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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 IPR2023-00262
Patent 9,117,341

DECLARATION OF DWIGHT CREVELT IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 9,117,341

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EXHIBIT LIST

Exhibit No.	Description
Ex.1001	U.S. Patent No. 9,117,341 ("'341 Patent")
Ex.1002	File History for U.S. Patent '341 Patent
Ex.1003	Reserved
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	*Curriculum Vitae* of Dwight Crevelt
Ex.1009	Vishal Jain & Jyoti Moy Chatterjee, *Machine Learning with Health Care Perspective* (Springer 2020)
Ex.1010	Christiani Hugenii, 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, *Statisticians of the Centuries* (Springer 2001)
Ex.1012	Jui-Pin Cheng, *The Origin of Probability and The Problem of Points* (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
Ex.1013	Nicholas Hammond, *The Cambridge Companion to Pascal* (Cambridge University Press 2003)
Ex.1014	Prakash Gorroochurn, *Thirteen Correct Solutions to the ''Problem of Points'' and Their Histories*, THE MATHEMATICAL INTELLIGENCER (Springer 2014)
Ex.1015	Keith Devlin, *The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern* (Basic Books 2008)
Ex.1016	Anders Hald, *A History of Probability and Statistics and Their Applications before 1750* (John Wiley & Sons 2003)
Ex.1017	Adam Prügel-Bennett, *The Probability Companion for Engineering and Computer Science* (Cambridge University Press 2019)

Exhibit No.	Description
Ex.1018	Elizabeth A. Killick & Mark D. Griffiths, *In-Play Sports Betting: a Scoping Study*, 17 INT J MENT HEALTH ADDICTION 1456 (Apr. 16, 2018)
Ex.1019	*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.1020	Mark O'Haire, *The History of Betting*, 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, *How Does a Betting Exchange Work?*, BBC News (Dec. 7, 2007)
Ex.1023	Landi, Giancluca, *Betting Exchange: The Sports Trading Revolution* (StreetLib 2017)
Ex.1024	Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 (Jun. 18, 2016)
Ex.1025	Vaughan Williams & Donald S. Siegal, *The Oxford Handbook of the Economics of Gambling* (Oxford University Press 2013)
Ex.1026	Mark Davies *et al.*, *Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering*, 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005)
Ex.1027	U.S. Patent No. 7,909,694 ("Schugar '694")
Ex.1028	Betfair Trading Software, *About Bet Angel Software* (via The Wayback Machine dated Dec. 26, 2007)
Ex.1029	Green All Over Blog (Dec. 7, 2008)
Ex.1030	Dan Thomas, *Betfair's 'Cash Out' Trading Tool Used for the Millionth Time*, BETTFAIR (Sept. 13, 2011)
Ex.1031	Betfair Financial Statement (Jun. 29, 2011)
Ex.1032	Dan Thomas, *Cash Out Comes to Betfair Mobile*, Betfair (Dec. 19, 2011)
Ex.1033	Michael Taylor, *Cash In My Bet with William Hill*, WILLIAMHILL.COM (Dec. 18, 2012)
Ex.1034	Tal Grant *et al.*, *UK Gaming*, Credit Suisse (Aug. 14, 2017)
Ex.1035	James Conrey McMath, *Speculation and Gambling in Options, Futures and Stocks in Illinois* (Hawkins & Loomis 1921)
Ex.1036	LeRoy Gross, *The Conservative Investor's Guide to Trading Options* (Wiley 1999)
Ex.1037	Stuart Banner, *Speculation: A History of the Fine Line Between Gambling and Investing* (Oxford University Press 2017)

Exhibit No.	Description
Ex.1038	E.V. Smalley, *Northern Pacific Railroad Book of Reference* (E. Wells Sackett & Rankin 1883)
Ex.1039	Wesley A. Sturges *et al.*, *Stock Option and Stock Purchase Plans* (U.S. Gov't Printing Office 1952)
Ex.1040	Michael C. Thomsett, *Getting Started in Options* (Wiley 2007)
Ex.1041	Lawrence G. McMillan, *McMillan on Options* (Wiley 2011)
Ex.1042	The Sports Trader, *The Diary of a Betdaq Trader* (Dec. 5, 2007)
Ex.1043	Betfair Community, *Football Forum* (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, *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.1045	Betfair Community, *General Betting Forum* (Dec. 10, 2010)
Ex.1046	Betfair Community, *General Betting Forum* 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, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB
Ex.1049	Exhibit 341.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB
Ex.1050	Exhibit 439.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB
Ex.1051	Exhibit 516.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB
Ex.1052	Exhibit 716.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB
Ex.1053	Exhibit 779.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB

Exhibit No.	Description
Ex.1054	Exhibit 822.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB
Ex.1055	Exhibit 969.A to Plaintiffs' Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB

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. 9,117,341 ("the '341 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 '341 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 '341 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 '341 Patent (Ex.1001) and its prosecution history (Ex.1002). I have reviewed and am familiar with the specification of the '341 Patent. I have reviewed and am familiar with the file history of the '341 Patent.

4. In preparing this Declaration, I have also reviewed and am familiar with the each of the documents identified in the exhibit list above and/or discussed 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 of 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. I note that, based on my understanding, an ***express*** motivation to combine taught by a secondary reference is neither circular nor rooted in hindsight because it is expressed in the prior art itself—necessarily before the invention.

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 '341 Patent, a POSITA would 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 ’341 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 ’341 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.).

'341 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), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html (Ex.1012).

[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 Hugenii, The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated at 2 (printed 1741) (Ex. 1010).

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 at 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); Giancluca 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*, BETFAIR 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 '341 Patent

A. The '341 Patent Priority Date

44. The application that led to the '341 Patent was filed May 12, 2014 as U.S. Patent Application No. 14/275,136 and is a continuation of U.S. Patent Application No. 13/958,028 filed on August 2, 2013, which is a continuation-in-part of U.S. Patent Application No. 13/605,813, which was filed September 6, 2012. *See generally* '341 Patent. For purposes of my analysis and opinions, I have assumed that the '341 Patent has the priority date of the earliest filed application to which it claims priority—September 6, 2012.

B. Overview

45. The '341 Patent, entitled "Wagering Apparatus, Methods and Systems," purports to be directed to a "new betting product" for "any event where betting may be utilized," but the only alleged "unique differentiator" identified in the '341 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.)." '341 Patent 2:32, 2:42-47.

46. As confirmed by the prosecution history discussed in the following section, the method described in the '341 Patent may involve a system that initiates both of a "buy-out" offer and a "partial buy-out" 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.* 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.* 2:33-38.

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.* 13:50-54. 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 the 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.* 29:35-37. If the player accepts the partial buy-out offer, however, the player retains a portion of the ticket and may continue to play

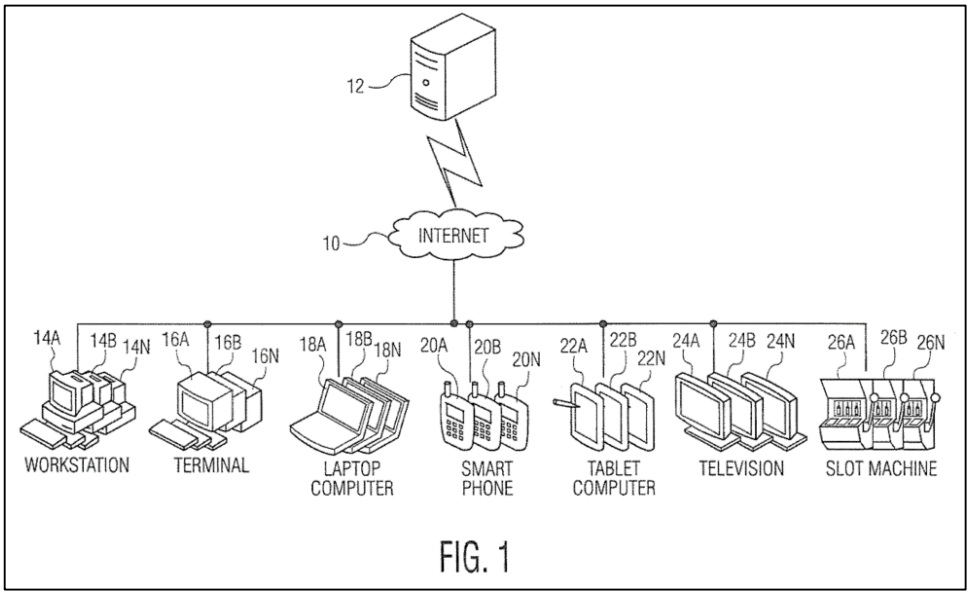
the remaining legs in a wagering game or participate in a bonus game, albeit with a reduced expected winning to account for the part of the ticket sold. *Id.* 29:39-41. And if the player rejects the offer to fully or partially buy-out, the wagering event simply continues as normal. *Id.* 29:37-39.

48. The '341 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).[4] 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 '341 Patent states, can be used in a wagering event that has a plurality of "legs." *Id.* 1:52-54. A "leg," which the '341 Patent states "should be broadly construed," may comprise of 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),

[4] All emphasis to text (e.g., bold italics) and to figures (e.g., red boxes/lines) herein are my own, unless indicated otherwise.

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.* 1:55-62, 4:13-14.

49. Similarly, the '341 Patent is not directed to a specific wagering system. Rather, while the '341 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 '341 Patent recognizes that such systems are well-known. *See id.* 3:62-4:13.



Id. FIG. 1.

50. In addition, as the '341 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."), 11:1-4 ("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."), 22:39-41 ("The present disclosure may be implemented in various configurations for gaming machines or wager terminals ***known in the art***."). Similarly, the controller or server, which is also described as being "broadly construed," 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 Rach 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.* 6:3-10; *see also id.* 4:6-10 ("As should be understood, the term 'system controller' should be broadly construed to comprise any hardware device or device that includes at least one central processing unit (CPU) or other processing device and associated memory."). Notable with respect to my analysis and opinions herein, the '341 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 issue from the application that published as the DeWaal reference that I have analyzed throughout this declaration. *Id.* 22:39-55.

51. In addition to the system components being conventional and well-known, the '341 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 '341 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.* 6:61-63; *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 '341 Patent. The '341 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 ’341 Patent and that share common claim terms. Specifically, in addition to the ’341 Patent prosecution history, I have also reviewed the prosecution history of the following U.S. Patents: 8,721,439 (“’439 Patent”); 9,275,516 (“’516 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. And, all of these related patents, including the ’341 Patent are directly or indirectly terminally disclaimed over the ’439 Patent.

53. 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[1002] (’341 Patent FH) at 104-110 (September 29, 2014 Non-Final Office Action). More specifically, regarding the claim limitations of presenting and initiating “at least one of a buy-out offer and [a] partial buy-out offer,” 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[1002] (’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."

54. The Applicant responded to the September 23, 2014 Office Action on December 18, 2014. *See* EX[1002] ('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[1002] ('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[1002] ('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[1002] ('341 Patent FH) at 26 (May 27, 2015 Response to Office Action dated Mar. 12, 2015).

55. 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[1002] ('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[1002] ('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[1002] ('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[1002] ('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[1002] ('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.

56. Therefore, according to the Applicant's arguments to secure allowance of the '341 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

57. I have been instructed that the challenged claims of the '341 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.

58. Based on this understanding, it is my opinion that one term or phrase of the '341 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 claim 1 of the '341 Patent, and, by virtue of "claim dependency," this term also is in in dependent claims that depend from claim 1, including challenged claim 10 of the '341 Patent.

59. 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 '341 Patent. 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.

60. 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, the Patent Owner has taken positions in litigation against DraftKings that contradict that definition.

61. Specifically, regarding Patent Owner's positions in the litigation, 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[1049] (Patent Owner's Initial Infringement Contentions Exhibit 341.A) at 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])

62. 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 '341 Patent. EX[1001] ('341 Patent) 22:52-55.

63. 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].

64. 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 ¶¶ [0119], [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.").

65. 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.").

66. 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].

67. These features of DeWaals 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])

68. 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].

69. 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].

70. 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].

71. 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].

72. 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].

IX. Grounds of Unpatentability

73. In this section, I will explain why claims 1 and 10 of the '341 Patent are anticipated o rendered obvious by the disclosure of DeWaal alone under Patent Owner's apparent construction of the limitation "at least one of a buy-out offer and [a] partial buy-out offer" and/or rendered obvious by DeWaal alone or in combination with Schugar under DraftKings' construction of that limitation.

74. 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 and 10 are Anticipated or Obvious in view of DeWaal Alone and/or Obvious in view of DeWaal in Combination with Schugar

75. I incorporate by reference my discussion of the background of the technology and overview of the DeWaal and Schugar 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, POSITA a 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.

76. While I discuss the obviousness analysis in detail in the sections that follow, and I incorporate my obviousness analysis into each limitation below that discusses DeWaal and Schugar, it is worth noting at the outset that there was an express motivation to combine DeWaal with Schugar. 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.

77. 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].

78. 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."

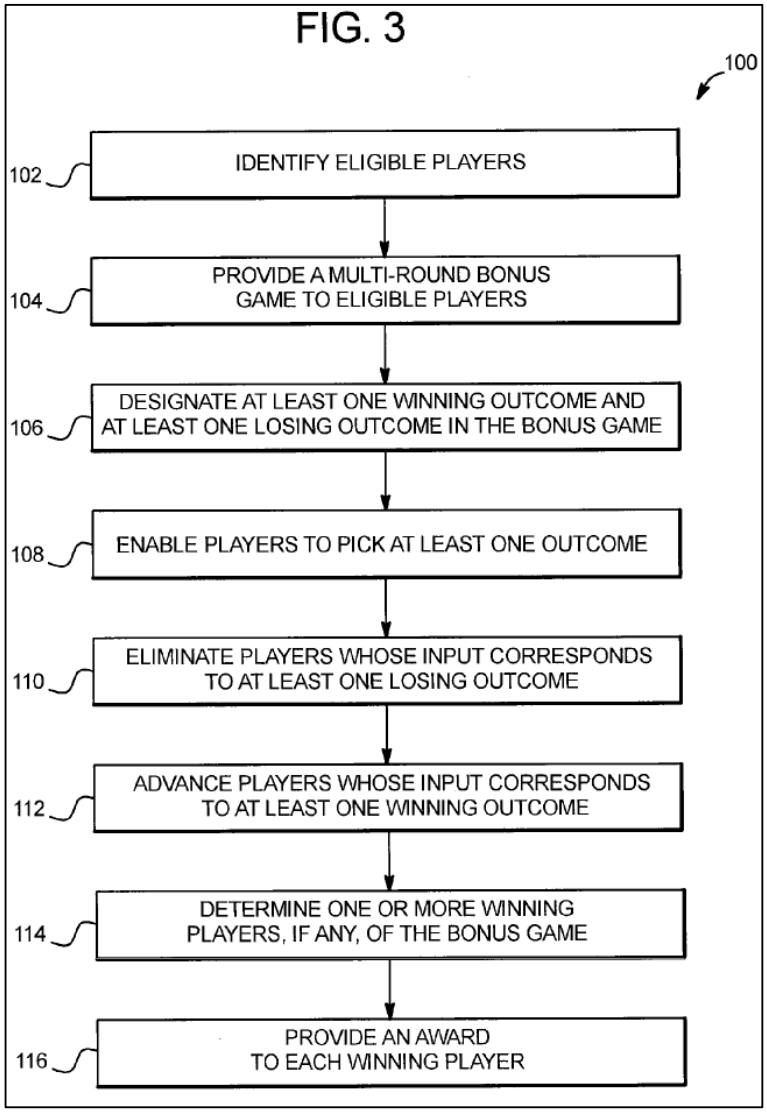
1. Claim 1

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

79. Limitation 1[a] is the preamble of claim 1 of the '341 Patent. In my opinion, and to the extent the preamble is limiting, DeWaal discloses limitation 1[a] of the '341 Patent alone under Patent Owner's apparent construction of the limitation

"at least one of a buy-out offer and partial buy-out offer" and/or alone or in combination with Schugar under DraftKings' construction of that limitation. The remainder of limitation 1[a] is disclosed in DeWaal under either party's construction of that term.

80. In my opinion, a POSITA would understand that 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].

81. 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 amount, 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."

82. In my opinion, a POSITA would understand that DeWaal's bonus event is "for one or more players." For example, DeWaal discloses that 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].

83. 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 presenting a player with "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].

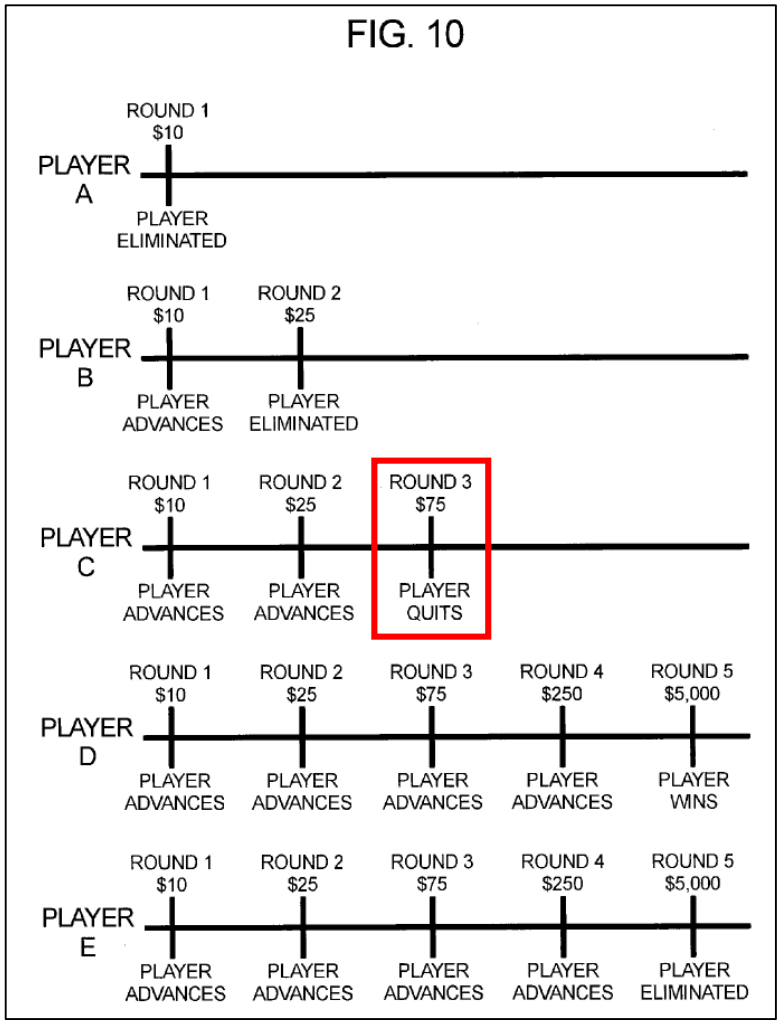
84. With respect to the offer and acceptance feature, DeWaal explains, in the context of an exemplary bonus event having five rounds, that "[p]rior to the second round, the central controller ***offers each advancing player an additional***

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 total rounds in the bonus event, the offer was made by the controller "prior to completion of the wagering event." 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), and thus prior to completion of the wagering event.

85. 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.

86. 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 ¶ [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).

87. 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 the final round. 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)***.") (emphasis added).

88. The description of a "buy-out offer" in the '341 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 '341 Patent states that "the buy-out offer is for buying an entire ticket from a player (i.e., 100%) for an indicated value." '341 Patent at 12:15-16.

89. 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."

90. 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 '341 Patent.

91. 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 '341 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." '341 Patent at 14:13-17. 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%." '341 Patent at 12:60-67. 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.,* '341 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.").

92. 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].

93. 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.

94. 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*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, 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.

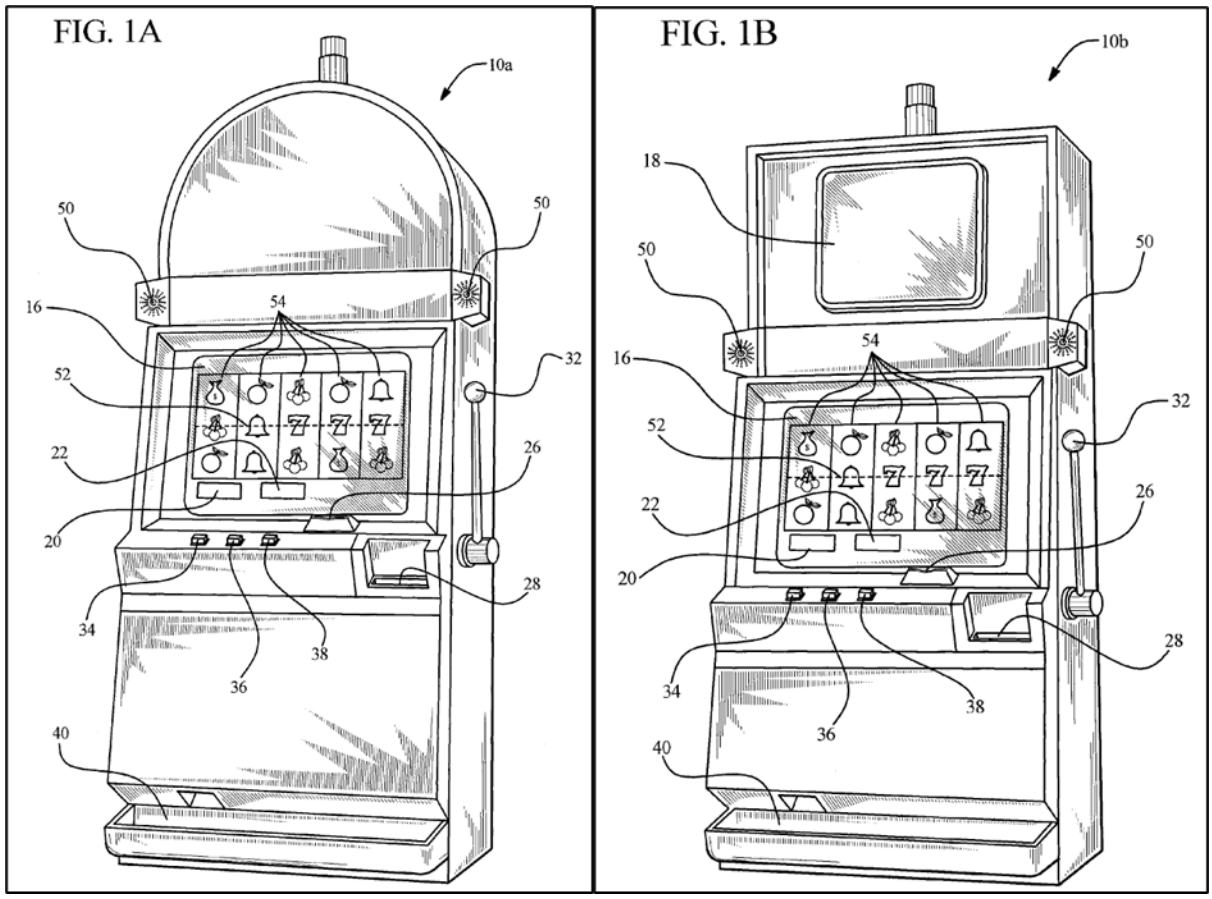
95. In my opinion, for the reasons discussed above and below with respect to limitations 1[f] and 1[g], a POSITA would have been motivated to modify the system and method for providing a bonus event in DeWaal, and in particular the offer and acceptance feature of DeWaal's bonus event, to add Schugar's 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]-[0079] ("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

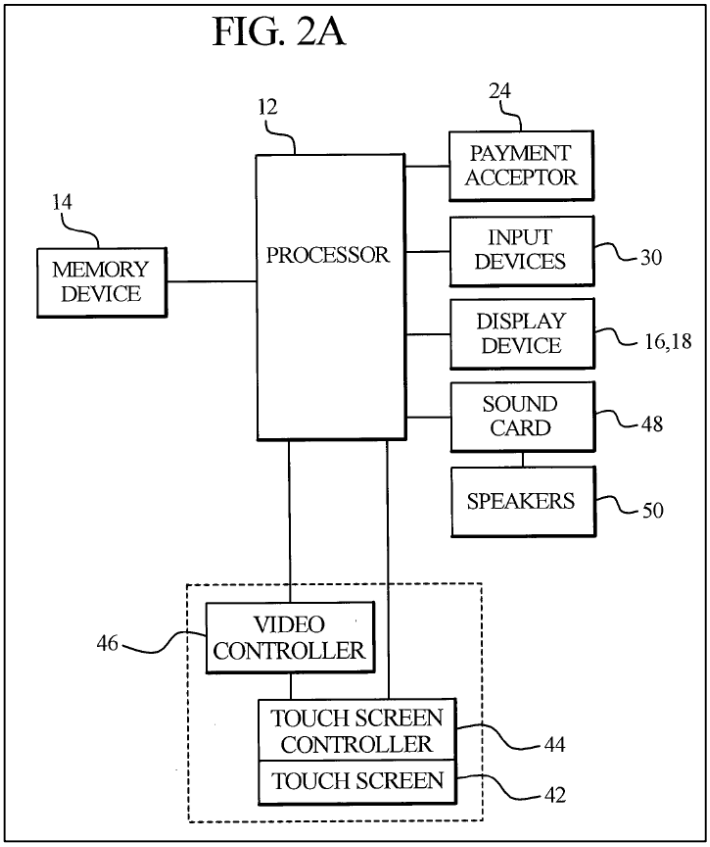
one or more players may participate in a wagering event, said system controller being adapted for:"

96. In my opinion, DeWaal discloses limitation 1[b]. As an initial matter, the '341 Patent admits that the types of "wagering input devices" or gaming machines disclosed in DeWaal are suitable for implementing the disclosure of the '341 Patent. *See* '341 Patent at 22:39-55.

97. 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. 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].

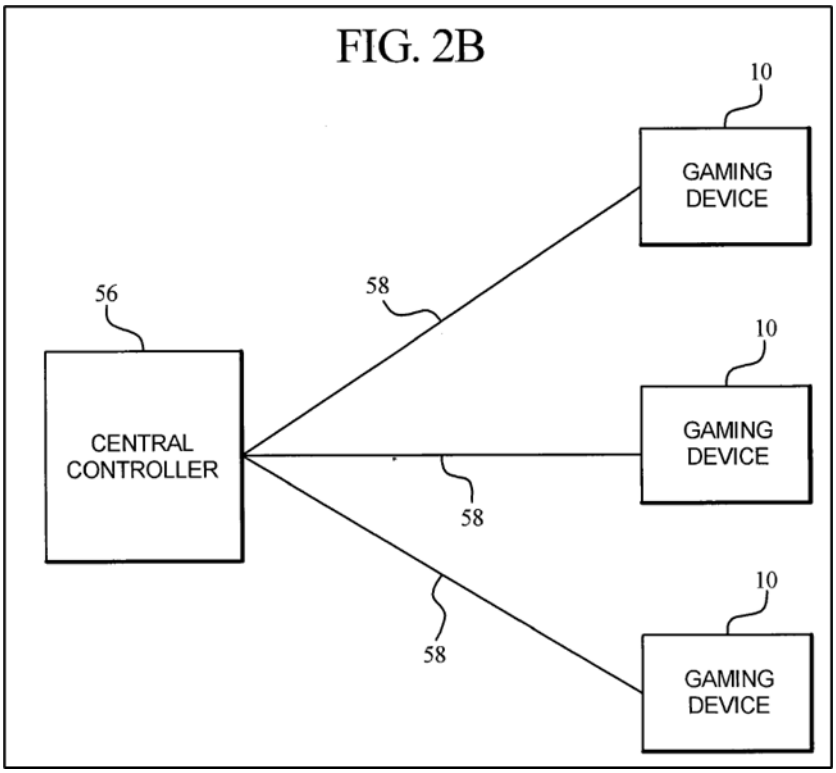


DeWaal at FIG. 2A.

98. 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 indica 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.")

99. 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]. A POSITA would have understood that the communications between DeWaal's disclosure of the gaming devices and the controller transmitting and receiving events, messages, commands, or other signals to one another 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.").

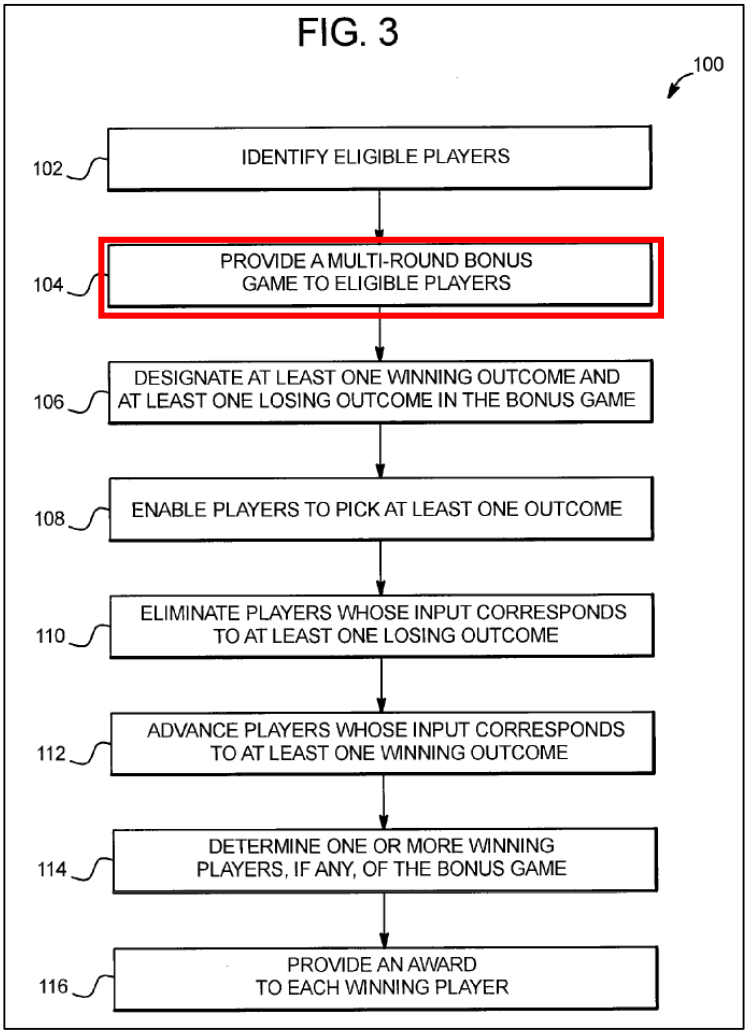
100. In such a configuration, a POSITA would understand that DeWaal discloses a plurality of gaming devices in communication with a system controller "through which one or more players may participate in a wagering event." For example, in addition to the description of the "thin client" above where the 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 wagering event" through the central controller and the gaming device.

c. 1[c] – "initiating the wagering event for one or more players;"

101. In my opinion, DeWaal discloses limitation 1[c]. A POSITA would understand that DeWaal's bonus event is "the wagering event for one or more

players" for the reasons explained above with respect to limitation 1[a], which are herein incorporated by reference.

102. 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.").

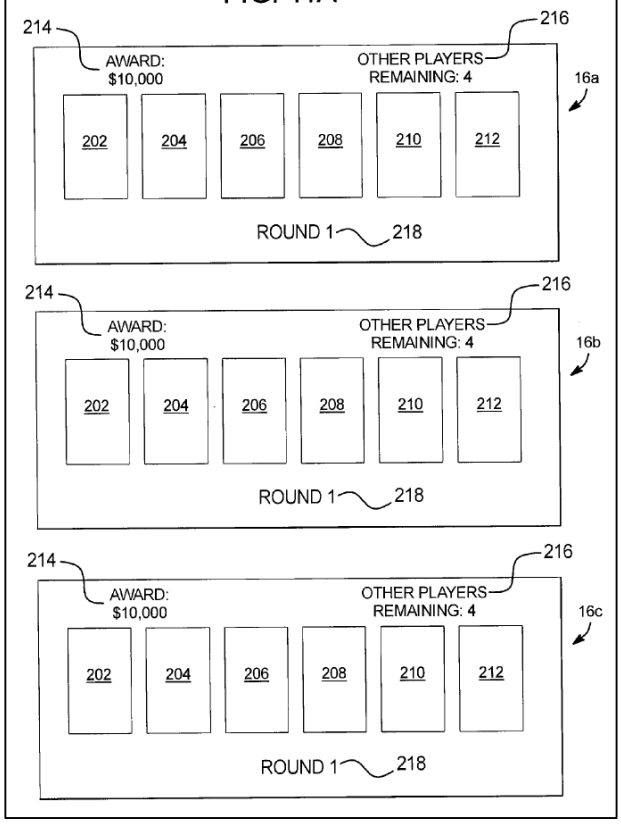


DeWaal at FIG. 3.

103. 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.

FIG. 11A



DeWaal at FIG. 11A. In this way, a POSITA would have understood that the game is initiated by the controller at least when the controller causes the game to be displayed on the gaming device for the user.

d. 1[d] –"receiving a wager via the one or more wagering input devices in response to a player desiring to participate in the wagering event;"

104. 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.

105. In my opinion, a POSITA would understand that DeWaal's central controller "receiv[es] a 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]. 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. Thus, as DeWaal discloses, the amount wagered is entered at the gaming device and sent to and received by the accounting and 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.

106. 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].

107. 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.

108. 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 a player desiring to participate in the" bonus event at least because the player must submit 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.

e. 1[e] – "identifying one or more players eligible to win from among players participating in the wagering event;"

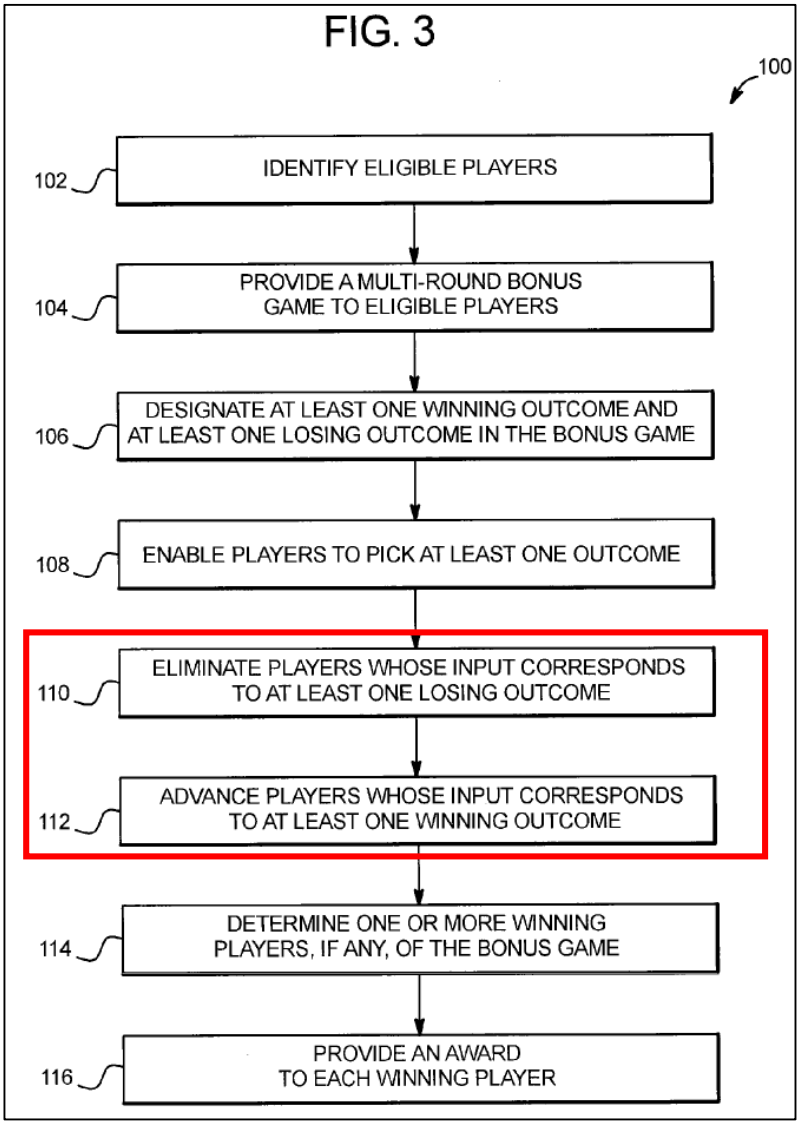
109. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[e] of the '341 Patent. Specifically, DeWaal's techniques for determining which of the players participating in the bonus event advance to the next round, and thus are eligible to win the next round, includes "identifying one or more players eligible to win from among players participating in the wagering event." *See, e.g.,* DeWaal ¶¶ [0016], [0119], [0130].

110. 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."). Accordingly, corresponding to "identifying one or more players eligible to win," 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 players that may advance to and win the next round and eliminating players who are not eligible to advance or win the next round. This elimination process in DeWaal corresponds at least to the second step in FIG. 5 of the '341 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." '341 Patent at FIG. 5.

111. 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."). Similarly, even if a player won a given round and was eligible for advancement to and to win the subsequent round, that player may be eliminated from the bonus event prior to the subsequent

round if they accept the offer to cash in prior to the subsequent round. *See, e.g.,* DeWaal ¶ [0141] ("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 qualified to advance to the second round, accepted the offered additional award and quit the bonus event."). Thus, in DeWaal's system, prior to the start of each round, the central controller identifies the number of players that are "***eligible***" to participate in and win a given round by identifying each player that won the prior leg and excluding or eliminating each player that lost the prior leg or accepted the additional award to quit the bonus event. 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 players that are eligible to win each round is illustrated, for example, in FIG. 3 shown below.



DeWaal at FIG. 3.

112. As shown below in FIG 7, DeWaal's system identifies the number of "continuing players" that are "***eligible players***" for each round, and each "eligible" player for a given round is eligible to win that round by selecting a potential designated/winning outcome under their wager on 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.

113. As is apparent from the explanation above of DeWaal's eligibility determinations, the identification of players that are eligible to win each round of the bonus event is made "from among players participating in the 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 eligible 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. 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 (advancing players) and 100 of the 400 advancing 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 the players that are eligible to win 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.").

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

114. As an initial matter, limitation 1[f] overlaps with portions of limitation 1[a] analyzed above, and I incorporate by reference my analysis of limitation 1[a] herein.

115. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[f] of the '341 Patent alone under Patent Owner's apparent construction of the limitation "at least one of a buy-out offer and partial buy-out offer" and/or alone or in combination with Schugar under DraftKings' construction of that limitation. Specifically, as explained in greater detail below, a POSITA would understand that DeWaal discloses a bonus event with an "offer and acceptance" feature that corresponds to a buy-out offer and satisfies the entirety of limitation 1[f] as it pertains to a "buy-out offer," but DeWaal does not expressly describe the "partial buy-out offer" portion of this limitation. However, Schugar discloses the "partial buy-out offer" portion 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[f] under DraftKings' construction.

116. In addition to the discussion above for limitation 1[a], and corresponding to "initiating at least one of a buy-out offer," DeWaal discloses that "***the central controller offers each advancing player an additional award to quit the bonus event***" and 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]. By disclosing that the "central controller" makes the "offers," and that the central controller "cause[s] the display device to display an offer," a POSITA would understand that DeWaal discloses the central controller "initiating" a buy-out offer because making and displaying the offer is "initiating" it.

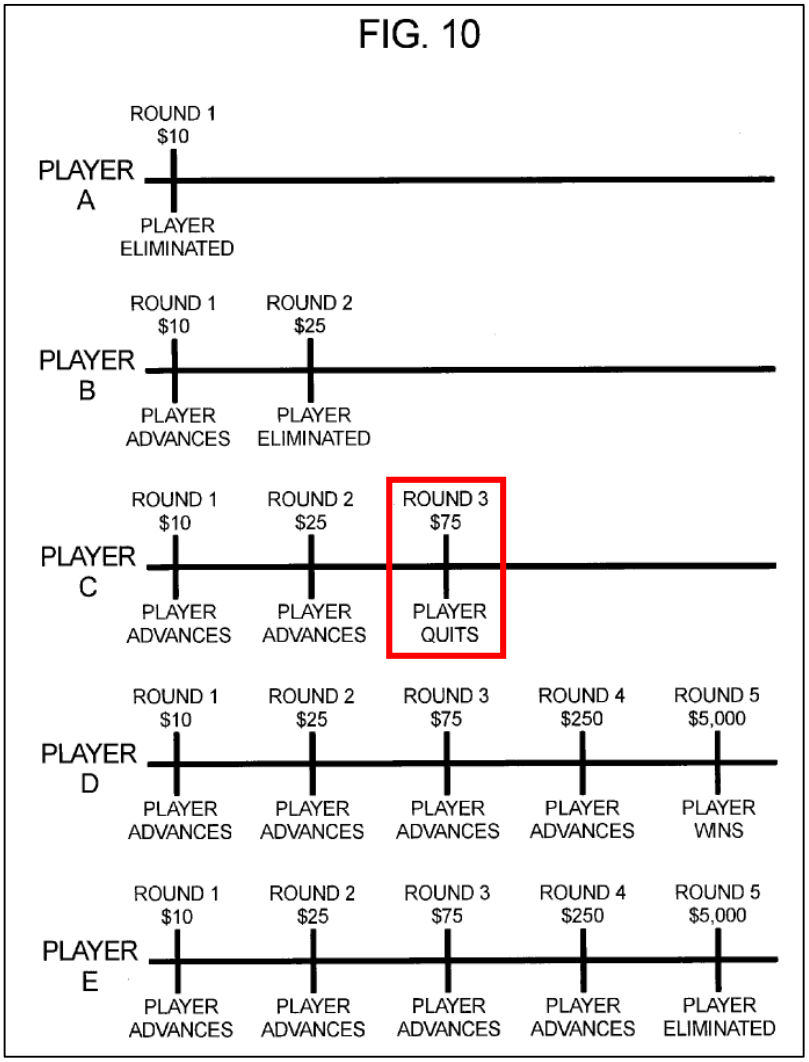
117. The initiating and causing display of at least one of a buy-out offer is done "to any number of the one or more players that are eligible to win." As explained above, DeWaal discloses that the offer is made "to the advancing players," which is also explained above with respect to limitation 1[e], refers to the players that are eligible to win prior to the start of a given round. For example, 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 . . . . In this embodiment, the total accumulated award is offered to each advancing player along with the option to quit." DeWaal ¶ [0018]; *see also* DeWaal ¶ [0146] ("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."). As explained above, a POSITA would understand that an "advancing player" in DeWaal's event is one that remains eligible to win, and DeWaal states the buy-out offers are initiated only to those advancing, eligible players, thereby satisfying this limitation.

118. And, corresponding to "said buy-out offer or partial buy-out offer being initiated at any time before the wagering event has been completed," 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 initiated by the controller "before the wagering event has been completed." 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 "before the wagering event has been completed" (*e.g.*, between rounds 1 and 2, between rounds 2 and 3, between rounds 3 and 4, and between rounds 4 and 5). And because this portion of limitation 1[f] is indisputably written in the disjunctive ("said buy-out offer ***or*** partial buy-out offer"), it can be satisfied by DeWaal regardless of whether "at least one of a buy-out offer and partial buy-out offer" is interpreted to be written in the conjunctive or disjunctive.

119. 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 ¶ [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). 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).").

120. The description of a "buy-out offer" in the '341 Patent covers DeWaal's disclosure of 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 '341 Patent states that "the buy-out offer is for buying an entire ticket from a player (i.e., 100%) for an indicated value." '341 Patent at 12:15-16.

121. Therefore, under Patent Owner's apparent construction, 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 limitation 1[f]. Accordingly, under Patent Owner's apparent construction, a POSITA would understand that DeWaal discloses the entirety of limitation 1[f] of the '341 Patent.

122. 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 '341 Patent as an offer to purchase "a partial portion of the ticket, for example and equal fifty percent share" or "for example any 10% interval from 10% to 90%, at an appropriate monetary amount." '341 Patent at 14:13-17. 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%." '341 Patent at 12:60-67. 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.*, '341 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.").

123. However, 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]. Schugar, in addition to fully "cash[ing] in" a bet and "surrender[ing]" it, as with DeWaal's offer and acceptance feature, discloses that "[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].

124. Schugar's disclosure of "cashing in" a "portion" of a player's wager is further demonstrated with reference to an embodiment involving a multi-stage sport wagering event and/or a series of sporting events. 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 can make selections of outcomes along the way, after 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.

125. 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*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% partial 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.

126. 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 out a portion of the player's wager. Schugar provides an express motivation to combine its teaching of providing partial cash-out with 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]-[0079] ("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).

127. 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.

128. In addition, this limitation would have been obvious to a POSITA 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 out 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 out 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 the '341

Patent, the Applicant admitted that the prior art disclosed a full buy-out offer, as previously described herein.

129. 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 CONTINUE 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.

130. 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 out 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 out functionality. Further, the results of the combination are entirely predictable and expected—the system would provide the option to fully cash out 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 out 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.

131. In addition, in my opinion, this limitation would have been obvious to a POSITA 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.

132. 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 out or reduce their participation in a wagering event in exchange for some indicted 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 out 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 out 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 out, provides the user with the greatest flexibility and peace of mind.

133. 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 an active 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***.").

134. Furthermore, a POSITA would have a reasonable expectation of success in adding Schugar's ability and offer to cash out 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]. In addition, a POSITA would have had a reasonable expectation of success in adding partial buy-

out to DeWaal at least because the prior art (e.g., Schugar) demonstrates that full and partial cash/buy out features are practicable and desirable together, as has been explained herein.

135. 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 out a portion of the player's wager. For example, Schugar teaches that the ability to cash out 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.").

g. 1[g] – "identifying any acceptances of said at least one of a buy-out offer and partial buy-out offer that have been initiated;"

136. Similar to limitation 1[f], it is my opinion that a POSITA would understand that DeWaal discloses limitation 1[g] of the '341 Patent alone under Patent Owner's apparent construction of the claim not requiring a "partial buy-out offer" to be made and/or alone or 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 DraftKings' position on this issue, at least for the reasons explained above with respect to limitation 1[f], which are herein incorporated by reference.

137. In my opinion, a POSITA would have understood that DeWaal discloses "identifying any acceptances of said at least one of a buy-out offer … that have been initiated" 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 identifies 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, i.e., providing them with the buy-out offer amount.

138. Therefore, under Colossus'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.

139. 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 describe "identifying any acceptances of said at least of a … partial-buy out offer that have been initiated." However, Schugar discloses this limitation. For instance, for the reasons set forth above in my discussion of limitation 1[f], a POSITA would have understood that Schugar discloses initiating both a full and "partial buy-out offer." In addition, Schugar discloses that the "player can also exercise this option" to cash out "with a press of a button which allows the player to bank his or her positive expectation." Schugar ¶ [0092]. Similarly, Schugar discloses that a player can "indicate his or her desire" to accept or reject an option "on an electronic input device (e.g., touch screen, keyboard, etc.)." *Id.* ¶ [0135]. A POSITA would have understood that a player's press of a button on an electronic input device would create a signal indicating and identifying their acceptance of the option to cash out their wager in full or in part in response to the pop-up window prompt discussed with respect to claim 1. This understanding is further confirmed and corroborated by Schugar's explanation that "[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" in the "current machine" and/or a "remote database for later retrieval." *Id.* ¶ [0093]. From this disclosure, a POSITA would have understood that there was an identification that the cash out offer was accepted, such as by the player pressing a button indicating acceptance, because the method involves storing the cashed out value in response to such identified acceptance.

140. In implementing Schugar's wagering methods in DeWaal's central server system, it would have been obvious to a POSITA that the central server system would identify that the cash out offer was accepted by, for example, receiving a signal generated by the input device indicating that the cash out offer was accepted, because DeWaal discloses that such functions are performed by the central server/controller. For example, 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 central server receiving various signals of user inputs from the gaming devices. That is, 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 would receive any acceptance of the partial 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.

141. 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-out 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 out as disclosed in Schugar.

142. In addition, the combination of DeWaal and Schugar would have been obvious for at least the same reasons explained above for limitation 1[f], and those reasons also are incorporated herein.

h. 1[h] – "completing the wagering event; and

143. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[h] of the '341 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 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 event 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 into and through a final terminating round, DeWaal discloses limitation 1[h].

144. 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

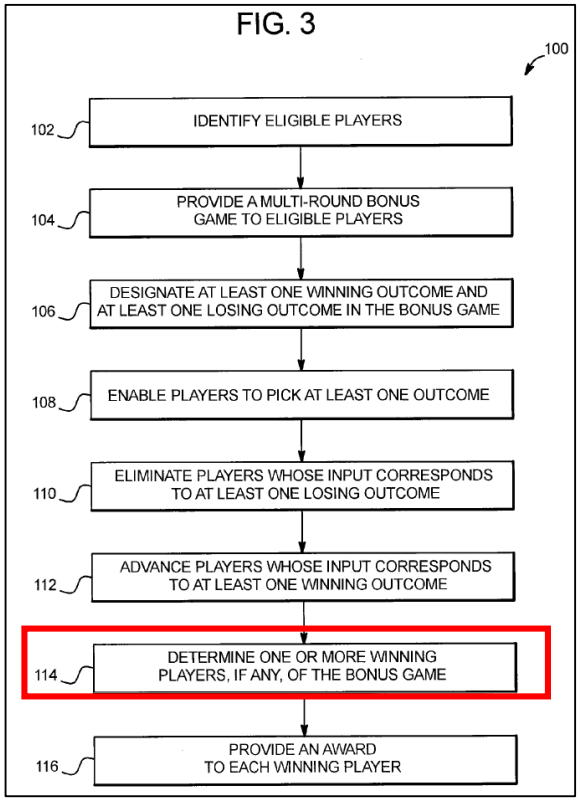
ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	$25	300	400	$25
2	300	200	$50	100	100	$75
3	100	50	$200	20	50	$275
4	20	5	$2,000	2	15	$2,245
5	2	1	$10,000	0	1	$12,275

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.

145. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[i] of the '341 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 for the wagering event. 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 10

a. *10[a] – "The method of claim 1, wherein the multi outcome wagering event comprises one or more virtual games, said method further comprising:"*

146. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with Schugar renders obvious "the method of claim 1" for the reasons explained above, which are herein incorporated by reference.

147. 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].

148. 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 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.

149. 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.

150. Finally, I note that, while claim 10 recites that the wagering event is a "multi-outcome" wagering event, claim 1 does not recite that the event is "multi-outcome." Nonetheless, a POSITA would understand that DeWaal's bonus event is a "multi-outcome" wagering 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. 10[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,"

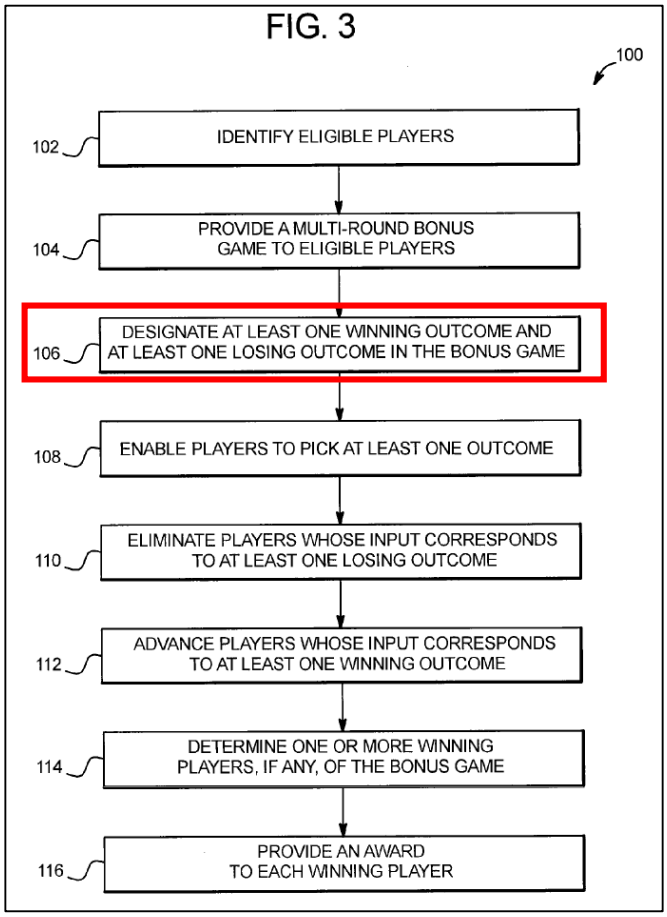
151. In my opinion, a POSITA would have understood that DeWaal discloses "initiating the buy-out offer prior to completion of the one or more virtual games" for the same reasons as DeWaal discloses "said buy-out offer … being initiated at any time before the wagering event has been completed" as recited in

limitation 1[f], because as explained above, DeWaal's wagering event is the virtual game. I incorporate my analysis of that limitation herein.

152. Further, a POSITA would have understood that DeWaal discloses initiating the buy-out offer "after an outcome of the one or more virtual games has been determined" because DeWaal discloses initiating the offer to quit after a first round but before the final round of the bonus event and several outcomes of the selection game are determined for each round prior to the central server initiating the offer to quit before the subsequent round. Thus, there are multiple disclosures in DeWaal that, in my opinion, a POSITA would understand to satisfy this claim limitation.

153. 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 before the subsequent round. *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.").



DeWaal at FIG. 3. Therefore, as shown above, the central server determines and designates at least one winning outcome and at least one losing outcome in the bonus game 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. Thus, a POSITA would have understood that this method in 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.

154. 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, which a POSITA would have understood satisfies this limitation.

155. In addition, DeWaal discloses that its buy-out offers may be made after the completion or one "virtual game" and before the completion of another because its "multi-round bonus event" includes games like "reel/slot games," which are completed in each round. DeWaal ¶[0157]. And the outcomes of such a multi-round 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].

c. 10[c] – "said buy-out offer including a price that is at least partially based on random-number-generated probabilities."

156. A POSITA would understand that DeWaal discloses "said buy-out offer including a price that is at least partially based on random-number-generated probabilities" because DeWaal discloses that the option to quit that is offered to a player is in exchange for an "award" and that the amount of the 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.

3. No Evidence of Non-Obviousness

157. It is my understanding that in order for evidence of non-obviousness to be relevant, there must be a nexus between the claimed invention and the evidence. I am not aware of any evidence of non-obviousness.

X. Conclusion

158. 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.

159. 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 29th day of November 2022, in Walnut Grove MO

Respectfully submitted,

Dwight Crevelt