection in one of the rounds, the *central controller offers that player to either quit the bonus event and keep the total award accumulated in the bonus event or continue the bonus event and play a subsequent round*. If the player chooses to quit, the central controller provides (or causes that player to be provided) with the accumulated award ... In this embodiment, *the total*

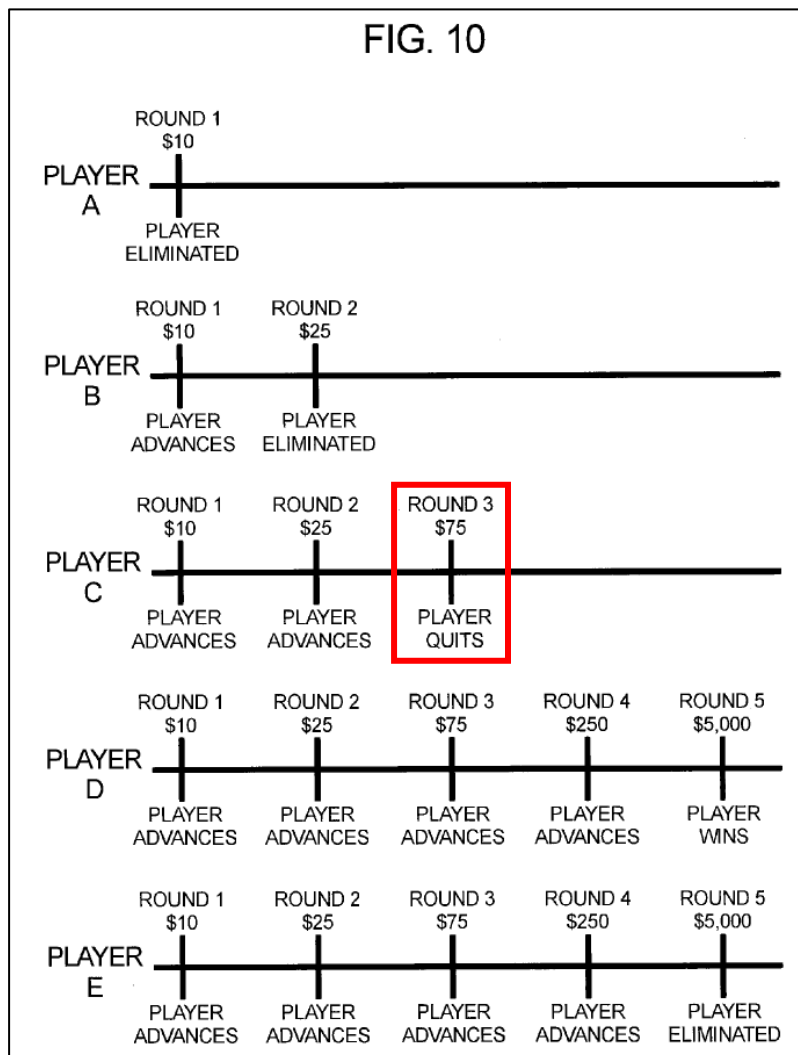
accumulated award is offered to each advancing player along with the option to quit.” DeWaal ¶ [0018].

99. With respect to the offer and acceptance feature, DeWaal explains, in the context of an exemplary bonus event having five rounds, that “[p]rior to the second round, the central controller *offers each advancing player an additional award to quit the bonus event.*” DeWaal ¶ [0141]. In this example, because the offer of the additional award to quit the bonus event was provided after the first round but before the second round of the five rounds in the bonus event, the offer was made by the controller “prior to completion of all of the defined number of legs,” with the “defined number of legs” being five legs in this example. Indeed, DeWaal discloses that the process of making such offers to quit the bonus event and surrender any chance of winning the bonus event jackpot “continues for each round until the central controller determines one or more winning players for the bonus event.” DeWaal ¶ [0143]. Thus, in this embodiment of the bonus event, DeWaal discloses that four buy-out offers may be made to the player “prior to completion of all” five legs (*e.g.*, between rounds 1 and 2, between rounds 2 and 3, between rounds 3 and 4, and between rounds 4 and 5).

100. Because accepting the offer effectively ends the player’s participation in the bonus event, *i.e.*, the player “quits” the bonus event by accepting, the offer is for 100% of the player’s interests held in the bonus event and their interest in

potentially winning the bonus jackpot award in the final round. In other words, DeWaal's offer and acceptance feature provides players the option of surrendering their entire interest in the bonus event, including their interest in winning the bonus jackpot, in exchange for value, such as the equity stake the player has in the bonus round given their current position at the time the offer is made. Thus, a POSITA would have understood that DeWaal's reference to a player "quitting" the bonus event before termination or completion of all rounds refers to the player being offered, and accepting, a buy-out offer.

101. An example timeline of multiple players participating in a bonus event with the offer and acceptance feature is provided, for example, in DeWaal's FIG. 10, which is shown below, and described in paragraphs [0157] through [0160]. This timeline, and the accompanying description, confirm that DeWaal's offer and acceptance feature in the bonus event corresponds to the claimed "buy-out offer."



DeWaal at FIG. 10 (annotated).

102. As DeWaal explains with respect to FIG. 10:

The central controller offers Players C, D and E to quit the bonus event prior to the third round. If any of the players quit the bonus event, the central controller provides these players with the accumulated additional awards associated with the first and second rounds. If the players reject the offer, these players are risking the

accumulated additional awards associated with the first and second rounds to play the third round of the bonus event. *As illustrated, Player C accepts the offer and the central controller provides Player C with the accumulated additional award associated with the first and second rounds (e.g., \$10 and \$25).* Players D and E each rejected the offer and advance to the third round.

DeWaal ¶ [0159]. Thus, as shown above with respect to the red box drawn on FIG. 10, upon accepting the award in exchange for quitting the event before round 3, Player C was provided with the amount of the offer and their participation in the bonus event ended before the third round, demonstrating that the offer was for 100% of the player's interests in the bonus event and their interest in winning the bonus jackpot in round five. That is, upon accepting the offer in DeWaal, the player is provided some indicated value and the player's wager and participation in the bonus event ends such that the player is no longer eligible to win the bonus event jackpot in round 5. *See DeWaal ¶ [0146] ("If a player accepts the offered portion of the award pool, the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event).")*.

103. The description of a "buy-out offer" in the '439 Patent is consistent with the buy-out offer disclosed in DeWaal (*i.e.*, offering the player an award in exchange for quitting the bonus event). For example, just as with DeWaal's disclosure of the

offer for some value and to quit, the '439 Patent states that “the buy-out offer is for buying an entire ticket from a player (i.e., 100%) for an indicated value.” '439 Patent at 12:14-16.

104. Further, in my opinion, a POSITA would understand that DeWaal discloses “a player [being] presented with” a buy-out offer. For example, DeWaal discloses that the “central controller may *cause the display device to display an offer of \$10 to the advancing players*. The display may include appropriate messages, such as ‘YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!’” DeWaal ¶ [0146]. A POSITA would understand that the controller causing the display device to display “an offer” to “quit the bonus round and keep the” award or reject the offer and “play another round” and put the award at risk to mean that the player was presented with, via the display, a buy-out offer because displaying is a known technique for presenting and providing the player with a choice of taking the amount and quitting or rejecting the amount and continue playing is an “offer.”

105. As discussed above in section VII of my declaration, I understand that one interpretation of the language “presented with at least one of” with a plurality of subsequent options means that the limitation may be met by a showing in the prior art of presenting “at least one of” the listed options. As also discussed above, I

further understand based on allegations made in the co-pending district court litigation that Patent Owner asserts infringement under this interpretation. Therefore, to the extent that Patent Owner argues for a similar interpretation here, where this preamble is “limiting,” and where limitation 1[a] does not require “a partial buy-out offer,” and thus may be satisfied by a full “buy-out offer” alone, DeWaal discloses “wherein a player is presented with at least one of a buy-out offer and a partial buy-out offer prior to completion of all of the defined number of legs.” Under this presumed construction of Patent Owner, a POSITA would understand that DeWaal discloses the entirety of limitation 1[a] of the ’439 Patent.

106. However, DeWaal does not expressly disclose the ability to offer *both* a buy-out offer *and* a partial buy-out offer as required under DraftKings’ construction because DeWaal does not expressly disclose a “partial buy-out offer.” Distinct from a full “buy-out offer,” where 100% of the wager is surrendered for some indicated value and an accepting player’s participation in the event ends in exchange for the indicated value, a “partial buy-out offer” is described in the ’439 Patent as an offer to purchase “a partial portion of the ticket, for example an equal fifty percent share” or “for example any 10% interval from 10% to 90%, at an appropriate monetary amount.” ’439 Patent at 14:16-17. Therefore, in the 50% share example of the partial buy-out offer, an accepting player would be permitted to continue playing in the wagering event and would be eligible to win the jackpot,

but “the amount paid to the player would then be similarly reduced, such as being reduced proportionately by 50%.” ’439 Patent at 12:62-64. In other words, if a player accepts a partial buy-out offer for 50% of the ticket, the player can continue playing in the wagering event but at a reduced pay scale. *See e.g.*, ’439 Patent at 14:17-20 (“Thus, the player in the above example could sell 10% of the ticket for \$8,000 and retain the potential of receiving 90% of the \$1,000,000 Jackpot Pool.”).

107. DeWaal renders this limitation obvious in view of Schugar, which directly discloses a “partial buy-out offer.” For example, Schugar discloses that, “[w]hen the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to ***cash in on the winning state before completing the game.***” Schugar ¶ [0077]. In addition to fully “cash[ing] in” a bet and “surrender[ing]” it in full, “[t]he player can ***also bank a portion*** of the expected profit the player has earned for later use.” Schugar ¶¶ [0078], [0079]. As Schugar explains, “[a] player may find it attractive to be able to accumulate (or ‘bank’) ***a portion*** of a positive expectation situation for later redemption.” Schugar ¶ [0077]. “This can be done in a number of ways.” Schugar ¶ [0079]. For example, in a situation where the player placed a \$100 wager, one such way is that “the house can take a portion of the player’s wager (such as 10%), so that the player now has \$90” wagered on the event, and “the taken portion can be stored for later redemption by the player” and “can be accumulated and dispersed to the player at a later time.”

Schugar ¶ [0079]. The banked portion “can be redeemed for cash instantly” or “redeemed for cash at a later time.” Schugar ¶ [0083]. As Schugar explains, whether the player wins or loses the wagering event after cashing in a portion of the player’s wager thereon, “the player has banked the banked value for later redemption” and the player can “continue to wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

108. Schugar’s disclosure of “cashing in” a “portion” of a player’s wager is further demonstrated with reference to an embodiment involving “series” of games or a multi-stage sport wagering event. As Schugar discloses, “[t]he embodiments herein can also be used to bet on sporting events, either at intervals on individual games or series of games.” Schugar ¶ [0072]. As an initial matter, considering the prior art as a whole, a POSITA would have understood that Schugar’s sports betting concept and wagering on the games in a series, such as a seven-game series like the baseball World Series or a four-quarter football game like the Patriots versus the Giants, is analogous to and compatible with the structure and operation of DeWaal’s multi-round bonus event including the offer and acceptance feature. *See* Schugar ¶¶ [0072], [0120], [0126]. For example, a multi-round wagering event on a four-quarter sporting event as described in Schugar naturally aligns with a four-round bonus event as described in DeWaal, where each round corresponds to each quarter in the sporting event and each quarter has at least two outcomes, team A is winning or team

B is winning at the end of the quarter, and players make selections on each quarter/round in the four-quarter series. *See* Schugar ¶¶ [0120], [0126]. Similarly, a multi-round wagering event on a seven-game series sporting event as described in Schugar naturally aligns with a seven-round bonus event as described in DeWaal, where each game corresponds to each game in the sporting event and each game has at least two outcomes, team A wins or team B wins, and players make selections of outcomes on each game/round in the seven game series. *See* Schugar ¶ [0072]. In each of these examples, a POSITA would understand that there could be additional outcomes associated with each round in this example, such as team A winning by X amount or team B losing by Y amount.

109. In the context of wagering on a sporting event, Schugar describes cashing in a portion of the player's wager as follows:

[C]onsider a football game with the Patriots vs. the Giants. The Patriots are a +900 long shot. ***A bettor wagers \$100 on the Patriots.*** At halftime, the patriots are winning by +28 points. At this point, a parimutuel halftime betting pool determines that the Giants are now a +1000 long shot. Assuming no house commission for simplicity, a +1000 translates into a 10% probability of occurrence of the Giants winning. Thus, the bettor has a 90% chance of winning \$900, thus the effective value of the original wager is now $0.90 \times 900 = \$810$. ***The bettor can now***

surrender \$10 of his original wager which is effectively worth \$81. This \$81 can now be wagered on the Giants which would result in a \$810 win if the Giants win. *The player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win.* Thus, the player is in a no-lost situation and can relax and enjoy the game without worry.

Schugar ¶ [0126]; *see also* Schugar ¶ [0120].

110. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100 wager such that the original wager remains active, with a lower expected payout, and the player has already banked nearly all of their original wager to be put to use however the player desires, such as by placing a counter bet to put the player in a no-lose situation. Further, while this example relates to cashing in during a wager on a single game, Schugar also discloses that the “embodiments described herein can also be used to bet on sporting events, either at intervals on individual games *or series of games.*” Schugar ¶ [0072]. For example, “[a]fter each game in the series ... payout odds for each team winning the series can change to reflect the current conditions (as described herein and/or known in the art) and players can make wagers during the series.” Schugar ¶ [0072]. Thus, much like how the odds changed and the player was able to partially cash out during halftime of the single game in the football game example above, a POSITA would understand Schugar to teach that, as the odds change after each

game/round in a series of games, the player would be able to partially cash out after each game/round in a wager on the series of games.

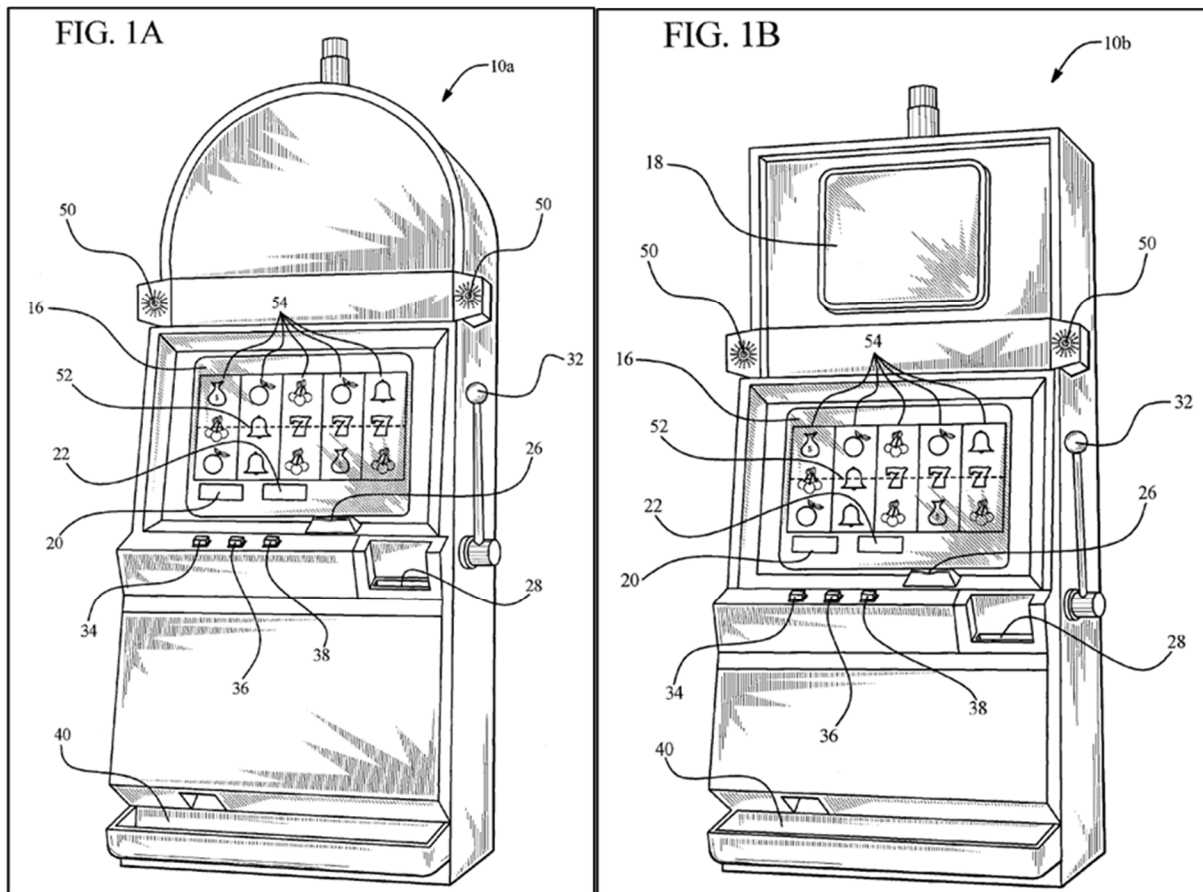
111. In my opinion, for the reasons discussed above and below with respect to limitations 1[f] and 1[g], a POSITA would have been motivated to modify the system and method for providing a bonus event in DeWaal, and in particular the offer and acceptance feature of DeWaal's bonus event, to add Schugar's offer to cash in a portion of the player's wager. For example, a POSITA would have been motivated to provide Schugar's partial cash-out feature as an option in DeWaal's system to increase revenue to the casino operator through increasing commissions while providing the player "peace of mind" of at least some "banked" profit. *See, e.g., Schugar at ¶¶ [0078 - 79]* ("For example, the house can let the surrender [sic] the wager for \$125. The house makes money on this proposition, and the player gets the peace of mind of the sure win. The player can also bank a portion of the expected profit the player has earned for later use.... In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.").

b. 1[b] – "providing one or more wagering input devices in communication with a system controller through which the one or more players may participate in the multi-outcome wagering event, said system controller being adapted for:"

112. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[b]. As an initial matter, the '439 Patent admits that the types

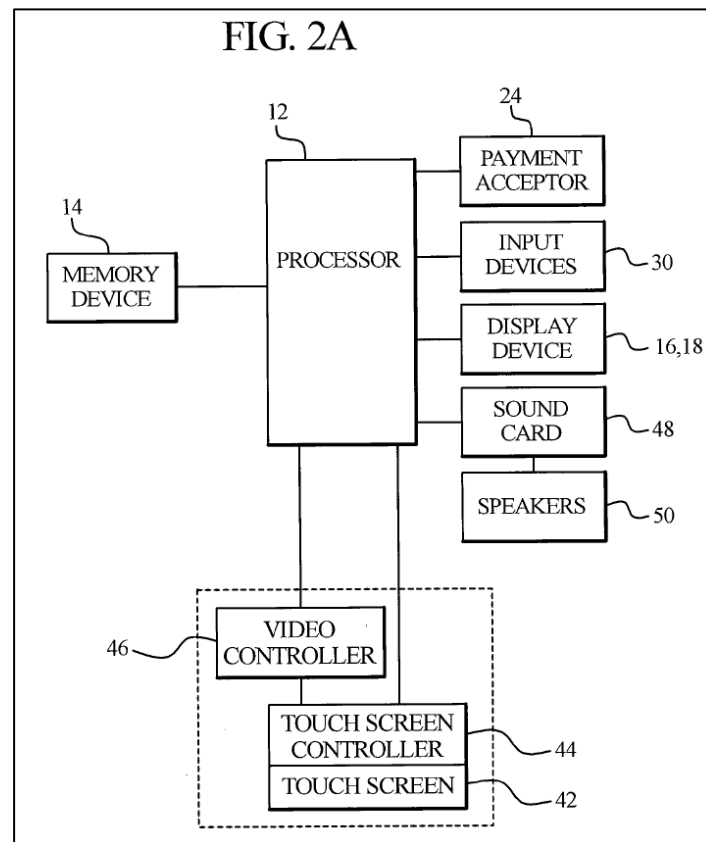
of “wagering input devices” or gaming machines disclosed in DeWaal are suitable for implementing the disclosure of the ’439 Patent. See ’439 Patent at 22:39-55 (citing U.S. Patent No. 8,105,149 to DeWaal (“DeWaal ’149”), which is the patent that issued from DeWaal with identical disclosures; noting that the gaming machines disclosed in DeWaal are suitable for “incorporating the concept of the present disclosure” because they include “computerized instructions for controlling any games” that can be reprogrammed or changed).

113. In addition, and more specifically, DeWaal discloses “providing one or more wagering input devices.” For example, DeWaal discloses that its system and method “may be implemented in various configurations for ***gaming machines or gaming devices.***” DeWaal ¶ [0042]. The various configurations include “dedicated gaming machine or gaming device” and a “changeable gaming machine or gaming device,” such as those depicted in FIGS. 1A and 1B, and/or “a desktop computer, a laptop personal computer, a personal digital assistant (PDA), portable computing device, or other computerized platform to implement the present disclosure.” DeWaal ¶¶ [0042], [0048]; see also DeWaal ¶ [0048] (“In one embodiment, the gaming machine may be a hand held device, a mobile device or any other suitable wireless device that enables a player to play any suitable game at a variety of different locations.”). Two exemplary embodiments of DeWaal’s gaming devices are shown below from FIGS. 1A and 1B:



DeWaal at FIGS 1A and 1B.

114. DeWaal discloses that the gaming devices include “a plurality of displays, inputs, controls and other features of a conventional gaming machine.” DeWaal ¶ [0045]. As shown in FIG. 2A below, the gaming device includes “at least one processor 12” that is “in communication with or operable to access or exchange signals with at least one data storage or memory device 14.” DeWaal ¶ [0046].

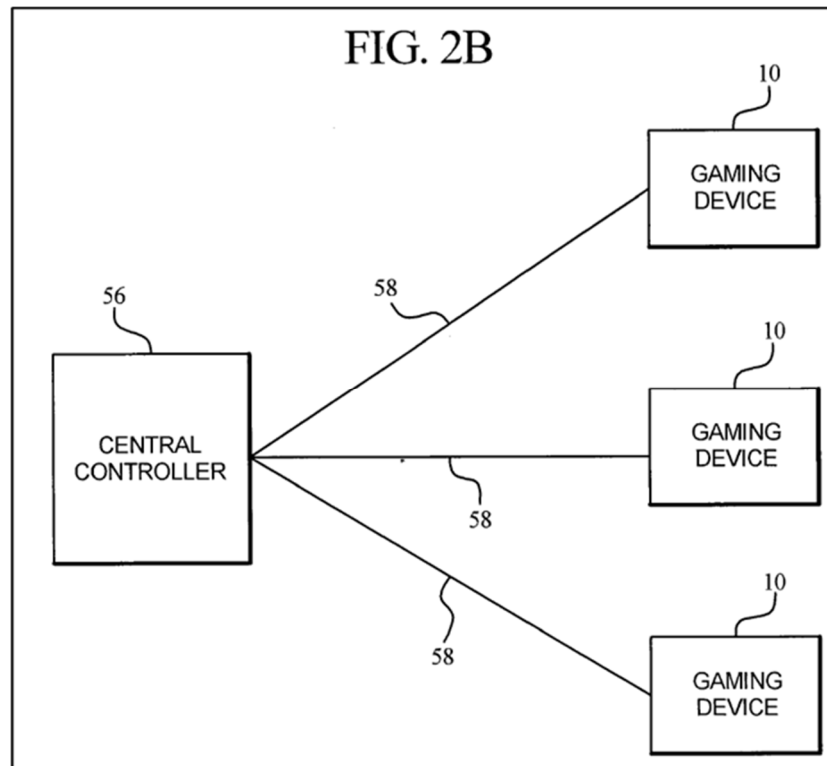


DeWaal at FIG. 2A.

115. A POSITA would have understood that DeWaal’s gaming machines or gaming devices correspond to “wagering input devices” because they are devices through which a user submits an amount of currency to wager and selects game indicia or elements on which the wager is placed using the input devices of the gaming machine, such as a payment acceptor and touchscreen. See e.g., DeWaal ¶¶ [0057] (“the gaming device includes at least one payment acceptor 24”), [0061] (“one input device is a touch-screen 42 coupled with a touch-screen controller 44 ... A player can make decisions and input signals into the gaming machine by touching

the touch-screen at the appropriate places. One such input device is a conventional touch-screen button panel.”), [0128] (“the bonus event includes a selection game and the plurality of outcomes include player selectable elements or selections.”)

116. In my opinion, a POSITA would understand that DeWaal’s gaming devices are “in communication with a system controller.” For example, FIG. 2B, shown below, “is a schematic block diagram illustrating *a plurality of gaming terminals in communication with a central controller.*” DeWaal ¶ [0032].



DeWaal at FIG. 2B. Explaining FIG. 2B, DeWaal discloses that “*one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56* through a data network or

remote communication link 58.” DeWaal ¶ [0084]. Providing further details regarding the communication between the gaming devices and the system controller, DeWaal discloses that:

In these embodiments, *the processor of each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server.* The gaming device processor is operable to execute such communicated events, messages or commands in conjunction with the operation of the gaming device. Moreover, *the processor of the central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.* The central server processor is operable to execute such communicated events, messages or commands in conjunction with the operation of the central server.

DeWaal ¶ [0084].

117. A POSITA would understand that the communications between DeWaal’s disclosure of the gaming devices and the controller transmitting and receiving events, messages, commands, or other signals corresponds to the gaming devices being in communication with a system controller. Moreover, DeWaal’s

central controller is a “system” controller because it “remotely controls any games (or other suitable interfaces) and the gaming device is utilized to display such games (or suitable interfaces) and receive one or more inputs or commands from a player, such as in a “thin client” configuration. DeWaal ¶ [0123]; DeWaal ¶ [0088] (“Central production or control can assist a gaming establishment or other entity in maintaining appropriate records, controlling gaming, reducing and preventing cheating or electronic or other errors, reducing or eliminating win-loss volatility and the like.”).

118. In such a configuration, a POSITA would understand that DeWaal discloses a plurality of gaming devices in communication with a system controller “through which the one or more players may participate in the multi-outcome wagering event.” For example, in addition to the description of the “thin client” above where the controller “controls any games,” DeWaal discloses that the “central controller” causes “the system gaming machine to provide a multi-round bonus event to a plurality of players,” and “[t]he central controller enables each eligible player to make an input in association with the plurality of outcomes in each round as indicated by block 108” in process 100. DeWaal ¶ [0129]. A POSITA would understand that the central controller enabling players to make inputs of the selected outcomes of the bonus event via the gaming devices constitutes “participat[ing] in a

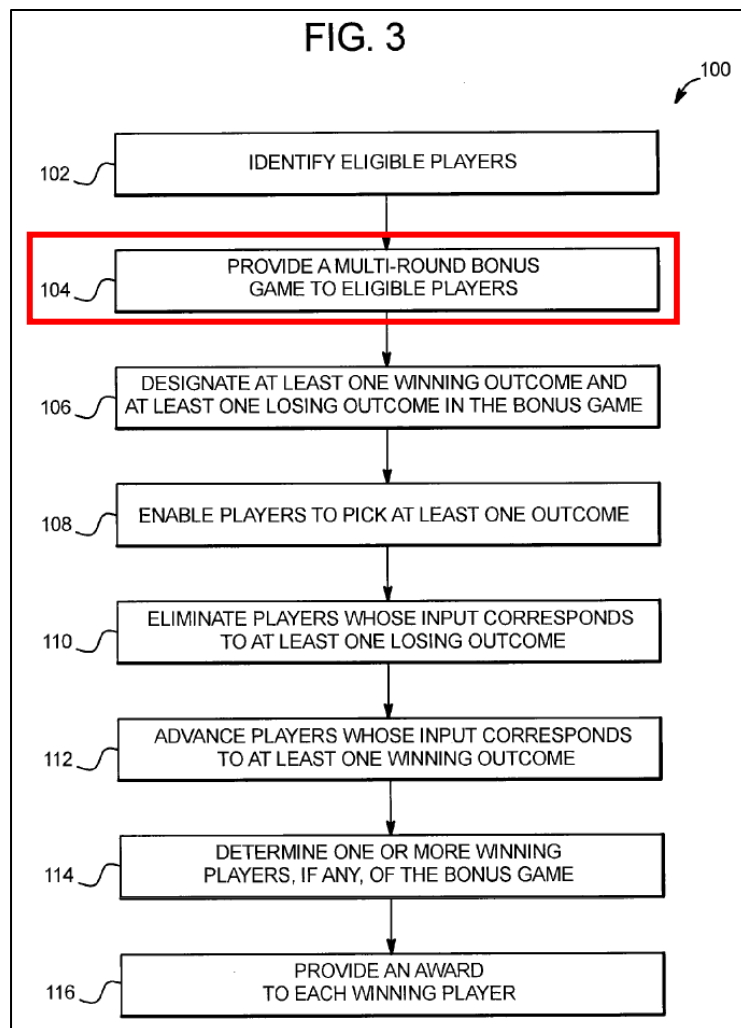
multi-outcome wagering event” through the central controller and the gaming device.

- c. 1[c] – “initiating the multi-outcome wagering event for the one or more players, said multi-outcome wagering event comprised of the defined number of legs, wherein one or more jackpots, or a portion thereof, is awarded at least where a particular number of the defined number of legs are completed;”*

119. In my opinion, DeWaal discloses limitation 1[c]. A POSITA would understand that DeWaal’s bonus event is “the multi-outcome wagering event for the one or more players” for the reasons explained above with respect to limitation 1[a], which are herein incorporated by reference. A POSITA would also understand that DeWaal’s bonus event is “comprised of the defined number of legs” for the reasons explained above with respect to limitation 1[a], which are herein incorporated by reference.

120. Further, a POSITA would understand that DeWaal discloses the central controller “initiating” the bonus event. For example, DeWaal discloses that the “central controller ... **cause[s]** the system gaming machine to provide a multi-round bonus event to a plurality of players.” DeWaal ¶ [0124]. Similarly, with respect to the process 100 shown in FIG. 3 that is executed and performed by the system controller, DeWaal again explains that “[t]he central controller **provides** the multi-round bonus event (or **causes** the gaming machines to provide the multi-round bonus

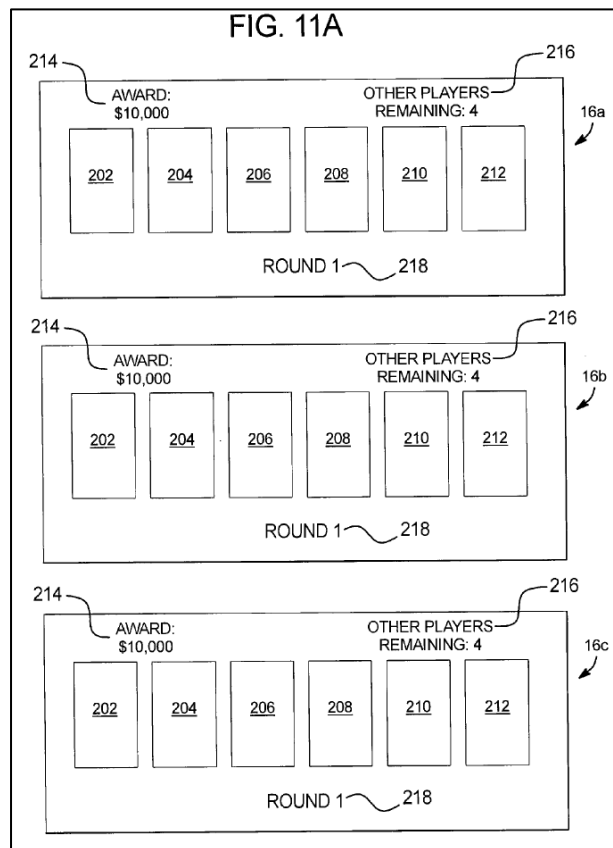
event) to those eligible players as indicated by block 104.” DeWaal ¶ [0126]; *see also* DeWaal ¶ [0123] (“the process 100 is embodied in computerized instructions executed by a central controller or remote host.”).



DeWaal at FIG. 3.

121. Further confirming that DeWaal’s central controller “initiates” the multi-round bonus game for a plurality of players, DeWaal discloses that “the central controller identifies ... one or more eligible players at gaming machines in the

gaming system” and that “[t]he central controller causes a display device of a plurality of gaming machines to display the bonus event to those eligible players,” which enables the players “to substantially simultaneously attempt to win the award in the bonus event.” DeWaal ¶ [0109]. The central controller provides the game only “once a suitable triggering event occurs,” thereby confirming that it is the central server that “initiates” the bonus event because the bonus event is not provided unless and until the central server determines such a suitable triggering event has occurred. DeWaal ¶ [0119]; *see also* DeWaal ¶ [0139] (equating “initiated” and “triggered” with respect to the bonus event). Once the central controller initiates or triggers the bonus event and provides it to the gaming devices of eligible players, the server displays the bonus game on the eligible gaming devices (or causes it to be displayed), as shown in FIGS 11A through 11F, which “are front views of a display device of a plurality of gaming machines in the gaming system ... showing the multi-round selection game.” DeWaal ¶ [0163]. FIG. 11A is shown below as an example.



DeWaal at FIG. 11A.

122. A POSITA would understand that DeWaal discloses that, as part of the bonus event “one or more jackpots, or a portion thereof, is awarded at least where a particular number of the defined number of legs are completed.” For example, DeWaal discloses that players in the bonus event may compete for “a designated award, such as *a top-level award* or an award of relatively high value.” DeWaal ¶ [0187]. Such a top-level award may be a “*pool*” or a “*progressive jackpot*.” DeWaal ¶ [0102]. Such pools/jackpots may be funded by the separate “wagers placed to participate in the bonus event,” and therefore, a POSITA would understand them to

be a “jackpot.” DeWaal ¶ [0118]. In addition, regarding the awarding of the jackpot or award pool, DeWaal discloses that “the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event.” DeWaal ¶ [0119]. That is, corresponding to awarding the jackpot pool “at least where a particular number of the defined number of legs” or rounds “are completed,” DeWaal discloses that the jackpot is “*unavailable until a predetermined criteria is met,*” and the primary criteria is “*play of the bonus event, such as advancement to a certain round in the bonus event.*” DeWaal ¶ [0187]. As DeWaal discloses, the certain round may be the “*final round,*” wherein “if one of the players makes an input that is associated with the winning outcome, the central controller provides that player (or causes the player to be provided) with the award (or portion of the award if a plurality of the remaining players make inputs associated with the winning outcome.” DeWaal ¶ [0012].

d. 1[d] – “receiving the wager via the one or more wagering input devices in response to the one or more players desiring to participate in the multi-outcome wagering event, wherein the wager coincides with each of the defined number of legs;”

123. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[d] because players use the gaming devices to insert currency and one or more game selections for a wager when the player desires to participate

in the bonus event, and the central controller receives signals from the gaming machines corresponding to such input by the players.

124. In my opinion, a POSITA would understand that DeWaal's central controller "receiv[es] the wager" because DeWaal discloses that its wagering machines include "payment acceptor," such as a coin slot 26 and a payment, note or bill acceptor 28, where the player inserts money, coins or tokens" DeWaal ¶ [0057]. DeWaal also discloses that its central controller tracks the amounts wagered and receives signals representing the input selections upon which the user is wagering in the bonus event. Specifically, DeWaal discloses that "that the gaming network includes a real-time or on-line accounting and gaming information system operably coupled to the central server or controller," which "includes a player database for storing player profiles, a player tracking module for tracking players and a credit system for providing automated casino transactions." DeWaal ¶ [0094]. The tracking system operably coupled to the central server or controller "***tracks any players gaming activity at the gaming device,***" including "any suitable information, ***such as any amounts wagered, average wager amounts and/or the time these wagers are placed.***" DeWaal ¶¶ [0095], [0096]. Further, DeWaal states that the "central controller determines which players are eligible for the bonus event ***in association with a separate wager***" submitted for the bonus event, which is a "side wager or entry fee that enables a player to participate in the bonus event," and that

“by this tracking,” referring to the tracking of the wager discussed above, “the central controller is operable to determine which players of the gaming machines in the gaming system are eligible for the bonus event.” DeWaal ¶¶ [0117], [0118]. Thus, as DeWaal discloses, the amount wagered is entered at the gaming device and sent to and received by the tracking module of the central controller so that the central controller can perform its functions, including but not limited to, its tracking and bonus game eligibility functions. In other words, as a POSITA would understand, the actions taken by the central controller based on the wager confirm that the central controller receives the wager.

125. Further, regarding the player’s selections of various outcomes for the bonus event, as constituting part of the player’s wager on the bonus event, DeWaal discloses that players of the bonus event also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). Like the wagered amount, “[t]he *central controller receives a signal from gaming machines in the gaming system corresponding to an input from each player in each round.*” DeWaal ¶ [0129].

126. A POSITA would understand that, because such signals representing the amount wagered and the wagered selections are picked by the player “*via any*

suitable input device of the gaming machine, such as a touch screen” and “*receive[d] ... from gaming machines* in the gaming system,” they are received by the central controller “via the one or more wagering input devices” as claimed. DeWaal ¶ [0129]. To be sure that the wager is received by the central controller “via the one or more wagering input devices,” DeWaal discloses that “the gaming device includes at least one payment acceptor 24” and that “one input device” of the gaming machine “is a touchscreen 42 coupled with a touch-screen controller 44” and that “[a] player can make decisions and input signals into the gaming machine by touching the touch-screen at the appropriate places.” DeWaal ¶¶ [0057], [0061]. Thus, DeWaal discloses that the wager amount and wager selections for the bonus event are input into the gaming system and received by the central controller via the user interfaces of the gaming machine, or in other words, “via the one or more wagering input devices” as claimed.

127. Further, in my opinion, a POSITA would understand that the currency and selections for the bonus game were received by the central server “in response to the one or more players desiring to participate in the” bonus event because the player submits a “separate wager” in order to be eligible for the bonus event. Specifically, DeWaal discloses that “the central controller determines which players are eligible for the bonus event in association with a *separate wager*” that is a “*side-wager or entry fee that enables a player to participate in the bonus event.*” DeWaal

¶ [0118]. And, as discussed above, even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is reserved to fund the progressive/bonus jackpots. See, e.g., DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and was disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus event because a wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game. Similarly reflecting a player’s desire to participate in the bonus event, players of the bonus event must also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). A POSITA would understand that these

affirmative input actions are indicative of a player desiring to participate in the bonus event.

128. In my opinion, a POSITA would understand that, in DeWaal's bonus game, "the wager coincides with each of the defined number of legs" because players of the bonus event "*make an input in association with the plurality of outcomes in each round*" as indicated by block 108" in process 100. DeWaal ¶ [0129]. Thus, DeWaal's bonus event wager "coincides" or corresponds with "each of the defined number of legs" because the selected outcomes are made for and correspond to "each round," or leg, of the bonus event.

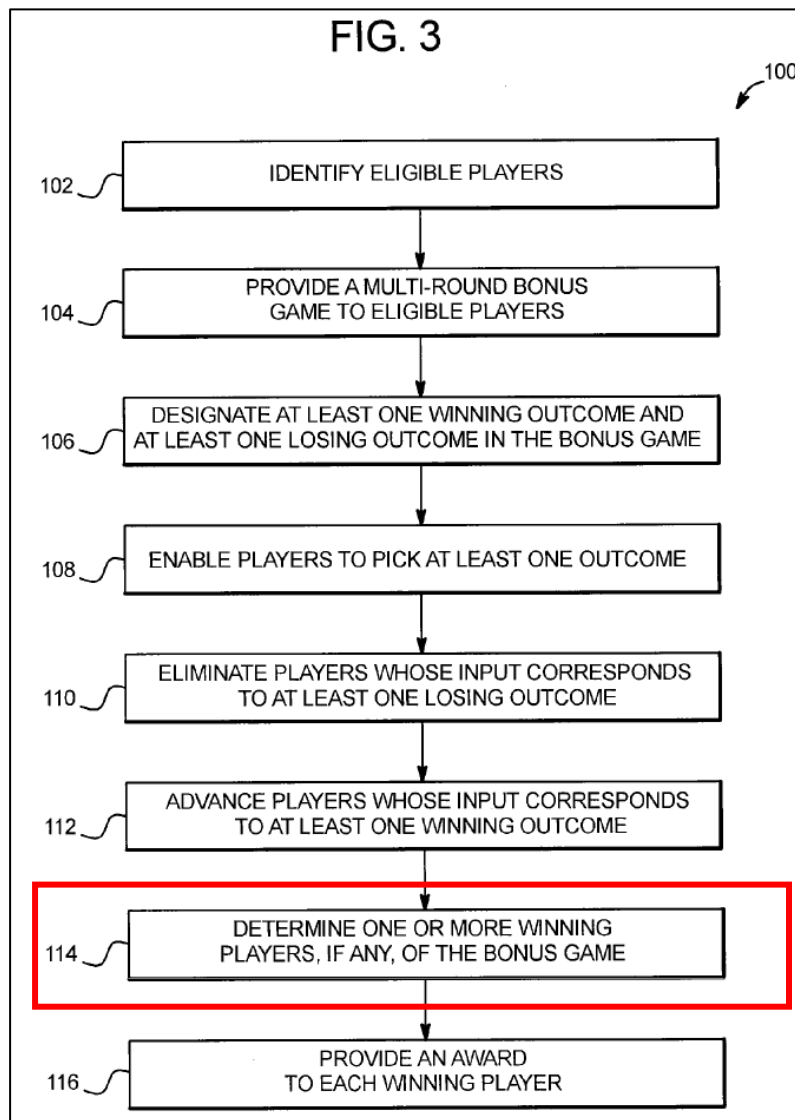
e. 1[e] – "identifying one or more winners of each of the defined number of legs based on the wager from among the one or more players participating in the multi-outcome wagering event, wherein players winning at least one leg are eligible to win at least one jackpot or a portion thereof;"

129. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[e] of the '439 Patent. Specifically, DeWaal's techniques for determining which of the players participating in the bonus event selected a winning outcome, and thus are eligible to win an award, includes "identifying one or more winners of each of the defined number of legs based on the wager from among the one or more players participating in the multi-outcome wagering event, wherein players winning at least one leg are eligible to win at least one jackpot or a portion thereof." *See e.g.*, DeWaal ¶¶ [0010], [0012], [0130].

130. For example, in order to “win all or a share of an award associated with the bonus event,” such as the jackpot, a player “must pick a designated outcome (i.e., a winning outcome) in each round” of the bonus event. DeWaal ¶¶ [0119]; [0143] (“In one embodiment, each player is required to make an input associated with the winning outcome in each round including the final round to be determined as a winning player.”). As the bonus event progresses, “[t]he central controller selects the winning player for the one or more awards based on choices or decisions input by the players.” DeWaal ¶¶ [0010]. Accordingly, corresponding to “identifying one or more winners of each of the defined number of legs,” DeWaal’s system and method for providing the bonus event narrows down the pool of players after each round of the bonus event by identifying winning players that may advance to the next round and eliminating players who are not eligible to advance or win the next round. This process in DeWaal corresponds at least to the second step in FIG. 5 of the ’439 Patent, which is “interrogating the ticket base, to count live or active tickets that have correctly predicted each game outcome to date following each outcome.” ’439 Patent at FIG. 5.

131. As DeWaal states, “[d]uring play of the selection bonus game, *players who pick the designated selection (i.e., a winning outcome)* in an initial round may be deemed *eligible for advancement to a subsequent round*.” DeWaal ¶ [0130]. Players that do not select a winning outcome are deemed ineligible for advancement

to a subsequent round and are eliminated from the bonus event. *See* DeWaal ¶¶ [0131], [0119] (“During any of the plurality of rounds, once a player does not make an input associated with the designated selection, that player is eliminated from the bonus event and disqualified from winning the award.”). Thus, in DeWaal’s system, prior to the start of each round, the central controller identifies each player that won the prior leg by selecting a winning outcome and excludes or eliminates each player that lost the prior leg by not selecting a winning outcome. As DeWaal states, “this process continues *for each round* until the central controller determines one or more winning players for the bonus event.” DeWaal ¶ [0143]. This process of identifying the winning players for each round is illustrated, for example, in FIG. 3 shown below.



DeWaal at FIG. 3.

132. As shown below in FIG 7, DeWaal’s system identifies the “number of winning players, such as one or a plurality of players” for the bonus event and this process continues “until a final round.” DeWaal ¶ [0132].

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7.

133. DeWaal’s identification of winning players for each round of the bonus event is “based on the wager,” and more specifically based on the player’s input selection of one of the wagered upon potential outcome in each round. As DeWaal states, “[b]ased on the players’ input,” which includes the players’ selections of outcomes for each round as discussed above, “*the central controller designates (or causes a designation of) certain players to advance to a subsequent round as indicated by block 112*. That is, when one or more of the players make an *input that is associated with the winning outcome in one of the rounds, the central controller advances these players* to a subsequent round of the bonus event.” DeWaal ¶ [0130]. As shown above in Step 112 of FIG. 3, this determination of winning players for each round involves comparing the player’s selected outcome for a given round to

the designated or winning outcome of that round to identify whether the player's selected outcome "corresponds to" a winning outcome. *See* DeWaal at FIG. 3.

134. As is apparent from the explanation above of DeWaal's eligibility determinations, the identification of winning players for each round of the bonus event is made "from among players participating in the multi-outcome wagering event." *See e.g.*, DeWaal ¶¶ [0129] ("Based on the players' input, the central controller designates (or causes designation of) ***certain players*** to be ineligible (i.e., if the player's input is associated with the losing outcome) and eliminates (or causes an elimination of) those players from the bonus event as indicated by block 110."), [0130] ("During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event."). As shown above, and below in an annotated version of FIG. 7, DeWaal's identification of winning players for each round is "from among players participating" in the bonus event because DeWaal's method and system categorizes, for each round, each of the players participating in the bonus event as eligible (red box) or ineligible (blue box).

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
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5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7.

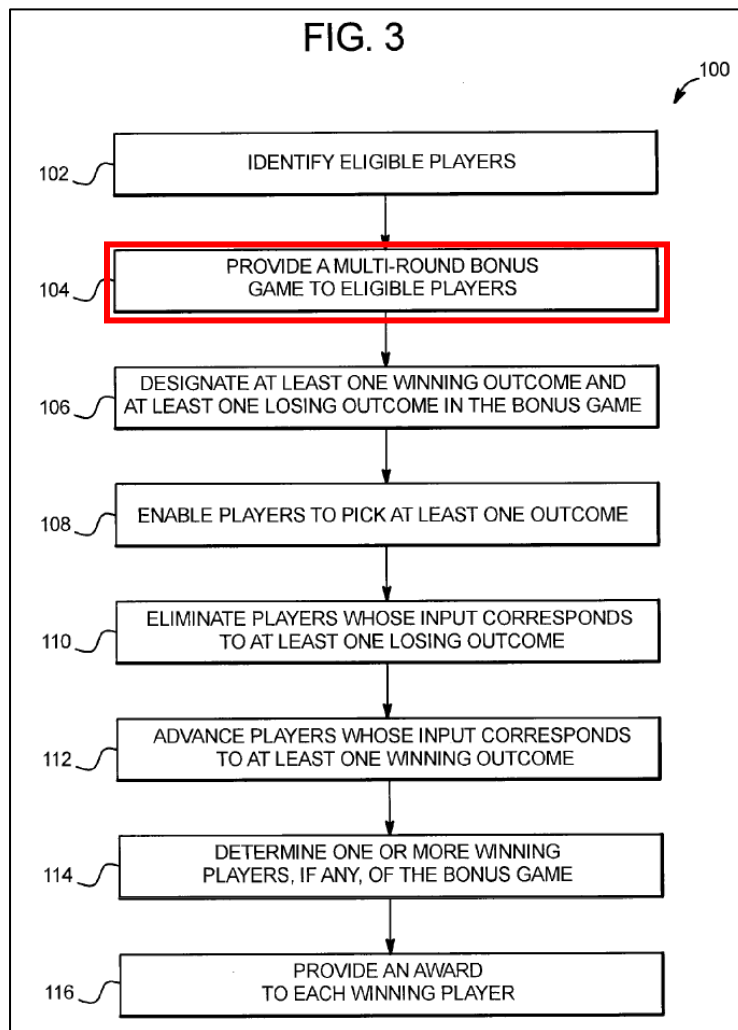
135. As shown above, the bonus event began with 800 players that were eligible to win the first round/leg of the bonus event. 400 of those players selected a losing outcome in the first round (ineligible players), 400 selected the winning outcome in the first round (winning players) and 100 of the 400 winning players accepted the offer to take a prize and quit, thereby leaving 300 “continuing players” that are eligible to win the second round, as shown in the value of 300 in the “eligible players” column for round 2. As explained above, DeWaal states that this process of identifying winners for each round from among all of the participating player continues until the final round and the bonus event is concluding. *See e.g.*, DeWaal ¶¶ [0132] (“This process continues for a designated number of rounds until a final

round.”), [0143] (“As illustrated, this process continues for each round until the central controller determines one or more winning players for the bonus event.”).

136. As shown in the FIG. 7 example, out of the original 800 players that began the bonus event and were eligible to win the jackpot at the beginning of the bonus event, there were just two players that advanced to the final round, and thus only two players from among the starting 800 that were eligible to win the jackpot award in the final round. Therefore, in this example, DeWaal discloses “wherein players winning at least one leg are eligible to win at least one jackpot or a portion thereof” where the claimed “at least one leg” is the final round of the bonus event because players that advance to the final leg are eligible to win the final leg and the jackpot award associated with the final leg or a divided portion thereof. Further, at each of the first, second, third, or fourth round of the bonus event, the winners of each round remain *eligible*, or are still in the running, to win the final jackpot after the final round, or at least a divided portion thereof. Moreover, the advancing players at each round are also eligible to win “a portion” of the jackpot associated with each round (i.e., \$25 for the first round).

f. 1[f] – “initiating at least one of the buy-out offer and partial buy-out offer to any number of the one or more players that are eligible to win at least one jackpot for at least a portion of said at least one jackpot, said buy-out offer being initiated at any time before the multi-outcome wagering event has been completed;”

137. A POSITA would understand that DeWaal discloses “initiating at least one of the buy-out offer and partial buy-out offer” under Patent Owner’s anticipated construction of this term. First, DeWaal discloses a central controller that performs the “initiating” step. DeWaal ¶ [0115]. For example, DeWaal discloses that the “central controller ... *cause[s]* the system gaming machine to provide a multi-round bonus event to a plurality of players.” DeWaal ¶ [0124]. Similarly, with respect to the process 100 shown in FIG. 3 that is executed and performed by the system controller, DeWaal again explains that “[t]he central controller *provides* the multi-round bonus event (or *causes* the gaming machines to provide the multi-round bonus event) to those eligible players as indicated by block 104.” DeWaal ¶ [0126]; *see also* DeWaal ¶ [0123] (“the process 100 is embodied in computerized instructions executed by a central controller or remote host.”).



DeWaal at FIG. 3.

138. Notably, DeWaal’s central controller “initiates” a buy-out offer, such that prior to each subsequent round, the central controller “*offers* each advancing player an *additional award* to quit the bonus event.” DeWaal ¶ [0141]. For example, as illustrated in Figure 7, “two hundred players qualify to advance to the third round. The central controller *offers* those *players* to either *quit the bonus event and accept the second additional award* or continue the bonus event and play the third round.

The second additional award offered to each advancing player is \$50 (i.e., the total amount of the award, such as \$10,000, divided by the number of advancing players, such as 200).” DeWaal ¶ [0142]. A POSITA would have understood that DeWaal’s reference to a player quitting a bonus event before termination or completion of all rounds refers to the player being offered, and accepting, a buy-out offer.

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
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3	100	50	\$200	20	50	\$275
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5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7.

139. As discussed above in Section VI.A of my declaration, I understand that one interpretation of the language “at least one of” with a plurality of subsequent

options means that the limitation may be met by a showing in the prior art of presenting “at least one of” the listed options. As also discussed above, I further understand based on allegations made in the co-pending district court litigation that Patent Owner asserts infringement under this interpretation. Therefore, to the extent that Patent Owner argues for a similar interpretation here, where limitation 1[f] does not require a “partial buy-out offer,” and thus may be satisfied by a full “buy-out offer” alone, DeWaal discloses “initiating at least one of the buy-out offer and partial buy-out offer.”

140. However, DeWaal does not expressly disclose the ability to offer both a buy-out offer and a partial buy-out offer as required under DraftKings’ construction because DeWaal does not expressly disclose a “partial buy-out offer.”

141. Specifically, distinct from a full “buy-out offer,” where 100% of the wager is surrendered for some indicated value and an accepting player’s participation in the event ends in exchange for the indicated value, a “partial buy-out offer” is described in the ’439 Patent as an offer to purchase “a partial portion of the ticket, for example an equal fifty percent share” or “for example any 10% interval from 10% to 90%, at an appropriate monetary amount.” ’439 Patent at 14:16-17. Therefore, in the 50% share example of the partial buy-out offer, an accepting player would be permitted to continue playing in the wagering event and would be eligible to win the jackpot but “the amount paid to the player would then be similarly

reduced, such as being reduced proportionately by 50%.” ’439 Patent at 12:62-64. In other words, if a player accepts a partial buy-out offer for 50% of the ticket, the player can continue playing in the wagering event but at a reduced pay scale. *See e.g.*, ’439 Patent at 14:17-20 (“Thus, the player in the above example could sell 10% of the ticket for \$8,000 and retain the potential of receiving 90% of the \$1,000,000 Jackpot Pool.”).

142. Schugar discloses a “partial buy-out offer.” For example, Schugar discloses that, “[w]hen the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to *cash in on the winning state before completing the game.*” Schugar ¶ [0077]. In addition to fully “cash[ing] in” a bet and “surrender[ing]” it, “[t]he player can *also bank a portion* of the expected profit the player has earned for later use.” Schugar ¶¶ [0078], [0079]. As Schugar explains, “[a] player may find it attractive to be able to accumulate (or ‘bank’) *a portion* of a positive expectation situation for later redemption.” Schugar ¶ [0077]. “This can be done in a number of ways.” Schugar ¶ [0079]. For example, in a situation where the player placed a \$100 wager, one such way is that “the house can take a portion of the player’s wager (such as 10%), so that the player now has \$90” wagered on the event, and “the taken portion can be stored for later redemption by the player” and “can be accumulated and dispersed to the player at a later time.” Schugar ¶ [0079]. The banked portion “can be redeemed

for cash instantly” or “redeemed for cash at a later time.” Schugar ¶ [0083]. As Schugar explains, whether the player wins or loses the wagering event after cashing in a portion of the player’s wager thereon, “the player has banked the banked value for later redemption” and the player can “continue to wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

143. Schugar’s disclosure of “cashing in” a “portion” of a player’s wager is further demonstrated with reference to an embodiment involving “series” of games or a multi-stage sport wagering event. As Schugar discloses, “[t]he embodiments herein can also be used to bet on sporting events, either at intervals on individual games or series of games.” Schugar ¶ [0072]. As an initial matter, considering the prior art as a whole, a POSITA would have understood that Schugar’s sports betting concept and wagering on the games in a series, such as a seven-game series like the baseball World Series or a four-quarter football game like the Patriots versus the Giants, is analogous to and compatible with the structure and operation of DeWaal’s multi-round bonus event including the offer and acceptance feature. *See* Schugar ¶¶ [0072], [0120], [0126]. For example, a multi-round wagering event on a four-quarter sporting event as described in Schugar naturally aligns with a four-round bonus event as described in DeWaal, where each round corresponds to each quarter in the sporting event and each quarter has at least two outcomes, team A is winning or team B is winning at the end of the quarter, and players make selections on each

quarter/round in the four-quarter series. *See* Schugar ¶¶ [0120], [0126]. Similarly, a multi-round wagering event on a seven-game series sporting event as described in Schugar naturally aligns with a seven-round bonus event as described in DeWaal, where each game corresponds to each game in the sporting event and each game has at least two outcomes, team A wins or team B wins, and players make selections of outcomes on each game/round in the seven game series. *See* Schugar ¶ [0072]. In each of these examples, a POSITA would understand that there could be additional outcomes associated with each round in this example, such as team A winning by X amount or team B winning by Y amount.

144. In the context of wagering on a sporting event, Schugar describes cashing in a portion of the player's wager as follows:

[C]onsider a football game with the Patriots vs. the Giants. The Patriots are a +900 long shot. ***A bettor wagers \$100 on the Patriots.*** At halftime, the patriots are winning by +28 points. At this point, a parimutuel halftime betting pool determines that the Giants are now a +1000 long shot. Assuming no house commission for simplicity, a +1000 translates into a 10% probability of occurrence of the Giants winning. Thus, the bettor has a 90% chance of winning \$900, thus the effective value of the original wager is now $0.90 \times 900 = \$810$. ***The bettor can now surrender \$10 of his original wager which is effectively***

worth \$81. This \$81 can now be wagered on the Giants which would result in a \$810 win if the Giants win. *The player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win.* Thus, the player is in a no-lost situation and can relax and enjoy the game without worry.

Schugar ¶ [0126]; *see also* Schugar ¶ [0120].

145. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100 wager such that the original wager remains active, with a lower expected payout, and the player has already banked nearly all of their original wager to be put to use however the player desires, such as by placing a counter bet to put the player in a no-lose situation. Further, while this example relates to cashing in during a wager on a single game, Schugar also discloses that the “embodiments described herein can also be used to bet on sporting events, either at intervals on individual games *or series of games.*” Schugar ¶ [0072]. For example, “[a]fter each game in the series ... payout odds for each team winning the series can change to reflect the current conditions (as described herein and/or known in the art) and players can make wagers during the series.” Schugar ¶ [0072]. Thus, much like how the odds changed and the player was able to partially cash out during halftime of the single game in the football game example above, a POSITA would understand to teach that, as the odds change after each game/round

in a series of games, the player would be able to partially cash out after each game/round in a wager on the series of games.

146. In my opinion, a POSITA would have been motivated to modify the system and method for providing a bonus event in DeWaal, and in particular the offer and acceptance feature of DeWaal's bonus event, to add Schugar's offer to cash in a portion of the player's wager. Schugar provides an express motivation to combine its teaching of providing partial cash-out with DeWaal's bonus event because Schugar teaches that providing a partial cash-out option can increase revenue to the casino operator through increasing commissions while providing the player the "peace of mind" of at least some "banked" profit. *See, e.g.*, Schugar at ¶¶ [0078 - 79] ("For example, the house can let the surrender [sic] the wager for \$125. The house makes money on this proposition, and the player gets the peace of mind of the sure win. The player can also bank a *portion* of the expected profit the player has earned for later use.... In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.") (emphasis added).

147. Specifically, a POSITA would have understood that one of the primary methods for driving casino revenue was to increase the number of individual wagering transactions on which the casino can charge a commission. While providing full cash-out as taught by DeWaal (and Schugar) provides one such

opportunity for the operator to earn a transaction-based commission, many players may not wish to completely exit the bonus game of DeWaal. However, those same players may have at least some desire to “bank” at least some portion of a wager while it is profitable (during what Schugar refers to as a “positive expectation” state). Thus, a POSITA would have sought to capitalize on the desire of some players to only partially hedge their risk while still retaining some stake in DeWaal’s bonus game by offering a partial cash-out option, thus increasing transactions with the casino where a commission can be charged while also meeting player expectations and desires.

148. The limitation of “initiating at least one of a buy-out offer and a partial buy-out offer ...before the multi-outcome wagering event has been completed” would have been obvious because it is only a combination of prior art elements according to known methods to yield predictable results. For example, as explained above, corresponding to the claimed “buy-out offer,” DeWaal discloses a bonus event including an offer and acceptance feature that offers the player the ability to fully surrender or cash in their full wager for some indicated value before the bonus event is complete. In addition, as explained above, Schugar, corresponding to the claimed “partial buy-out offer,” discloses a wagering event including an offer for the player to cash in a portion of their wager for some indicated value before the bonus event is complete and to continue playing in the wagering event. Therefore, in my

opinion, the prior art included the ability to offer a player both a full buy-out offer and partial buy-out offer, although not in a single prior art reference with all of the other elements of the claims. The lack of combination in a single prior art reference is the only difference between the limitation 1[f] and the prior art. In fact, during prosecution of a related patent in the same family as the '439 Patent, the Applicant admitted that the prior art disclosed a full buy-out offer, as previously described herein.

149. A POSITA could have combined DeWaal's offer to fully surrender or cash out a player's wager and Schugar's offer to cash out a portion of a player's wager by simply adding standard machine readable and executable instructions to DeWaal's controller and adding the ability to partially cash out to the graphical user interface of the gaming device, such as by including the "appropriate message" as described in DeWaal and as would be known by a POSITA. DeWaal [0146]. For example, a POSITA would have understood that the modified message/offer to the user could state: "YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND! [OR YOU MAY KEEP \$5 AND CONTINUING PLAYING THE BONUS EVENT WITH A DIFFERENT PAYTABLE!]" *See id.* The computer instructions to handle providing the partial cash-out offer on the display of the gaming device, receive a user input in response to the offer, send a signal to

the central controller from the gaming device indicating the player's choice in response to the offer would have paralleled those, and likely could be easily bundled with, the existing signals and methods in DeWaal for handling the offer to quit. No specialized or advanced computer programming skills would be required. The only new feature that would have to be added to DeWaal's controller would be a method to reduce the pay table proportionate to the amount of the partial cash-out offer, but as described in Schugar, such a function involves only basic math that is well within the level of skill of a POSITA in this case.

150. In combination, DeWaal's full buy-out feature and Schugar's partial buy-out feature would not interfere or obstruct one another in any way and would perform the identical functions as they do individually. Adding Schugar's ability for partially cashing in simply adds another choice or selection for the user to make and DeWaal's system for providing the bonus event having the offer and acceptance feature would be compatible with Schugar's partial cash in functionality. Further, the results of the combination are entirely predictable and expected—the system would provide the option to fully cash in the players wager and end the player's participation in the bonus event, as described in DeWaal, as well provide the option to partially cash in the players wager and continue participating in the bonus event, as described in Schugar. In other words, the two options, while both related to the

ability to cash in on a player's equity position in the bonus event, largely operate independent of one another as separate options and choices for the user to make.

151. In addition, in my opinion, the limitation of “initiating at least one of a buy-out offer and a partial buy-out offer ...before the multi-outcome wagering event has been completed” would have been obvious because it is the use of a known technique to improve similar devices, methods, or products in the same way, and because the combination only applies a known technique to a known device and method that is ready for improvement to yield predictable results.

152. As described above, DeWaal describes a system and method for providing a bonus game with an offer and acceptance feature that enables a player to fully end their participation in a wagering event in exchange for some indicated value. However, DeWaal's offer and acceptance feature does not expressly disclose an ability to offer a way for the player to partially cash in or reduce their participation in a wagering event in exchange for some indicated value. A POSITA would have recognized DeWaal's limited ability to surrender the player's wager and end the game fully and would have been motivated to add additional ways to provide awards to players to increase excitement and enjoyment for players by providing players with the ability to make additional inputs or choices in the bonus game that affect the outcome of the bonus game. DeWaal ¶ [0012] (“Accordingly, the bonus even enables players to make inputs or choices that affect the award, if any, that will be

provide to those players in the bonus event. Such a configuration provides increased excitement and enjoyment for players because the players are provided with the ability to make inputs or choices in the bonus game that affect the outcome of the bonus game.”). For example, a player could be discouraged from using or hesitant to use DeWaal’s full surrender or cash in feature because accepting the offer would remove the player from the bonus event and leave them worrying if they could have won more had they rejected the offer and remained in the bonus event. Adding Schugar’s ability to cash in only a portion of the players wager in the bonus event and continuing playing in the bonus event, even if for a lesser top prize or jackpot, would give the player greater peace of mind, allow them to enjoy the game without worry, and make money for the house or system operator. Schugar ¶¶ [0078] (“The house makes money on this proposition, and the player gets the peace of mind of the sure win.”), [0126] (“Thus, the player is in a no-lose situation and can relax and enjoy the game without worry.”). Moreover, providing the player with both options, to fully or partially cash in, provides the user with the greatest flexibility and peace of mind.

153. For example, a POSITA would have understood that both DeWaal and Schugar are within the same field of endeavor and provide comparable solutions to the same types of problems. As has been described herein, both references disclose techniques that allow a player to cash out of a wagering event, and therefore provide

an award to the player, based on the player's equity position. *See* DeWaal ¶ [0008] (“There is a continuing need to provide new and different gaming machines and gaming systems as well as ***new and different ways to provide awards to players including bonus awards.***”); Schugar ¶ [0003] (“The present inventive concept relates to a wagering game that allows a player to ***alter payouts based on an equity position the player has in the wagering game.***”).

154. Furthermore, a POSITA would have a reasonable expectation of success in adding Schugar's ability and offer to cash in on a portion of the player's wager to DeWaal's offer and acceptance feature of the bonus event because both references teach that these techniques are useful and practicable in the same types of multi-round or multi-stage games. *See* DeWaal ¶ [0127] (“In different embodiments, the multi-round bonus event includes, but is not limited to, reel/slot games, card games, (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or games that include one or more rounds of game play.”); Schugar ¶ [0075] (“In addition to applying the equity concepts described herein to the above-described games, the methods described herein of using equity funds can also be used for any game that has variable states and is not over without an interval between states.”), ¶ [0104] (“A machine game 400 can be any wagering machine game, such as a slot machine, video poker machine, or

machine game which plays any game which can have multiple states (e.g. games which a player can wager on a progression).”). Further, just as each round of the bonus event in DeWaal is associated with a progressing potential award, each game state in Schugar “may have a different expected return for the player based on the player’s wagers and the current game state.” Schugar ¶ [0054].

155. Finally, the combination described herein would have been obvious to a POSITA because there are express teachings, suggestions, and motivations in the prior art that would have encouraged a POSITA to combine DeWaal’s bonus game and offer and acceptance feature with Schugar’s ability to cash in a portion of the player’s wager. For example, Schugar teaches that the ability to cash in a portion of the player’s wager may be “attractive” to a player, and thus attract a player to a system operator’s wagering events, because it allows a player to limit losses but continue wagering, and even allows a player to put themselves into a “no-lose situation.” Schugar ¶¶ [0077] (“A player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption. In this manner, even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.”), [0079] (“In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.”), [0126] (“Thus, the player is in a no-lose situation and can relax and enjoy the game without worry.”).

156. In my opinion, for the reasons discussed above, it would have been obvious to modify the system and method for providing a bonus event in DeWaal, and in particular the offer and acceptance feature of DeWaal's bonus event, to add Schugar's offer to cash in a portion of the player's wager.

157. Further confirming that DeWaal's central controller "initiates" a buy-out offer for a plurality of players, DeWaal also discloses "one or more players that are *eligible* to win." According to DeWaal, "the central controller enables *one or more eligible players* in the gaming system to simultaneously (or substantially simultaneously) attempt to win the award in the bonus event." DeWaal ¶ [0009].

158. Moreover, DeWaal teaches "at least one jackpot for at least a portion of said at least one jackpot." For example, DeWaal discloses that players in the bonus event may compete for "a designated award, such as *a top-level award* or an award or relatively high value." DeWaal ¶ [0187]. Such a top-level award may be a "*pool*" or a "*progressive jackpot*." DeWaal ¶ [0102]. Such pools/jackpots may be funded by the separate "wagers placed to participate in the bonus event," and therefore, a POSITA would understand them to be a "jackpot." DeWaal ¶ [0118]. In addition, regarding the awarding of the jackpot or award pool, DeWaal discloses that "the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event." DeWaal ¶ [0119]. That is, corresponding to awarding the jackpot pool "at least where a particular

number of the defined number of legs” or rounds “are completed,” DeWaal discloses that the jackpot is “*unavailable until a predetermined criteria is met*,” and the primary criteria is “*play of the bonus event, such as advancement to a certain round in the bonus event*.” DeWaal ¶ [0187]. As DeWaal discloses, the certain round may be the “*final round*,” wherein “if one of the players makes an input that is associated with the winning outcome, the central controller provides that player (or causes the player to be provided) with the *award* (or *portion of the award* if a plurality of the remaining players make inputs associated with the winning outcome).” DeWaal ¶ [0012]. Thus, DeWaal discloses “at least one jackpot for at least a portion of said at least one jackpot.”

159. Further, in my opinion a POSITA would understand that DeWaal discloses “said buy-out offer being initiated at any time before the multi-outcome wagering event has been completed.” First, DeWaal discloses “the multi-outcome wagering event” such that “[DeWaal’s] bonus event is a *multi-round* selection game that includes a *plurality of rounds* and *a number of available outcomes in each round*.” DeWaal ¶ [0119]; *see also* DeWaal ¶ [0128] (“The multi-round bonus event includes a plurality of outcomes in each round. Each round may include the same number of or different numbers of outcomes. At least one of the outcomes is designated as a winning outcome and at least one of the outcomes is designated as a losing outcome as indicated in block 106. In one embodiment, each round includes

one winning outcome and a plurality of losing outcomes.”). The potential outcomes of each round of DeWaal’s multi-round bonus game include designated or “winning” outcomes and non-designated or “losing” outcomes. DeWaal ¶ [0012]. The presence of at least two outcomes, *e.g.*, winning and losing, for each round of the multi-round bonus game makes the bonus game “multi-outcome.” In one example, “the multi-round selection games includes four rounds and ***ten outcomes per round.***” DeWaal ¶ [0119]. Thus, a POSITA would understand that DeWaal’s multi-round bonus event corresponds to “the multi-outcome wagering event.”

160. A POSITA would understand that DeWaal’s multi-round bonus event illustrated in Figure 7 depicts a buy-out offer, such as an award, that is provided to a player before the final round in the bonus event. DeWaal ¶ [0141] (“In this embodiment, the multi-round bonus event includes ***five rounds.*** Each round is associated with an award, such as \$10,000. As illustrated, eight hundred players are eligible for the bonus event in this embodiment. Of the eight hundred players, four hundred players qualified to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round). ***Prior to the second round,*** the central controller ***offers*** each advancing player ***an additional award to quit the bonus event.***”). Thus, a POSITA would find that an award offered before the final round (i.e. fifth round in Figure 7) in a bonus event corresponds to an award offered “*before the multi-outcome wagering event has been completed.*”

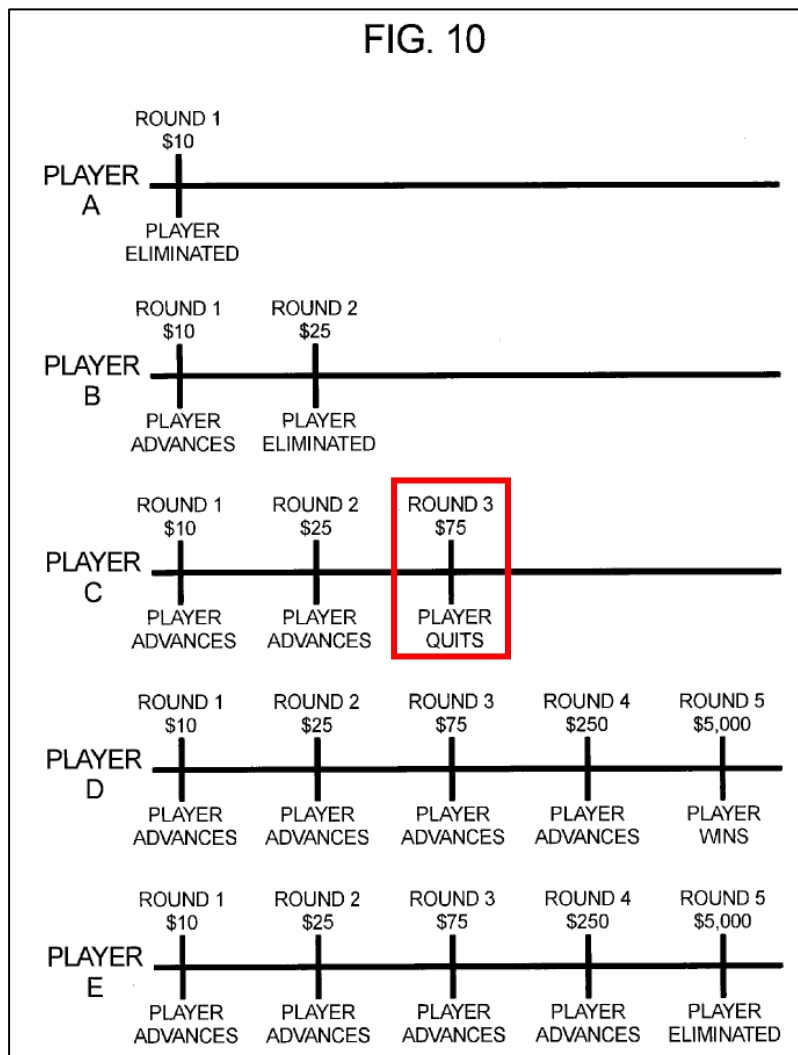
- g. 1[g] – “whereupon receiving an acceptance of the buy-out offer from at least one of the players eligible to win at least one jackpot, each of the players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot, wherein each of the players not accepting the buy-out offer will remain eligible to win the at least one jackpot, and wherein each of the players accepting the partial buy-out offer remains eligible to win at least a portion of the at least one jackpot;”*

161. Similar to limitation 1[f], it is my opinion that a POSITA would understand that DeWaal discloses limitation 1[g] of the '439 Patent alone under Patent Owner's apparent construction of the claim not requiring a “partial buy-out offer” to be made and/or renders obvious this limitation in combination with Schugar under DraftKings' position on that issue. Specifically, as explained in detail below, a POSITA would understand that DeWaal discloses a bonus event with an “offer and acceptance” feature that corresponds to offer and acceptance of a buy-out offer that satisfies limitation 1[g] as it pertains to a “buy-out offer,” but DeWaal does not expressly describe the “partial buy-out offer” portions of this limitation. Schugar, however, discloses the “partial buy-out” portions of this limitation and, in my opinion, it would have been obvious to a POSITA to combine the teachings of DeWaal and Schugar to arrive at limitation 1[g] under Draftking's position on this issue, at least for the reasons explained above with respect to limitation 1[f], which are herein incorporated by reference.

162. In my opinion, a POSITA would have understood that DeWaal discloses “receiving an acceptance of the buy-out offer from at least one of the players eligible to win at least one jackpot” because DeWaal discloses the central controller taking action in direct response to a player accepting the offer of the additional award to quit the bonus event and discloses the server receiving various signals of user inputs from the gaming devices. For example, DeWaal discloses that “the processor of *each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server* The processor of the *central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.*” DeWaal ¶ [0084]; *see also* DeWaal ¶ [0129] (“The central controller receives a signal from gaming machines in the gaming system corresponding to an input from each player in each round.”); DeWaal ¶ [0061] (“A player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate places.”). Regarding the specific actions taken by the controller when a player accepts the offer to quit, DeWaal explains that “[i]f any of the players quit the bonus event, the central controller provides these players with the accumulated awards associated with the first and second rounds.” DeWaal ¶ [0159]; *see also* DeWaal ¶ [0146] (“If fifty players accept the offer and quit the bonus event,

the central controller provides these fifty players with an award portion of \$10.”). A POSITA would therefore understand that DeWaal teaches that the central controller receives an acceptance of the buy-out offer at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event and the central controller takes specific and direct actions in response to a player accepting the offer to quit.

163. In my opinion, a POSITA would have understood that DeWaal discloses “each of the players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot” because DeWaal discloses that “*if a player accepts the offered portion of the award pool, the player is eliminated* from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event).” DeWaal ¶ [0146]; DeWaal ¶ [0141] (“As illustrated, one hundred players who qualified to advance to the second round, accepted the offered additional award and quit the bonus event.”). A POSITA would understand that, if a player was “eliminated” by accepting the offered award for quitting, the player is “no longer eligible to exclusively win the at least one jackpot” at least because the player is no longer eligible to win the jackpot at all. This is illustrated, for example, in FIG. 10, for example, which shows Player C accepting the offer in the third round and ceasing their participation in the bonus event.



DeWaal at FIG. 10 (annotated). Moreover, a POSITA would have understood that a player would have been “eligible to exclusively win” the jackpot as long as the player remained in the game without quitting or cashing out. This is because DeWaal contemplates both the scenario where a single player wins the entire jackpot at the end of the bonus event and the scenario where multiple players win the jackpot and split the pot. *E.g.*, DeWaal at Fig. 3 (Element 114: “DETERMINE **ONE OR MORE WINNING PLAYERS**, IF ANY, OF THE BONUS GAME.”) Thus, a POSITA

would have understood DeWaal to disclose that a player remains eligible to *exclusively* win the bonus game when they have not yet been eliminated or quit, and that they are no longer eligible to exclusively win the bonus game after elimination or quitting.

164. In my opinion, a POSITA would have understood that DeWaal discloses “wherein each of the players not accepting the buy-out offer will remain eligible to win the at least one jackpot” because DeWaal expressly states that “[i]f a *player rejects the offered portion of the award*, that player risk the offered portion of the award to *play a subsequent round of the bonus event*,” i.e., advance to the next round, and as discussed above DeWaal discloses and teaches that players that are eligible to advance to the next round are eligible to win the jackpot for the bonus event. DeWaal ¶ [0146]; *see also* DeWaal ¶ [0019] (“If ten players pick the designated selection in the first round, the central controller offers those ten players to either quit the bonus event and accept the \$25 award or *continue the bonus event and play the second round*.”).

165. Therefore, under Patent Owner’s apparent construction of this claim, where a “partial buy-out offer” is an optional (not required) feature or limitation, a POSITA would have understood that DeWaal discloses limitation 1[g] in its entirety.

166. Under DraftKings’ construction, however, as explained above, because DeWaal does not expressly describe the concept of a “partial buy-out offer,” DeWaal

does not expressly disclose “wherein each of the players accepting a partial buy-out offer remains eligible to win at least a portion of the at least one jackpot.” Nevertheless, this limitation would have been obvious based on DeWaal in view of Schugar for at least the reasons discussed above with regard to limitations 1[a], and 1[f]. More specifically with regard to the limitations here, a POSITA would have understood that one of the benefits of accepting the obvious partial buy-out offer would be that the user could continue playing and thus remain eligible to win a portion of the jackpot (e.g., a jackpot at a reduced amount based on the partial buy-out reduction in wager amount). Indeed, this concept of proportionate reduction in jackpot being tied to a partial buy-out would have been well-known to a POSITA at the relevant time (*see supra* § V.C) and would have been necessary to properly incentivize players to engage in the partial buy-out feature. Thus, as discussed above with respect to limitation 1[f], Schugar in combination with DeWaal discloses these elements, and the combination would have been obvious.

167. Regarding the limitation of “receiving an acceptance of the ... partial buy-out offer” from the eligible players that “have accepted the ... partial buy-out offer,” a POSITA would understand that in the combination of DeWaal and Schugar described herein, DeWaal’s central controller would receive an acceptance of the partial buy-out offer from the eligible players that have accepted it in the exact same manner that DeWaal already discloses with respect to its offer to quit. As described

above, because DeWaal already discloses receiving an acceptance of an offer to quit, the additional instructions for handling the partial cash in offer of Schugar would be minimal, and the signals could likely be bundled with those that already implement DeWaal's offer and acceptance feature. In this regard, a POSITA would recognize that, because DeWaal's system is capable of receiving the claimed acceptance with respect to an offer to quit, it would also be capable of receiving an acceptance to partially quit or cash in as disclosed in Schugar.

168. Finally, corresponding to the element of "wherein each of the players accepting a partial buy-out offer remains eligible to win at least a portion of the at least one jackpot," as explained above, a player that accepts Schugar's partial cash in offer remains eligible to win the award and continue playing, albeit at a reduced pay table. For example, in a situation where the player placed a \$100 wager, one such way is that ***"the house can take a portion of the player's wager (such as 10%), so that the player now has \$90" wagered on the event***, and "the taken portion can be stored for later redemption by the player" and "can be accumulated and dispersed to the player at a later time." Schugar ¶ [0079]. As Schugar further explains, whether the player wins or loses the wagering event after cashing in a portion of the player's wager thereon, ***"the player has banked the banked value for later redemption" and the player can "continue to wager, but limit his losses by ensuring that some amount is still saved for later."*** Schugar ¶ [0079]. Thus, in this

example, the player accepting the offer to cash in a portion of their wager remains eligible to win 90% of the jackpot, thereby disclosing this limitation.

169. This element is also disclosed in other examples provided in Schugar. For example, in the context of wagering on a sporting event, Schugar describes cashing in a portion of the player's wager as follows:

[C]onsider a football game with the Patriots vs. the Giants. The Patriots are a +900 long shot. ***A bettor wagers \$100 on the Patriots.*** At halftime, the patriots are winning by +28 points. At this point, a parimutuel halftime betting pool determines that the Giants are now a +1000 long shot. Assuming no house commission for simplicity, a +1000 translates into a 10% probability of occurrence of the Giants winning. Thus, the bettor has a 90% chance of winning \$900, thus the effective value of the original wager is now $0.90 \times 900 = \$810$. ***The bettor can now surrender \$10 of his original wager which is effectively worth \$81.*** This \$81 can now be wagered on the Giants which would result in a \$810 win if the Giants win. ***The player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win.*** Thus, the player is in a no-lost situation and can relax and enjoy the game without worry.

Schugar ¶ [0126]; *see also* Schugar ¶ [0120]. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100

wager such that the original wager remains active with a lower expected payout, i.e., the player remains eligible to win a 90% portion of the original jackpot.

h. 1[h] – “completing the remainder of the defined number of legs to finish the multi-outcome wagering event; and”

170. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[h] of the '439 Patent because DeWaal discloses that the central controller continues to identify winners and losers of each round until a designated or final round at the conclusion of which the controller determines one or more winners of the bonus event. For instance, corresponding to “completing the remainder of the defined number of legs to finish the multi-outcome wagering event,” DeWaal explains that “the central controller continues to advance any remaining eligible players to a subsequent round until the remaining award pool is provided to one of the remaining eligible players” in a final round. DeWaal ¶ [0147]. In this way, DeWaal explains that the process for advancing eligible players by determining winners and losers of each round and offering the winners a chance to quit “continues for each round until the central controller determines one or more winning players for the bonus event,” or “until a final round” in which “the central controller determines one or more winning players, if any, of the bonus event as indicated by block 114.” DeWaal ¶ [0143], [0132]. To be sure, DeWaal explains that “the bonus even ends after a designated number of rounds including a final

round.” DeWaal ¶ [0181]. Therefore, by continuing to advance players through the designated number of rounds or legs of the bonus event, DeWaal discloses limitation 1[h].

171. Disclosure of this element is also confirmed by, for example, DeWaal’s FIG. 7, which is an example of a bonus even having five rounds. As shown below in FIG. 7, even though some players lost or accepted the offer to quit in earlier rounds, the system and method disclosed therein completed the remainder of the five rounds to finish the event and awarded the jackpot to the single remaining player at the end of the fifth round.

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

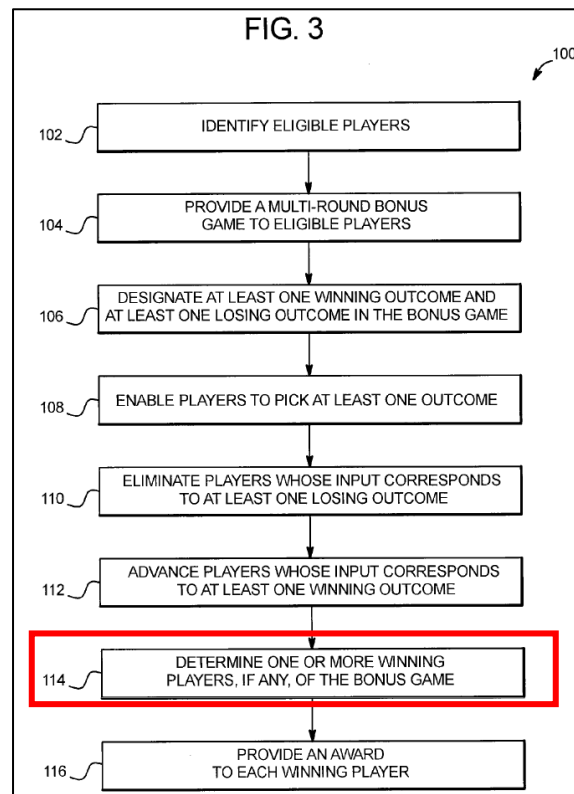
ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7; see also DeWaal ¶¶ [0141]-[0143].

- i. 1[i] – “determining if any of the players have won the at least one jackpot or portion thereof.”

172. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[i] of the '439 Patent because DeWaal discloses that, in the final round, the central controller determines which if any of the players won the final round and therefore won the jackpot or a portion thereof. Specifically, for example, DeWaal discloses that “[i]n the final round, *the central controller determines one or more winning players, if any, of the bonus event* as indicated by block 114.” DeWaal ¶ [0132]. This determination is also illustrated in step 114 of FIG. 3, as shown below.



DeWaal at FIG. 3.

2. Claim 2: “The method of claim 1, wherein each of the defined number of legs comprises one or more selected from the group consisting of sporting events, lotteries, real games and virtual games, and wherein the wager comprises a potential outcome for each of the legs.”

173. In my opinion, a POSITA would have understood that DeWaal discloses wherein the bonus event “comprises one or more selected from the group consisting of sporting events, lotteries, real games and virtual games.” As an initial matter, I note that this limitation is recited in the disjunctive, and therefore may be met by a teaching or disclosure in the prior art of just one of the disjunctively recited options. DeWaal discloses all but one option, and the combination with Schugar discloses the remaining option (sporting events).

174. DeWaal discloses that

The bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, *the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or games that include one or more rounds of game play.*

DeWaal ¶ [0108], [0127]. The “lottery games” disclosed in DeWaal are “lotteries” as recited in claim 2. Accordingly, DeWaal discloses a bonus event where legs are comprised of lotteries and therefore discloses this limitation for at least this reason.

175. Moreover, A POSITA would also understand that the enumerated examples in DeWaal, including “reel/slot games,” “card games (e.g., poker, blackjack),” “wheel games,” “dice games,” “free spin games,” etc., are all “real games” that may include physical or mechanical components used to implement the game. Specifically, a POSITA would understand the term “real game” in this context to refer to a game that is not virtual or machine generated in nature and is thus based on the physical operation of a machine (i.e., the physical spinning of a reel or the selection of numbers). This is particularly true when contrasted with the term “virtual game” as in this claim. DeWaal discloses numerous “real games” because DeWaal explains that “[t]he gaming machine or device may include some or all of the features of conventional gaming machines or devices. The primary or base game may comprise *any suitable reel-type game, card game, cascading or falling symbol game, number game or other game of chance* [...],” all of which would be understood by a POSITA to be “real games” with physical or mechanical components. DeWaal ¶ [0064]. DeWaal supports this interpretation by explaining that “[i]n one embodiment, as illustrated in FIGS. 1A and 1B, a base or primary game may be a slot game with one or more paylines 52. The paylines may be

horizontal, vertical, circular, diagonal, angled or any combination thereof. In this embodiment, the gaming device includes at least one and preferably a plurality of reels 54, such as three to five reels 54, in either *electromechanical form with mechanical rotating reels* or video form with simulated reels and movement thereof.” DeWaal ¶ [0065]. Critically, DeWaal discloses that these same games can be implemented as its “bonus event.” DeWaal ¶ [0108]. Thus DeWaal discloses a bonus event with legs comprised of real games.

176. DeWaal goes on to disclose that that the exemplary “real games” enumerated above may also be implemented as “virtual games” that replace physical or mechanical components with video simulations or representations of those components (“The primary or base game may comprise any suitable reel-type game, card game, cascading or falling symbol game, number game or other game of chance *susceptible to representation in an electronic or electromechanical form*, which in one embodiment produces a random outcome based on probability data at the time of or after placement of a wager. That is, different primary wagering games, such as *video poker games, video blackjack games, video keno, video bingo* or any other suitable primary or base game may be implemented.” DeWaal ¶ [0064]). In another example, DeWaal explains that “the display devices of the gaming device are configured to display at least one and preferably a plurality of game or other suitable images, symbols and indicia such as any visual representation or exhibition of the

movement of objects such as mechanical, *virtual or video reels and wheels*, dynamic lighting, video images, images of people, characters, places, things and faces of cards, and the like.” DeWaal ¶ [0055]. A POSITA would understand DeWaal’s bonus event selection game discussed herein to be a “virtual game” at least because it involves the computer-generated display of electronic (virtual) gaming outcomes/indicia on the display device of the gaming machine rather than mechanical or physical presentation of these gaming elements. For example, “FIGS. 11A, 11B, 11C, 11D, 11E and 11F are front views of a display device of a plurality of gaming machines in the gaming system disclosed herein illustrating one embodiment of a multi-round bonus event, wherein the display devices substantially simultaneously display the bonus event to a plurality of players who compete for an award.” DeWaal ¶ [0041]. Further confirming that the bonus event selection game is a “virtual game,” DeWaal discloses that the gaming device may utilize certain virtual effects during presentation of the game to a player at the gaming machine. See e.g., DeWaal ¶ [0172] (“The central controller causes the display device ... to indicate the designated selection through illumination, highlighting, audio and/or visual effects.”). Thus, a POSITA would understand that DeWaal discloses the bonus event comprising a virtual game at least because the display device is configured for virtual games and because the bonus event selection game is a virtual/computer-generated game.

177. While some of the above-quoted passages from DeWaal refers to the primary or base game (as distinguished from the “bonus event”), DeWaal further explains that “the executable game program” may be “for a primary game, a secondary game” (bonus game), “or *both*,” which would indicate to a POSITA that the game provided in the bonus event may be the same as the primary game. DeWaal ¶ [0099]. This understanding is confirmed by DeWaal, which also states that “the bonus or secondary game may be any type of suitable game, either similar to or completely different from the base or primary game.” DeWaal ¶ [0079]. In this regard, DeWaal’s examples of the bonus game overlap with the examples of the primary game, such that the bonus game may be any of lottery games, real games, or virtual games.

178. As mentioned above, since this claim requires “*one or more selected from the group consisting of* sporting events, lotteries, real games and virtual games,” the limitation is disjunctive, such that the bonus event comprising any one of a “sporting event,” a “lottery,” a “real game,” or a “virtual game” would satisfy the limitation. Therefore, DeWaal alone would satisfy the limitations of claim 2 of the ’439 Patent by specifically enumerating that the bonus event may be any of a lottery game, a real game, or a virtual game, as explained above. However, to the extent that DeWaal fails to disclose that the bonus event may be a “sporting event,” DeWaal in combination with Schugar discloses this limitation (“It is further noted

that the methods described herein can be applied to all games, including live table games or *live sporting events*, described herein [...].” Schugar ¶ [0106]; *see also* Schugar ¶ [0072] (“[t]he embodiments described herein can also be used to bet on *sporting events*, either at intervals on individual games or series of games.”).

179. Specifically, as mentioned in my analysis regarding Limitation 1[a], a multi-round wagering event on a four-quarter sporting event as described in Schugar naturally aligns with a four-round bonus event as described in DeWaal, where each round corresponds to each quarter in the sporting event and each quarter has at least two outcomes, team A is winning or team B is winning at the end of the quarter, and players make selections on each quarter/round in the four-quarter series. *See* Schugar ¶¶ [0120], [0126]. Similarly, a multi-round wagering event on a seven-game series sporting event as described in Schugar naturally aligns with a seven-round bonus event as described in DeWaal, where each game corresponds to each game in the sporting event and each game has at least two outcomes, team A wins or team B wins, and players make selections of outcomes on each game/round in the seven game series. *See* Schugar ¶ [0072]. A POSITA would have been motivated to include the sports betting games disclosed in Schugar as “legs” of the bonus event in DeWaal “to provide new and different gaming machines and gaming systems” as taught by DeWaal. *See* DeWaal ¶ [0008]. Specifically, a POSITA would have understood that players of the gaming system of DeWaal would have been enticed

to play “new and different” games, such as a multi-round bonus game based on a sports-wagering concept as taught by Schugar.

180. Regarding the limitation that “each of the defined number of legs comprises one or more selected from the group,” DeWaal discloses this limitation. As explained above, DeWaal discloses that the bonus event comprises one or more game types selected from the group. As explained above with respect to at least limitation 1[a], DeWaal also discloses that the bonus event is “multi-round” such that each of the multiple rounds, correlating to “each of the defined number of legs,” are a component of the bonus game. A POSITA would understand that since the bonus event disclosed in DeWaal comprises a defined number of legs, therefore each of the defined number of legs may comprise one or more of the same games as those exemplary games enumerated in DeWaal for the bonus event. DeWaal supports this interpretation by disclosing “[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or ***games that include one or more rounds of game play.***” DeWaal ¶ [0108]. In the bonus game, “players must pick a designated outcome (i.e., a winning outcome) ***in each round*** to win all or a share of an award associated with the bonus event.” DeWaal ¶ [0119]. Therefore,

a POSITA would understand that each round, or leg, of the bonus event comprises rounds of the same game type as the bonus event as a whole.

181. In my opinion, a POSITA would understand that, in DeWaal's bonus game, "the wager comprises a potential outcome for each of the legs" because players of the bonus event "*make an input in association with the plurality of outcomes in each round*" as indicated by block 108" in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] ("each of the eligible players makes selections from a number of available selections (such as from *a plurality of potential outcomes* or selections) *in each round*."). Thus, DeWaal's bonus event wager "comprises" selections from a plurality of "potential outcomes" for "each of the legs" of the bonus event.

3. Claim 3: "The method of claim 2, wherein the wager is one or more of selectable by being handpicked by at least one of the one or more players, provided electronically on request of the at least one of the one or more players through communication between the one or more wagering input devices and the system controller, provided via a random number generator associated with the system controller, a quick pick or a smart pick."

182. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with Schugar discloses "the method of claim 2" for the reasons explained above, which are herein incorporated by reference.

183. In my opinion, a POSITA would have understood that DeWaal discloses "wherein the wager is one or more of selectable by being handpicked by at

least one of the one or more players” because “each eligible player” of the bonus event may “make an input in association with the plurality of outcomes of each round” of the bonus event. DeWaal ¶ [0129]. In this scenario, a POSITA would understand that an input from each eligible player is equivalent to a wager selectable by the player in a bonus event including a selection game, wherein “the plurality of outcomes include *player selectable elements or selections*.” DeWaal ¶ [0128]. Furthermore, DeWaal discloses that the “player selectable elements” may be picked by the player “via any suitable input device of the gaming machine, such as a touch screen.” DeWaal ¶ [0129]; *see also* DeWaal ¶¶ [0057], [0061] (“[...] one input device is a touch-screen 42 coupled with a touch-screen controller 44, or some other touch-sensitive display overlay to *allow for player interaction* with the images on the display. The touch-screen and the touch-screen controller are connected to a video controller 46. *A player can make decisions and input signals* into the gaming machine *by touching the touch-screen* at the appropriate places.”). A POSITA would understand that by interacting with an input device, such as a touchscreen that users touch with their hands, to select the plurality of outcomes of the bonus event, each eligible player of the bonus event would necessarily be handpicking the selectable elements that make up the wager.

184. I would also note here that it was extremely well-known at the relevant time to allow players “hand pick” or select a game to play via a gaming machine,

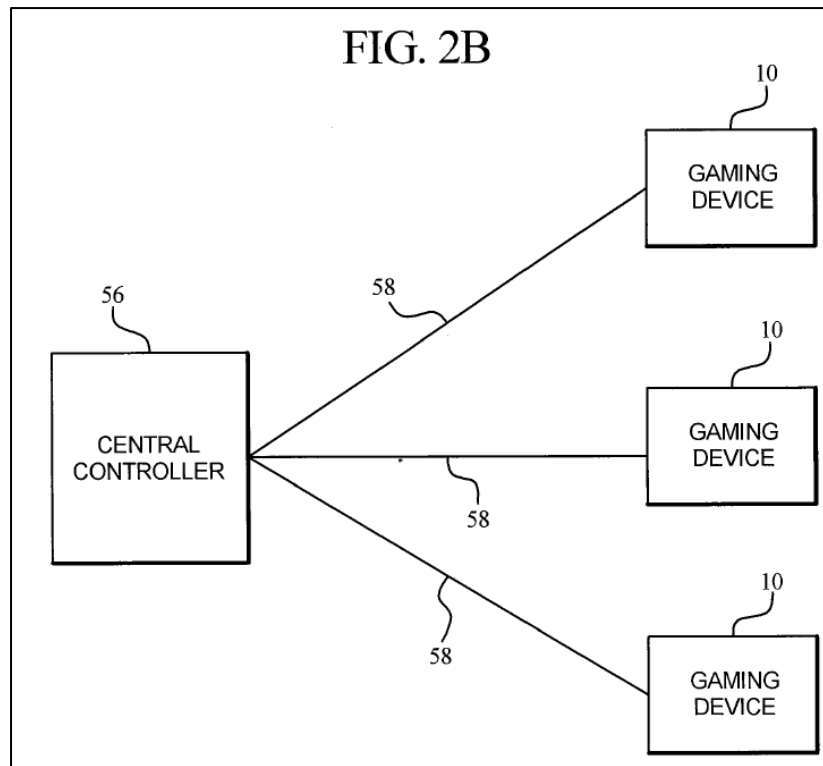
and including via the very gaming machines disclosed by DeWaal. Specifically, a POSITA would have understood that gaming machines would have been programmed with software supporting numerous different types of games and could have had an interface to select the game to play, including for selecting a bonus game. Indeed, the “touch-screen” disclosed by DeWaal is just one of numerous interface components that a POSITA would have implemented to allow player “picking” of a game.

185. A POSITA would understand that “the wager is ... provided electronically on request of the at least one of the one or more players” because each eligible player of the bonus event must “*make an input* in association with the plurality of outcomes in each round” of the bonus event. DeWaal ¶ [0129]. Each player may input “at least one of the selections via any suitable input device of the gaming machine, such as a touch screen.” DeWaal ¶ [0129]. A POSITA would understand that such affirmative input actions by the player on a touch screen of a gaming machine is equivalent to the player making a request to place a wager in the bonus event. Therefore, the wager is provided “on request” of the one or more players. Furthermore, a POSITA would understand that the wager request is provided “electronically” because “[t]he central controller receives *a signal* from gaming machines in the gaming system *corresponding to an input* from each player in each round.” DeWaal ¶ [0129]. A POSITA would understand that a signal is an

electrical impulse or radio wave that is transmitted or received. Therefore, a POSITA would understand that the signal containing information of each player's wager request is an electrical signal that must necessarily be "electronically" provided by the gaming machine and received by the central controller.

186. Regarding the limitation that the wager is "provided electronically ... through communication between the one or more wagering input devices and the system controller," DeWaal discloses this limitation because "[t]he *central controller receives a signal from gaming machines* in the gaming system *corresponding to an input from each player in each round.*" DeWaal ¶ [0129]. As explained above with respect to limitation 1[b], a POSITA would have understood that DeWaal's gaming machines correspond to "wagering input devices" and DeWaal's central controller correspond to "the system controller." In other words, DeWaal discloses in at least ¶ [0129] that the wager, corresponding to the "input from each player in each round," is provided electronically as "a signal" from the one or more wagering input devices (i.e., "gaming machines") to the system controller (i.e., "the central controller"). Under this correlation, a POSITA would understand that electrical communication must exist between the one or more wagering input devices and the system controller in order to electronically transmit the wager. DeWaal also explicitly explains this configuration in at least FIG. 2B,

shown below, which “is a schematic block diagram illustrating *a plurality of gaming terminals in communication with a central controller.*” DeWaal ¶ [0032].

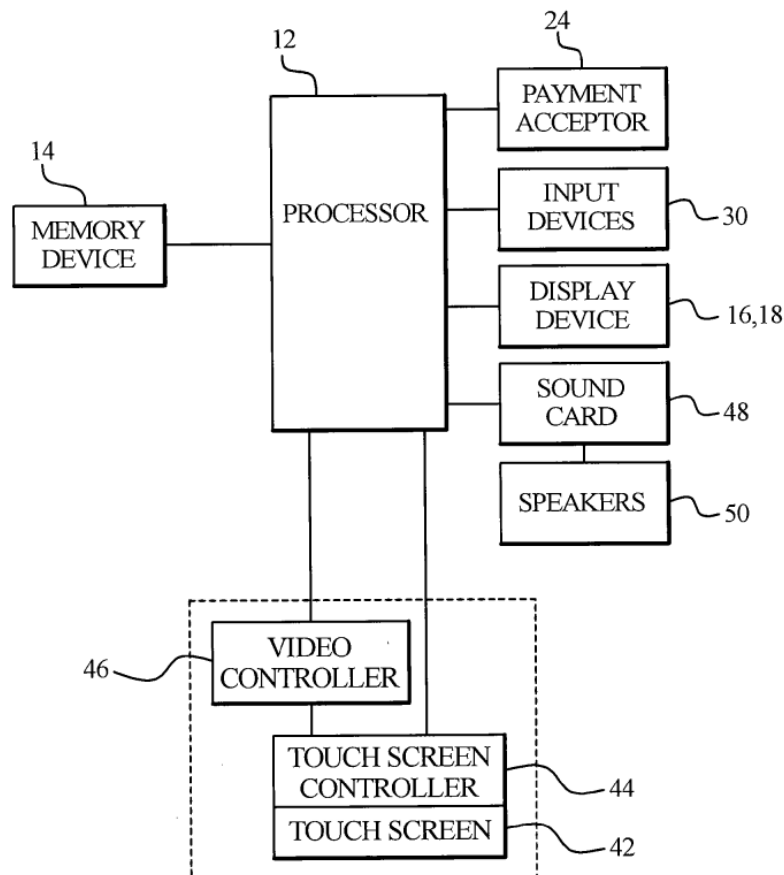


DeWaal at FIG. 2B. Explaining FIG. 2B, DeWaal further discloses that “*one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56* through a data network or remote communication link 58.” DeWaal ¶ [0084]. Therefore, a POSITA would understand that the wager is provided electronically “through communication between the one or more wagering input devices and the system controller.”

187. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the wager is ... provided via a random number generator

associated with the system controller, a quick pick or a smart pick,” DeWaal discloses, “[i]n one embodiment, each round is timed so that each eligible player has a predetermined amount of time, such as 60 seconds, to make an input. In one embodiment, if the player does not make an input in the predetermined amount of time, the player is deemed ineligible and eliminated from the bonus event. In another embodiment, *if the player does not make an input in the predetermined amount of time, the central controller randomly selects the input for the player.*” DeWaal ¶ [0186]. Therefore, a POSITA would understand that DeWaal discloses a scenario where the wager, or input, is not selected by the player but rather randomly provided to the player. A POSITA would also understand that such randomness in generating the wager may be provided via a random number generator, a quick pick or a smart pick, or another similar device with equivalent functionality. Specifically, DeWaal discloses in FIG. 2A, shown below, a schematic block diagram of a gaming device including a “memory device 14” that “stores other data such as image data, event data, player input data, *random or pseudo-random number generators*, pay-table data or information and applicable game rules that relate to the play of the gaming device.” DeWaal ¶ [0046].

FIG. 2A



DeWaal at FIG. 2A.

188. DeWaal further goes on to explain that the random number generators stored in the memory device 14 are “associated with” the system controller. DeWaal discloses that, in the embodiment illustrated in FIG. 2A, “the gaming device preferably includes at least one processor 12, such as a microprocessor, a microcontroller-based platform, a suitable integrated circuit or one or more application-specific integrated circuits (ASIC's). *The processor is in communication with or operable to access or to exchange signals with at least one*

data storage or memory device 14.” DeWaal ¶ [0046]. Furthermore, DeWaal discloses that, with reference to FIG. 2B, “one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56 through a data network or remote communication link 58.” DeWaal ¶ [0084]. Therefore, a POSITA would understand that the random number generator is “associated with” the system controller because the random number generator is stored in the memory device 14, which is in communication with the processor 12 of the gaming device 10, which is in communication with the central server.

4. Claim 4: “The method of claim 2, wherein the games comprise one or more selected from the group consisting of slot machines, keno, poker, video games and racing.”

189. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with Schugar discloses and/or renders obvious “the method of claim 2” for the reasons explained above, which are herein incorporated by reference.

190. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the games comprise one or more selected from the group consisting of slot machines, keno, poker, video games and racing.” As an initial matter, I note that this limitation is again recited in the disjunctive, and therefore

may be met by a teaching in the prior art of any of the above recited games. For example, DeWaal discloses that “[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, *the bonus event includes*, but is not limited to, reel/*slot games*, card games (e.g., *poker*, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or games that include one or more rounds of game play.” DeWaal ¶ [0108], [0127]. Here, DeWaal discloses that the bonus event can be implemented as a slot machine game, poker game, or other competition or skill based games that that would include “video games and racing.”

191. In another example, DeWaal explains that the gaming device may provide “any suitable reel-type game, card game, cascading or falling symbol game, number game or *other game of chance susceptible to representation in electronic or electromechanical form*, which in one embodiment produces a random outcome based on probability data at the time of or after placement of a wager. That is, different primary wagering games, such as *video poker games, video blackjack games, video keno, video* bingo or any other suitable primary or base game may be implemented.” DeWaal ¶ [0064].

192. While some of the above-quoted passages from DeWaal refer to the primary or base game, DeWaal further explains that “the executable game program” may be “for a primary game, a secondary game” (bonus game), “or both,” which would indicate to a POSITA that the game provided in the bonus event may be the same as the primary game. DeWaal ¶ [0099]. This understanding is confirmed by DeWaal, which also states that “the bonus or secondary game may be any type of suitable game, either similar to or completely different from the base or primary game.” DeWaal ¶ [0079]. In this regard, DeWaal’s examples of the bonus game overlap with the examples of the primary game, such that the bonus game may be any of slot machine games, keno, poker, or video games (such as video poker games, video blackjack games, video keno games, or video bingo games).

193. Since claim 4 of the ’439 Patent requires “*one or more selected from the group consisting of* slot machines, keno, poker, video games and racing,” the limitation is disjunctive, such that the bonus event comprising any one of “slot machines,” “keno,” “poker,” “video games,” *or* “racing” would satisfy the limitation. Therefore, DeWaal discloses the limitations of claim 4 of the ’439 Patent by specifically enumerating that the bonus event may be any of slot machine games, keno, poker, or video games, as explained above. Moreover, the combination of DeWaal in view of Schugar teaches that the game may be a racing game because

Schugar teaches wagering on sporting events, which would include sporting events where the event is “racing” such as horse racing and car racing, and a POSITA would have been motivated to implement DeWaal’s bonus game as a multi-round sporting event (i.e., racing) for the reasons discussed above in regard to Claim 2 and Limitations 1[a] and [f].

5. Claim 5: “The method of claim 1, wherein accepting the partial buy-out offer comprises at least one of the one or more players accepting less than the buy-out offer amount, said acceptance resulting in the at least one of the one or more players remaining eligible to win at least a portion of at least one jackpot.”

194. In my opinion, the combination of DeWaal and Schugar renders this claim obvious. A POSITA would understand that DeWaal’s bonus event includes offering and accepting a buy-out for players that remain eligible to win a jackpot. *See, e.g.,* DeWaal ¶ [0037]; *supra* Limitations 1[a], 1[f], 1[g]. Necessarily included in this opinion is the notion that the partial cash-out offer would be for *less than* the full buy-out offer amount disclosed by DeWaal. Indeed, as discussed in my Background of the Technology section, a POSITA would have recognized that a partial exercise allowed the owner of an “option” in financial markets to sell part of a position before the strike date while holding the remainder until expiration. This concept was applied to gaming well before the 2012 time frame. *See supra* § V.C. It

would have also been well-known that the buy out amount for the partial sale would be less than the buy out amount for the sale of the entire bet (or option).

195. While DeWaal does not expressly disclose a “*partial* buy-out”, as detailed above with respect to limitation 1[f], herein incorporated by reference, Schugar does. Schugar also discloses offering and accepting a partial buy-out for “less than the [full] buy-out offer amount.”

196. Schugar discloses that “[t]he player can also bank a *portion* of the expected profit the player has earned for later use.” ¶ [0079]. For example, in a situation where the player placed a \$100 wager, one such way is that “the house can take a portion of the player’s wager (such as 10%), so that the player now has \$90” wagered on the event, and “the taken portion can be stored for later redemption by the player” and “can be accumulated and dispersed to the player at a later time.” Schugar ¶ [0079]. The banked 10% portion of the wager corresponds to the player “accepting less than the buy-out offer amount” because the 10% portion is less than the 100% value of the wager. Schugar ¶ [0083]. As Schugar explains, whether the player wins or loses the wagering event after cashing in a portion of the player’s wager thereon, “the player has banked the banked value for later redemption” and the player can “continue to wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

197. Indeed, the ‘439 Patent admits “a party purchasing a partial buy-out of a ticket (i.e., less than 100% of the rights associated with the ticket) would be entitled to win any award or jackpot for which the ticket is redeemable in proportion to the interest purchased via the partial buy-out. Thus, if the party purchased a 30% interest in the ticket, the party would be entitled to 30% of the winnings for which the ticket is redeemable. As with full buy-outs, partial buy-outs can occur prior to or at any stage of a wagering event.” See ‘439 Patent at 28:15-23. Schugar discloses this arrangement because Schugar discloses the same proportional payout for a partial buy-out as discussed directly above.

198. The combination of DeWaal and Schugar renders this limitation obvious. A POSITA would understand that, in the combined system, accepting the partial buy-out offer of Schugar (offered as an alternative to the full buy-out offer taught in the bonus event of DeWaal) “result[s] in the at least one of the one or more players *remaining eligible* to win at least a portion of at least one jackpot” because Schugar teaches that the player *continues to play* the game after “banking” some portion of the positive expectation embedded in the wager. Schugar ¶ [0079]. As explained above in limitation 1[g], a player that accepts Schugar’s partial cash in offer remains eligible to win a portion of the jackpot and continue playing, albeit at a reduced pay table. For example, in a situation where the player placed a \$100 wager, one such way is that “*the house can take a portion of the player’s wager*

(such as 10%), so that the player now has \$90” wagered on the event, and “the taken portion can be stored for later redemption by the player” and “can be accumulated and dispersed to the player at a later time.” Schugar ¶ [0079]. As Schugar further explains, whether the player wins or loses the wagering event after cashing in a portion of the player’s wager thereon, *“the player has banked the banked value for later redemption” and the player can “continue to wager, but limit his losses by ensuring that some amount is still saved for later.”* Schugar ¶ [0079]. Thus, in this example, the player accepting the offer to cash in a portion of their wager “remains eligible” to win 90% of the jackpot offered in DeWaal’s bonus event, thereby rendering this limitation obvious.

6. Claim 6: “The method of claim 1, wherein the buy-out offer is initiated on behalf of at least one of a third party and one or more of the players, and when the buy-out offer is accepted, the third party becomes eligible for winning at least a portion of the jackpot.”

199. As discussed above, DeWaal discloses initiating a buy-out offer. *See supra* Limitation 1[f]. For example, DeWaal discloses that the “central controller ... *cause[s]* the system gaming machine to provide a multi-round bonus event to a plurality of players.” DeWaal ¶ [0124]. Similarly, with respect to the process 100 shown in FIG. 3 that is executed and performed by the system controller, DeWaal again explains that “[t]he central controller *provides* the multi-round bonus event (or *causes* the gaming machines to provide the multi-round bonus event) to those

eligible players as indicated by block 104.” DeWaal ¶ [0126]; *see also* DeWaal ¶ [0123] (“the process 100 is embodied in computerized instructions executed by a central controller or remote host.”).

200. Notably, DeWaal’s *central controller* “initiates” a buy-out offer, such that prior to each subsequent round, the central controller “*offers* each advancing player an *additional award* to quit the bonus event.” DeWaal ¶ [0141]. For example, as illustrated in Figure 7, “two hundred players qualify to advance to the third round. The central controller *offers* those *players* to either *quit the bonus event and accept the second additional award* or continue the bonus event and play the third round.

201. DeWaal and Schugar do not expressly describe the concept of initiating a buy-out offer (or partial buy-out offer) on behalf of a third party or one or more other players or that “when the buy-out offer is accepted, the third party becomes eligible for winning at least a portion of the jackpot.” However, Scott discloses these limitations and a POSITA would have been motivated to combine DeWaal (and Schugar)⁴ with Scott to initiate a buy-out on behalf of, and to configure the system

⁴ The proposed application of Schugar’s teachings of a partial buy-out offer to DeWaal’s system to render obvious the “partial buy-out” limitation under DraftKings’ proposed construction are consistent with Scott’s teachings regarding

such that, once accepted, that the third party or other players become eligible for winning at least a portion of the jackpot.

202. As an initial matter, it would have been obvious that the entity acquiring the interest in a position—whether it be a financial position (e.g., a stock option), or a gambling position such as a gambling ticket, card or position in an ongoing game—would be entitled to redeem the interest for cash value at expiration of the game. Indeed, this is the purpose of paying value to acquire the interest—the acquirer is wagering that the position, once expired, will be worth more than was paid to acquire the interest.

203. Scott teaches this well-known concept in the context of gaming systems, where a player's live wager can be bought by and sold to a system operator or other players of the gaming system. *See supra* § VIII.C. Specifically, Scott teaches systems for providing “value for partial or incomplete game outcomes,” which is “highly advantageous in that the ability to sell non-final sets of indicia provides another avenue for players to be rewarded for playing a wagering game.”

sale of partial interests and are properly motivated for the same reasons as set forth in this section. Thus, a POSITA would have also been motivated to combine DeWaal, Scott, and Schugar for these same reasons.

Scott ¶¶ [0003], [0009]. In one embodiment, the current cash value of a live wager is displayed on the display device of a gaming machine, and “a player input device 108 in the form of an ‘accept’ button may be provided to allow a player to accept a current cash value presented on a display 104 by the value engine.” *Id.* ¶¶ [0048], [0060]. The player may “accept” or “decline” the current cash value offer by pressing the appropriate buttons on the gaming machine. *Id.* ¶¶ [0077]-[0078]. “If the player accepts the current cash value for his or her game symbols at decision step 432, the current cash value may be paid to the player at step 424. The game may then end.” *Id.* ¶ [0079].

204. Scott also discloses embodiments regarding buying and selling by *other players* of the system via an “electronic marketplace,” as Scott describes it, where a player “may decide that he or she is better off selling the hand to another player than to take the current cash value or attempt to achieve a winning outcome from the symbols.” *Id.* ¶ [0099]. For example, engaging a “sell” button or the like may cause the player’s wager to enter an “electronic marketplace for sets of symbols” and “solicit wagers or credits from other players who may purchase the symbols from the player.” *Id.* In this scenario, the selling player may utilize the current cash value displayed on their screen to set or designate an initial selling price for their wager, but the player may also “independently set a value or price for their indicia.” *Id.* ¶¶ [0125], [0127]. A second player, e.g., a “buying player,” on the marketplace may

accept the initial offer price and purchase the ticket, or they may “propose his or her own different price or counter offer.” *Id.* ¶ [0139]. In typical fashion for a marketplace, “counter offers may continue to be made between the players until a counter offer is accepted or declined.” *Id.* If an offer or counter offer is accepted, “[t]he server may then transfer the non-final set of indicia from the first player to the second player” and “the tokens, credits, funds or other consideration used to purchase the non-final set of indicia may be transferred from the second player to the first player.” *Id.* ¶ [0140]. The first player “will no longer be able to play the non-final set of indicia,” but they “may be played to a conclusion or final set of indicia on the second gaming machine” after they are transferred to the second player. *Id.*

205. A POSITA would have been motivated to include Scott’s options for transacting in full or partial interests in live wagers within the bonus game of DeWaal because DeWaal discloses providing buy-out opportunities via similar gaming machines arranged in a similar architectures. For example, the combination of DeWaal’s central server with the server of Scott would have involved mere simple substitution or combination of known elements to achieve predictable results. A POSITA would have been well equipped to implement the proposed combination which would have involved no more than merely software implementation. With regard to the gaming machines of DeWaal, similar ordinary skill would have been

required to implement the “quit” (i.e., buy-out) option from DeWaal to include the features of the “sell” button and similar interfaces of Scott to initiate a full or partial buy-out transaction with either the house, other players, or any third party.

206. Scott itself touts the benefits and compatibility of the proposed combination. *E.g.*, Scott ¶ [0009], [0041]. Specifically, Scott states that use of its value engine is “advantageous in that it adds a *new element* to wagering games that is *compatible with a wide variety of wagering games*.” Scott ¶ [0041]. Thus, Scott recognizes that its system can be used with any game with multiple stages (such as DeWaal’s multi-round bonus event), even though the entire “value engine” of Scott need not necessarily be implemented into DeWaal’s central server to render the limitation obvious. In addition, Scott also teaches that the functionality of its disclosed system can be used “to enhance traditional games, such as to encourage new players to play or entice existing players to continue playing.” Scott ¶ [0043]. These are exactly the attributes a POSITA would be focused on when designing a wagering system. Moreover, Scott teaches that its system can be added to games to create better player “connection between their actions and the cash value presented by the value engine.” *Id.* A POSITA would have understood that this type of connection fosters increase player engagement and therefore would have been motivated to modify DeWaal’s system to include such functionality in order to achieve these benefits expressly taught by Scott. *See also* Scott ¶ [0077] (explaining

that the goal of value engine is to provide tough/interesting choice to player to make the offer more dynamic/interesting.).

207. Furthermore, Scott teaches implementation within a secondary, such as a bonus game as disclosed by DeWaal. Scott ¶¶ [0098], [0099], [0117]. This, in my opinion is an additional express motivation to add the incorporate the exchange teachings of Scott in the bonus event of DeWaal.

208. Because both references teach methods and systems of implementing a wagering game wherein a player is able to receive payment for his or her position prior to the completion of the game. Scott merely provides additional means for achieving this goal relative to DeWaal, such as providing a marketplace where players can sell their positions to other players. Therefore, a POSITA would recognize that DeWaal and Scott are analogous references which attempt to achieve the same goal and would therefore be motivated to combine them.

209. Regarding “when the buy-out offer is accepted, the third party becomes eligible for winning at least a portion of the jackpot,” a POSITA would understand that Scott establishes a marketplace for buying and selling rights to certain wagering opportunities. For example, Scott discloses that “a player may sell his or her . . . hand to another player [rather] than to take the current cash value or to attempt to achieve a winning outcome from the symbols [*i.e.*, playing cards or slot symbols].” Scott at [0099]. Scott also teaches that a player can achieve this by

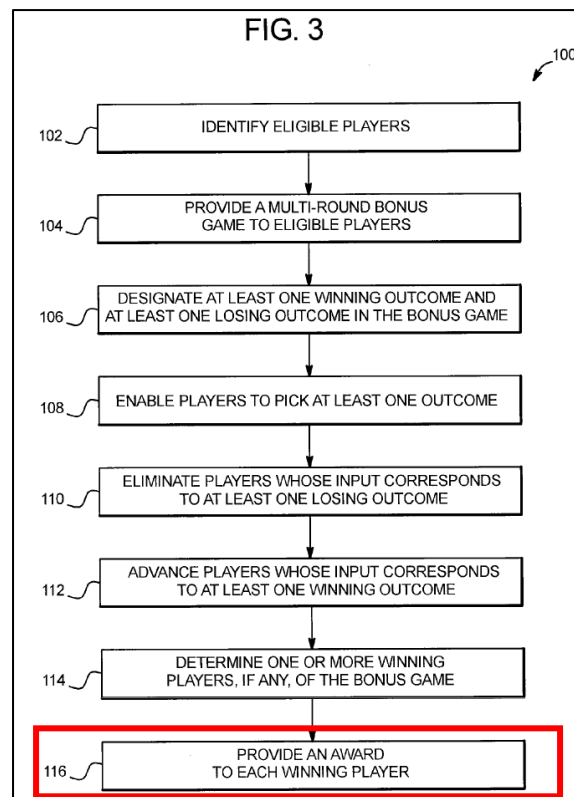
setting a sale price for sale on a multiplayer marketplace, wherein the price may be set by the player or a computer. Scott at [0127]-[0129].

210. A POSITA would therefore understand that upon receiving the hand from the first player, the third party or other player can play that hand to win a jackpot or portion thereof. As explained above, a symbol can represent a card of playing cards, a slot machine result, etc., which may correlate to an eligibility “for winning at least a portion of the jackpot.” Furthermore, Scott states that “the current cash value may be paid to the player” depending on his or her symbols. Scott at [0079]. Therefore, a POSITA would understand that Scott discloses that the third party or other player can become eligible for winning at least a portion of the jackpot.

7. Claim 7: “The method of claim 1, wherein the system controller is further programmed to award the jackpot, or any fractional portion thereof, upon the completion of the multi-outcome event pool.”

211. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the system controller is further programmed to award the jackpot, or any fractional portion thereof,” because DeWaal discloses providing the award for the bonus game, such as the jackpot, to any winning players. For example, DeWaal states that “the *central controller is operable to provide an award to each winning player* as indicated by block 116.” DeWaal ¶ [0133]. This step of providing

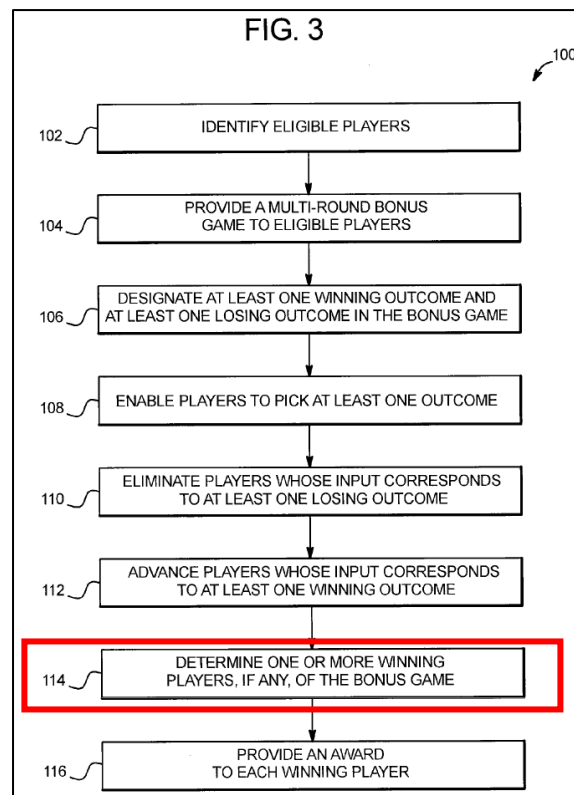
the award to the players that have won the jackpot (or a portion thereof) is illustrated in FIG. 3 of DeWaal, as shown below.



DeWaal at FIG. 3.

212. Regarding the limitation of “award[ing] the jackpot ... upon the completion of the multi-outcome event pool,” a POSITA would have understood that DeWaal discloses this limitation because DeWaal discloses that, in the final round, the central controller determines which, if any, of the players won the final round and therefore won the jackpot or a portion thereof. Specifically, for example, DeWaal discloses that “*in the final round, the central controller determines one or more winning players, if any, of the bonus event* as indicated by block 114.”

30:46-59. This determination is also illustrated in step 114 of FIG. 3, as shown below.



DeWaal at FIG. 3. A POSITA would understand that the “final round” of the bonus event in DeWaal signifies the completion of the bonus event (i.e., the multi-outcome event pool). Therefore, a POSITA would understand that DeWaal discloses that the central controller determines one or more winning players at the end of the event and awards those winning players the jackpot award (or a portion thereof) upon completion of the bonus event.

8. Claim 8

j. 8[a] – “The method of claim 1, wherein the multi-outcome wagering event comprises one or more virtual games, said method further comprising:”

213. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the multi-outcome wagering event comprises one or more virtual games” because DeWaal’s bonus event (corresponding to the “multi-outcome wagering event”) may include a virtual or computer-generated game. For example, DeWaal explains that “the display devices of the gaming device are configured to display at least one and preferably a plurality of game or other suitable images, symbols and indicia such as any visual representation or exhibition of the movement of objects such as mechanical, *virtual or video reels and wheels*, dynamic lighting, video images, images of people, characters, places, things and faces of cards, and the like.” DeWaal ¶ [0055]. In another example, DeWaal explains that the gaming device may provide “any suitable reel-type game, card game, cascading or falling symbol game, number game or other game of chance susceptible to *representation in electronic* or electromechanical *form*, which in one embodiment produces a random outcome based on probability data at the time of or after placement of a wager. That is, different primary wagering games, such as *video poker games, video blackjack games, video keno, video bingo* or any other suitable primary or base game may be implemented.” DeWaal ¶ [0064].

214. While the above-quoted passage from DeWaal refers to the primary or base game, DeWaal further explains that “the executable game program” may be “for a primary game, a secondary game” (bonus game), “or both,” which would indicate to a POSITA that the game provided in the bonus event may be the same game virtual game as the primary game. DeWaal ¶ [0099]. This understanding is confirmed by DeWaal, which also states that “the *bonus or secondary game may be any type of suitable game, either similar to or completely different from the base or primary game.*” DeWaal ¶ [0079]. In this regard, DeWaal’s examples of the bonus game overlap with the examples of the primary game, which may be virtual games. DeWaal ¶ [0108] (“The bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or games that include one or more rounds of play.”). Based on these disclosures, a POSITA would understand that, because the gaming device is suitable for providing virtual games such as video poker, video blackjack, video keno, video bingo, or other video or computer generated games that do not involve physical gaming indicial (but rather, are displayed virtually on the display device) for the primary game or event, the

secondary or bonus event, which may be “similar to” the base or primary game, may also be one of the identified virtual games or a different virtual game.

215. In any event, a POSITA would understand DeWaal’s bonus event selection game discussed herein to be a “virtual game” at least because it involves the computer-generated display of electronic (virtual) gaming outcomes/indicia on the display device of the gaming machine rather than mechanical or physical presentation of these gaming elements. For example, “FIGS. 11A, 11B, 11C, 11D, 11E and 11F are front views of *a display device of a plurality of gaming machines in the gaming system disclosed herein illustrating one embodiment of a multi-round bonus event*, wherein the display devices substantially simultaneously display the bonus event to a plurality of players who compete for an award.” DeWaal ¶ [0041]. Further confirming that the bonus event selection game is a “virtual game,” DeWaal discloses that the gaming device may utilize certain virtual effects during presentation of the game to a player at the gaming machine. *See e.g.*, DeWaal ¶ [0172] (“The central controller causes the display device ... to indicate the designated selection through illumination, highlighting, audio and/or *visual effects*.”). Thus, a POSITA would understand that DeWaal discloses the bonus event comprising a virtual game at least because the display device is configured for virtual games and because the bonus event selection game is a virtual/computer-generated game.

- k. 8[b] – “initiating the buy-out offer prior to completion of the one or more virtual games, but after an outcome of the one or more virtual games has been determined, said buy-out offer including a price that is at least partially based on random-number-generated probabilities.”

216. DeWaal discloses “initiating the buy-out offer prior to completion of the one or more virtual games” for the same reasons as DeWaal discloses “said buy-out offer ... being initiated at any time before the multi-outcome wagering event has been completed” as recited in limitation 1[f]. I incorporate my analysis of that limitation herein. Further, a POSITA would have understood that DeWaal discloses initiating the buy-out offer after the virtual games have been determined because DeWaal discloses initiating the offer to quit after a first round but before the final round of the bonus event, where outcomes of the selection game are determined for each round prior to the central server initiating the offer to quit.

217. For example, the central controller determines at least one “designated” or “winning outcome” and at least one “losing outcome” from the potential outcomes for each round of the bonus event prior to initiating an offer to quit, which is initiated for each round before the subsequent round begins. *See* DeWaal ¶¶ [0167] (“In each round, the eligible players pick one of the available selections ... and the central controller designates one of the available selections ... as a designated selection (i.e., winning outcome or selection).”), [0175] (“The central controller determines whether any of the Players ... picked the designated selection 204 to advance to the

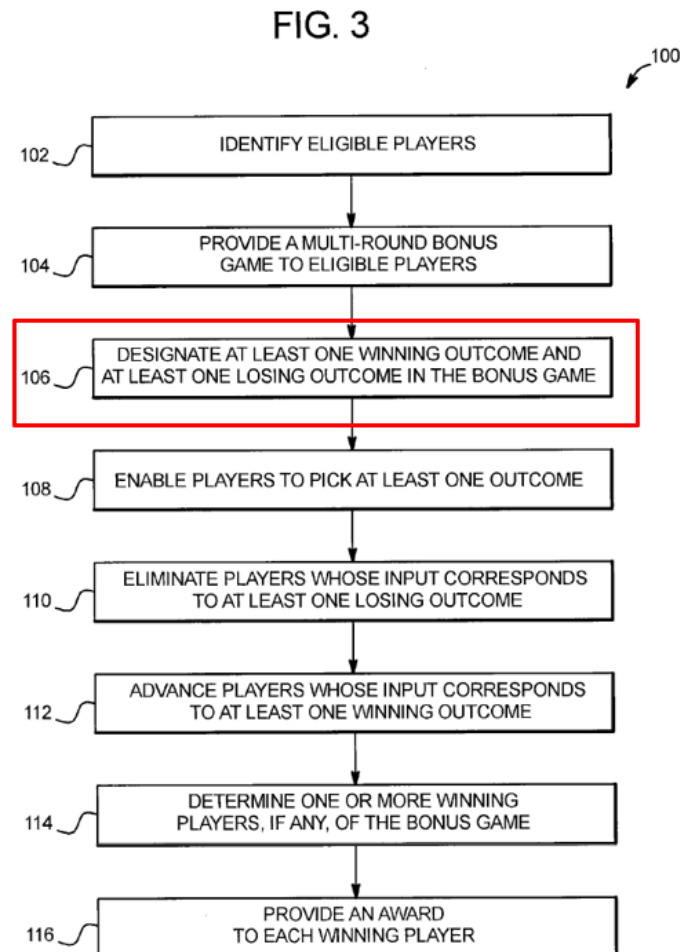
second round.”), [0141] (“Of the eight hundred players, four hundred players qualified to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round. Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event.”), [0132] (“This process continues for a designated number of rounds until a final round. In the final round, the central controller determines one or more winning players, if any, of the bonus event as indicated by block 114.”).

218. For example, DeWaal Figure 3 shows a process for implementing a bonus event game where “outcomes” of the games are determined at an initial stage, and in advance of providing any buy-out offers, or offers to “quit.” DeWaal states:

The multi-round bonus event includes a plurality of outcomes in each round. *Each round may include the same number of or different numbers of outcomes. At least one of the outcomes is designated as a winning outcome and at least one of the outcomes is designated as a losing outcome as indicated by block 106.* In one embodiment, each round includes one winning outcome and a plurality of losing outcomes. The number of outcomes, the number of rounds, and/or the number of winning or designated outcomes are set to any Suitable number by the implementer of the gaming system. In one embodiment, the bonus event includes a selection game

and the plurality of outcomes include player selectable elements or selections.

DeWaal, ¶ [0128]. DeWaal's Figure 3 is provided below.



DeWaal at FIG. 3. Therefore, as shown above, the central server determines and designates at least one winning outcome for each round in Step 106. Subsequently, after step 112 but prior to step 114, for example, the central server initiates and provides advancing players with an option to quit in exchange for an award. DeWaal, ¶ [0141] (“Prior to the second round, the central controller offers

each advancing player an additional award to quit the bonus event.”) Thus, a POSITA would have understood that DeWaal discloses “initiating the buy-out offer prior to completion of the one or more virtual games,” because the buy-out offer is initiated prior to determining any winners of the bonus event, “but after an outcome of the one or more virtual games has been determined,” because the buy-out offer is initiated after the controller has determined the winning outcome for the round.

219. As another example, the central controller also determines an “outcome” of the first round, e.g., by comparing the player’s selected outcome to the designated or winning outcome determined by the controller to determine if the player won or lost the first round prior to the central controller providing the player an offer to quit after that outcome of the first round was determined. *See* DeWaal ¶ [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players advance to the subsequent round of the bonus event.”). As an example, DeWaal explains that, in the first round of the bonus event, “four hundred players qualified to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round). Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event.” DeWaal ¶ [0141]. Thus, in this example, the “outcome” that is determined is whether the

player has won a given round, such as the first round of the multi-round bonus event, and the offer to quit the bonus event is provided only to those players that won the prior round. *See also* DeWaal ¶ [0146] (“In this example, one hundred eligible players advance from the first round by making an input of a designated or winning outcome in the first round The central controller may cause the display device to display an offer of \$10 to the advancing players ... ‘YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!’”). Therefore, as this example shows, the central controller determines the outcome of whether a player has won or lost a prior round and subsequently initiates an offer to quit to the player that was determined to have selected a winning outcome in the prior round.

220. In addition, DeWaal states that outcomes of the bonus game may be “predetermined” such that the offer to quit is always initiated after an outcome of the virtual game has been determined. DeWaal ¶ [0050].

221. DeWaal also discloses that the option to quit that is offered to a player is in exchange for an “award” and that awards may be *randomly* generated based on probability data. For example, as has been described herein, “the central controller offers each advancing player an additional *award to quit the bonus event*,” and DeWaal further explains that the system may “*randomly generate[] awards ... based on probability data*.” DeWaal ¶¶ [0141], [0049]; *see also* DeWaal ¶ [0049]

(“*each award ... is associated with a probability* and the gaming device *generates the award ... to be provided to the player based on the associated probabilities.*”). Such randomness in generating the award is performed using a “random number generator (RNG), such as a true random number generator, a pseudo random number generator or other suitable randomization process.” DeWaal ¶ [0049]. Therefore, a POSITA would understand that the amount or price of DeWaal’s offer to quit may be based, at least in part, on *random-number generated probabilities* because DeWaal discloses that the awards may be randomly generated based on probability data.

9. Claim 9: “The method of claim 1, further comprising initiating a bidding process among a designated number of players interested in accepting at least one of the buy-out offer and partial buy-out offer, and closing the bidding process after a certain span of time or after a certain number of the buy-out and partial buy-out offers have been accepted.”

222. The combination of DeWaal in view of Scott, and, alternatively, further in view of Schugar renders this limitation obvious. First, a POSITA would have been motivated to combine Scott’s teachings regarding transacting in live wagers within the bonus event and overall system of DeWaal. *See supra* § IX.A.6. Scott further teaches providing “bidding process” for buy-outs and closing the bidding process as claimed.

223. Regarding “initiating a bidding process among a designated number of players interested in accepting at least one of the buy-out offer and partial buy-out offer,” Scott establishes a *marketplace* where other player or third parties offer, buy, and sell rights to certain wagering opportunities. For example, Scott discloses that “a player may sell his or her . . . hand to another player [rather] than to take the current cash value or to attempt to achieve a winning outcome from the symbols [*i.e.*, playing cards or slot symbols].” Scott ¶ [0099]. Scott also teaches that a player can achieve this by setting a sale price for sale on a multiplayer marketplace, wherein the price may be set by the player or a computer. Scott ¶ [0127]-[0129]. Thus Scott teaches that a number of players can accept a buy-out or partial buy-out offer.

224. Regarding “initiating a bidding process,” Scott explains that

In one embodiment for example, rather than accepting an offer price, the second player may propose his or her own different price or counter offer. The first player may be notified or alerted to this counter offer, and be provided an option to accept or decline the counter offer. In some embodiments, the first player may be permitted to propose his or her own counter offer, and counter offers may continue to be made between the players until a counter offer is accepted or declined.

Scott ¶ [0139]. This is a “bidding process” because players or third party entities “bid” or offer and “counter” offers to transacting in live wagers.

Indeed, Scott clarifies that the system is “configured to support a substantial number of players to allow a marketplace for non-final sets of indicia to be established.” Scott at [0142]. Taken together, therefore, a POSITA would understand that Scott teaches a method wherein a player can receive offers from various third parties or other players and play them against each other to “initiate a bidding process.”

225. Regarding “closing the bidding process after a certain span of time or after a certain number of the buy-out and partial buy-out offers have been accepted,” Scott discloses that, at the end of the game, the option to sell one’s position is closed. Specifically, Scott states “if the first player continues to play the wagering game such that a final set of indicia is generated, the option to sell will be disabled.” Scott ¶ [0126]. Thus, Scott teaches that the bidding process ends after a span of time (i.e., the completion of the event).

10. Claim 10: “The method of claim 1, wherein one or more interim jackpots are awarded where a particular number of the defined number of legs are completed prior to completion of the multi-outcome wagering event.”

226. A POSITA would have understood that DeWaal discloses “wherein one or more interim jackpots are awarded where a particular number of the defined number of legs are completed.” As explained in greater detail above with respect to at least limitation 1[f], which is herein incorporated by reference, DeWaal’s bonus

event includes an “offer and acceptance feature” that “offers each advancing player *an additional award* to quit the bonus event.” DeWaal ¶ [0141]. Specifically, DeWaal explains that “[i]n one embodiment, players can win *an additional award associated with each round* as described above and *any additional awards won in the plurality of rounds are accumulated into a total award*.” DeWaal ¶ [0018]. Given this explanation, a POSITA would understand that the “additional award associated with each round” may be accumulated and offered to the player after any number of rounds of the bonus event is complete, thus making the accumulated “additional awards” equivalent to the “interim jackpot” that is awarded to the player after “a particular number of the defined number of legs are complete” as set forth in this limitation.

227. DeWaal also explains in an exemplary embodiment, “the multi-round bonus event includes five rounds. *Each round is associated with an award*, such as \$10,000. As illustrated, eight hundred players are eligible for the bonus event in this embodiment. Of the eight hundred players, four hundred players qualify to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round). *Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event*. [...] As illustrated, one hundred players who qualify to advance to the second round, accepted the offered additional award and quit the bonus event. Three

hundred player who qualify for the second round rejected the offered additional award and continue to the second round of the bonus event.” DeWaal ¶ [0141]. In this example, the “additional award,” correlating to the “interim jackpot,” was offered to eligible players after the first round and before the second round of the bonus event. Thus, a POSITA would understand that the “additional award” disclosed in DeWaal is awarded “where a particular number of the defined number of legs are completed.”

228. Furthermore, a POSITA would have understood that the “additional award” (i.e., interim jackpot) may be awarded “prior to completion of the multi-outcome wagering event.” Continuing the exemplary embodiment explained above, the “additional award” is awarded to each advancing player “*prior to the second round*” such that a player who accepts the offered additional award would “*quit the bonus event*” whereas a player who rejects the offered additional award would “*continue to the second round of the bonus event.*” DeWaal ¶ [0141]; *see also* DeWaal ¶ [0018] (“In this embodiment, if the player picks the designated selection in one of the rounds, the central controller offers that player to either *quit the bonus event and keep the total award accumulated* in the bonus event or continue the bonus event and play a subsequent round. *If the player chooses to quit, the central controller provides (or causes that player to be provided) with the accumulated award.*”). Since players that accept the offered additional award effectively quit the

bonus event before the final round, a POSITA would understand from this example that the “additional award” disclosed in DeWaal must necessarily be awarded to eligible players “prior to the completion of the multi-outcome wagering event” and is therefore an “interim jackpot.”

11. Claim 11: “The method of claim 10, wherein there is a span of time before at least one final leg of the multi-outcome event is completed, and the at least one final leg is completed in a live or pre-recorded event attended by the players eligible to win a jackpot, a portion thereof, or a bonus prize.”

229. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with Schugar discloses or renders obvious “the method of claim 10” for the reasons explained above, which are herein incorporated by reference.

230. In my opinion, a POSITA would have understood that DeWaal discloses “wherein there is a span of time before at least one final leg of the multi-outcome event is completed” because DeWaal discloses that the bonus event is “multi-round” and that each of the multiple rounds are a component of the bonus event. DeWaal ¶ [0119] (“In one embodiment, the bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round. In one embodiment, the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event.”). Therefore, a POSITA would understand that the

at least one “final leg of the multi-outcome event” correlates to a final round in “the plurality of rounds” of the bonus event disclosed in DeWaal. Since “players must pick a designated outcome (i.e., a winning outcome) in each round” and the bonus event comprises a “plurality of rounds,” a POSITA would understand that there must necessarily be “a span of time” before the final leg of the multi-outcome event is completed to allow players enough time to pick designated outcomes in each round of the bonus game before reaching the final round or completing the bonus game.

231. Furthermore, a POSITA would have understood that DeWaal discloses “wherein ... the at least one final leg is completed in a live or pre-recorded event” because DeWaal discloses that the bonus event is provided to all eligible players “substantially simultaneously.” DeWaal ¶ [0108] (“One embodiment of the gaming system and method disclosed herein *substantially simultaneously provides a multi-round bonus event to a plurality of players.*”). A POSITA would understand that in order for each round of the bonus event to be provided “substantially simultaneously” to “a plurality of players,” each player must experience each round of the bonus event, including the final round, either live, in real-time, or synchronized pre-recorded content, thus making the final round of the bonus event a “live” event.

232. Since claim 11 of the ’439 Patent requires that the final leg is completed in “a live *or* pre-recorded event,” the limitation is disjunctive, such that DeWaal

alone would satisfy this limitation by disclosing that the bonus event may be a live event that is simultaneously provided to a plurality of players. Accordingly, this limitation is met for the reasons discussed above.

233. Moreover, a POSITA would have understood that the “gaming devices 10” shown in Figs. 1A and 1B of DeWaal are traditional physical casino gaming machines located in a casino, which players “attend” in person to play. *See* DeWaal, ¶¶ [0044], [0052]. Thus, a POSITA would have understood that a player participating in the bonus event game of DeWaal would “attend” the final round (as well as the other rounds of the bonus event).

234. Regarding the limitation that the “at least one final leg is ... attended by the players eligible to win a jackpot, a portion thereof, or a bonus prize,” DeWaal discloses that only players who pick the winning outcome in a given round of the bonus event may advance to a subsequent round whereas players that fail to pick the winning outcome are eliminated from the bonus event. DeWaal ¶ [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, *only eligible players may advance to the subsequent round* of the bonus event.”); *see also* DeWaal ¶ [0131] (“if a player does not make an input associated with the designated selection (i.e., a winning outcome) in an initial round, that player may be deemed ineligible for advancement to a subsequent

round.”). Since the “final leg” correlates to the final round of the bonus event, a POSITA would understand that only players who have selected the winning outcome in all previous rounds and are therefore eligible to win the jackpot, or a portion thereof, would be allowed to attend the final round of the bonus event. Thus, DeWaal discloses that the “final leg” of the bonus event is attended by “players eligible to win a jackpot, a portion thereof, or a bonus prize.”

12. Claim 12: “The method of claim 11, further comprising initiating a buy-back offer, prior to the at least one final leg, to at least one player eligible to win the jackpot, the portion thereof, or the bonus, said buy-back offer being for a portion of an entirety of said jackpot, said portion thereof, or said bonus prize.”

235. This claim depends from claim 11, which further depends from claim 10, and which further depends from claim 1. I therefore incorporate my analysis above as to those claims, and only address the additional limitations added in this claim here.

236. I note that this limitation is similar to those addressed in my opinion above with regard to claim 8 except that this limitation recites a “buy-back” offer rather than a “buy-out” offer. In my opinion, a POSITA would understand that “a buy-*back* offer” is *equivalent* to the buy-out offer as recited in limitations 1[a], 1[f], and 1[g] and claim 8 because this is consistent with the ‘439 Patent specification, which recites “[i]n this implementation, it is contemplated the users devices would also *receive* messages and the *buy-out offers* discussed below from the pool operator

via the *central server system 12*, so that the *individual user* could *participate in* the wagering system and ***buy-back option*** via the user's connected device.”’439 Patent at 5:48-53. See ‘439 Patent at 21:1-7 (“Thus, it is also contemplated that the *central server system 12* could allow the *posting of available buy-back options* so that the public could ***place buy-back*** offers for example through the wagering terminals 14 and the ticket holder could select the buy-back bid of his or her choosing.”). According to these recitations in the ‘439 specification, if the user devices receive “buy-out offers” via a central server system, an individual user at each user device finds itself participating in a “buy-back option”; thus the terms “buy-out offer” and “buy-back option” appear to be used interchangeably in the ‘439 Patent.

237. Confirming that “buy-back offer” is the buy-out offer recited in limitations 1[f] and 1[g] above, a POSITA would also understand that DeWaal teaches “initiating a buy-back offer, prior to the at least one final leg.” As an initial matter, DeWaal discloses initiating a buy-back offer before DeWaal’s bonus event has been completed for the reasons explained above with respect to limitation 1[f] and discloses a number of legs as reasoned above with respect to Claim 2, which are herein incorporated by reference. A POSITA would understand that DeWaal’s bonus event in Figure 7 (see below) includes “at least one final leg” because the bonus event in Figure 7 entails five rounds, for which the fifth round is the “final leg” because it is the last round. See also DeWaal ¶ [0141] (“In this embodiment,

the multi-round bonus event includes *five rounds*. Each round is associated with an award, such as \$10,000 ... *Prior to the second round*, the central controller *offers* each advancing player an *additional award to quit* the bonus event.”) According to Figure 7, buy-out offers are awarded to the player in the first, second, third, and fourth rounds. Thus, DeWaal discloses initiating a buy-out offer prior to the fifth or “final leg” in the bonus event.

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

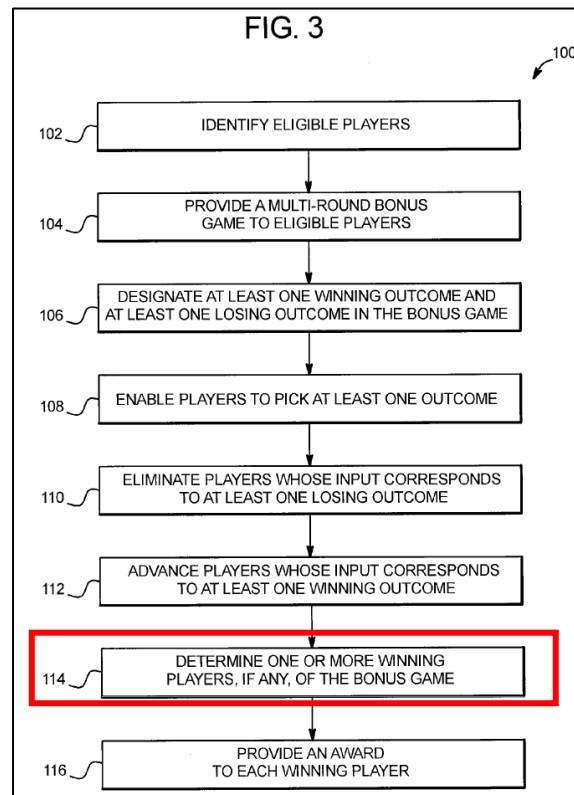
ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7.

238. DeWaal further discloses that, in the final round, the central controller determines which if any of the players won the final round and therefore won the jackpot or a portion thereof. For example, DeWaal discloses that “[i]n the final round, *the central controller determines one or more winning players, if any, of*

the bonus event as indicated by block 114.” 30:46-59. This determination is also illustrated in step 114 of FIG. 3, as shown below.



DeWaal at FIG. 3.

239. DeWaal discloses “said buy-back offer being for a portion of an entirety of said jackpot, said portion thereof, or said bonus prize” because DeWaal recites “[t]he central controller *offers a portion of the award pool* (or *causes a portion of the award pool to be offered*) to each player who picked the designated selection in one of the rounds. If a player accepts the offered portion of the award pool, the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event). If a player rejects the offered

portion of the award, that player risks the offered portion of the award to play a subsequent round of the bonus event.” DeWaal ¶ [0146]; *see also supra* § IX.A.5.

13. Claim 13: “The method of claim 11, wherein the live or pre-recorded event is a reality show that is broadcast over a mass communications medium.”

240. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with Schugar discloses or renders obvious “the method of claim 11” (which in turn depends from claim 10) for the reasons explained above, which are herein incorporated by reference.

241. Schugar discloses this limitation, and the combination with DeWaal renders this claim obvious. First, as to DeWaal, DeWaal discloses that “the bonus or secondary game may be *any type of suitable game*, either similar to or completely different from the base or primary game.” DeWaal ¶ [0079]) For example, DeWaal discloses, “[i]n different embodiments, the *multi-round bonus event includes, but is not limited to*, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or *games that include one or more rounds of game play*.” DeWaal ¶¶ [0108], [0127]. As another example, DeWaal discloses, “[i]n another embodiment, the eligible players are provided with

different types of multi-round bonus events based on player preferences of which type of multi-round bonus event each player wants to play.” DeWaal ¶ [0127].

242. Schugar supplements the teachings of DeWaal by stating that the event wagered on may be “a sporting event (including horse racing, football, etc., simulated by machine or real), a gambling game (e.g., craps, blackjack, etc.), or even a dramatic work (*such as a reality show*).” Schugar ¶ [0109]. A POSITA would have been motivated to combine DeWaal with Schugar such that the bonus event is a reality show because both references teach methods and systems of implementing a wagering game and DeWaal already suggests the possibility that the bonus event wagering game may be *any type of game*. Schugar merely provides a game type (i.e., “reality show”) in the context of a partial buy-out feature and teaches that such an event may be suitable for implementation as a wagering game. The combination would have involved the simple substitution of known elements (i.e., Schugar’s reality show wagering game as the bonus event of DeWaal). Moreover, DeWaal discloses that the bonus event may be conducted “simultaneously” for each eligible user. A POSITA would have understood this type of simultaneous coordination to be conducive to conducting the bonus game with wagering on events in a live or pre-recorded airing of a reality show on national broadcast or cable networks.

243. DeWaal also discloses that its gaming machines can support and play “external video sources” via a “video controller 46.” DeWaal, ¶ [0061]. Thus,

DeWaal contemplates displaying video at a gaming machine or peripheral device, which a POSITA would have understood could accommodate display of a “reality show” or related wagering game.

244. Regarding the limitation that the bonus event is “broadcast over a mass communications medium,” DeWaal discloses that “a plurality of the gaming devices are capable of being connected together through a data network,” and that “the *data network is an internet* or intranet.” DeWaal ¶¶ [0097], [0098]. As explained above with reference to at least limitation 1[b], DeWaal’s “gaming devices” correlate to the wagering input devices configured to implement the multi-outcome wagering event. In addition, a POSITA would understand that the “internet” is a computer network capable of serving as a medium for mass communication between devices connected to the network. Therefore, a POSITA would understand that the bonus event disclosed in DeWaal may be implemented on “a plurality of gaming device” connected together through “a data network,” which is a mass communications medium capable of broadcasting the bonus event to a plurality of eligible players. Therefore, DeWaal discloses that the bonus event may be “broadcast over a mass communications medium,” such as the internet.

14. Claim 14: “The method of claim 13, wherein the mass communications medium comprises at least one of television,

satellite, cable, the Internet, mobile communication device, social media and radio.”

245. In my opinion, DeWaal discloses limitation 14.⁵ A POSITA would understand that DeWaal discloses the “mass communications medium” for the reasons explained above with respect to limitation 13 (which depends from claim 11, and which in turn depends from claim 10), which are herein incorporated by reference. For example, DeWaal discloses that “a plurality of the gaming devices are capable of being connected together through a data network,” and that “the *data network is an internet* or intranet.” DeWaal ¶¶ [0097], [0098]. A POSITA would understand that the “internet” is a computer network capable of serving as a medium for mass communication, such as video streaming and gaming, between devices connected to the network.

⁵ While the intrinsic record of the '439 Patent, including Patent Owner's express disclaimers during prosecution of its child, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting *both* a buy-out *and* a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require *either* X *or* Y).

246. Further, a POSITA would understand that DeWaal's disclosure of "downloading or streaming the game program over a dedicated data network, *internet*, or a telephone line" also corresponds to streaming broadcast content via "at least one of television, satellite, cable, the Internet, mobile communication device, social media and radio." DeWaal ¶ [0100]; DeWaal ¶ [0098] ("the operation of the gaming device can be viewed at the gaming device with at least one *internet* browser"); DeWaal ¶ [0053] ("The display devices may include, without limitation, *a monitor, a television display . . .*"). Therefore, DeWaal discloses that the wagering event may be implemented on "a plurality of gaming devices" connected together through "a data network," which is a mass communications medium capable of broadcasting the wagering event.

15. Claim 15: "The method of claim 1, further comprising awarding at least one consolation jackpot where a consolation scenario is won."

247. DeWaal discloses "a consolation award" in the context of a bonus event game that is awarded when a consolation scenario is won. DeWaal ¶ [0017]. DeWaal's "consolation award" corresponds to a "consolation jackpot" as recited in this claim. Specifically, DeWaal discloses that "the central controller provides a consolation award (or causes the consolation award to be provided) to each player who did not pick the designated selection in one of the rounds." *Id.* DeWaal also discloses that "in one embodiment, the additional award (or a portion of the award)

associated with each round may be a *consolation award* provided to players who do not advance to a subsequent round” of the bonus event. DeWaal ¶ [0145] (emphasis added).

248. The ’439 Patent states that a “consolation scenario” and/or “Consolation Pool(s) [] may be won by those who correctly select *a portion of the correct outcomes* or another consolation scenario.” ’439 Patent at 2:64-3:2 (emphasis added). Indeed, a POSITA would have understood a consolation prize to be granted or offered in exactly this scenario—where a player has selected some, but not all, of the designated selections in a selection game. Moreover, as discussed more fully with regard to claim 25 below, a POSITA would have understood that some winning selection in a consolation leg (i.e., after selection of an incorrect outcome) would have been required in order to achieve the consolation jackpot. DeWaal therefore discloses awarding a consolation jackpot where a consolation scenario is won because it discloses awarding a consolation prize in its bonus game to players that have selected *some* of the designated selections for a bonus game, but “who did not pick the designated selection in one of the rounds.” DeWaal, ¶ [0145].

16. Claim 16: “The method of claim 15, wherein said consolation scenario comprises at least one of winning a predetermined subset of the defined number of legs and selecting a predetermined

number of non-winning legs that each finishes within a predetermined position of a corresponding winning leg.”

249. As explained above with regard to claim 15, a POSITA would understand that DeWaal discloses a “consolation scenario” and awarding a consolation jackpot when the scenario is won. I note that the limitation here is recited in the disjunctive such that the claim may be met by the consolation scenario comprising either “winning a predetermined subset of the defined number of legs” *or* “selecting a predetermined number of non-winning legs”⁶

250. Having established that DeWaal discloses “a defined number of legs” corresponding to the bonus rounds, and regarding “winning a predetermined subset of the defined number of legs” corresponding to the consolation scenario, DeWaal discloses awarding a consolation jackpot in this case because it discloses awarding

⁶ While the intrinsic record of the ’439 Patent, including Patent Owner’s express disclaimers during prosecution of its child, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting *both* a buy-out *and* a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require *either* X *or* Y).

a consolation prize in its bonus game to players that have selected *some* of the designated selections for a bonus game, but “who did not pick the designated selection in one of the rounds.” DeWaal, ¶ [0145]. Specifically, DeWaal discloses that the “consolation award [may be] provided to players *who do not advance to a subsequent round*” of the bonus event, and thus, who made an incorrect selection in the last leg or round of the bonus event. *Id.* Thus, in this example, winning the “predetermined subset of the defined number of legs” includes winning all but the last round in the bonus event of DeWaal. DeWaal therefore discloses the first alternative limitation recited in this claim.

251. Regarding the second alternative limitation of “selecting a predetermined number of non-winning legs that each finishes within a predetermined position of a corresponding winning leg,” DeWaal discloses “a consolation award” in the context of a bonus event game that is awarded when a consolation scenario is won, and a POSITA would have understood that a winning selection in the final consolation leg would have been required in order to win a consolation award. DeWaal ¶ [0017]; *infra* Claim 25. A POSITA would understand that one way to set up a bonus event in DeWaal would be that the consolation scenario is entered after a losing leg of the bonus round, but that a winning outcome selection is required in order to win the consolation award. In this scenario, the corresponding “non-winning leg” is the incorrect selection that enters the

consolation leg, and the “winning leg” is the winning selection to win the bonus award. The predetermined relationship of non-winning to winning legs is therefore disclosed by DeWaal.

17. Claim 17: “The method of claim 1, wherein the one or more wagering input devices is adapted for generating the wager for at least one of the one or more players reflecting one or more predicted outcomes of the multi-outcome wagering event.”

252. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the one or more wagering input devices is adapted for generating the wager for at least one of the one or more players” because DeWaal discloses that “[t]he central controller *receives a signal from gaming machines* in the gaming system *corresponding to an input from each player* in each round.” DeWaal ¶ [0129]. As explained above with reference to my analysis of claim 1 and limitations 1[b] and 1[d], which are incorporated here by reference, a POSITA would understand that DeWaal’s “gaming machines” correlate to “the one or more wagering input devices” and the input from each player into those gaming machines correlates to “the wager for at least one of the one or more players.”

253. DeWaal also discloses that “the processor of the central server is designed to *transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.*” DeWaal ¶ [0084]. Thus, a POSITA would also understand that DeWaal’s

gaming machines generate a signal corresponding to the wager input by the one or more players for transmission/reception by the central gaming server. Therefore, a POSITA would understand that DeWaal's gaming machines (i.e., wagering input devices) are "adapted for generating the wager for the at least one or more players" in response to user input and for transmission to the central server.

254. Furthermore, a POSITA would have understood that DeWaal discloses that the wager generated by the wagering input device "reflect[s] one or more predicted outcomes of the multi-outcome wagering event." Specifically, DeWaal discloses that a player's wager consists of selections of various "outcomes," which are really player-predictions of the designated outcome, for each round of the bonus event. DeWaal ¶ [0129] ("[t]he central controller enables each eligible player to make *an input in association with the plurality of outcomes in each round* [...]"); *see also* DeWaal ¶ [0013] ("each of the eligible players makes selections from a number of available selections (such as from a *plurality of potential outcomes* or selections) in each round."). Thus, a POSITA would understand that the wager generated by the wagering input device reflects the player's "predicted outcomes" of each round of the multi-outcome wagering event.

18. Claim 18: "The method of claim 1, wherein ownership or partial ownership of the wager may be changed from player to

player at any time before or during the course of the multi-outcome wagering event.”

255. In my opinion, a POSITA would understand that Scott discloses this limitation and the combination with DeWaal (and Schugar) renders this claim obvious. I have already addressed the combination of DeWaal, Schugar, and Scott above in my analysis with regard to Claims 6 and 9. Specifically with regard to the limitations of this claim, regarding “ownership or partial ownership of the wager may be changed from player to player,” a POSITA would understand that Scott establishes a marketplace for buying and selling rights to certain wagering opportunities. For example, Scott discloses that “a player may sell his or her . . . hand to another player [rather] than to take the current cash value or to attempt to achieve a winning outcome from the symbols [*i.e.*, playing cards or slot symbols].” Scott at [0099]. Scott also teaches that a player can achieve this by setting a sale price for sale on a multiplayer marketplace, wherein the price may be set by the player or a computer. Scott ¶¶ [0127]-[0129].

Regarding “at any time before or during the course of the multi-outcome wagering event,” Scott discloses “as long as the first player has a non-final set of indicia, an option for the player to sell the indicia may be made available. For example . . . a ‘Sell’ button, that may be engaged or activated to sell the player's non-final set of indicia.” Scott ¶ [0126]. Thus, Scott discloses transferring ownership

or partial ownership “from player to player” at “any time before or during the course” of a game. On the other hand, Scott discloses that at the end of the game, the option to sell one’s position is closed. Specifically, Scott states “if the first player continues to play the wagering game such that a final set of indicia is generated, the option to sell will be disabled.” Scott ¶ [0126]. Thus, Scott teaches that the bidding process ends after a span of time (i.e., the completion of the event). *See* Claim 9. Taken together, a POSITA would understand that Scott teaches ownership of a live stake in DeWaal’s bonus event can be transferred before or during the bonus event and therefore renders this claim obvious.

19. Claim 19: “The method of claim 18, wherein the system controller is further adapted for identifying the ownership status of the wager.”

256. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with one or more of Schugar and Scott discloses and/or renders obvious “the method of claim 18” for the reasons explained above, which are herein incorporated by reference. The central server of DeWaal alone, and, alternatively, the central server of DeWaal as modified by Scott, each disclose or suggest the limitation added by this claim, “wherein the system controller is further adapted for identifying the ownership status of the wager.”

257. With regard to DeWaal, DeWaal discloses that “the gaming network includes a real-time or on-line accounting and gaming information system operably

coupled to the central server or controller,” which “includes a player database for storing player profiles, a *player tracking module* for tracking players and a credit system for providing automated casino transactions.” DeWaal ¶ [0094]. The tracking system operably coupled to the central server or controller “*tracks any players gaming activity at the gaming device*,” including “any suitable information, *such as any amounts wagered, average wager amounts and/or the time these wagers are placed*.” DeWaal ¶¶ [0095], [0096]. Thus, a POSITA would understand that in order to track each player’s gaming activity, including the amount of each wager for a specific player or when each wager was placed, the central controller must necessarily be capable of identifying which player owns each wager placed in order to log the transaction. DeWaal further supports this interpretation by explaining that “[i]n existing player tracking systems, a *player is issued a player identification card* which has an encoded player identification number that uniquely identifies the player. Player tracking on gaming devices such as slot machines, is typically accomplished with a card reader mounted to the gaming device. *When the player is at a gaming device, the player inserts the card into the card reader. The card reader reads the player identification number from the player tracking card and communicates information regarding the player’s subsequent gaming activity through a network to a central computer*.” DeWaal ¶ [0005]. Thus, a POSITA would understand that that the central controller disclosed in DeWaal is “adapted for

identifying the ownership status of the wager” placed on a gaming device at least by linking each wager to a player’s unique player identification number.

258. The combination of Scott with DeWaal (and Schugar) also discloses this limitation because Scott includes similar teachings. For example, Scott discloses, “[i]n yet other embodiments, the multiplayer system may allow the player to leave once the non-final set of indicia have been offered for sale. In such embodiments, the *non-final set of indicia will typically be associated with the player*, such as with the player’s player tracking or other account.” Scott ¶ [0131]. Furthermore, Scott goes into further detail to explain that one player may sell his/her wager (i.e., the non-final set of indicia) to another player in the multiplayer system before the wagering event is complete. Scott ¶ [0126] (“[a]s long as the first player has a non-final set of indicia, an option for the player to sell the indicia may be made available.”); *see also* Scott ¶ [0132] (“[a]t a step 928 the server 120 may distribute the offer price to a pool of potential buyers by transmitting the offer price to one or more second gaming machines 100B of one or more second players.”); *see also* Scott ¶ [0131] (“[t]he player may then use his or her account or ticket to later claim the sale proceeds if/when the non-final set of indicia sells. Sale proceeds may be automatically credited to a player tracking or other account as well.”). By disclosing that the non-final set of indicia (i.e., wager) offered for sale is “associated with the player” such that “[s]ale proceeds may be automatically credited” to the player once

the sale is complete, a POSITA would understand that the system controller in Scott must necessarily track/identify “the ownership status” of each wager. Scott’s teachings of tracking player transactions reinforce DeWaal’s disclosures to do the same and therefore would have further motivated a POSITA to implement the combined system as claimed to identify the ownership status of a wager.

20. Claim 20: “The method of claim 1, wherein the wager further comprises a list that is at least one of printed on a ticket, printed on a voucher, and displayed via the one or more wagering input devices.”

259. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the wager further comprises a list that is at least one of printed on a ticket, printed on a voucher, and displayed via the one or more wagering input devices.” Since claim 20 of the ’439 Patent requires “*at least one of* ... printed on a ticket, printed on a voucher, and displayed via the one or more wagering input devices,” the limitation is disjunctive, such that a wager that is any one of “printed on a ticket,” “printed on a voucher,” *or* “displayed via the one or more wagering input devices” would satisfy the limitation.⁷

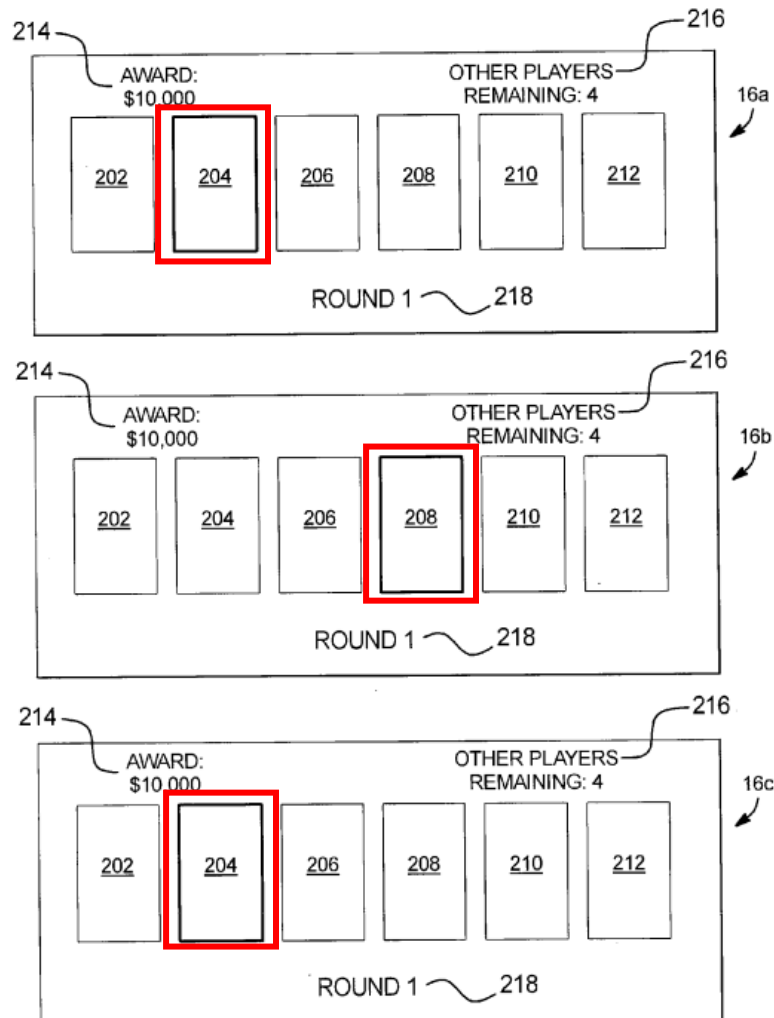
⁷ While the intrinsic record of the ’439 Patent, including Patent Owner’s express disclaimers during prosecution of its child, supports interpreting limitations directed

260. DeWaal at least discloses that the wager is “displayed via the one or more wagering input devices.” For example, DeWaal discloses that “FIG. 11A illustrates the display devices 16 *a*, 16 *b* and 16 *c* of respective gaming machines substantially simultaneously displaying the selections 202, 204, 206, 208, 210 and 212 for a first round of the bonus event. The central controller enables each player to select at least one of the selections via any suitable input device of the gaming machine, such as a touch screen.” DeWaal ¶ [0168]. DeWaal goes on to explain that not only does the display devices of the gaming machines display the selections available in each round of the bonus event, but also that “the ***display devices*** 16 *a*, 16 *b* and 16 *c* ***display the respective player picks of the selections*** 202, 204, 206, 208, 210 and 212 for a first round of the bonus event.” DeWaal ¶ [0171]. As shown in the red boxes in FIG. 11B, reproduced below, the “respective player picks of the selections” are bolded on display devices of the gaming machines. DeWaal ¶ [0171]

to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting ***both*** a buy-out ***and*** a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require ***either*** X ***or*** Y).

(“Player A picked the selection 204 as indicated by the display device 16 *a*. Player B picked the selection 208 as indicated by the display device 16 *b*. Player C picked the selection 204 as indicated by the display device 16 *c*.”).

FIG. 11B



DeWaal at FIG. 11B. This process of causing display of the player picked outcome on the display of the gaming machine is repeated for each round of the bonus event. DeWaal at FIG. 11E, ¶ [0178] (“In FIG. 11E, the display devices 16a, 16b and 16c

display the respective player picks of the selections 202, 204, 206, 208, 210 and 212 for the second round of the bonus event.”).

261. As explained in detail above with respect to at least claim 1, a POSITA would have understood that a player’s selections in each round of the bonus event, as disclosed in DeWaal, is equivalent to the player’s “wager” in the wagering event, as recited in the claim limitations of the ’439 Patent, because both “selections” and “wagers” are inputs by the player that determine whether the player may proceed to the next round, or “leg,” of the bonus event, or “wagering event.” This interpretation is further supported by DeWaal ¶ [0171], which explains that “each *player picked one of the selections* 202, 204, 206, 208, 210 and 212, such as through input devices associated with gaming machines in the gaming system, *in an attempt to advance to a second round.*” Thus, a POSITA would understand that DeWaal discloses at least that “the wager” (i.e., player selections) is “displayed via the one or more wagering input devices” (i.e., the display devices of the gaming machines).

21. Claim 21: “The method of claim 1, wherein the one or more wagering devices comprises at least one of a wagering terminal, a wagering workstation, a personal computer, a smart phone, a tablet computing device, a gaming machine, a slot machine, and a lottery machine.”

262. In my opinion, DeWaal discloses limitation 21 because the ’439 Patent admits that the types of “wagering devices” or gaming machines disclosed in

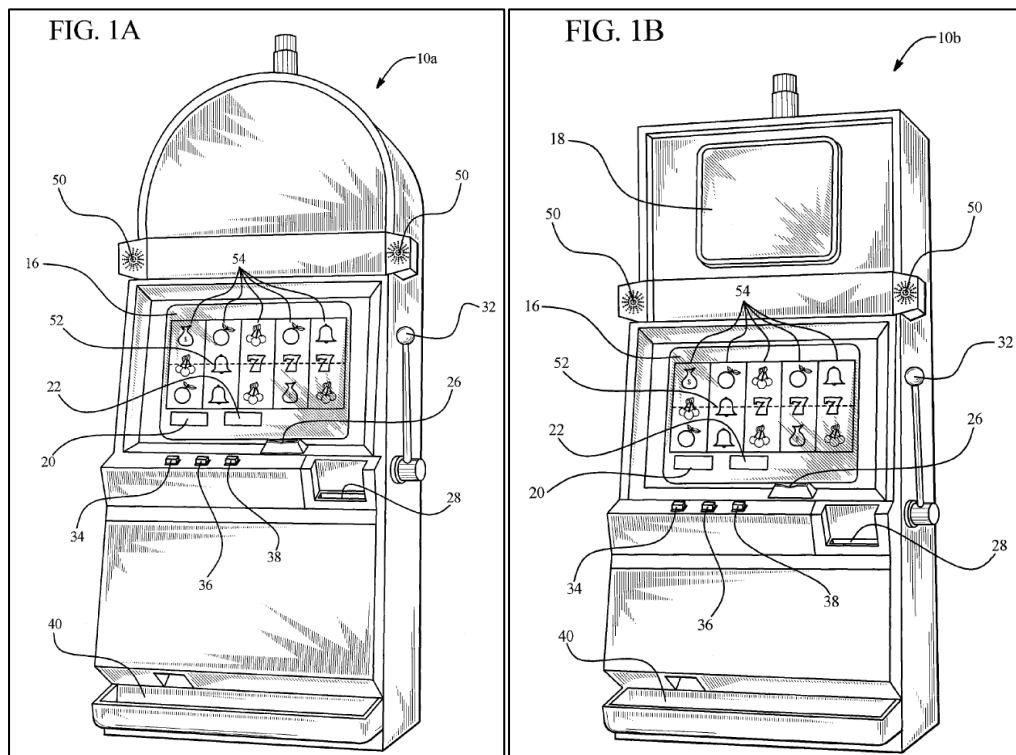
DeWaal are suitable for implementing the disclosure of the '439 Patent. *See* '439 Patent at 22:39-55.

263. A POSITA would understand that DeWaal's gaming machines or gaming devices correspond to "wagering devices" because they are devices through which a user submits an amount of currency to wager and selects game indicia or elements on which the wager is placed as discussed above with respect to limitation 1[b] (analysis incorporated herein by reference).

264. In addition and more specifically, DeWaal discloses "one or more wagering devices comprises at least one of a wagering terminal, a wagering workstation, a personal computer, a smart phone, a tablet computing device, a gaming machine, a slot machine, and a lottery machine."⁸ For example, DeWaal

⁸ While the intrinsic record of the '439 Patent, including Patent Owner's express disclaimers during prosecution of its child application, supports interpreting limitations directed to presenting "at least one of a buy-out offer and a partial buy-out offer" in the conjunctive (i.e., to require presenting ***both*** a buy-out ***and*** a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require ***either*** X ***or*** Y).

discloses that its system and method “may be implemented in various configurations for *gaming machines or gaming devices*.” DeWaal ¶ [0042]. The various configurations include “dedicated gaming machine or gaming device” and a “changeable gaming machine or gaming device,” such as those depicted in FIGS. 1A and 1B, and/or “*a desktop computer, a laptop personal computer*, a personal digital assistant (PDA), portable computing device, or *other computerized platform* to implement the present disclosure.” DeWaal ¶ [0042], [0048]; *see also* DeWaal ¶ [0048] (“In one embodiment, the gaming machine may be a hand held device, *a mobile device* or any other suitable wireless device that enables a player to play any suitable game at a variety of different locations.”). Two exemplary embodiments of DeWaal’s gaming devices are shown below from FIGS. 1A and 1B:



DeWaal at FIGS 1A and 1B. As shown in FIGS. 1A and 1B, the gaming device “may be a *slot game* with one or more paylines.” DeWaal ¶ [0065]. Further, DeWaal discloses that the bonus event can include “reel/*slot games* . . . *lottery games*” which corresponds to the gaming device being “a slot machine” or “a lottery machine.” DeWaal ¶ [0108].

22. Claim 22: “The method of claim 1, wherein the multi-outcome wagering event comprises a pool or is progressive, wherein said pool is at least one of fixed, variable and guaranteed.”

265. As an initial matter, I note that a POSITA would have understood that a “pool” generally refers to a method of gambling in which money bet on the result of a particular event by a number of people is awarded to one or more winners

according to conditions. In addition, a POSITA would have generally understood a “progressive” game to be a game in which the jackpot or award increases each time the game is played but the jackpot is not won.

266. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the multi-outcome wagering event comprises a pool or is progressive” because DeWaal discloses an award “pool” for each bonus event. DeWaal ¶ [0146] (“[i]n one embodiment, the central controller is operable to maintain at least one *award pool for each bonus event*. The central controller offers a portion of the award pool (or causes a portion of the award pool to be offered) to each player who picked the designated selection in one of the rounds.”).

267. DeWaal also discloses that the bonus event may be implemented with a “progressive award” where the payout for advancing players increases with each round, where the game is played, but not won (i.e., where players do not advance).

In one embodiment, the additional awards accumulate as the players advance through each round of the bonus event. For example, as illustrated, the total accumulated award for the second round (e.g., S75) equals the amount won by each advancing player in the first and second rounds (e.g., S25 and S50, respectively). *In this embodiment, if a player chooses to continue the bonus event and does not advance in a subsequent round, that player loses or forfeits any additional awards*

accumulated in the bonus event. The total accumulated award for each round is offered to each advancing player along with the option to quit the bonus event. In one embodiment, as illustrated, the total accumulated award offered to the players increases with each round. It should be appreciated that the award values associated with each round may be set to any suitable values by the implementer of the gaming system. In one embodiment, the awards associated with each round include bonus awards or *progressive awards*.

DeWaal ¶ [0144]. Thus, a POSITA would understand that the bonus event disclosed in DeWaal may be “progressive” in this regard.

268. DeWaal also discloses an embodiment of its bonus event in which “*if no players advance to a final round*, the bonus event ends and the *award is provided in a subsequent bonus event* [T]he award may grow to a relatively large amount because the *award can be carried over to one or more subsequent bonus events* and continually funded (e.g., by player's wagers). This provides increased excitement and enjoyment for the players.” DeWaal ¶ [0023]. Here, DeWaal discloses a progressive-style bonus game where the jackpot is carried over to the next bonus event game where the jackpot increases each time the game is played but not won.

269. In my opinion, a POSITA would have understood that DeWaal also discloses “wherein said pool is at least one of fixed, variable and guaranteed.”⁹ For example, DeWaal explains that each player eligible for the bonus event makes a wager that contributes to the pool award, and that the number of eligible players making wagers in the bonus event is determined by a triggering event and is not predetermined. DeWaal ¶ [0150] (“total award and/or one or more additional awards may be funded through player wagers.”); ¶ [0109] (“[u]pon an occurrence of a suitable triggering event, the central controller of the gaming system identifies at least one player and preferably a plurality of players who are eligible to play the bonus event.”). Thus, a POSITA would understand that the pool of the bonus event is variable because the number of players eligible to make a wager in the bonus event

⁹ While the intrinsic record of the ’439 Patent, including Patent Owner’s express disclaimers during prosecution of its child application, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting **both** a buy-out **and** a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require **either** X **or** Y).

is not predetermined. As another example, explained above, DeWaal discloses that the bonus event employing a “pool of awards or other game outcomes ... *provides players with all of the available awards or other game outcomes* over the course of the play cycle and *guarantees the amount of actual wins and losses.*” DeWaal ¶ [0050]; *see also* DeWaal ¶ [0148] (“[i]n one embodiment, each advancing player is guaranteed a portion of the award pool for each round, wherein the guaranteed portion of the award pool increases in each round.”). Thus, a POSITA would understand that the pool of the bonus event is also guaranteed because, while the number of players participating in the bonus event may be variable, each winning player is *guaranteed* his/her portion of the award pool after each round.

23. Claim 23: “The method of claim 1, wherein where there are no winners of at least one of the one or more jackpots, said at least one jackpot is rolled into another multi-outcome wagering event or at least partially awarded to an operator of the multi-outcome wagering event.”

270. Since the limitations of claim 23 require “said at least one jackpot is rolled into another multi-outcome wagering event *or* at least partially awarded to an operator of the multi-outcome wagering event,” the limitation is disjunctive, such that a jackpot that is any one of “rolled into another multi-outcome wagering event” *or* “partially awarded to an operator of the multi-outcome wagering event” would satisfy the limitation.

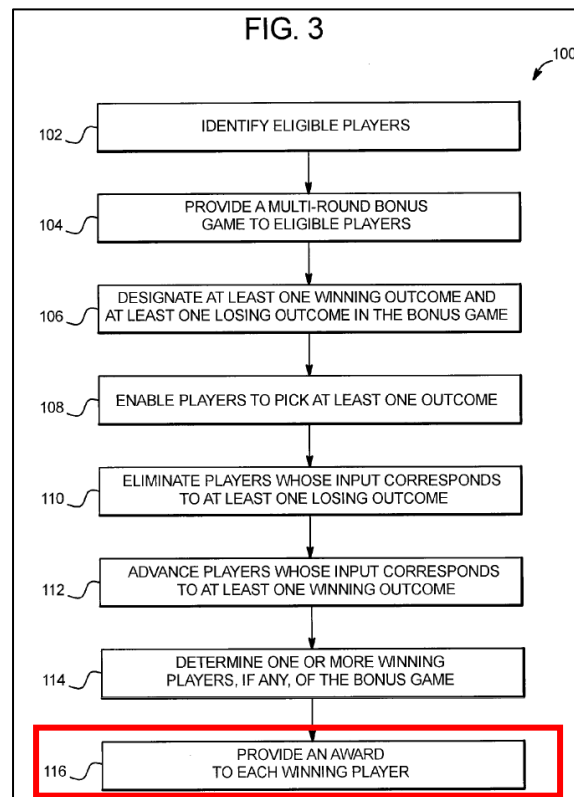
271. In my opinion, a POSITA would have understood that DeWaal discloses at least “wherein where there are no winners of at least one of the one or more jackpots, said at least one jackpot is rolled into another multi-outcome wagering event.” DeWaal discloses an embodiment of its bonus event in which “***if no players advance to a final round***, the bonus event ends and the ***award is provided in a subsequent bonus event***. In one such embodiment, the subsequent bonus event is provided at a different frequency and/or at different odds than the initial bonus event. In one instance, the subsequent bonus event occurs more frequently and provides players with a higher likelihood of winning the award, which provides increased excitement and enjoyment for players. Additionally, the award may grow to a relatively large amount because the ***award can be carried over to one or more subsequent bonus events*** and continually funded (e.g., by player's wagers). This provides increased excitement and enjoyment for the players.” DeWaal ¶ [0023].

272. Moreover, as explained in detail above with reference to at least claim 1, a POSITA would understand that the bonus event, as well as any subsequent bonus events, disclosed in DeWaal correlates to the multi-outcome wagering event recited in the limitation of claim 23. In DeWaal, the bonus event is a “multi-round” bonus event that allows eligible players to advance through each round until reaching the “final round.” DeWaal ¶ [0132] (“[t]his process continues for a designated number of rounds until a final round. In the final round, the central controller determines one

or more winning players, if any, of the bonus event as indicated by block 114.”). Thus, a POSITA would understand that “no players advance[ing] to a final round” is equivalent to “no winners of at least one of the one or more jackpots” because only players that have a possibility of winning the jackpot may advance to the final round. In the scenario where “no players advance to a final round,” DeWaal explicitly discloses that “the award,” correlating to the “one or more jackpots,” may be “carried over to one or more subsequent bonus events,” correlating to “another multi-outcome wagering event.” Thus, a POSITA would understand that DeWaal discloses this limitation.

24. Claim 24: “The method of claim 1, wherein at least one of the one or more jackpots comprises a monetary award provided to at least one winning player in the form of at least one of currency, tokens and credit.”

273. In my opinion, a POSITA would have understood that DeWaal discloses that “wherein at least one of the one or more jackpots ... [is] provided to at least one winning player” because DeWaal discloses providing the award for the bonus game, such as the jackpot, to any winning players. For example, DeWaal states that “the central controller is operable to provide an award to each winning player as indicated by block 116.” DeWaal ¶ [0133]. This step of providing the award to the players that have won the jackpot (or a portion thereof) is illustrated in FIG. 3 of DeWaal, as shown below.



DeWaal at FIG. 3.

274. Further, regarding the limitation “wherein at least one of the one or more jackpots comprises a monetary award ... in the form of at least one of currency, tokens and credit,”¹⁰ DeWaal discloses an example of displaying a message alert to

¹⁰ While the intrinsic record of the ’439 Patent, including Patent Owner’s express disclaimers during prosecution of its child application, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting *both* a buy-out *and* a partial

a player that has won an award of \$10,000. DeWaal ¶ [0169]. In this example, where the jackpot is \$10,000, a POSITA would understand such an award to be “currency,” and specifically U.S. Dollars currency. *See* DeWaal ¶ [0169] (“As illustrated, the amount of the award is \$10,000, which is indicated by an award display 214.”).

25. Claim 25

- a. 25[a]-[b] – *“The method of claim 1, wherein the multi-outcome wagering event comprises at least one of a bonus leg and a consolation leg, wherein designated players who have won a defined number of legs qualify for the bonus leg and designated players who have lost a defined number of legs qualify for the consolation leg, and”*

275. As an initial matter, I note that this limitation is recited in the disjunctive and may therefore be met by a showing in the prior art of just “one of” a bonus leg or a consolation leg.¹¹ Nevertheless, DeWaal discloses a bonus leg and renders obvious providing both a bonus **and** consolation leg.

buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require **either** X **or** Y).

¹¹ While the intrinsic record of the '439 Patent, including Patent Owner's express disclaimers during prosecution of its child application, supports interpreting

276. As discussed above, DeWaal discloses a multi-round bonus game that has a “plurality of outcomes in each round,” where “players must pick a designated selection (i.e., a winning outcome) in each round to win all or a share of the award,” and players that pick the winning outcome in a round advance to a subsequent round. DeWaal ¶ [0128]. Thus, DeWaal discloses that a player can win “a defined number of legs [to] qualify for the bonus leg” (i.e., any subsequent round after a winning selection) in the bonus event. More specifically, a POSITA would understand that each subsequent round of DeWaal’s bonus event is a “bonus leg.” By winning each consecutive round of the bonus event, the player qualifies for the next “leg” of the bonus event. This is all that is recited by the claim, which requires that “players who have won a defined number of legs qualify for the bonus leg.”

b. 25[c] – “wherein correctly predicting an outcome of the bonus leg qualifies at least one designated player for at least a portion of a bonus prize and correctly predicting an outcome

limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting **both** a buy-out **and** a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require **either** X **or** Y).

of the consolation leg qualifies at least one designated player for at least a portion of a consolation prize.”

277. As discussed above, the bonus leg and consolation leg of limitations 25[a]-[b] are recited in the disjunctive such that limitation 25[c] may also be met by a showing of just one of the bonus leg or consolation leg in the prior art. As explained above, a POSITA would understand that DeWaal discloses a bonus leg (based on a correct prediction) and a consolation leg (based on an incorrect prediction in at least one round). A POSITA would also understand that typically a *correct* prediction is required in order to win a prize, which is a concept that is consistent with DeWaal’s disclosure.

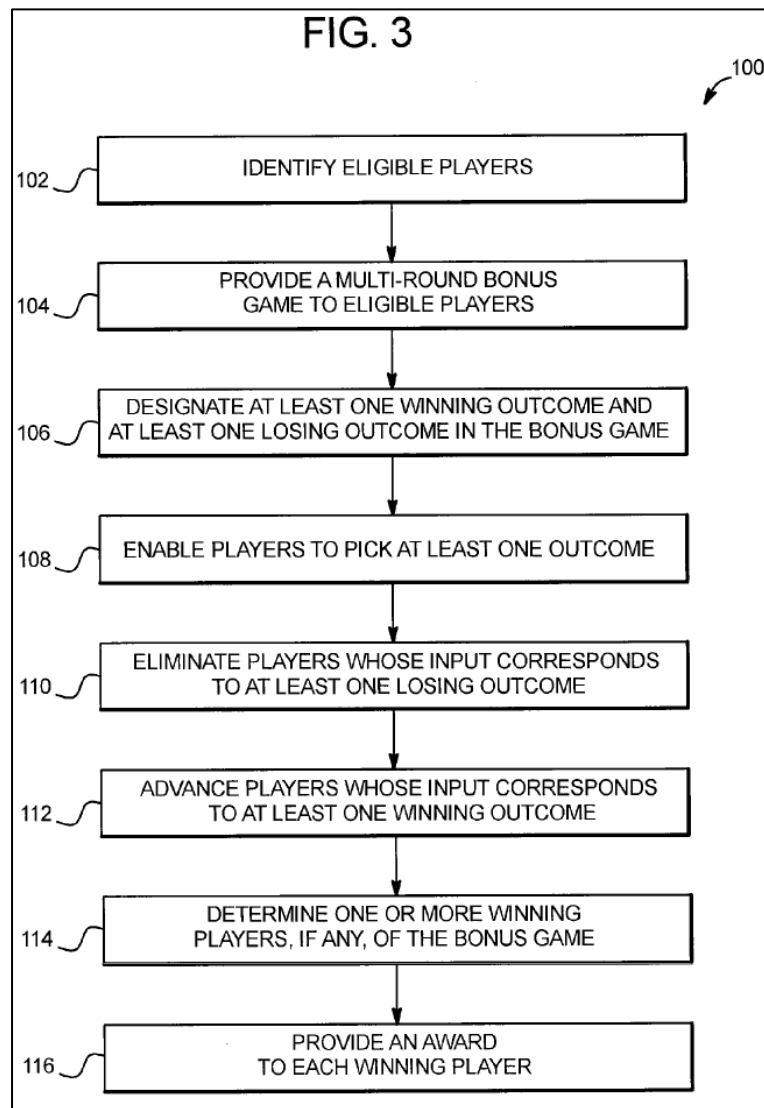
278. DeWaal discloses that “correctly predicting an outcome of the bonus leg qualifies” the player for “at least a portion of a bonus prize” because DeWaal discloses a multi-round bonus game that has a “plurality of outcomes *in each round*,” where “players must pick a designated selection (i.e., a winning outcome) *in each round* to win all or a share of the award.” DeWaal ¶ [0128]. Thus, DeWaal satisfies this limitation and discloses this claim through disclosure of a bonus leg and an associated prize.

26. Claim 26

- a. 26[a] – “A wagering system including one or more wagering input devices for allowing the placement of a wager on a multi-outcome wagering event, the wagering system comprising:”

279. Limitation 26[a] is the preamble of claim 26 of the '439 Patent. In my opinion, and to the extent the preamble is limiting, DeWaal discloses this limitation for the same reasons discussed above with regard to limitation 1[b].

280. To reiterate, a POSITA would understand that DeWaal discloses “a wagering system ... for allowing the placement of a wager” because DeWaal discloses a system for providing or conducting a bonus event. For example, DeWaal describes “a gaming *system* and method” for “provid[ing] a multi-round *bonus event* to a plurality of players.” DeWaal ¶ [0108]. The system for conducting DeWaal’s bonus event is disclosed, for example, in FIG. 3, depicted below.



DeWaal at FIG. 3; *see also* DeWaal ¶ [0033] (“FIG. 3 is a flowchart of one embodiment of the ***gaming system*** disclosed herein illustrating an opportunity for one or more players to win an award in a bonus event.”), ¶ [0122] (“Referring now to FIG. 3, a flowchart of an example process 100 for substantially simultaneously ***providing a bonus event*** to a plurality of eligible players is illustrated.”). Exemplary embodiments further illustrating DeWaal’s wagering system are shown, for

example, in FIG. 11A-F. *See* DeWaal at FIGS. 11A-F, ¶ [0041] (“FIGS. 11A, 11B, 11C, 11D, 11E and 11F are front views of a display device of a plurality of gaming machines in the ***gaming system*** disclosed herein illustrating one embodiment of a multi-round bonus event, wherein the display devices substantially simultaneously display the bonus event to a plurality of players who compete for an award.”). In my opinion, a POSITA would understand that DeWaal’s bonus event is a “wagering event” because it is subject to a separate wager. For example, DeWaal discloses that “the central controller determines which players are eligible for the bonus event in association with a ***separate wager***.” DeWaal ¶ [0118]. DeWaal further explains that that “separate wager” comprises a “***side-wager or entry fee that enables a player to participate in the bonus event***.” DeWaal ¶ [0118]. Even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is reserved to fund the progressive/bonus jackpots. *See, e.g.*, DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and was disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player

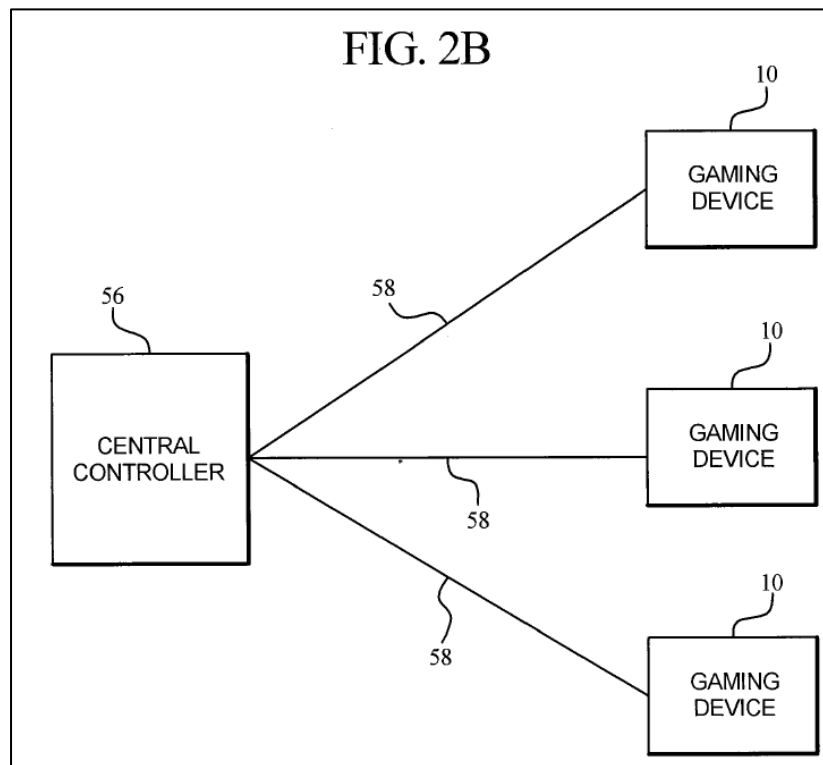
places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus event because a wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game. Moreover, in connection with the bonus event wager, DeWaal discloses that players of the bonus event also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). Because a user submits a separate wager to be eligible to participate in the bonus event, a POSITA would understand that DeWaal’s bonus event is a “wagering event.”

281. In my opinion, a POSITA would understand that DeWaal’s bonus event is also a “multi-outcome” event. For example, DeWaal discloses that “the bonus event includes a selection game and *the plurality of outcomes* include player selectable elements or selections.” DeWaal ¶ [0128]. Further, in addition to DeWaal’s description of a “plurality of outcomes in each round” referenced in the preceding paragraph, DeWaal further discloses that “the bonus event is a multi-round selection game that includes a plurality of rounds and *a number of available outcomes in each round.*” DeWaal ¶ [0119]; *see also* DeWaal ¶ [0128] (“The multi-round bonus event includes a plurality of outcomes in each round. Each round may

include the same number of or different numbers of outcomes. At least one of the outcomes is designated as a winning outcome and at least one of the outcomes is designated as a losing outcome as indicated in block 106. In one embodiment, each round includes one winning outcome and a plurality of losing outcomes.”). The potential outcomes of each round of DeWaal’s multi-round bonus game include designated or “winning” outcomes and non-designated or “losing” outcomes. DeWaal ¶ [0012]. The presence of at least two outcomes, *e.g.*, winning and losing, for each round of the multi-round bonus game makes the bonus game “multi-outcome.” In one example, “the multi-round selection games includes four rounds and ***ten outcomes per round.***” DeWaal ¶ [0119].

b. 26[b] – “a system controller configured to communicate with the one or more wagering input devices, said system controller configured to:”

282. This limitation is disclosed by DeWaal for the same reasons discussed above for limitation 1[b]. Again, to briefly reiterate my opinion above, a POSITA would understand that DeWaal’s “system controller” is “configured to communicate with the one or more wagering input devices” as discussed above with respect to limitation 1[b] (analysis incorporated herein by reference). For example, FIG. 2B, shown below, “is a schematic block diagram illustrating ***a plurality of gaming terminals in communication with a central controller.***” DeWaal ¶ [0032].



DeWaal at FIG. 2B. Explaining FIG. 2B, DeWaal discloses that *“one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56 through a data network or remote communication link 58.”* DeWaal ¶ [0084]. Providing further details regarding the communication between the gaming devices and the system controller, DeWaal discloses that:

In these embodiments, *the processor of each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server.* The gaming device processor is operable to

execute such communicated events, messages or commands in conjunction with the operation of the gaming device. Moreover, the processor of *the central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices*. The central server processor is operable to execute such communicated events, messages or commands in conjunction with the operation of the central server.

DeWaal ¶ [0084]. A POSITA would understand that the communications between DeWaal's disclosure of the gaming devices and the controller transmitting and receiving events, messages, commands, or other signals corresponds to the gaming devices being in communication with a system controller.

283. Moreover, DeWaal's central controller is a "system" controller because the '439 Patent admits that the term "'system controller' should be broadly construed to comprise any hardware device or devices that includes at least one central processing unit (CPU) or other processing device and associated memory" and DeWaal's central controller also "includes at least one processor and a memory or storage device." DeWaal ¶ [0099]; '439 Patent at 4:4-10. Further, DeWaal's central controller "remotely controls any games (or other suitable interfaces) and the gaming device is utilized to display such games (or suitable interfaces) and receive one or

more inputs or commands from a player, such as in a “thin client” configuration. DeWaal ¶ [0123]; DeWaal ¶ [0088] (“Central production or control can assist a gaming establishment or other entity in maintaining appropriate records, controlling gaming, reducing and preventing cheating or electronic or other errors, reducing or eliminating win-loss volatility and the like.”).

- c. 26[c] – “initiate the multi-outcome wagering event for one or more players, said multi-outcome wagering event comprised of a defined number of legs, wherein one or more jackpots, or a portion thereof, is awarded at least where a particular number of the defined number of legs are completed;”*

284. In my opinion, DeWaal discloses limitation 26[c] for the same reasons discussed in my opinion above with regard to limitation 1[c]. A POSITA would understand that DeWaal’s bonus event is “the multi-outcome wagering event” for the reasons explained above with respect to limitation 26[a], which are herein incorporated by reference. In addition, DeWaal’s bonus event is “for one or more players.” For example, DeWaal discloses that its gaming system and method “substantially simultaneously provides a multi-round bonus event *to a plurality of players.*” DeWaal ¶ [0108]. DeWaal further discloses that the system “preferably” identifies a “plurality of players who are eligible to play the bonus event.” DeWaal ¶ [0109]; *see also* DeWaal ¶ [0124]. Moreover, as discussed above, “the process 100” for providing the bonus game causes “the system gaming machine to provide a multi-round bonus event to *a plurality of players.*” DeWaal ¶ [0124].

285. Furthermore, DeWaal's bonus event is clearly "comprised of a defined number of legs." For example, DeWaal discloses that the bonus event is "multi-round" and that each of the multiple rounds are a component of the bonus event. DeWaal ¶ [0119] ("In one embodiment, the bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round. In one embodiment, the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event."). This mapping of DeWaal's multiple rounds to the claimed "legs" is consistent with the '439 Patent specification, which states that "[t]he term 'leg as used herein should be broadly construed and may comprise any desired number of individual components of any type of event, such as any type of game or sporting event." '439 Patent at 4:13-16; *see also* '439 Patent at 1:52-62 ("The present disclosure is directed ... a unique betting product where players make selections in a number of different legs which, as defined below, can include ***any variety of different discrete events*** ... partial events ... components of events ... multiple independent events ... and/or compilations of events.").

286. Further overlapping with the '439 Patent's definition of "leg," DeWaal discloses that "[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection

games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or ***games that include one or more rounds of game play.***” DeWaal ¶ [0108]. Many of these exemplary games are the same as those which the ’439 Patent admits have multiple “legs.” *See e.g.*, ’439 Patent at 4:29-34 (“a leg may comprise any desired number of individual components of any game or a game in its entirety, virtual and real, such as for instance, and without limitation, keno, jacks, poker, blackjack ... slot machines, lotteries.”).

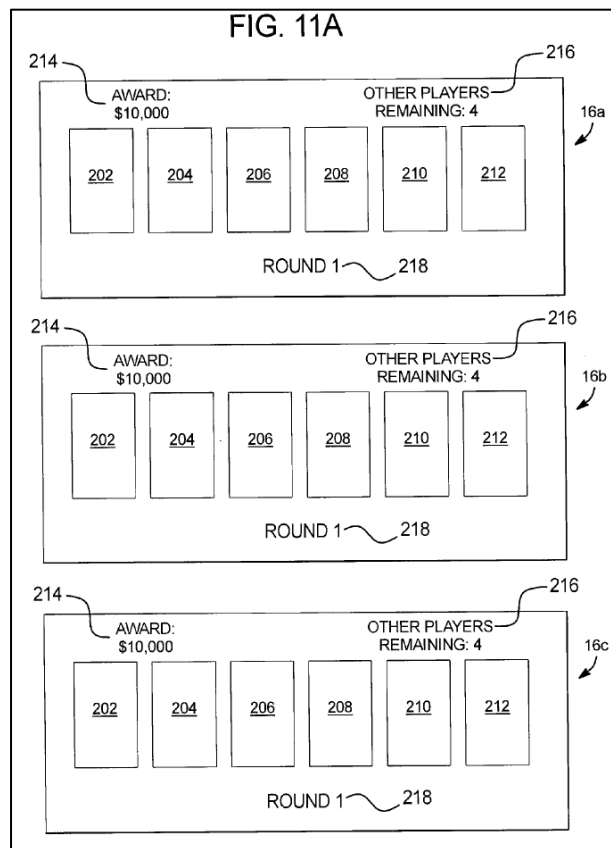
287. Regarding the number of legs being a “defined number of legs,” DeWaal discloses that “the number of rounds ... may be *set* by the game implementer to any suitable number.” DeWaal ¶ [0182]; DeWaal ¶ [0128] (“The number of outcomes, the number of rounds, and/or the number of winning or designated outcomes are set to any suitable manner by the implementer of the gaming system.”). By disclosing that the bonus event includes a “set” number of “rounds,” a POSITA would understand that DeWaal’s multi-round bonus event comprises a “defined number of legs,” where each round corresponds to a “leg.” Similarly, DeWaal discloses that the “bonus event ends after a ***designated number of rounds*** including a final round.” DeWaal ¶ [0011].

288. DeWaal also discloses the central controller initiates the bonus event. For example, DeWaal discloses that the “central controller ... ***cause[s]*** the system

gaming machine to provide a multi-round bonus event to a plurality of players.” DeWaal ¶ [0124]. Similarly, with respect to the process 100 shown in FIG. 3 that is executed and performed by the system controller, DeWaal again explains that “[t]he central controller *provides* the multi-round bonus event (or *causes* the gaming machines to provide the multi-round bonus event) to those eligible players as indicated by block 104.” DeWaal ¶ [0126]; *see also* DeWaal ¶ [0123] (“the process 100 is embodied in computerized instructions executed by a central controller or remote host.”).

289. Further confirming that DeWaal’s central controller “initiates” the multi-round bonus game for a plurality of players, DeWaal discloses that “the central controller identifies ... one or more eligible players at gaming machines in the gaming system” and that “[t]he central controller causes a display device of a plurality of gaming machines to display the bonus event to those eligible players,” which enables the players “to substantially simultaneously attempt to win the award in the bonus event.” DeWaal ¶ [0109]. The central controller provides the game only “once a suitable triggering event occurs,” thereby confirming that it is the central server that “initiates” the bonus event because the bonus event is not provided unless and until the central server determines such a suitable triggering event has occurred. DeWaal ¶ [0119]; *see also* DeWaal ¶ [0139] (equating “initiated” and “triggered” with respect to the bonus event). Once the central controller initiates or

triggers the bonus event and provides it to the gaming devices of eligible players, the server displays the bonus game on the eligible gaming devices (or causes it to be displayed), as shown in FIGS 11A through 11F, which “are front views of a display device of a plurality of gaming machines in the gaming system ... showing the multi-round selection game.” DeWaal ¶ [0163]. FIG. 11A is shown below as an example.



DeWaal at FIG. 11A.

290. A POSITA would understand that DeWaal discloses that, as part of the bonus event “one or more jackpots, or a portion thereof, is awarded at least where a particular number of the defined number of legs are completed.” For example,

DeWaal discloses that players in the bonus event may compete for “a designated award, such as *a top-level award* or an award or relatively high value.” DeWaal ¶ [0187]. Such a top-level award may be a “*pool*” or a “*progressive jackpot*.” DeWaal ¶ [0102]. Such pools/jackpots may be funded by the separate “wagers placed to participate in the bonus event,” and therefore, a POSITA would understand them to be a “jackpot.” DeWaal ¶ [0118]. In addition, regarding the awarding of the jackpot or award pool, DeWaal discloses that “the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event.” DeWaal ¶ [0119]. That is, corresponding to awarding the jackpot pool “at least where a particular number of the defined number of legs” or rounds “are completed,” DeWaal discloses that the jackpot is “*unavailable under a predetermined criteria is met*,” and the primary criteria is “*play of the bonus event, such as advancement to a certain round in the bonus event*.” DeWaal ¶ [0187]. As DeWaal discloses, the certain round may be the “*final round*,” wherein “if one of the players makes an input that is associated with the winning outcome, the central controller provides that player (or causes the player to be provided) with the award (or portion of the award if a plurality of the remaining players make inputs associated with the winning outcome.” DeWaal ¶ [0012].

- d. 26[d] – “*receive the wager via the one or more wagering input devices in response to at least one of the one or more players desiring to participate in the multi-outcome wagering event,*

wherein the wager coincides with each of the defined number of legs;”

291. DeWaal discloses limitation 26[d] for the same reasons discussed in my opinion above with regard to limitation 1[d]. Specifically, a POSITA would have understood that players use the gaming devices of DeWaal to insert currency and one or more game selections for a wager when the player desires to participate in the bonus event, and the central controller receives signals from the gaming machines corresponding to such input by the players.

292. In my opinion, a POSITA would understand that DeWaal’s central controller “receive[s] the wager” because DeWaal discloses that its wagering machines include “payment acceptor,” such as a coin slot 26 and a payment, note or bill acceptor 28, where the player inserts money, coins or tokens” DeWaal ¶ [0057]. DeWaal also discloses that its central controller tracks the amounts wagered and receives signals representing the input selections upon which the user is wagering in the bonus event. Specifically, DeWaal discloses that “that the gaming network includes a real-time or on-line accounting and gaming information system operably coupled to the central server or controller,” which “includes a player database for storing player profiles, a player tracking module for tracking players and a credit system for providing automated casino transactions.” DeWaal ¶ [0094]. The tracking system operably coupled to the central server or controller “**tracks any**

players gaming activity at the gaming device,” including “any suitable information, *such as any amounts wagered, average wager amounts and/or the time these wagers are placed.”* DeWaal ¶¶ [0095], [0096]. Further, DeWaal states that the “central controller determines which players are eligible for the bonus event *in association with a separate wager*” submitted for the bonus event, which is a “side wager or entry fee that enables a player to participate in the bonus event,” and that “by this tracking,” referring to the tracking of the wager discussed above, “the central controller is operable to determine which players of the gaming machines in the gaming system are eligible for the bonus event.” DeWaal ¶¶ [0117], [0118]. Thus, as DeWaal discloses, the amount wagered is entered at the gaming device and sent to and received by the tracking module of the central controller so that the central controller can perform its functions, including but not limited to, its tracking and bonus game eligibility functions. In other words, as a POSITA would understand, the actions taken by the central controller based on the wager confirm that the central controller receives the wager.

293. Further, regarding the player’s selections of various outcomes for the bonus event, as constituting part of the player’s wager on the bonus event, DeWaal discloses that players of the bonus event also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections

from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). Like the wagered amount, “[t]he *central controller receives a signal from gaming machines in the gaming system corresponding to an input from each player in each round.*” DeWaal ¶ [0129].

294. A POSITA would understand that, because such signals representing the amount wagered and the wagered selections are picked by the player “*via any suitable input device of the gaming machine*, such as a touch screen” and “*receive[d] ... from gaming machines in the gaming system*,” they are received by the central controller “via the one or more wagering input devices” as claimed. DeWaal ¶ [0129]. To be sure that the wager is received by the central controller “via the one or more wagering input devices,” DeWaal discloses that “the gaming device includes at least one payment acceptor 24” and that “one input device” of the gaming machine “is a touchscreen 42 coupled with a touch-screen controller 44” and that “[a] player can make decisions and input signals into the gaming machine by touching the touch-screen at the appropriate places.” DeWaal ¶¶ [0057], [0061]. Thus, DeWaal discloses that the wager amount and wager selections for the bonus event are input into the gaming system and received by the central controller via the user interfaces of the gaming machine, or in other words, “via the one or more wagering input devices” as claimed.

295. Further, in my opinion, a POSITA would understand that the currency and selections for the bonus game were received by the central server “in response to at least one of the one or more players desiring to participate in the” bonus event because the player submits a “separate wager” in order to be eligible for the bonus event. Specifically, DeWaal discloses that “the central controller determines which players are eligible for the bonus event in association with a *separate wager*” that is a “*side-wager or entry fee that enables a player to participate in the bonus event.*” DeWaal ¶ [0118]. Similarly reflecting a player’s desire to participate in the bonus event, players of the bonus event must also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). A POSITA would understand that these affirmative input actions are indicative of a player desiring to participate in the bonus event.

296. In my opinion, a POSITA would understand that, in DeWaal’s bonus game, “the wager coincides with each of the defined number of legs” because players of the bonus event “*make an input in association with the plurality of outcomes in each round*” as indicated by block 108” in process 100. DeWaal ¶ [0129]. Thus, DeWaal’s bonus event wager “coincides” or corresponds with “each of the defined

number of legs” because the selected outcomes are made for and correspond to “each round,” or leg, of the bonus event.

- e. 26[e] – “identify one or more winners of each of the defined number of legs based on the wager from among the one or more players participating in the multi-outcome wagering event, wherein players winning at least one leg remain eligible to win at least one jackpot or a portion thereof;”*

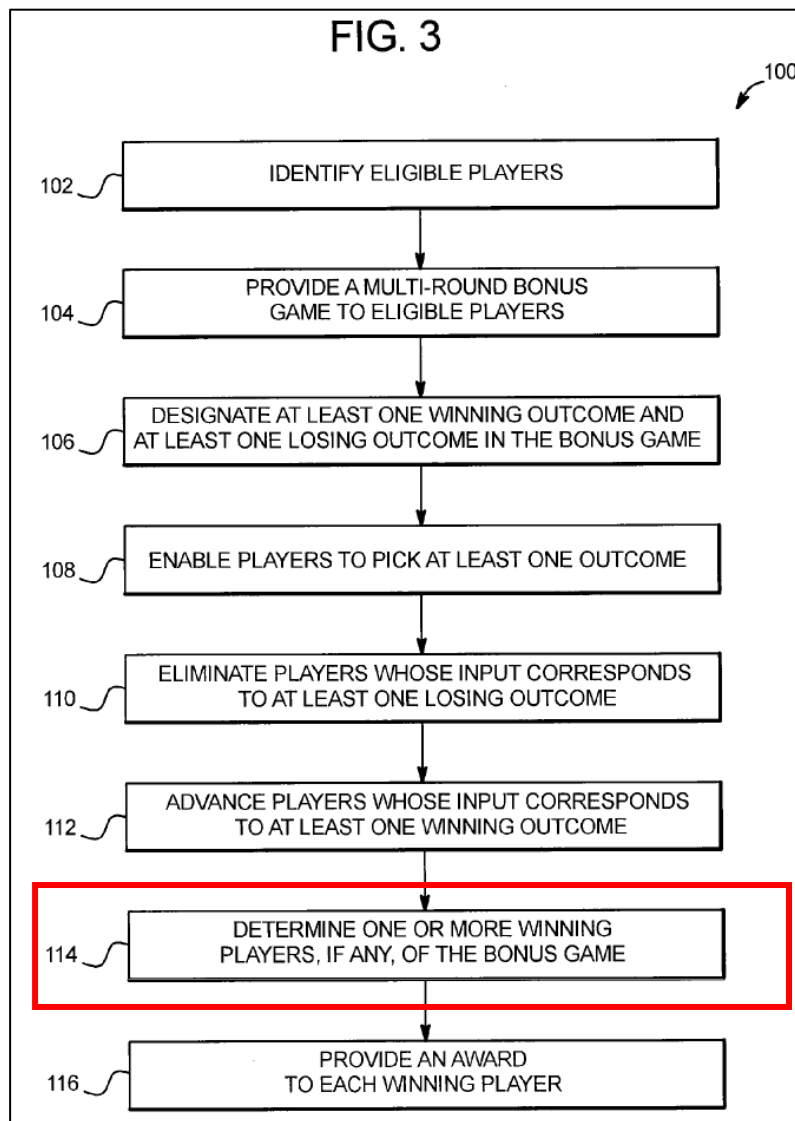
297. DeWaal discloses limitation 26[e] for the same reasons discussed above with regard to limitation 1[e]. Specifically, DeWaal’s techniques to determine which of the players participating in the bonus event selected a winning outcome, and thus remain eligible to win an award, correspond to “identify one or more winners of each of the defined number of legs based on the wager from among the one or more players participating in the multi-outcome wagering event, wherein players winning at least one leg remain eligible to win at least one jackpot or a portion thereof” as discussed above with respect to limitation 1[e] (analysis incorporated herein by reference). *See e.g.*, DeWaal ¶¶ [0010], [0012], [0130].

298. For example, in order to “win all or a share of an award associated with the bonus event,” such as the jackpot, a player “must pick a designated outcome (i.e., a winning outcome) in each round” of the bonus event. DeWaal ¶¶ [0119]; [0143] (“In one embodiment, each player is required to make an input associated with the winning outcome in each round including the final round to be determined as a winning player.”). As the bonus event progresses, “[t]he central controller selects

the winning player for the one or more awards based on choices or decisions input by the players.” DeWaal ¶¶ [0010]. Accordingly, corresponding to “identifying one or more winners of each of the defined number of legs,” DeWaal’s system and method for providing the bonus event narrows down the pool of players after each round of the bonus event by identifying winning players that may advance to the next round and eliminating players who are not eligible to advance or win the next round. This process in DeWaal corresponds at least to the second step in FIG. 5 of the ’439 Patent, which is “interrogating the ticket base, to count live or active tickets that have correctly predicted each game outcome to date following each outcome.” ’439 Patent at FIG. 5.

299. As DeWaal states, “[d]uring play of the selection bonus game, *players who pick the designated selection (i.e., a winning outcome)* in an initial round may be deemed *eligible for advancement to a subsequent round*.” DeWaal ¶ [0130]. Players that do not select a winning outcome are deemed ineligible for advancement to a subsequent round and are eliminated from the bonus event. *See* DeWaal ¶¶ [0131], [0119] (“During any of the plurality of rounds, once a player does not make an input associated with the designated selection, that player is eliminated from the bonus event and disqualified from winning the award.”). Thus, in DeWaal’s system, prior to the start of each round, the central controller identifies each player that won the prior leg by selecting a winning outcome and excludes or eliminates each player

that lost the prior leg by not selecting a winning outcome. As DeWaal states, “this process continues *for each round* until the central controller determines one or more winning players for the bonus event.” DeWaal ¶ [0143]. This process of identifying the winning players for each round is illustrated, for example, in FIG. 3 shown below.



DeWaal at FIG. 3.

300. As shown below in FIG 7, DeWaal's system identifies the "number of winning players, such as one or a plurality of players" for the bonus event and this process continues "until a final round." DeWaal ¶ [0132].

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7.

301. DeWaal's identification of winning players for each round of the bonus event is "based on the wager," and more specifically based on the player's input selection of one of the wagered upon potential outcome in each round. As DeWaal states, "[b]ased on the players' input," which includes the players' selections of outcomes for each round as discussed above, "*the central controller designates (or causes a designation of) certain players to advance to a subsequent round as indicated by block 112.* That is, when one or more of the players make an *input that is associated with the winning outcome in one of the rounds, the central controller advances these players* to a subsequent round of the bonus event." DeWaal ¶ [0130].

As shown above in Step 112 of FIG. 3, this determination of winning players for each round involves comparing the player's selected outcome for a given round to the designated or winning outcome of that round to identify whether the player's selected outcome "corresponds to" a winning outcome. *See* DeWaal at FIG. 3.

302. As is apparent from the explanation above of DeWaal's eligibility determinations, the identification of winning players for each round of the bonus event is made "from among the one or more players participating in the multi-outcome wagering event." *See e.g.*, DeWaal ¶¶ [0129] ("Based on the players' input, the central controller designates (or causes designation of) *certain players* to be ineligible (i.e., if the player's input is associated with the losing outcome) and eliminates (or causes an elimination of) those players from the bonus event as indicated by block 110."), [0130] ("During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event."). As shown above, and below in an annotated version of FIG. 7, DeWaal's identification of winning players for each round is "from among players participating" in the bonus event because DeWaal's method and system categorizes, for each round, each of the players participating in the bonus event as eligible (red box) or ineligible (blue box).

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7.

303. As shown above, the bonus event began with 800 players that were eligible to win the first round/leg of the bonus event. 400 of those players selected a losing outcome in the first round (ineligible players), 400 selected the winning outcome in the first round (winning players) and 100 of the 400 winning players accepted the offer to take a prize and quit, thereby leaving 300 “continuing players” that are eligible to win the second round, as shown in the value of 300 in the “eligible players” column for round 2. As explained above, DeWaal states that this process of identifying winners for each round from among all of the participating player continues until the final round and the bonus event is concluding. *See e.g.*, DeWaal ¶¶ [0132] (“This process continues for a designated number of rounds until a final

round.”), [0143] (“As illustrated, this process continues for each round until the central controller determines one or more winning players for the bonus event.”).

304. As shown in the FIG. 7 example, out of the original 800 players that began the bonus event and were eligible to win the jackpot at the beginning of the bonus event, there were just two players that advanced to the final round, and thus only two players from among the starting 800 that remain eligible to win the jackpot award in the final round. Therefore, in this example, DeWaal discloses “wherein players winning at least one leg remain eligible to win at least one jackpot or a portion thereof” where the claimed “at least one leg” is the final round of the bonus event because players that advance to the final leg remain eligible to win the final leg and the jackpot award associated with the final leg. Further, where the claimed “at least one leg” is the first, second, third, or fourth round of the bonus event, the winners of each round remain eligible to “a portion” of the jackpot associated with each round (i.e., \$25 for the first round).

f. 26[f] – “initiate at least one of a buy-out offer and a partial buy-out offer to any number of the one or more players that remain eligible to win at least one jackpot, or portion thereof, for at least a portion of said at least one jackpot, said buy-out offer being initiated before the multi-outcome wagering event has been completed;”

305. DeWaal discloses limitation 26[f] under Patent Owner’s anticipated construction, and renders obvious limitation 26[f] under DraftKings’ proposed

construction for the reasons explained above with respect to limitation 1[f]. In addition, the combination of DeWaal with Schugar also renders this limitation obvious for the same reasons discussed above.

306. Moreover, a POSITA would understand that DeWaal discloses win at least one jackpot “*or portion thereof*,” which is not recited verbatim in limitation 1[f] because DeWaal recites “The central controller *offers a portion of the award pool* (or *causes a portion of the award pool to be offered*) to each player who picked the designated selection in one of the rounds. If a player accepts the offered portion of the award pool, the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event). If a player rejects the offered portion of the award, that player risks the offered portion of the award to play a subsequent round of the bonus event.” DeWaal ¶ [0146].

- g. 26[g] – “receive an acceptance of at least one of the buy-out offer and partial buy-out offer from at least one of the one or more players eligible to win the at least one jackpot or portion thereof, wherein each of the one or more players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot, wherein each of the one or more players not accepting the buy-out offer will remain eligible to win the at least one jackpot, and wherein each of the one or more players accepting the partial buy-out offer remains eligible to win at least a portion of the at least one jackpot;”

307. DeWaal discloses limitation 26[g] under Patent Owner's proposed construction and renders obvious limitation 26[g] under DraftKings' proposed construction for the reasons explained above with respect to limitation 1[g]. In addition, the combination of DeWaal with Schugar also renders obvious this limitation for the same reasons discussed above with regard to limitation 1[g].

h. 26[h] – “complete the remainder of the defined number of legs to finish the multi-outcome wagering event; and”

308. DeWaal discloses this limitation for the same reasons discussed above with regard to limitation 1[h]. Specifically, DeWaal discloses that the central controller continues to identify winners and losers of each round until a designated or final round at the conclusion of which the controller determines one or more winners of the bonus event. For instance, corresponding to “complete the remainder of the defined number of legs to finish the multi-outcome wagering event,” DeWaal explains that “the central controller continues to advance any remaining eligible players to a subsequent round until the remaining award pool is provided to one of the remaining eligible players” in a final round. DeWaal ¶ [0147]. In this way, DeWaal explains that the process for advancing eligible players by determining winners and losers of each round and offering the winners a chance to quit “continues for each round until the central controller determines one or more winning players for the bonus event,” or “until a final round” in which “the central

controller determines one or more winning players, if any, of the bonus event as indicated by block 114.” DeWaal ¶ [0143], [0132]. To be sure, DeWaal explains that “the bonus even ends after a designated number of rounds including a final round.” DeWaal ¶ [0181]. Therefore, by continuing to advance players through the designated number of rounds or legs of the bonus event, DeWaal discloses limitation 26[h].

309. Disclosure of this element is also confirmed by, for example, DeWaal’s FIG. 7, which is an example of a bonus even having five rounds. As shown below in FIG. 7, even though some players lost or accepted the offer to quit in earlier rounds, the system and method disclosed therein completed the remainder of the five rounds to finish the event and awarded the jackpot to the single remaining player at the end of the fifth round.

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

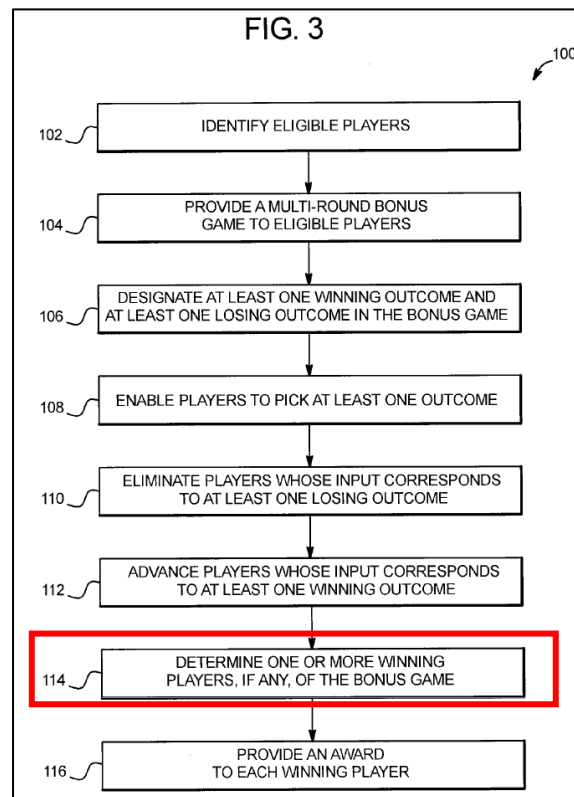
ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

DeWaal at FIG. 7; see also DeWaal ¶¶ [0141]-[0143].

- i. 26[i] – “determine if any of the players have won the jackpot or portion thereof.”

310. DeWaal discloses this limitation for the same reasons discussed above with regard to limitation 1[i]. Specifically, DeWaal discloses that, in the final round, the central controller determines which if any of the players won the final round and therefore won the jackpot or a portion thereof. Specifically, for example, DeWaal discloses that “[i]n the final round, ***the central controller determines one or more winning players, if any, of the bonus event*** as indicated by block 114.” DeWaal ¶ [0132]. This determination is also illustrated in step 114 of FIG. 3, as shown below.



DeWaal at FIG. 3.

27. Claim 27: “The wagering system of claim 26, wherein the multi-outcome wagering event comprises the defined number of legs, each comprising at least one of an entire sporting event, a partial sporting event, a divisible component of a sporting event, multiple independent sporting events occurring sequentially or concurrently, and a compilation of related sporting events.”

311. DeWaal discloses that “wherein the multi-outcome wagering event comprises the defined number of legs” for the reasons explained above with respect to limitation 26[c] and 1[c]. The remainder of this limitation is rendered obvious by

DeWaal in view of Schugar.¹² As discussed above with regard to claim 2, DeWaal discloses a multi-round bonus event that may be “any type of suitable game,” such as, for example, lottery games, real games, or virtual games. DeWaal ¶ [0079]; *see also* DeWaal ¶¶ [0055], [0064], [0108], [0127]. However, DeWaal does not expressly disclose that the bonus event may be a “sporting event.” Schugar, on the other hand, discloses methods of conducting a wagering game that “can be used to bet on *sporting events*, either at intervals on individual games or series of games.” Schugar ¶ [0072]. A POSITA would understand that such “sporting events” disclosed by Schugar therefore may include any one of an “entire sporting event, a partial sporting event, a divisible component of a sporting event, multiple

¹² While the intrinsic record of the '439 Patent, including Patent Owner's express disclaimers during prosecution of its child application, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting *both* a buy-out *and* a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require *either* X *or* Y).

independent sporting events occurring sequentially or concurrently, and a compilation of related sporting events.”

312. A POSITA would have been motivated to combine these teachings of Schugar with DeWaal’s bonus event because both references are within the same field of endeavor and provide comparable solutions to the same types of problems. As has been described herein, both references disclose techniques that allow a player to cash out of a wagering event, and therefore provide an award to the player, based on the player’s equity position. *See* DeWaal ¶ [0008] (“There is a continuing need to provide new and different gaming machines and gaming systems as well as ***new and different ways to provide awards to players including bonus awards.***”); Schugar ¶ [0003] (“The present inventive concept relates to a wagering game that allows a player to ***alter payouts based on an equity position the player has in the wagering game.***”). Moreover, a POSITA would have been motivated to incorporate Schugar’s sports-wagering games in the system of DeWaal based on DeWaal’s express teaching to provide new and different ways to provide awards to players (i.e., through the new and different gaming opportunities disclosed by Schugar).

313. Furthermore, Schugar’s disclosure in ¶ [0072] of betting on sporting events either “at intervals on individual games or series of games” is analogous to DeWaal’s disclosure of the bonus game, which may include multi-rounds of a “selection game.” Specifically, considering the prior art as a whole, a POSITA

would have understood that Schugar's sports betting concept and wagering on the games in a series, such as a seven-game series like the baseball World Series or a four-quarter football game like the Patriots versus the Giants, is analogous to and compatible with the structure and operation of DeWaal's multi-round bonus event including the offer and acceptance feature. *See* Schugar ¶¶ [0072], [0120], [0126]. For example, a multi-round wagering event on a four-quarter sporting event as described in Schugar naturally aligns with a four-round bonus event as described in DeWaal, where each round corresponds to each quarter in the sporting event and each quarter has at least two outcomes, team A is winning or team B is winning at the end of the quarter, and players make selections on each quarter/round in the four-quarter series. *See* Schugar ¶¶ [0120], [0126]. Similarly, a multi-round wagering event on a seven-game series sporting event as described in Schugar naturally aligns with a seven-round bonus event as described in DeWaal, where each game corresponds to each game in the sporting event and each game has at least two outcomes, team A wins or team B wins, and players make selections of outcomes on each game/round in the seven game series. *See* Schugar ¶ [0072]. In each of these examples, a POSITA would understand that there could be additional outcomes associated with each round in this example, such as team A winning by X amount or team B winning by Y amount.

314. In conclusion, a POSITA would be motivated to substitute the “selection game” of the bonus event as disclosed in DeWaal with the “sporting event” as disclosed in Schugar with a reasonable expectation of success based on Dewaal’s recognition of player-desire for new gaming opportunities. This modification or substitution would have required mere software implementation to convert the game for DeWaal’s bonus event to the sports-wagering games taught by Schugar in a multi-round format, which would have been well-within the ordinary level of skill. Moreover, a POSITA would have been motivated to do so for the very same reasons identified above with regard to the combination of DeWaal and Schugar discussed above in Limitation 1[a]. Thus, DeWaal in combination with Schugar renders this claim obvious.

28. Claim 28

- a. 28[a]-[b] – “The wagering system of claim 27, wherein the system controller is further configured to: initiate the one or more buy-out offers or partial buy-out offers for any combination of the defined number of legs at any time prior to completion of the multi-outcome wagering event; and”*

315. This limitation is similar to limitation 1[f], except that it depends from claim 27, which recites that the legs are a sporting event or part thereof, and requires offering one or more buy-out offers or partial buy-out offers for any combination of the legs. As an initial matter, the combination of DeWaal in view of Schugar renders claim 27 obvious because a POSITA would have been motivated to modify

DeWaal's bonus event to include a multi-round sports wagering game as taught by Schugar and discussed directly above.

316. Moreover, as also discussed above, DeWaal alone and the combination of DeWaal and Schugar further renders obvious initiating a buy-out offer and/or partial buy-out offer for each leg of the multi-round game of DeWaal's bonus event. *See supra* Limitation 1[f]. Because it would have been obvious to initiate buy-out offers and/or partial buy-out offers for each leg of DeWaal's bonus event, it also would have been obvious to initiate a buy-out offer and/or a partial buy-out offer for “for ***any combination***” of legs in the sports wagering game configuration of the combined system because offering one or more full or partial buy-outs at “each” leg of the game is a “combination of legs” that includes all legs. Specifically, there is nothing about the sports-wagering context that would render DeWaal (or DeWaal and Schugar's) teachings regarding full and partial buy-outs unsuitable for offering at each round of a multi-round sporting event game. Said differently, a POSITA would be equally motivated to offer a buy-out and/or partial buy-out at each leg or any combination of legs of a bonus event implemented as a sports wagering game. It is therefore my opinion that DeWaal in view of Schugar therefore renders this limitation obvious.

- b. 28[c] – “*receive the acceptance of said one or more buy-out offers or partial buy-out offers.*”

317. DeWaal discloses limitation 28[c] for the reasons explained above with respect to limitations 1[g] and 26[g], which are herein incorporated by reference. Here, because the limitation is recited in the disjunctive, DeWaal's disclosure of receiving acceptance of a buy-out offer meets this limitation.

29. Claim 29:

- a. 29[a] – *“The wagering system of claim 26, wherein the multi-outcome wagering event comprises at least one of a bonus leg and a consolation leg,”*

318. DeWaal discloses limitation 29[a] for at least the reasons discussed in my opinion above with regard to limitations 25[a]-[b].

- b. 29[b] – *“wherein designated players who have won a defined number of the legs qualify for the bonus leg and designated players who have lost a defined number of the legs qualify for the consolation leg, and”*

319. DeWaal discloses limitation 29[b] for at least the reasons discussed in my opinion above with regard to limitations 25[a]-[b].

- c. 29[c] – *“wherein correctly predicting an outcome of the bonus leg qualifies at least one designated player for at least a portion of a bonus prize and correctly predicting an outcome of the consolation leg qualifies at least one designated player for at least a portion of a consolation prize.”*

320. DeWaal discloses limitation 29[c] for at least the reasons discussed above with regard to limitation 25[c].

30. Claim 30:

- a. [30a]: “The wagering system of claim 26, wherein the wager comprises at least one of an accumulator and parlay wager comprising at least one or more combinations of at least a portion of the defined number of legs,

321. In my opinion, a POSITA would have understood that DeWaal discloses “at least one of an accumulator and parlay wager.” First, a POSITA would have understood that “accumulator” or “parlay wagers” were extremely well-known betting operations and were both similar in nature. Generally, both types of wagers involve placing a single wager that contains multiple individual sub-wagers linked together and where each sub-wager selection must be correct in order to win the bet. If any of the sub-wager selections are not won, then the bet is typically lost. Since the combined odds of winning all sub-wagers is typically lower than the odds of winning any individual bet, parlay or accumulator bets are typically associated with much greater payouts.

322. A POSITA would have understood that DeWaal’s bonus event *is* an accumulator or parlay-type of wagering event because players must make multiple, individual selection (i.e., sub-wagers) on the outcome of each round of the bonus event, and each individual selection must be correct in order for the player to advance to the next round and possibly win the final accumulated award (i.e., jackpot).

323. Specifically, DeWaal discloses that the “bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round.” DeWaal ¶ [0119]. Players must correctly select the “designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event.” DeWaal ¶ [0119]; *see also* DeWaal ¶ [0167] (“[i]f one of the players picks the designated selection, that player advances to a subsequent round. If one of the players picks one of the selections other than the designated selection (i.e., a losing outcome or selection), that player is eliminated from the bonus event”). As explained above with reference to at least claim 26, a POSITA would understand that a player’s selections in each round of the bonus event is equivalent to the player’s “wager” in the wagering event. Thus, DeWaal discloses both a parlay and accumulator type of wager.

324. Regarding the limitation that the accumulator or parlay wager comprises “at least one or more combinations of at least a portion of the defined number of legs,” DeWaal discloses this limitation. As explained above with reference to at least limitation 1[d], DeWaal discloses that players of the bonus event “*make an input in association with the plurality of outcomes in each round* as indicated by block 108” in process 100. DeWaal ¶ [0129]. Thus, DeWaal’s bonus event wager “compris[es] at least one or more combinations of at least a portion of

the defined number of legs” because the selected outcomes are made for and correspond to “each round,” or leg, of the bonus event.

- b. [30b]: wherein the one or more combinations are selectable by at least one of any of the one or more players, a third party, and the wagering system,

325. In my opinion, a POSITA would understand that DeWaal discloses “wherein the one or more combinations are selectable by the at least one of any of the one or more players, a third party, and the wagering system”¹³ because “each eligible player” of the bonus event may “make an input in association with the plurality of outcomes of each round” of the bonus event. DeWaal ¶ [0129]. In this scenario, a POSITA would understand that an input from each eligible player is equivalent to a combination (i.e., wager) selectable by the player in a bonus event

¹³ While the intrinsic record of the ’439 Patent, including Patent Owner’s express disclaimers during prosecution of its child application, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting **both** a buy-out **and** a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require **either** X **or** Y).

including a selection game, wherein “the plurality of outcomes include ***player selectable elements or selections***.” DeWaal ¶ [0128]. Furthermore, DeWaal discloses that the “player selectable elements” may be picked by the player “via any suitable input device of the gaming machine, such as a touch screen.” DeWaal ¶ [0129]; *see also* DeWaal ¶¶ [0057], [0061] (“[...] one input device is a touch-screen 42 coupled with a touch-screen controller 44, or some other touch-sensitive display overlay to ***allow for player interaction*** with the images on the display. The touch-screen and the touch-screen controller are connected to a video controller 46. A ***player can make decisions and input signals*** into the gaming machine ***by touching the touch-screen*** at the appropriate places.”). A POSITA would understand that by interacting with an input device, such as a touchscreen that users touch with their hands, to select the plurality of outcomes of the bonus event, one or more players of the bonus event would necessarily be selecting the one or more combinations that make up the wager. Likewise, A POSITA would also understand that the one or more combinations must necessarily be “selectable” by the one or more players.

- c. [30c]: and wherein at any time before all legs included in the wager have been completed, at least one partial buy-out offer is initiated to any number of the one or more players remaining eligible to win at least one of a jackpot, a portion of a jackpot or an award.”

326. DeWaal in combination with Schugar renders this limitation obvious for at least the reasons discussed above with regard to the “partial buy-out” limitation of limitations 1[a], [f], and 26[f].

X. Conclusion

327. In signing this declaration, I recognize that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case and that cross-examination will take place within the United States. If cross-examination is required of me, I will appear for cross-examination within the United States during the time allotted for cross-examination.

328. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed this 28th day of November 2022, in WALTON GROVE, Mo

Respectfully submitted

A handwritten signature in black ink, appearing to read 'D. Crevelt', is written over a horizontal line.

Dwight Crevelt