

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

DIOGENES LIMITED, COLOSSUS (IOM) LIMITED,
Patent Owner

Case IPR2023-00265
Patent 9,704,338

**DECLARATION OF DWIGHT CREVELT IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
9,704,338**

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EXHIBIT LIST

Exhibit No.	Description
Ex.1001	U.S. Patent No. 9,704,338 (“’338 Patent”)
Ex.1002	File History for U.S. Patent ’338 Patent
Ex.1003	File History for U.S. Patent No. 9,117,341
Ex.1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
Ex.1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
Ex.1006	U.S. Patent Application Publication No. 2012/0309503 A1 (“Scott”)
Ex.1007	Reserved
Ex.1008	<i>Curriculum Vitae</i> of Dwight Crevelt
Ex.1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
Ex.1010	Christiani Huguenii, <i>The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated</i> (printed 1741)
Ex.1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
Ex.1012	Jui-Pin Cheng, <i>The Origin of Probability and The Problem of Points</i> (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
Ex.1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)
Ex.1014	Prakash Gorroochurn, <i>Thirteen Correct Solutions to the ‘Problem of Points’ and Their Histories</i> , THE MATHEMATICAL INTELLIGENCER (Springer 2014)
Ex.1015	Keith Devlin, <i>The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern</i> (Basic Books 2008)
Ex.1016	Anders Hald, <i>A History of Probability and Statistics and Their Applications before 1750</i> (John Wiley & Sons 2003)
Ex.1017	Adam Prügel-Bennett, <i>The Probability Companion for Engineering and Computer Science</i> (Cambridge University Press 2019)
Ex.1018	Elizabeth A. Killick & Mark D. Griffiths, <i>In-Play Sports Betting: a Scoping Study</i> , 17 INT J MENT HEALTH ADDICTION 1456 (Apr. 16, 2018)

Exhibit No.	Description
Ex.1019	<i>What is In-Play Betting: Live Betting Explained by William Hill</i> , WILLIAMHILL.COM (Apr. 20, 2021), https://news.williamhill.com/betting-guides/in-play-betting/
Ex.1020	Mark O’Haire, <i>The History of Betting</i> , TheSetPieces (2021), https://thesetpieces.com/latest-posts/the-history-of-betting/
Ex.1021	U.S. Patent No. 9,117,341 (“the ’341 Patent”)
Ex.1022	Chris Summers, <i>How Does a Betting Exchange Work?</i> , BBC News (Dec. 7, 2007)
Ex.1023	Landi, Gianluca, <i>Betting Exchange: The Sports Trading Revolution</i> (StreetLib 2017)
Ex.1024	Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 (Jun. 18, 2016)
Ex.1025	Vaughan Williams & Donald S. Siegal, <i>The Oxford Handbook of the Economics of Gambling</i> (Oxford University Press 2013)
Ex.1026	Mark Davies <i>et al.</i> , <i>Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering</i> , 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005)
Ex.1027	U.S. Patent No. 7,909,694 (“Schugar ’694”)
Ex.1028	Betfair Trading Software, <i>About Bet Angel Software</i> (via The Wayback Machine dated Dec. 26, 2007)
Ex.1029	Green All Over Blog (Dec. 7, 2008)
Ex.1030	Dan Thomas, <i>Betfair’s ‘Cash Out’ Trading Tool Used for the Millionth Time</i> , BETTFAIR (Sept. 13, 2011)
Ex.1031	Betfair Financial Statement (Jun. 29, 2011)
Ex.1032	Dan Thomas, <i>Cash Out Comes to Betfair Mobile</i> , Betfair (Dec. 19, 2011)
Ex.1033	Michael Taylor, <i>Cash In My Bet with William Hill</i> , WILLIAMHILL.COM (Dec. 18, 2012)
Ex.1034	Tal Grant <i>et al.</i> , <i>UK Gaming</i> , Credit Suisse (Aug. 14, 2017)
Ex.1035	James Conrey McMath, <i>Speculation and Gambling in Options, Futures and Stocks in Illinois</i> (Hawkins & Loomis 1921)
Ex.1036	LeRoy Gross, <i>The Conservative Investor’s Guide to Trading Options</i> (Wiley 1999)
Ex.1037	Stuart Banner, <i>Speculation: A History of the Fine Line Between Gambling and Investing</i> (Oxford University Press 2017)
Ex.1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)

Exhibit No.	Description
Ex.1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov't Printing Office 1952)
Ex.1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)
Ex.1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)
Ex.1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
Ex.1043	Betfair Community, <i>Football Forum</i> (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader
Ex.1044	Betfair Community, <i>Golf Forum</i> at 1 (Apr. 9, 2010), https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53
Ex.1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
Ex.1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
Ex.1047	U.S. Patent Application Publication No. 2001/0136566 A1 ("Acres")
Ex.1048	Exhibit 338.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1049	Exhibit 341.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1050	Exhibit 439.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1051	Exhibit 516.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1052	Exhibit 716.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1053	Exhibit 779.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1054	Exhibit 822.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

Exhibit No.	Description
Ex.1055	Exhibit 969.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

I, Dwight Crevelt, declare as follows:

I. Introduction

1. I have been retained on behalf of DraftKings Inc., a Delaware corporation (“DraftKings”) 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. 9,704,338 (“the ’338 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 ’338 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 ’338 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 ’338 Patent (Ex.1001) and its prosecution history (Ex.1002). I have reviewed and am familiar with the specification of the ’338 Patent. I have reviewed and am familiar with the file history of the ’338 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 ’338 Patent, a POSITA would be a person with a bachelor’s degree in electrical engineering, computer science, or a

similar field; and at least two years of experience in the wager based gaming industry. A person with less education but more relevant practical experience may also meet this standard. This description is approximate, and a higher level of education or skill may make up for less experience, and vice-versa.

V. Background of the Technology

29. I understand that analyzing the state of gaming systems during the years prior to the earliest possible priority date of the '338 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 '338 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

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

potentially those still eligible for bonus and/or consolation prizes) or to win or have correct (win) predictions for each 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.).

’338 Patent at 2:38-54. 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*

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

Problem of Points at 2 (2000),

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

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

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

of Probability and Statistics and Their Applications before 1750 at 55-56 (Wiley 2003) (Ex. 1016).

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

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

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

B. Cash Out and In-Play Betting

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

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

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

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

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

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

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

C. Partial Cash Outs

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

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

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

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

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

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

VI. The '338 Patent

A. Priority Date

44. The application that led to the '338 Patent was filed July 18, 2016 as U.S. Patent Application No. 15/212,392 and is a continuation of U.S. Patent Application No. 14/990,538 filed January 7, 2016, which is a continuation of U.S. Patent Application No. 14/833,572 filed August 24, 2015, which is a continuation of U.S. Patent Application No. 14/449,541 filed August 1, 2014, which is a continuation-in-part of U.S. Patent Application No. 14/275,136 filed May 12, 2014, which is a continuation of U.S. Patent Application No. 13/958,028 filed 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* '338 Patent. For purposes of my analysis and opinions, I have assumed that the '338 Patent has the priority date of the earliest filed application to which it claims priority—September 6, 2012.

B. Overview

94. The '338 Patent, entitled “Wagering Apparatus, Methods and Systems,” purports to be directed to a “wagering system and hardware and network connected to various wagering stations.” '338 Patent 3:33-35.

95. The only alleged “unique differentiator” identified in the '338 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.).” ’338 Patent at 2:38-54. As confirmed by the prosecution history discussed in the following section, the method described in the ’338 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.* 2:48-64. 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.* 2:38-44.

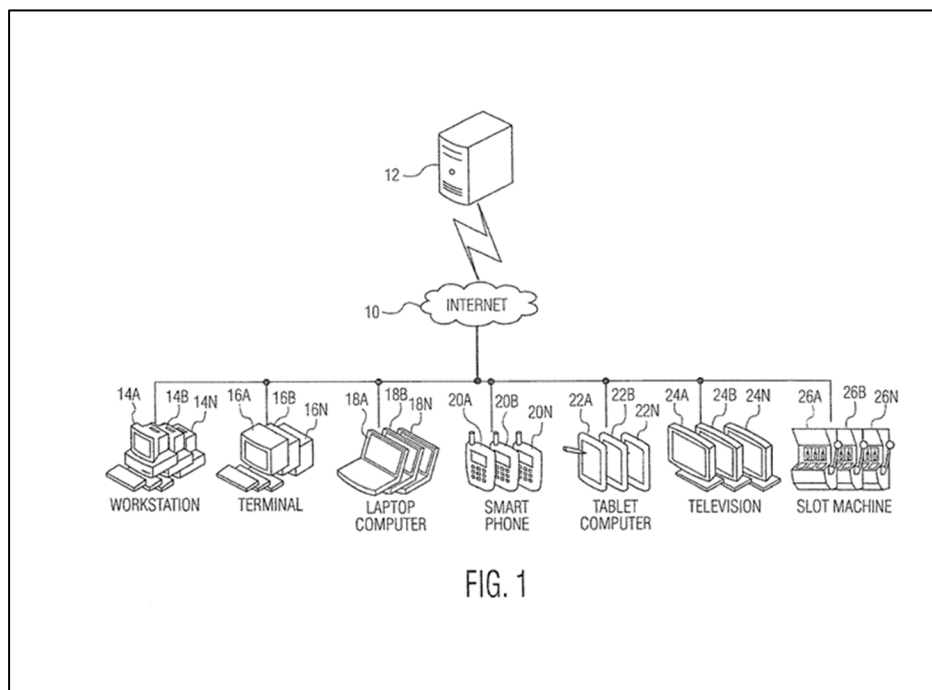
96. A player may have at least three options in responding to the buy-out and partial buy-out offer via an input at a wagering station: accept the offer to fully buy-out; accept the offer to partially buy-out; or reject both the offer to fully or partially buy-out. *Id.* 15:2-7. If the player accepts the full buy-out offer, the ticket is “cashed in (i.e. bought by system operator or third party) and all rights of the ticket

will vest in the system operator.” *Id.* 20:23-26. 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.* 33:67-34:2. 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.* 21:43-47. And if the player rejects the offer to fully or partially buy-out, the wagering event simply continues as normal. *Id.*

97. The ’338 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.* 3:49-53 (emphasis added). Some examples include “sporting events” and “virtual and real” casino games such as “jacks, poker, blackjack, Texas hold ‘em, etc.,” “lotteries, racing, slot machines and other multi-leg/multi-events/multi-outcome or divisible games.” *Id.* 3:56-66. The concept of the buy-out offer, as the ’338 Patent states, can be used in a wagering event that has a plurality of “legs.” *Id.* 1:55-56. A “leg,” which the ’338 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), 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.* 1:57-64, 5:7-10.

98. Similarly, the '338 Patent is not directed to a specific wagering system. Rather, while the '338 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 '338 Patent recognizes that such systems are well-known. *Id.* 4:55-66.



Id. FIG. 1.

99. In addition, as the '338 Patent states, the wager stations and wagering terminals may be a “conventional wager terminal” “as known in the art.” *Id.* 5:58-63; *see also id.* 11:54-57 (“The embodiments as generally illustrated in FIG. 1 may include, **as known in the art**, a display device which displays the betting options.”), 12:16-18 (“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.”), 24:4-6 (“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 should also be “broadly construed” to include “any hardware device or devices that includes at least one central processing unit (CPU) or other processing device and associated memory,” 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.* 4:66-5:3, 7:11-19. Notable with respect to my analysis and opinions herein, the '338 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 DeWaal reference that I have analyzed throughout this declaration. *Id.* 24:4-20.

100. In addition to the system components being conventional and well-known, the '338 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 '338 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.* 8:1-8; *see also id.* 8:12-15 (“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

45. I have reviewed the prosecution history of the '338 Patent. In the first non-final office action, the Examiner asserted a nonstatutory double patenting rejection for all pending claims (1-34). Ex.1002 at 140-141. The examiner also rejected pending claims 21-23 as being anticipated by US 2011/0136566 (“Acres”).

46. Notable to my analysis of the prosecution history herein, rejected claims 21-23 recited the disjunctive limitation of “display at least one proposal to full **or** partially buyout or cash-in to any number of the one or more players prior to completion of the one or more wagering events.” *Id.* 142-143. The Examiner found that Acres disclosed this limitation by its disclosure “showing presenting a buy-out offer to a player of the gaming system.” *Id.* 142. Thus, given that the claim is written in the disjunctive, as the Examiner recognized, Acres’ disclosure of a full “buy-out offer” was sufficient to disclose this limitation although the Examiner did not find that Acres disclosed the “partial[]” buyout alternative recited in the claim. *See id.* Claims 21-23 therefore differ from claims 1-20, 33, and 34 in that the latter recite a similar limitation, but in the conjunctive form of “display at least one of a buy-out offer **and** partial buy-out offer.” *Id.* 106-107. Accordingly, the Examiner did not reject claims 1-20.

47. In response to the double patenting rejection, the Applicant filed a terminal disclaimer, which was approved by the USPTO. *Id.* 99-100, 103. In response to the anticipation rejection over Acres, the Applicant amended claim 21 to include what was previously recited in dependent claim 27, which was not rejected over Acres. *Id.* 114, 115. The Applicant did not make any remarks in this response other than to amend the claims.

48. Thereafter, the Examiner issued a final rejection rejecting claims 36-38 as being “clearly anticipated by Acres.” *Id.* 78-80. Notably, unlike claims 1-20, claims 36-38 were like previously rejected claims 21-23 in that they recited the disjunctive limitation of “display at least one proposal to fully *or* partially buyout or cash-in.” *Id.* The Examiner also found that claim 39 was obvious over Acres in view of US 2002/0161645 (“Walker”). *Id.* 81. Claim 39 recited the disjunctive limitation described above, which the Examiner found was disclosed in Acres by Acres’ disclosure of full buyout, and it recited one or more “lottery machines,” which the Examiner found was disclosed in Walker. *Id.* 81-82. In addition, the Examiner withdrew the double patenting rejection and the anticipation rejection of claims 21-23 in view of the Applicant’s amendment and filing of the terminal disclaimer. *Id.* 83.

49. In response to the final office action, the Applicant cancelled claims 36-39. *Id.* 74. The Examiner then allowed pending claims 1-26 and 28-35. *Id.* 44. In the Examiner’s stated reasons for allowance, the Examiner noted that those claims were allowable, even though the Examiner recognized that Acres “teaches a buy-out offer presented to a player.” *Id.* 44. Notably, the first claim element that the examiner listed as not being found in the prior art included the disjunctive limitation discussed above of “display of at least one of a buy-out offer *and* partial buy-out offer.” *Id.*

50. The '338 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 '338 Patent and that share common claim terms. Specifically, in addition to the '338 Patent prosecution history, I have also reviewed the prosecution history of the following U.S. Patents: 8,721,439 ("'439 Patent"); 9,117,341 ("'341 Patent"); 9,424,716 ("'716 Patent"); 9,275,516 ("'516 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 '338 Patent are directly or indirectly terminally disclaimed over the '439 Patent.

51. For example, the '338 Patent is a continuation of U.S. Patent Application No. 14/990,538, which is a continuation of U.S. Patent Application No. 14/833,572, which is a continuation of U.S. Patent Application No. 14,449,541, which is a continuation-in-part of U.S. Patent Application No. 14/275,136, which issued as the '341 Patent.

52. The claims of the '341 Patent include limitations regarding presenting and/or initiating "at least one of a buy-out offer *and* partial buy-out offer." *See e.g.*, EX[1003] ('341 Patent FH) at 77 (Listing of claims in Dec. 18, 2014 Response to Office Action). Claims 1 and 32 of the '338 Patent also recites these limitations

regarding presenting and/or initiating “at least one of a buy-out offer ***and*** partial buy-out offer.” See ’338 Patent Claims 1, 32. Thus, the ’338 Patent and the ’341 Patent are directly related patents in the same family that share common limitations. During prosecution of the ’341 Patent, the Applicant made statements regarding these common limitations that are relevant to my analysis of the claims of the ’338 Patent and the prior art discussed herein.

53. By way of background, during prosecution of the ’341 Patent, the Examiner issued an Office Action on September 23, 2014 rejecting all pending claims of the ’341 Patent (claims 1-40) as “being clearly anticipated by Acres (US 2011/0136566)” under pre-AIA 35 U.S.C. § 102(b). EX[1003] (’341 Patent FH) at 104-110 (September 29, 2014 Non-Final Office Action). More specifically, regarding the common limitation discussed above, the Examiner found that “Acres discloses a wagering event for one or more players, ***wherein a player is presented with at least one of a buy-out and partial offer*** prior to completion of the wagering event,” and in particular, “Acres discloses initiating ***at least a buy-out offer*** to an eligible player based on the anticipated expected outcome of the player during the course of the game.” EX[1003] (’341 Patent FH) at 109 (September 29, 2014 Non-Final Office Action). Therefore, it appears that the Examiner interpreted the term “at least one of a buy-out offer and [a] partial buy-out offer” in the claims as being disjunctive, such that either a “buy-out offer” ***or*** a “partial buy-out offer” would

satisfy the limitation, and the Examiner found the prior art satisfied the common limitation because it disclosed presenting and initiating a full “buy-out offer.”

54. The Applicant responded to the September 23, 2014 Office Action on December 18, 2014. See EX[1003] ('341 Patent FH) at 76-89 (Dec. 18, 2014 Response to Office Action). In the response, the Applicant argued that “Claim 1, for example, recites a unique ability to offer *both* a buy-out offer and a partial buy-out offer to any number of players that are involved in a wagering event.” EX[1003] ('341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). Applicant then argued that “Acres fails to disclose or even contemplate the claimed capability to provide a ‘buy-out’ *and* ‘partial buy-out’ feature,” and that “Acres does not appear to disclose the claimed feature of a ‘partial buy-out’ *and* ‘buy-out’ that may be *offered as alternatives to players.*” EX[1003] ('341 Patent FH) at 86, 87 (Dec. 18, 2014 Response to Office Action). Therefore, in my opinion, a POSITA would understand that the Applicant took the position during prosecution that the claim limitation of “at least one of a buy-out offer and [a] partial buy-out offer” required “both” be provided and initiated “as alternatives to players.” This ability to offer a player both of an option to fully buy-out and an option to partially-buy out as alternatives is what the Applicant represented was the “innovation and utility of the claimed invention,” as opposed to either an offer to buy-out or partially buy-out

individually. EX[1003] ('341 Patent FH) at 26 (May 27, 2015 Response to Office Action dated Mar. 12, 2015).

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[1003] ('341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). However, Applicant distinguished Acres from the claims by explaining that “a buy-out offer for a player’s entire interest (as described in Acres) is not equivalent to purchasing only a portion of a player’s interest in potential winnings where the player retains an interest in the potential winnings.” EX[1003] ('341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). To the contrary, Applicant argued, “a ‘partial buy-out offer’ is defined in the specification as an offer to purchase a portion of a player’s interest in any potential winnings resulting from the wagering event, where the player retains any unsold portion in said interest and remains eligible to win at least a portion of an award.” EX[1003] ('341 Patent FH) at 86 (Dec. 18, 2014 Response to Office Action). As such, according to Applicant’s statements regarding the claim scope, “Acres does not anticipate Claim 1” because

“Acres (at a minimum) fails to disclose or even contemplate the claimed partial buy-out feature.” EX[1003] (’341 Patent FH) at 88 (Dec. 18, 2014 Response to Office Action). Based on the Applicant’s clarification or narrowing of the plain language of the claim, the Examiner found that “Applicant’s arguments ... are persuasive” and withdrew the anticipation rejection. EX[1003] (’341 Patent FH) at 69 (March 13, 2015 Office Action). No additional prior art rejections were made in any subsequent Office Action during the prosecution of the application leading to the ’341 Patent.

56. Therefore, according to the Applicant’s arguments to secure allowance of related patents to the ’338 Patent and other limitations in the claims of the ’338 Patent, prior art like Acres that discloses offering only a full “buy-out offer” does not satisfy the claims reciting “at least one of a buy-out offer and partial buy-out offer.” 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.

57. On July 18, 2016, after the Applicant made these statements regarding the meaning of “at least one of a buy-out offer and partial buy-out offer” and the Examiner relied upon them during prosecution of the application leading to the ’341 Patent, the Applicant filed the application leading to the ’338 Patent, certain claims of which reciting “at least one of a buy-out offer and partial buy-out offer” were not rejected by the Examiner over Acres despite containing the same claim language as in the ’341 Patent, as described above.

VII. Claim Construction

58. I have been instructed that the challenged claims of the ’338 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.

59. Based on this understanding, it is my opinion that one term or phrase of the '338 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 claims 1 and 32 of the '338 Patent, and, by virtue of "claim dependency," this term also is in in dependent claims that depend from claim 1, including challenged claims 4-15 and 17-19 of the '338 Patent.

60. In my opinion, the limitations of presenting and initiating "at least one of a buy-out offer and [a] partial buy-out offer" should be construed as requiring presenting and initiating *both* a buy-out offer *and* a partial buy-out offer that a player can alternatively select or accept or decline, which I will refer to herein as "DraftKings' construction" or "Draftkings' position" on the interpretation of this term. In my opinion, a POSITA would understand that the Patent Owner's clear and unambiguous statements that the term presenting or initiating "at least one of a buy-out offer and [a] partial buy-out offer" requires presenting or initiating "both" of a buy-out offer and a partial buy-out offer "as alternatives to a player," as discussed above in the prosecution history section of my opinion above, to attempt to distinguish the claims from the prior art and the Examiner relied on Applicant's arguments in granting the application. My opinion is based on, among others, the

statements Applicant made to overcome an anticipation rejection during prosecution of the related but earlier '341 Patent concerning the identical limitation, as described above. Therefore, the intrinsic evidence, and specifically the Applicant's arguments and statements, support that the phrase "at least one of a buy-out offer and [a] partial buy-out offer" should be interpreted in the conjunctive, such that "both" are required.

61. 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.

62. 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[1048] (Patent Owner's Initial Infringement Contentions Exhibit 338.A) 1-10. As the pictures in Patent Owner's claim charts show, if a player elects to "Cash Out" an active bet, that bet is closed and it marked as "CASHED OUT." *Id.*

Therefore, as I understand that claim terms must be interpreted the same for both invalidity and infringement, it appears that Patent Owner is interpreting this claim limitation as being able to be satisfied by a full “buy-out offer” alone. I refer to this construction as “Patent Owner’s apparent construction” or “Patent Owner’s position” herein.

VIII. Overview of Prior Art

A. Overview of DeWaal (EX[1004])

63. U.S. Patent Publication No. 2008/0113765 A1 to Daniel DeWaal (hereinafter, “DeWaal”), entitled “Gaming System and Method Providing Venue Wide Simultaneous Player Participation Based Bonus Game,” was published on May 15, 2008. The application leading to DeWaal, U.S. Patent Application No. 11/558,683, was filed on November 10, 2006, and issued as U.S. Patent No. 8,105,149 on January 31, 2012. Based on my review and comparison, the specification of DeWaal and the specification of issued U.S. Patent 8,105,149 are identical. U.S. Patent No. 8,105,149, i.e., the U.S. Patent that issued from the DeWaal reference relied upon herein, is incorporated by reference in the ’338 Patent. EX[1001] (’338 Patent) 24:17-20.

64. DeWaal describes a gaming system and method that “simultaneously provides a multi-round bonus event to a plurality of players wherein each players’ input(s) determine, at least in part, an award, if any provided to that player for the

bonus event.” DeWaal ¶ [0009]. Providing the ability for players to provide inputs or make choices that affect the award “provides increased excitement and enjoyment for players,” and satisfied a “continuing need” in the field “to provide new and different gaming machines and gaming systems as well as new and different ways to provide awards to players including bonus awards.” DeWaal ¶¶ [0013], [0008].

65. Among such choices or inputs that provide increased excitement and enjoyment for players is DeWaal’s “offer and acceptance feature.” *See e.g.*, DeWaal ¶¶ [0141], [0147], FIG. 7. For example, in DeWaal’s “multi-round” bonus game that has a “plurality of outcomes in each round,” and “players must pick a designated selection (i.e., a winning outcome) in each round to win all or a share of the award,” and players that pick the winning outcome in a round advance to a subsequent round and players that fail to pick the winning outcome in a given round are eliminated from the bonus event, the system “offers each advancing player an award to quit the bonus event” between each round. DeWaal ¶¶ [0128] (“The multi-round bonus event includes a plurality of outcomes in each round the bonus even includes a selection game and the plurality of outcomes include player selectable elements or selections”), [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event.”), [0131] (“if a player does not

make an input associated with the designated selection (i.e., a winning outcome) in an initial round, that player may be deemed ineligible for advancement to a subsequent round.”), [0141] (“four hundred players qualified to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round). Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event.”), [0147] (“This offer and acceptance process continues for a designated number of rounds.”).

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

risking the accumulated additional awards associated with the first and second rounds to play the third round of the bonus event.”).

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

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

B. Overview of Schugar (EX[1005])

69. U.S. Patent Publication No. 2008/0311981 A1 to David Schugar (hereinafter, “Schugar”), entitled “Wagering Game that Allows Player to Alter Payouts Based on Equity Position,” was published on December 18, 2008. The

application leading to Schugar, U.S. Patent Application No. 12/099,778, was filed on April 8, 2008. Schugar is directed to “a wagering game that allows a player to alter payouts based on an equity position the player has in the wagering game.” Schugar ¶ [0003].

70. Thus, Schugar describes “equity concepts” for “any” multi-stage or multi-round game that has “variable states and is not over without an interval between states,” such as “a sporting event, a gambling game (e.g., card game etc.), any event that bettors have placed wagers on in the prior art.” Schugar ¶¶ [0075], [0122]; *see also* Schugar ¶ [0104] (“A machine game can be any wagering game, such as a slot machine, video poker machine, or machine game which plays any game that can have multiple states (e.g. games which a player can wager on a progression).”). For example, Schugar discloses that “[w]hen the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to cash in on the winning state before completing the game.” Schugar ¶ [0075]. In this regard, Schugar recognizes that “[a] player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption” so that “even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.” Schugar ¶ [0077]. “In this way,” as Schugar explains, “the player can continue to

wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

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

72. As Schugar states, “[i]f the player chooses in operation 304 to bank his or her positive expectation, then the method can proceed to operation 306, which stores the value the player has banked for later use.” Schugar ¶ [0093]. Schugar provides flexibility in that “[e]ither the player can select how much positive expectation to bank, or the machine can automatically calculate an amount of positive expectation to bank.” Schugar ¶ [0094]. Or, providing even greater flexibility, “when a player achieves a positive change in his or her expectation, a

portion of the player's increased expectation can be automatically banked for later redemption.” Schugar ¶ [0101].

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

74 – 83 (Reserved)

IX. Grounds of Unpatentability

84. In this section, I will explain why claims 1, 4-5, 7-9, 13, 19, and 32 of the '338 Patent are anticipated by the disclosure of DeWaal under Patent Owner's apparent construction of the limitation of “at least one of a buy-out offer and partial buy-out offer” and/or how claims 1, 4-15, 17-19, and 32 are rendered obvious by the disclosure of DeWaal in combination with Schugar under DraftKings' construction of that limitation.

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

A. Claims 1, 4-15, 17-19, and 32 are Anticipated by DeWaal, or Rendered Obvious by DeWaal in View of Schugar

86. 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, a POSITA would have had a reasonable expectation of success in applying these features within DeWaal's networked betting system, which was not only well-known at the time, but also very similar to Schugar's networked betting system. While I address in more detail the motivation to combine DeWaal and Schugar in the relevant limitations below, I provide an overview of the motivation to combine DeWaal and Schugar at the outset here.

87. It is worth noting that there was an express motivation to combine DeWaal with these references. For example, DeWaal states that there was "*a*

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

88. In addition, a POSITA would have been motivated to combine these references in this way because Schugar teaches that the ability to cash out a portion of a player’s wager and continuing playing was a desirable compliment to the ability to cash out the entirety of a player’s wager and cease playing. That is, in addition to Schugar’s disclosed feature allowing a player to “surrender” their wager in its entirety for an award, it also discloses that the player “also” has the choice of “bank[ing] a portion of the expected profit the player has earned for later use.” Schugar ¶ [0078]; *see also* Schugar ¶ [0127] (“the player can still utilize the method described herein of *cashing out a portion of a current bet in progress* in order to pay for an additional wager”). Schugar expressly describes why a POSITA would

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

89. Therefore, a POSITA would have been motivated to make this combination of prior art techniques for providing additional or unique awards to players, and a POSITA would have understood, particularly in view of the teachings of Schugar, that DeWaal’s system was ready for improvement by complimenting its

ability to offer a full cash out of a wager via its “offer and acceptance feature” with Schugar’s ability to offer “cashing out a portion of a current bet in progress.”

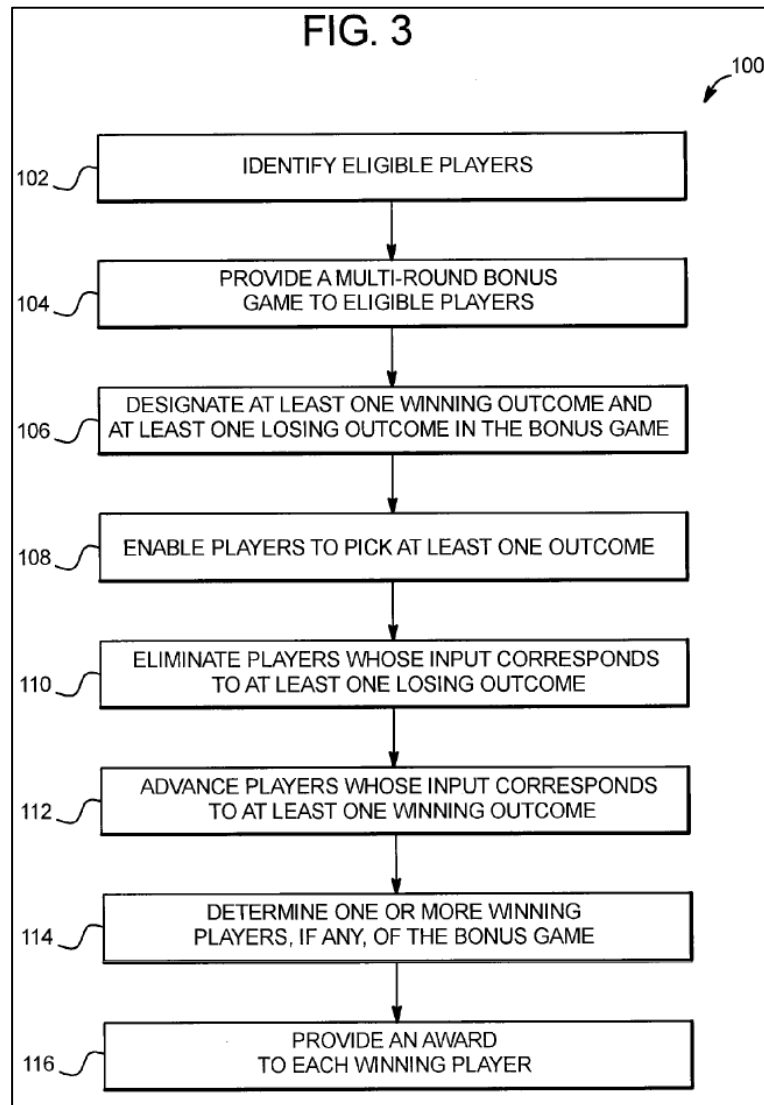
1. Claim 1

- a. 1[a] – “A method of conducting a multi-outcome wagering event for one or more players, wherein the wagering event comprises a defined number of legs, and wherein 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, the method comprising the steps of:”**

90. Limitation 1[a] is the preamble of claim 1 of the ’338 Patent. In my opinion, and to the extent the preamble is limiting, DeWaal discloses limitation 1[a] of the ’338 Patent under Patent Owner’s apparent construction of the limitation “at least one of a buy-out offer and partial buy-out offer” (where just one of a buy-out or partial buy-out is required) and renders obvious this limitation in combination with Schugar under DraftKings’ construction (where offering both full and partial buy-out is required). The remainder of limitation 1[a] is disclosed in DeWaal under either party’s construction of that term.

91. In my opinion, a POSITA would have understood that DeWaal discloses “a method of conducting a ... event” because DeWaal discloses a process for providing or conducting a bonus event. For example, DeWaal describes “a gaming system and *method*” for “provid[ing] a multi-round *bonus event* to a plurality of players.” DeWaal ¶ [0108]. The high-level process, or “method,” for

conducting DeWaal's bonus event is disclosed, for example, in FIG. 3, depicted below.



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

embodiments further illustrating DeWaal's process for conducting the bonus event are shown, for example, in FIG. 7 and FIG. 10. *See* DeWaal at FIG. 7, FIG. 10, ¶ [0141] ("FIG. 7 is a chart of one embodiment of a multi-round bonus event, wherein a plurality of players compete for an award at substantially the same time and the bonus event includes an offer and acceptance feature."), ¶ [0157] ("FIG. 10 is a timeline representative of one embodiment of a multi-round bonus event," including the offer and acceptance feature, "wherein a plurality of players compete for an award at substantially the same time and the award is provided to at least one of the players"). As DeWaal states, "[g]enerally, *the process 100 enables a central controller to cause the system gaming machine to provide a multi-round bonus event* to a plurality of players." DeWaal ¶ [0124].

92. In my opinion, a POSITA would understand that DeWaal's bonus event is a "wagering event" because it is subject to a separate wager. For example, DeWaal discloses that "the central controller determines which players are eligible for the bonus event in association with a *separate wager*." DeWaal ¶ [0118]. DeWaal further explains that that "separate wager" comprises a "*side-wager or entry fee that enables a player to participate in the bonus event*." DeWaal ¶ [0118]. Even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is

reserved to fund the progressive/bonus jackpots. See, e.g., DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and was disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus event because a wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game. Moreover, in connection with the bonus event wager, DeWaal discloses that players of the bonus event also “make an input in association with the plurality of outcomes in each round as indicated by block 108” in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round.”). Because a user submits a separate wager to be eligible to participate in the bonus event, a POSTIA would understand that DeWaal’s bonus event is a “wagering event.”

93. In my opinion, a POSITA would understand that DeWaal’s bonus event is also a “multi-outcome” event. For example, DeWall discloses that “the bonus event includes a selection game and *the plurality of outcomes* include player

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

94. 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].

95. In my opinion, a POSITA would understand that DeWaal’s bonus event “comprises a defined number of legs.” For example, DeWaal discloses that the bonus event is “multi-round” and that each of the multiple rounds are a component of the bonus event. DeWaal ¶ [0119] (“In one embodiment, the bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round. In one embodiment, the players must pick a designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event.”). This mapping of DeWaal’s multiple rounds to the claimed “legs” is consistent with the ’338 Patent specification, which states that “[t]he term ‘leg’ as used herein should be broadly construed and may comprise any desired number of individual components of any type of event, such as any type of game or sporting event.” ’338 Patent at 5:7-10; *see also* ’338 Patent at 1:54-64 (“The present disclosure is directed ... a unique betting product where players make selections in a number of different legs which, as defined below, can

include *any variety of different discrete events* ... partial events ... components of events ... multiple independent events ... and/or compilations of events.”).

96. Further overlapping with the '338 Patent's definition of “leg,” DeWaal discloses that “[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or *games that include one or more rounds of game play*.” DeWaal ¶ [0108]. Many of these exemplary games are the same as those which the '338 Patent admits have multiple “legs.” *See, e.g.,* '338 Patent at 5:25-30 (“a leg may comprise any desired number of individual components of any game or a game in its entirety, virtual and real, such as for instance, and without limitation, keno, jacks, poker, blackjack ... slot machines, lotteries[.]”).

97. Regarding the number of legs being a “defined number of legs,” DeWaal discloses that “the number of rounds ... may be *set* by the game implementer to any suitable number.” DeWaal ¶ [0182]; DeWaal ¶ [0128] (“The number of outcomes, the number of rounds, and/or the number of winning or designated outcomes are set to any suitable manner by the implementer of the gaming system.”). By disclosing that the bonus event includes a “set” number of “rounds,” a POSITA

would understand that DeWaal's multi-round bonus event comprises a "defined number of legs," where each round corresponds to a "leg." Similarly, DeWaal discloses that the "bonus event ends after a *designated number of rounds* including a final round." DeWaal ¶ [0011].

98. In my opinion, a POSITA would understand that during DeWaal's bonus event, "a player is presented with at least one of a buy-out offer." For example, as discussed in greater detail below with respect to limitation 1[j], my analysis of which is herein incorporated by reference, DeWaal's bonus event includes an offer and acceptance feature that corresponds to "a buy-out offer." *See, e.g.,* DeWaal ¶ [0141], FIG. 7, FIG. 10. As DeWaal explains, "if the player picks the designated," or winning, "selection in one of the rounds, the *central controller offers that player to either quit the bonus event and keep the total award accumulated in the bonus event or continue the bonus event and play a subsequent round*. If the player chooses to quit, the central controller provides (or causes that player to be provided) with the accumulated award ... In this embodiment, *the total accumulated award is offered to each advancing player along with the option to quit*." DeWaal ¶ [0018].

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

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

100. Because accepting the offer effectively ends the player’s participation in the bonus event, *i.e.*, the player “quits” the bonus event by accepting, the offer is for 100% of the player’s interests held in the bonus event and their interest in potentially winning the bonus jackpot award in the final round. In other words, DeWaal’s offer and acceptance feature provides players the option of surrendering their entire interest in the bonus event, including their interest in winning the bonus jackpot, in exchange for value, such as the equity stake the player has in the bonus round given their current position at the time the offer is made. Thus, a POSITA

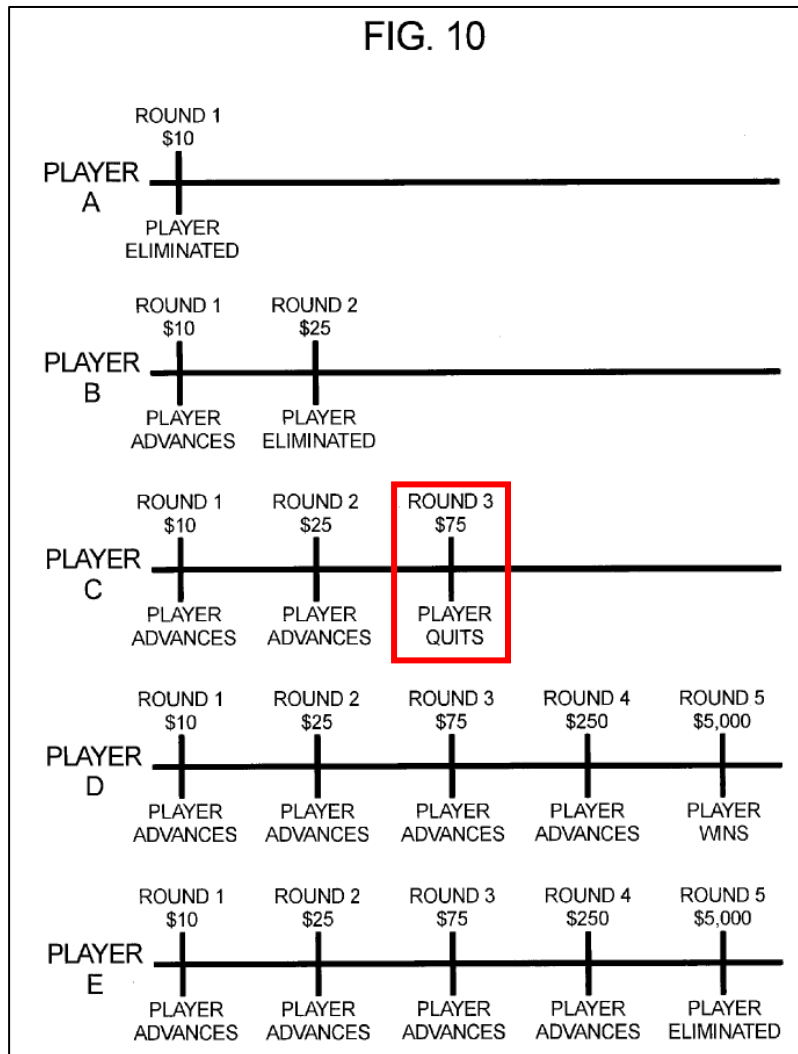
would have understood that DeWaal's reference to a player "quitting" the bonus event before termination or completion of all rounds refers to the player being offered, and accepting, a buy-out offer.

101. An example timeline of multiple players participating in a bonus event with the offer and acceptance feature is provided, for example, in DeWaal's FIG.

10, which is shown below, and described in paragraphs [0157] through [0160].

This timeline, and the accompanying description, confirm that DeWaal's offer and

acceptance feature in the bonus event corresponds to the claimed “buy-out offer.”



DeWaal at FIG. 10 (annotated).

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

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

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

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

103. The description of a "buy-out offer" in the '338 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 '338 Patent states that "the buy-out offer is for

buying an entire ticket from a player (i.e., 100%) for an indicated value.” ’338 Patent at 13:32-34.

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

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

litigation that Patent Owner asserts infringement under this interpretation. Therefore, to the extent that Patent Owner argues for a similar interpretation here, where this preamble is “limiting,” and where limitation 1[a] does not require “a partial buy-out offer,” and thus may be satisfied by a full “buy-out offer” alone, DeWaal discloses “wherein a player is presented with at least one of a buy-out offer and a partial buy-out offer prior to completion of all of the defined number of legs.” Under this presumed construction of Patent Owner, a POSITA would understand that DeWaal discloses the entirety of limitation 1[a] of the ’338 Patent.

106. However, DeWaal does not expressly disclose the ability to offer both a buy-out offer *and* a partial buy-out offer as required under DraftKings’ construction because DeWaal does not expressly disclose a “partial buy-out offer.” Distinct from a full “buy-out offer,” where 100% of the wager is surrendered for some indicated value and an accepting player’s participation in the event ends in exchange for the indicated value, a “partial buy-out offer” is described in the ’338 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.” ’338 Patent at 15:31-37. 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%.” ’338 Patent at 14:14-16. 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.*, ’338 Patent at 15:37-39 (“Thus, the player in the above example could sell 10% of the ticket for \$8,000 and retain the potential of receiving 90% of the \$1,000,000 Jackpot Pool.”).

107. While DeWaal alone does not disclose the partial buy-out concept, that concept was well-known in the art and would have been known to a POSITA at the relevant time (*see supra* §V.C) such that it would have been obvious to implement a partial buy-out offer (in addition to the full buy-out offer to “quit”) in the system of DeWaal in view of Schugar’s teachings as discussed below. Such a configuration would have been consistent with and motivated by DeWaal’s teachings to offer “new and different ways to provide awards to players including bonus awards” because the partial buy-out feature would have enabled a player to secure a fractional portion of a bonus award before completing the event and while still remaining eligible for a larger, but reduced, prize. DeWaal ¶ [0008].

108. Schugar, which explicitly discloses a “partial buy-out offer.” For example, Schugar discloses that, “[w]hen the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to *cash in on the winning state before completing the game.*” Schugar ¶ [0077]. In addition to fully “cash[ing] in” a bet and “surrender[ing]” it in full, “[t]he player

can *also bank a portion* of the expected profit the player has earned for later use.”

Schugar ¶¶ [0078], [0079]. As Schugar explains, “[a] player may find it attractive to be able to accumulate (or ‘bank’) *a portion* of a positive expectation situation for later redemption.” Schugar ¶ [0077]. “This can be done in a number of ways.” Schugar ¶ [0079]. For example, in a situation where the player placed a \$100 wager, one such way is that “the house can take a portion of the player’s wager (such as 10%), so that the player now has \$90” wagered on the event, and “the taken portion can be stored for later redemption by the player” and “can be accumulated and dispersed to the player at a later time.” Schugar ¶ [0079]. The banked portion “can be redeemed for cash instantly” or “redeemed for cash at a later time.” Schugar ¶ [0083]. As Schugar explains, whether the player wins or loses the wagering event after cashing in a portion of the player’s wager thereon, “the player has banked the banked value for later redemption” and the player can “continue to wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

109. 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.

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

[C]onsider a football game with the Patriots vs. the Giants.

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

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

111. 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.

112. In my opinion, for the reasons discussed above and below with respect to limitations 1[j] and 1[k], a POSITA would have been motivated to modify the system and method for providing a bonus event in DeWaal, and in particular the offer and acceptance feature of DeWaal’s bonus event, to add Schugar’s offer to cash in a portion of the player’s wager. For example, a POSITA would have been motivated to provide Schugar’s partial cash-out feature as an option in DeWaal’s system to increase revenue to the casino operator through increasing commissions while providing the player “peace of mind” of at least some “banked” profit. *See, e.g.,* Schugar at ¶¶ [0078 - 79] (“For example, the house can let the surrender [sic] the wager for \$125. The house makes money on this proposition, and the player gets the peace of mind of the sure win. The player can also bank a portion of the expected

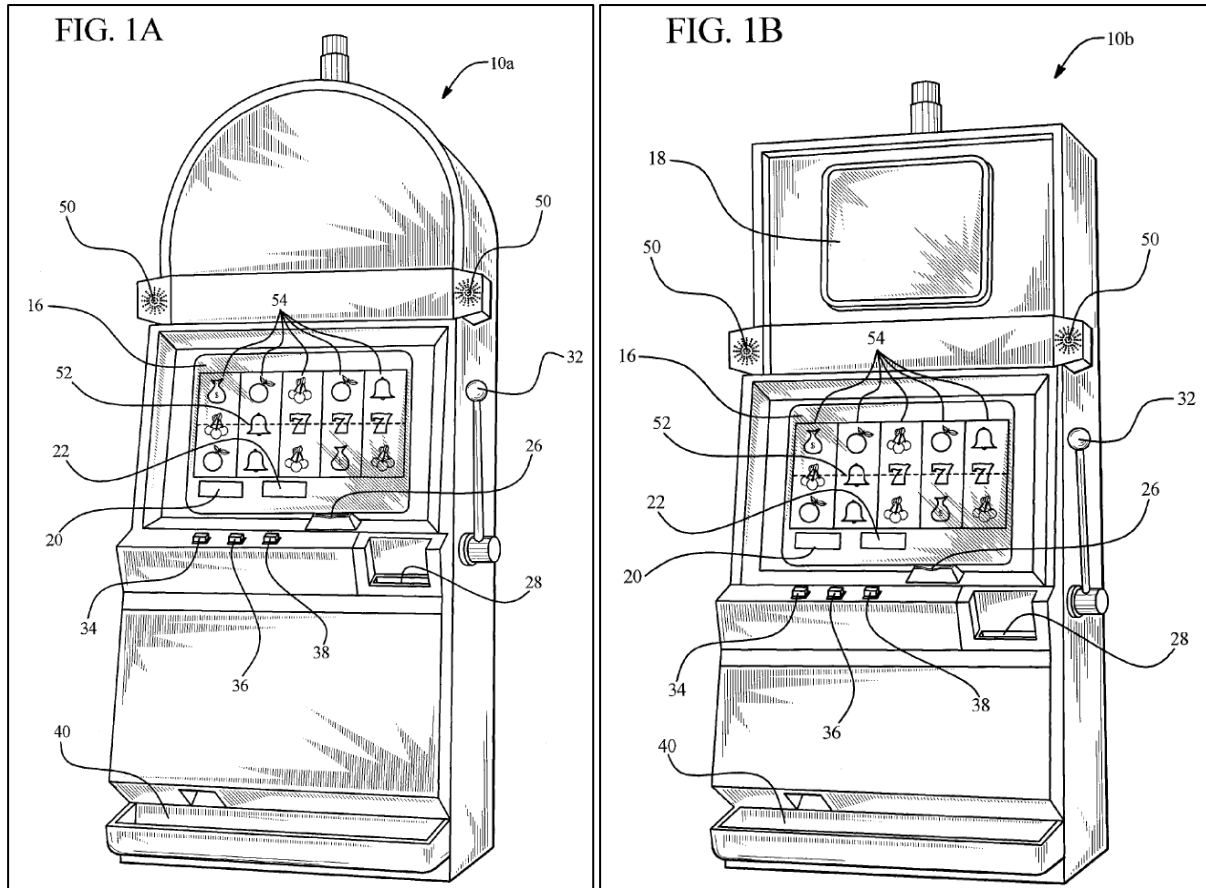
profit the player has earned for later use.... In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.”).

- b. 1[b] – “providing one or more wagering input devices in communication with a system controller through which one or more players may participate in a multi-outcome wagering event, the system controller comprising a trading exchange module, the one or more wagering input devices comprising one or more of a user input, a payment acceptor, or a link to a customer account for receiving a wager from a player, the one or more wagering input devices further comprising one or more displays for displaying the at least one of the buy-out offer and the partial buy-out offer after the multi-outcome wagering event begins, the one or more wagering input devices further comprising an input for receiving an acceptance of at least one of the buy-out offer and the partial buy-out offer, and the one or more wagering input devices further comprising a user output for issuing a credit, tokens, currency or an award to a player, said system controller being adapted for:”**

113. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[b]. As an initial matter, the '338 Patent admits that the types of “wagering input devices” or gaming machines disclosed in DeWaal are suitable for implementing the disclosure of the '338 Patent. *See* '338 Patent at 24:4-20 (citing U.S. Patent No. 8,105,149 to DeWaal (“DeWaal '149”), which is the patent that issued from DeWaal with identical disclosures; noting that the gaming machines disclosed in DeWaal are suitable for “incorporating the concept of the present disclosure” because they include “computerized instructions for controlling any

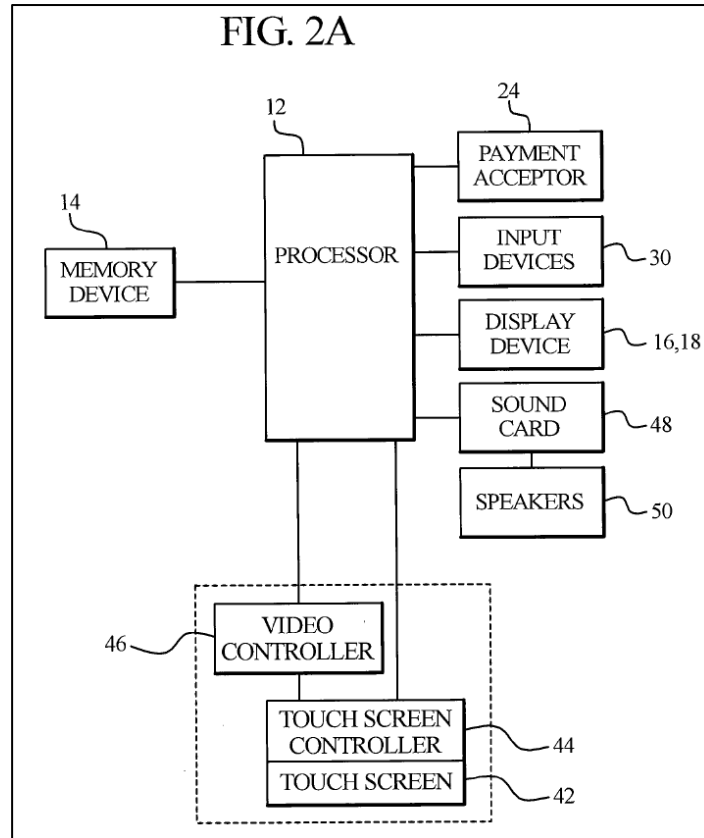
games” that can be reprogrammed or changed). Further, portions of limitation 1[b] overlap with 1[a], and I incorporate by reference my analysis of limitation 1[a] herein.

114. 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.

115. 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].

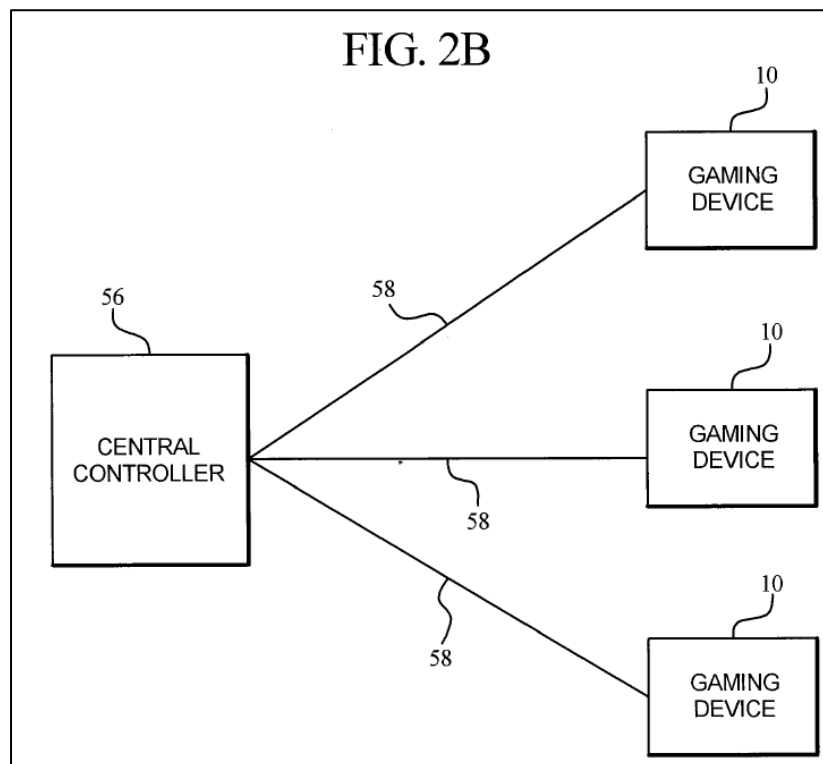


DeWaal at FIG. 2A.

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

touch-screen button panel.”), [0128] (“the bonus event includes a selection game and the plurality of outcomes include *player selectable elements or selections.*”)

117. 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].

118. A POSITA would understand that the communications between DeWaal's disclosure of the gaming devices and the controller transmitting and receiving events, messages, commands, or other signals corresponds to the gaming devices being in communication with a system controller. Moreover, DeWaal's central controller is a "system" controller because it "remotely controls any games (or other suitable interfaces) and the gaming device is utilized to display such games

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

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

120. In my opinion, a POSITA would understand that DeWaal's disclosure of software programs in the central server corresponds to "the system controller comprising a trading exchange module." As an initial matter, the '338 Patent fails to describe "a trading exchange module" and mentions only a "trading engine" once by disclosing that the "Offers Generation routine 452 is the *trading engine* that, when triggered, will *generate a set of offers* over all of the tickets that are still potential winners and then publish the offers and *receive/process the acceptance of these offers* via the Merchant API 420." '338 Patent at 9:9-14. In consideration of the "trading exchange module" as the "trading engine," a POSITA would understand that the claimed "trading exchange module" is merely a routine or function in software that initiates the cash out offer by generating and publishing the offers, which as described herein is disclosed in DeWaal. For example, DeWaal discloses that the central server contains "software programs stored in one or more memories and executable by one or more processors" that can "transmit and receive events, messages, commands or any other suitable data or signal" between the central server and the gaming devices. DeWaal ¶¶ [0122], [0084]. Further, DeWaal discloses that this central controller initiates a cash out offer by offering "each advancing player an additional award to quit the bonus event." DeWaal ¶ [0141]. Thus, a POSITA would understand that the central controller in DeWaal includes a routine or function that generates or initiates the cash out offer to quit because the central server could

not generate cash out offers unless it was programmed to do so by machine-readable and executable instructions. Further, a POSITA would have been motivated to use this “thin client” configuration because such central control provides benefits to a gaming establishment in “maintaining appropriate records, controlling games, reducing and preventing cheating or electronic other errors, reducing or eliminating win-loss volatility and the like.” DeWaal ¶ [0088]. Thus, DeWaal’s disclosure of software programs in the controller corresponds to the “trading exchange module” in limitation 1[b].

121. In my opinion, a POSITA would understand that DeWaal discloses “the one or more wagering input devices comprising one or more of a user input, a payment acceptor, or a link to a customer account for receiving a wager from a player” for several reasons.

122. First, corresponding to a “user input ... for receiving a wager from a player,” DeWaal discloses that the gaming device may include “bet one” and “bet max” buttons that enable the “player [t] place[] a bet by pushing the ... button.” DeWaal ¶ [0059]. A POSITA would have understood that a button that enables a player to place a wager satisfies this limitation with respect to the “user input.” In addition, rather than a physical button, the gaming device may also or alternatively include “a touch-screen 42 coupled with a touch-screen controller 44” that allows for player interaction so that the “player can make decisions and *input signals* into

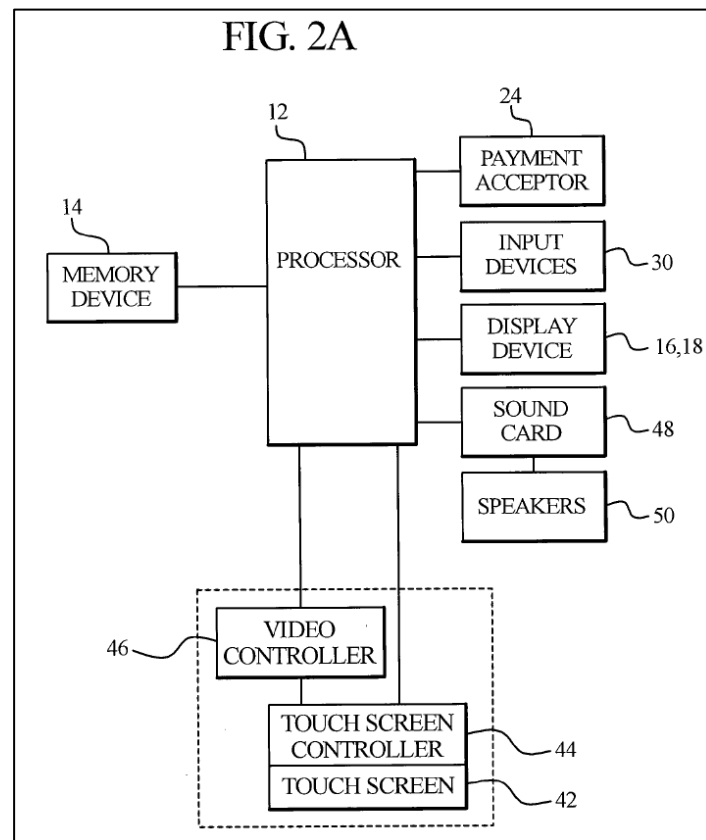
the gaming device.” DeWaal ¶ [0061]. A POSITA would understand that the touch-screen allows for user input for receiving a wager from a player because the player can make decisions by touching the touch-screen at the appropriate places, such as how much to bet and which selections to bet on.

123. Second, corresponding to the “payment acceptor ... for receiving a wager from a player,” DeWaal discloses its “gaming device includes at least one *payment acceptor*.” DeWaal ¶ [0057] (the payment acceptors may include “a coin slot 26 and a payment, note or bill acceptor 28, where the player inserts money, coins or tokens.”). A POSITA would have understood that a gaming devices including a payment acceptor for receiving funding for a wager from a player satisfies this limitation.

124. And third, corresponding to “a link to a customer account for receiving a wager from a player,” DeWaal discloses that “money may be transferred to a gaming device through electronic funds transfer” and that the gaming device is integrated with one or more “player tracking system” that “tracks any suitable information, such as any amounts wagered, average wager amounts and/or the time these wagers are placed.” DeWaal ¶¶ [0057], [0095]. A POSITA would understand that DeWaal’s electronic funds transfer and player tracking system are ways to receive a wager from players from a “customer account” and that the gaming device

must include a “link” or way of access to this customer account in order to carry out the wagering process.

125. In my opinion, a POSITA would understand that DeWaal discloses the “the one or more wagering input devices further comprising one or more displays for displaying the at least one of the buy-out offer and the partial buy-out offer after the multi-outcome wagering event begins.” In addition to the discussion above for limitation 1[a] (my analysis of which is incorporated herein), corresponding to “one or more displays for displaying the at least one of the buy-out offer and the partial buy-out offer,” DeWaal discloses that the gaming devices include “a plurality of displays.” DeWaal ¶ [0045].



DeWaal at FIG. 2A.

126. Further, regarding the displays being “for displaying at least one of the buy-out offer and the partial buy-out offer after the multi-outcome wagering event begins,” 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 comprises “one or more displays for displaying” a buy-out offer and partial buy-out offer. Moreover, as has been discussed herein, a POSITA would understand that such display of the buy-out offer (or partial buy-out offer as discussed with respect to limitation 1[a]) in DeWaal occurs “after the multi-outcome wagering event begins” because DeWaal discloses several examples where the offer is displayed after an initial round (*i.e.*, after round 1 in the example above), which occurs only after the event begins.

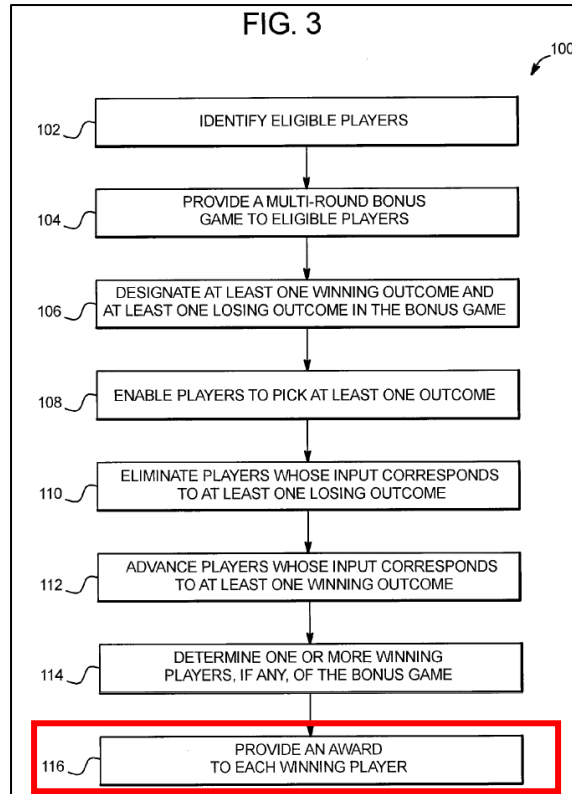
127. In my opinion, a POSITA would understand that DeWaal discloses “the one or more wagering input devices further comprising an input for receiving an

acceptance of at least one of the buy-out offer and the partial buy-out offer” because DeWaal discloses that the gaming device provides players with the option of accepting the buy-out offer (and partial buy-out offer as discussed above) and explains that “[a] player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate places.” DeWaal ¶ [0061].

128. That the gaming device includes an input for receiving any acceptance of the buy-out or partial buy-out offer is further confirmed by DeWaal’s disclosures that the central controller taking action in direct response to a player accepting the offer of the additional award to quit the bonus event and of 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.”). When a player accepts the offer to quit, DeWaal explains that “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 user gaming devices include “an input for receiving acceptance” of the buy-out offer at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event and the central controller takes specific and direct actions in response to a player accepting the offer to quit. Indeed, DeWaal plainly states that “the gaming device is utilized to display such games (or other suitable interfaces) and *receive one or more inputs or commands from a player.*” DeWaal ¶ [0042].

129. In my opinion, a POSITA would understand that DeWaal discloses “the one or more wagering input devices further comprising a user output for issuing a credit, tokens, currency or an award to a player” because DeWaal discloses providing the award for the bonus game, such as the jackpot, to any winning players. For example, DeWaal states that “the central controller is operable to provide an award to each winning player as indicated by block 116.” DeWaal ¶ [0133]. This step of providing the award to the players that have won the jackpot (or a portion thereof) is illustrated in FIG. 3 of DeWaal, as shown below.



DeWaal at FIG. 3.

130. In addition, DeWaal discloses that a player “may push the cash out button and cash out to receive *a cash payment or other suitable form of payment* corresponding to the number of remaining credits.” DeWaal ¶ [0060]. DeWaal further explains that the player “receives the coins or tokens in a coin payout tray” or may “receive other payout mechanisms such as tickets or credit slips redeemable by a cashier (or other suitable redemption system) or funding to the player’s electronically recordable identification card.” DeWaal ¶ [0060]. A POSITA would therefore understand that DeWaal’s gaming devices include “a user output” because

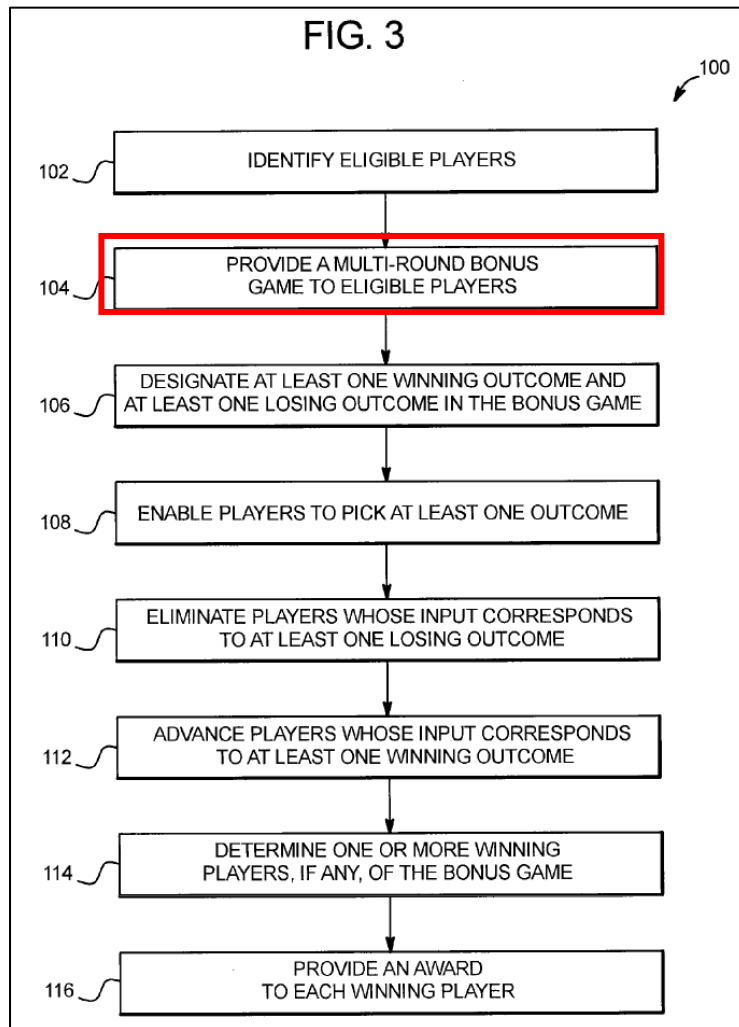
the player receives such “credit, tokens, currency, or an award” through the various methods described above (*i.e.*, cash out button, payout tray, etc).

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

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

132. 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

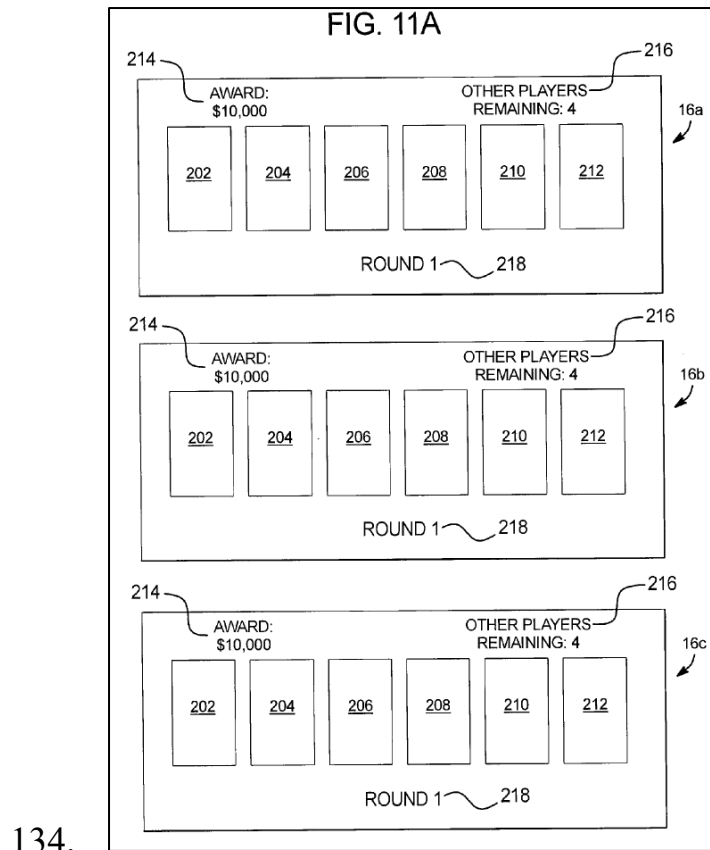
event) to those eligible players as indicated by block 104.” DeWaal ¶ [0126]; see also DeWaal ¶ [0123] (“the process 100 is embodied in computerized instructions executed by a central controller or remote host.”).



DeWaal at FIG. 3.

133. 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.



135. DeWaal at FIG. 11A.

136. A POSITA would understand that DeWaal discloses that, as part of the bonus event “one or more jackpots, or a portion thereof, is awarded at least where a particular number of the defined number of legs are completed.” For example, DeWaal discloses that players in the bonus event may compete for “a designated award, such as a top-level award or an award of relatively high value.” DeWaal ¶ [0187]. Such a top-level award may be a “pool” or a “progressive jackpot.” DeWaal ¶ [0102]. Such pools/jackpots may be funded by the separate “wagers placed to participate in the bonus event,” and therefore, a POSITA would understand them to be a “jackpot.” DeWaal ¶ [0118]. In addition, regarding the awarding of the jackpot

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

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

137. 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. I also incorporate by reference

my analysis of limitation 1[b], which discusses these user inputs and payment acceptors in detail.

138. 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.

139. 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].

140. A POSITA would understand that, because such signals representing the amount wagered and the wagered selections are input by the player "*via any suitable input device of the gaming machine*" and "*receive[d] ... from gaming machines* in the gaming system," they may be received by the central controller via any one of "the user input," "the payment acceptor," or "the link of the one or more wagering input devices," as claimed. DeWaal ¶ [0129]. For example, DeWaal discloses "[t]he central controller enables each player to select at least one of the selections via any suitable input device of the gaming machine, *such as a touch screen.*" A POSITA would understand that the "touch screen" of the gaming

machine correlates to “the user input” because both mechanisms allow a player to enter selections (*i.e.*, wagers) in each round of the bonus event. In another example, DeWaal discloses “the payment acceptor may include a coin slot 26 and a payment, note or bill acceptor 28, where the player inserts money, coins or tokens.” DeWaal ¶ [0057]. A POSITA would understand that the “payment acceptor,” including “coin slot 26” or “bill acceptor 28,” correlates to the “payment acceptor” claimed because both mechanisms enable a player to enter a wagered amount for the bonus event. In yet another example, DeWaal discloses “a player may insert an identification card into a card reader of the gaming device,” and “money may be transferred to a gaming device through electronic funds transfer” by associating a player’s funds with that player’s unique identification card. DeWaal ¶ [0057]. DeWaal further explains that this “electronic funds transfer” is possible because “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]. A POSITA would understand that the gaming devices (*i.e.*, wagering input devices) are “in communication” and therefore linked to each other via the data network, so that a player’s wager associated with the player’s unique identification card may be received by the central controller via “the link of the one or more wagering input devices.”

141. 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 input from a player desiring to participate in the” bonus event because the player may submit a “separate wager” in order to be eligible for the bonus event and/or must actively submit a wager in the base game to be eligible for the bonus game (as discussed above). Specifically, DeWaal discloses that “the central controller determines which players are eligible for the bonus event in association with a *separate wager*” that is a “*side-wager or entry fee that enables a player to participate in the bonus event.*” DeWaal ¶ [0118]. And, as discussed above, even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is reserved to fund the progressive/bonus jackpots. See, e.g., DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and was disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus event because a

wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game. A POSITA would understand that the receiving by the central controller was in response to input from a player desiring to participate in the game because the user actively took steps to initiate the game. Similarly reflecting a player's desire to participate in the bonus event, players of the bonus event must also "make an input in association with the plurality of outcomes in each round as indicated by block 108" in FIG. 3. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] ("each of the eligible players makes selections from a number of available selections (such as from a plurality of potential outcomes or selections) in each round."). A POSITA would understand that these affirmative input actions are indicative of a player desiring to participate in the bonus event.

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

e. 1[e] – “generating a record reflecting the wager associated with the player at the system controller;”

143. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[e] of the '338 Patent because DeWaal discloses an accounting and gaming system module operably coupled to the central controller that includes and populates a database (e.g., generates entries in the database) for tracking players' wagers and other wagering activity.

144. In my opinion, a POSITA would understand that DeWaal discloses “generating a record reflecting the wager ... at the system controller.” For example, DeWaal discloses that “the gaming network includes a real-time or on-line accounting and gaming information system operably coupled to the central server or controller. The accounting and gaming information system of this embodiment 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 “*player tracking system tracks any suitable information, such as any amounts wagered, average wager amounts and/or the times these wagers were placed.*” DeWaal ¶ [0096]. The player tracking system may also include “*the player's recent gaming sessions*, or any other suitable data.” DeWaal ¶ [0096]. Therefore, at least because the tracking module tracks a player's wagers for “recent gaming sessions,” not only the current gaming session, a POSITA would understand that the tracking module generates some form of persistent “record” that

reflects the wager for more than a transient amount of time, i.e., at least long enough to cover “recent” gaming sessions. Furthermore, for the avoidance of doubt, a POSITA would understand that database entry relating to a player’s wager is a type of “record” and that creating a database entry involves “generating” the entry relating to a player’s wager, and therefore the record relating to the player’s wager.

145. Further, a POSITA would understand that DeWaal discloses that the record reflecting a player’s wager is “associated with the player.” As described above, the tracking system “tracks” the wagering activity of particular players. To implement such tracking, the tracking system associates the wagering information with various pieces of additional information pertaining to the player, such as, for example “the player’s account number, the player’s card number, the player’s first name, the player’s surname, the player’s preferred name, the player’s tracking ranking, any promotion status associated with the player’s player tracking card, the player’s address, the player’s birthday, the player’s anniversary.” DeWaal ¶ [0096]. A POSITA would understand that associating the wager information with such personal identification information of the player, as disclosed in DeWaal, is a well-known technique for tracking players’ wagering activity.

f. 1[f] – “receiving input of an outcome of each of the defined number of legs corresponding to the multi-outcome wager event;”

146. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[f] because DeWaal discloses the central controller receiving input signals from the wagering devices that are or correspond to an outcome, such as a possible or selected outcome, for each round of the multi-round bonus event.

147. For example, corresponding to “receiving input of an outcome of each of the defined number of legs corresponding to the multi-outcome wagering event,” DeWaal discloses that “[t]he *central controller receives* a signal from gaming machines in the gaming system corresponding to *an input from each player in each round*,” and that those inputs by the players for each round are the players’ selections “from a plurality of potential *outcomes*” in each round such that the input signals received by the central control correspond to “an outcome” for each round of the multi-round bonus event. DeWaal ¶¶ [0013]; *see also* DeWaal ¶¶ [0129] (“The 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 FIG. 3), [0166] (“each round includes a plurality of available *selections or outcomes* 202, 204, 206, 208, 210, and 212.”), [0158] (“The central controller receives a signal from gaming machines in the gaming system corresponding to an input from Players A, B, C, D and E.”).

148. While the player's selection is of a potential outcome for each round, a POSITA would understand that a potential outcome is still "an outcome," particularly in the context of a multi-outcome bonus event as disclosed in DeWaal, where the event has more than one possible outcome. That is, potential outcomes that are selected by the players and received by the controller as "an outcome" because they are one of the possible outcomes of the multi-outcome bonus event. A POSITA would understand that a user's selection of a possible "outcome" does not make it any less of an "outcome," and the claim does not limit "an outcome" to any particular type of outcome, nor does it indicate where the outcome was received from. Thus, DeWaal's disclosures discussed above satisfy this limitation.

149. Notably, the '338 Patent confirms that this mapping is correct in that the '338 Patent, like DeWaal, recognizes that a selected outcome for a given leg is "an outcome" of the leg. For example, the '338 Patent states that "players ... select the outcomes of each leg." '338 Patent at 2:13-14; *see also* '338 Patent at 10:61-65 ("the input device is a game selection device or a game play button which is used by the player to identify the selected outcome of each of the games/matches/legs of the pool wager on the wager station 14 or wager terminal 16."). Therefore, this mapping of DeWaal's disclosure to limitation 1[f] is consistent with the use of the term "outcome" in the '338 Patent.

150. Alternatively, DeWaal discloses this limitation in another way. Specifically, rather than the above mapping where the selected outcome is “an outcome,” DeWaal also discloses receiving input of a final outcome, or result, of each round of the bonus game, which independently satisfies this claim limitation. For example, DeWaal teaches that the results of a round “may be stored” in a storage device or memory and retrieved at “different times” so that the “central controller is operable to determine a winning player and/or an amount of the award” for a round “based on this stored information at a later time.” DeWaal ¶ [0164]. As would have been apparent to a POSITA, storing the final/designated outcome, or results, of a round and later retrieving them from storage would involve the central controller receiving that outcome from the memory, thus satisfying this limitation.

g. 1[g] – “generating and causing display via the one or more wagering input devices the outcome of each of the defined number of legs to a player;”

151. In my opinion, DeWaal discloses limitation 1[g] of the '338 Patent because DeWaal discloses that the central controller generates the game outcomes for the bonus event and controls and causes the gaming devices to display the outcome to a player, which satisfies this limitation.

152. For example, corresponding to “generating ... the outcome of each of the defined number of legs,” DeWaal discloses that “the central server or controller randomly *generates a game outcome* for the secondary game based on probability

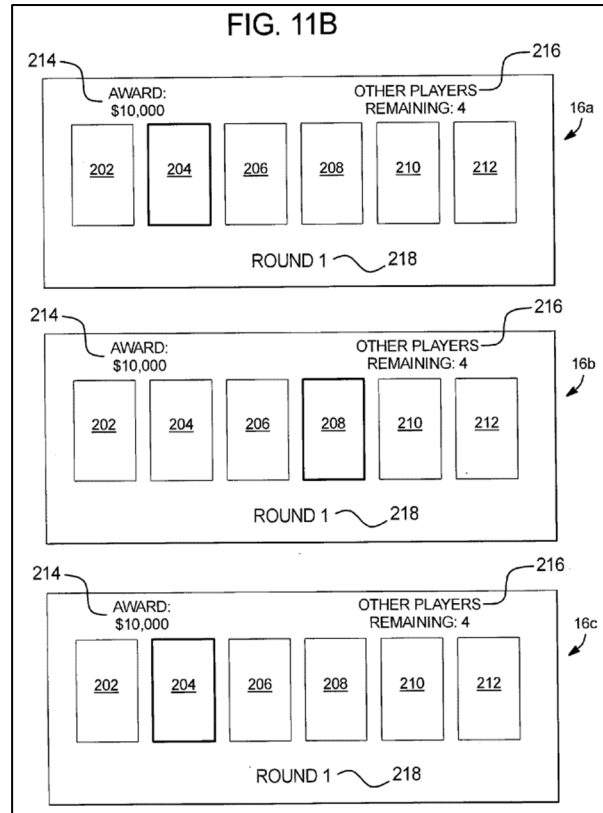
data.” DeWaal ¶ [0086]. The “secondary game” referenced in this passage of DeWaal refers to the bonus event previously referred to herein. *See, e.g.*, DeWaal ¶ [0004] (“**Secondary or bonus games** are also known in gaming machines.”). One of skill in the art would understand that because DeWaal’s bonus game includes multiple rounds, “generat[ing] a **game** outcome” comprises generating the outcomes for each round that makes up the multi-round bonus game.

153. This limitation is also satisfied by the alternative embodiment discussed above regarding limitation 1[f] concerning the final/designated or winning outcome of the round. For example, in addition to the central controller generating all of the possible outcomes for each round, as discussed herein, the “central controller of the gaming system designates (or causes designation of) at least one of the available outcomes in each round as a designated outcome (i.e., a winning outcome).” DeWaal ¶ [0012]. Thus, because the central controller performs the designation of an outcome as the winning outcome, a POSITA would have understood that the winning outcome is generated or created by the central controller.

154. Corresponding to “causing display via the one or more wagering input devices the outcome of each of the defined number of legs to a player,” DeWaal discloses that “[t]he central server or controller communicates the generated or selected game outcome to the initiated gaming device. The gaming device receives the generated or selected game outcome and provides the game outcome to the

player.” DeWaal ¶ [0088]. And, with respect to “*how the generated or selected game outcome is to be presented or displayed* to the player,” DeWaal explains that “*is also determined by the central server or controller and communicated to the initiated gaming device to be presented or displayed to the player.*” DeWaal ¶ [0088]. A POSITA would understand that a central controller that communicates to a gaming device how a game outcome is to be displayed to the player satisfies the claim limitation of “causing display via the one or more wagering input devices” of the outcome at least because the instructions for displaying the outcome were provided to the gaming device by the central controller and execution of those instructions by the gaming devices causes their result, displaying the outcome, to occur.

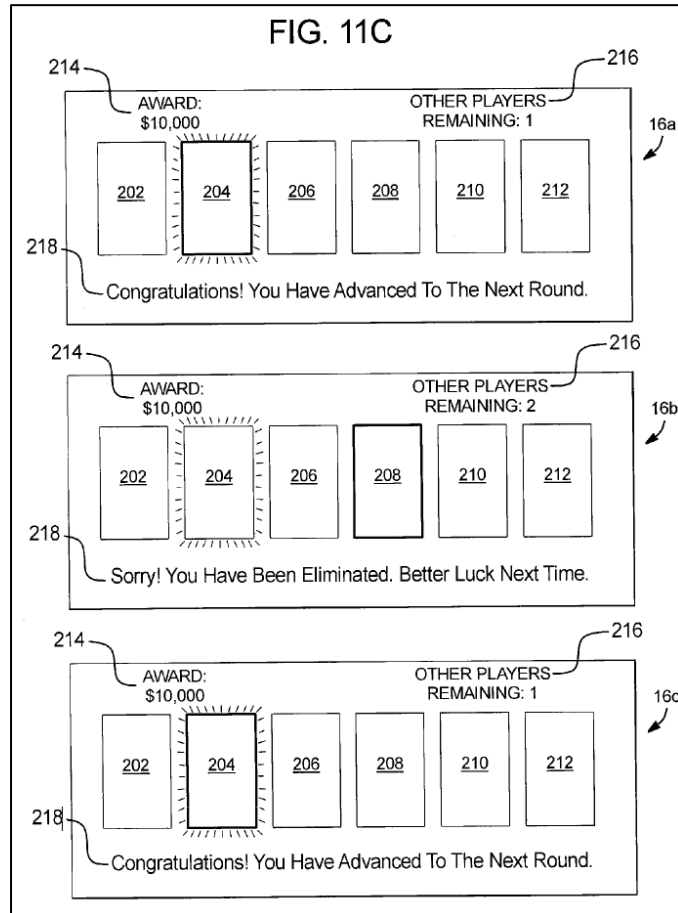
155. Examples of the central controller causing the display of the generated/selected outcome of each of the rounds of the bonus event are provided in FIGS 11A-11E. FIG. 11B is shown below as a representative example, which shows that the “display devices 16a, 16b, and 16c display their respective player picks of the selections 202, 204, 206, 208, 210 and 212 for the first round of the bonus event.”



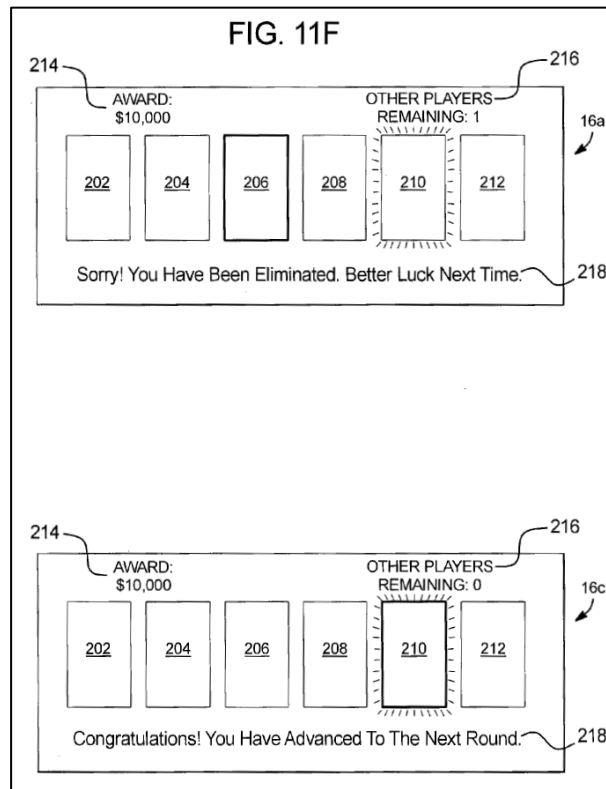
DeWaal at FIG. 11B. This process of causing display of the player picked outcome on the display of the gaming machine is repeated for each round of the bonus event. DeWaal at FIG. 11E, ¶ [0178] (“In FIG. 11E, the display devices 16a, 16b and 16c display the respective player picks of the selections 202, 204, 206, 208, 210 and 212 for the second round of the bonus event.”).

156. Similarly, with respect to the discussions above regarding the alternative embodiment of “the outcome” of each round being the designated or winning outcome, rather the selected outcome or some other outcome, DeWaal also discloses this this limitation. For example, DeWaal discloses that “after each eligible player picks one of the selections, the designated selection is *revealed* to the

players.” DeWaal ¶ [0167]. Further, corresponding to the central controller “causing display” of the designated outcome for each round of the bonus game, DeWaal discloses that the “central controller causes the display device ... to indicate the designated selection,” i.e., the winning outcome of each leg, “through illumination, highlighting, audio and/or visual effects.” DeWaal ¶ [0172]. An example of the central controller causing such display is shown, for example, in FIG. 11C below.



DeWaal at FIG. 11C. As confirmed by FIG. 11F, this process of the central controller causing the display of the winning outcome occurs for each round of the bonus event, as shown below.



DeWaal at FIG. 11F; ¶ [0179] (“The designated selection 210 is illuminated as indicated on the display devices 16a and 16c.”).

h. 1[h] – “identifying one or more players eligible to win each of the defined number of legs based on the wager from among players participating in the multi-outcome wagering event,”

157. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[h] of the ’338 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 each of the defined number of legs based on the wager from among players participating in the multi-outcome wagering event.” *See, e.g.*, DeWaal ¶¶ [0016], [0119], [0130].

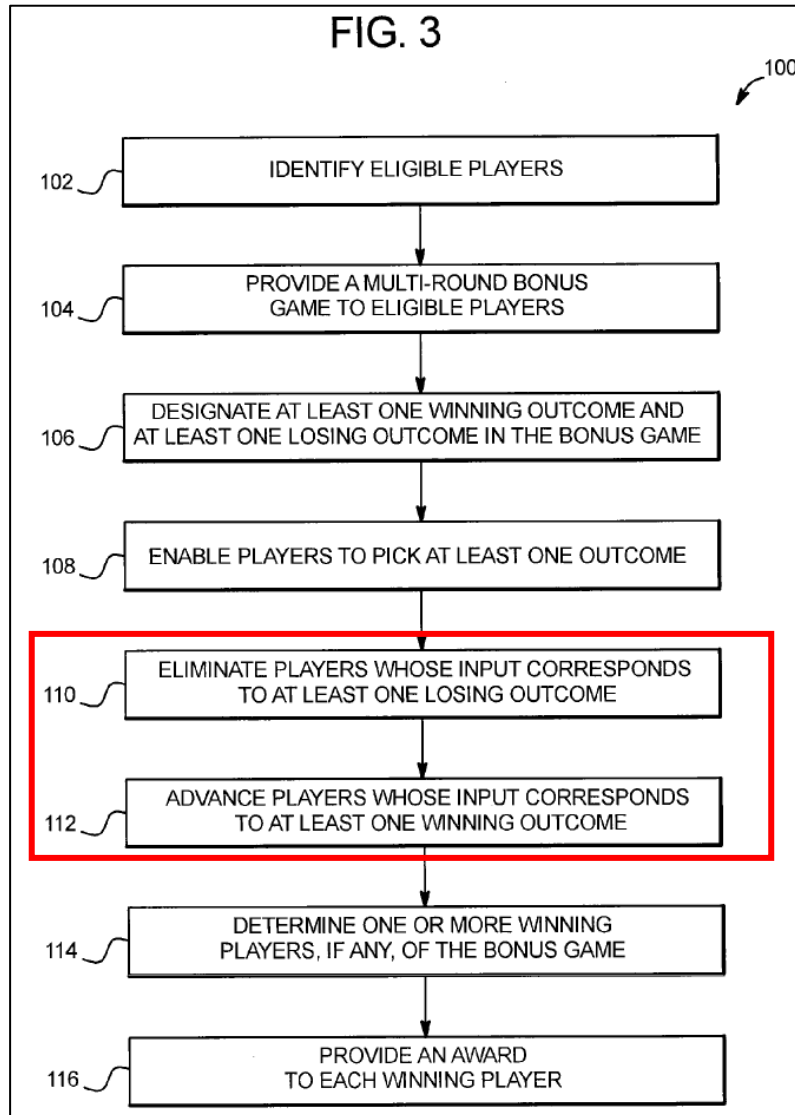
158. For example, in order to “win all or a share of an award associated with the bonus event,” such as the jackpot, a player “must pick a designated outcome (i.e., a winning outcome) in each round” of the bonus event. DeWaal ¶¶ [0119]; [0143] (“In one embodiment, each player is required to make an input 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 each of the defined number of legs,” DeWaal’s system and method for providing the bonus event narrows down the pool of players after each round of the bonus event by identifying 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 process in DeWaal corresponds at least to the second step in FIG. 5 of the ’338 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.” ’338 Patent at FIG. 5.

159. 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.

160. 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.

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

the player's selected outcome "corresponds to" a winning outcome. *See* DeWaal at FIG. 3.

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

- i. 1[i] – “determining any players eligible to win at least one jackpot or a portion thereof based on the potential outcome of each of the defined number of legs in comparison against the record reflecting the wager from among players participating in the multi-outcome wagering event, wherein players eligible to win at least one leg are eligible to win at least one jackpot or a portion thereof;”

163. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[i] of the '338 Patent because the players that are eligible to win each of the rounds of the bonus event, as discussed above with respect to limitation 1[h] (analysis incorporated herein by reference), are eligible to win a jackpot or portion thereof until they are eliminated from the bonus event by making an incorrect or losing selection or quitting the bonus event by accepting an offer of an award in exchange for quitting.

164. Specifically, in the context of DeWaal's above-described technique for identifying players eligible to win each round of the bonus event based on the wager, DeWaal explains that, “[a]s the bonus event progresses, the players make inputs that determine their eligibility for the award” and that after “certain players are eliminated from the bonus event, *any of the eligible players remaining in the bonus event have a chance to win the award,*” and more specifically, “as players are eliminated from the bonus game, *each eligible player remaining in the bonus game has an opportunity to win a greater share or portion of the award.*” To ultimately

win the jackpot, DeWaal explains that “players must pick a designated selection (i.e., a winning outcome) *in each round* to win all or a share of the award.” Thus, as a POSITA would understand, DeWaal’s identification of players that are eligible to win each round, and specifically the identification of which players are “eligible” to participate in a given round, corresponds to “determining any players eligible to win at least one jackpot or a portion thereof based on the potential outcome of each of the defined number of legs in comparison against the record reflecting the wager from among players participating in the multi-outcome wagering event” because a player remains eligible to win the jackpot or portion thereof as long as they are not deemed ineligible by way of selecting a losing outcome or quitting the game.

165. As an example, consistent with DeWaal’s disclosure, a POSITA would understand that every player that is identified as an “eligible player” in FIG. 7 for each round has been determined to be “eligible to win at least one jackpot or a portion thereof based on the potential outcome of each of the defined number of legs in comparison against the record reflecting the wager from among players participating in the multi-outcome wagering event” because they have not been eliminated from or quit 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. Therefore, there were 800 players that were “eligible” to win the jackpot when the bonus event began prior to the first round, there were 300 players eligible to win the jackpot before the second round began, there were 100 players eligible to win the jackpot before the third round began, and so on, until there were just 2 players eligible to win the jackpot before the fifth and final round in this example began. In this context, corresponding to “wherein players eligible to win at least one leg are eligible to win at least one jackpot or a portion thereof,” each player that advances to the next round is eligible to win at least one leg, namely, the subsequent leg, and thereby remain eligible to win the jackpot or portion thereof.

166. In addition, specifically in the context of determining eligibility to win the jackpot in the final round, DeWaal explains that players are eligible to win the jackpot or a portion thereof if they advance to the final round by selecting the

winning outcome of each preceding leg and that each of the players that advances to the final round is eligible to win the final round and thereby win the jackpot or a portion thereof.

167. Corresponding to “determining any players eligible to win at least one jackpot or a portion thereof,” DeWaal discloses that any player that reaches the final round of the bonus event is eligible to win the top prize or jackpot. Specifically, DeWaal explains that “[f]or each player that reaches the final round, the award associated with the bonus event is available to one or more of those players,” and such an award can be, for example, a top-level award or “*jackpot*[.]” DeWaal ¶ [0016], [0102]. In this context, by specifying that the jackpot award is “available to” each of the players reaching the final round, a POSITA would understand that to mean that those players are eligible to win the jackpot or a portion thereof, depending on their selection in the final round.

168. As such and corresponding to the determining of eligibility to win the jackpot being “based on the potential outcome of each of the defined number of legs in comparison against the record reflecting the wager,” DeWaal discloses that in order to reach the final round, a player must select and thereby wager upon a designated or winning outcome in each round prior to the final round. As DeWaal states, “[b]ased on the players’ input,” which includes the players’ selections of outcomes for each round as discussed above, “*the central controller designates (or*

causes a designation of) certain players to advance to a subsequent round as indicated by block 112. That is, when one or more of the players make an *input that is associated with the winning outcome in one of the rounds, the central controller advances these players* to a subsequent round of the bonus event.” DeWaal ¶ [0130].

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

3. Similarly, with respect to the final round, DeWaal discloses that “[i]n the final round, if one of the remaining players makes an input that is associated with the winning outcome, the central controller provides that player ... with the award (or a portion of the award if a plurality of the remaining players make inputs associated with the winning outcome.” DeWaal ¶ [0112].

169. As is apparent from the explanation above of DeWaal’s eligibility determinations, the identification of players that are eligible to win the jackpot in the final round is made “from among players participating in the multi-outcome wagering event.” *See, e.g.,* DeWaal ¶¶ [0129] (“Based on the players’ input the central controller designates (or causes designation of) *certain players* to be ineligible (i.e., if the player’s input is associated with the losing outcome) and eliminates (or causes an elimination of) those players from the bonus event as

indicated by block 110.”), [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event.”).

170. As shown above, and below in an annotated version of FIG. 7, DeWaal’s identification of eligible players for the final round and jackpot award 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 in the FIG. 7 example, out of the original 800 players that began the bonus event and were eligible to win the jackpot at the beginning of the bonus event, there were just two players that advanced to the final round, and thus only two players from among the starting 800 that were eligible to win the

jackpot award in the final round. Therefore, in this example, DeWaal discloses “wherein players eligible to win at least one leg are eligible to win at least one jackpot or a portion thereof” where the claimed “at least one leg” is the final round of the bonus event because players that advance to the final leg are eligible to win the final leg and the jackpot award associated with the final leg.

- j. 1[j] – “initiating via the trading exchange module and causing display of at least one of a buy-out offer and partial buy-out offer via the respective one or more displays of the one or more wagering input devices to any number of the one or more players that are eligible to win at least one jackpot for at least a portion of said at least one jackpot, said buy-out offer or partial buy-out offer being initiated by the trading exchange module at any time before the multi-outcome wagering event has been completed;”**

171. As an initial matter, limitation 1[j] overlaps with portions of limitation 1[a] and 1[b] analyzed above, and I incorporate by reference my analysis of those limitations herein.

172. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[j] of the '338 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 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[j] 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[j] under DraftKings’ construction.

173. In addition to the discussion above for limitations 1[a] and 1[b], and corresponding to “initiating via the trading exchange module and causing display of 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 and causing display” of a buy-out offer because making the offer is “initiating” and “caus[ing] the display device to display” the offer to the player is “causing display” of the buy-out offer. Further, as explained above with respect to limitation 1[b], the software

and functions within DeWaal's central controller (i.e., corresponding to the "trading exchange module") are what perform the claimed "initiating" of the buy-out offer.

174. Further, DeWaal's initiating and causing display of at least one of a buy-out offer is done "via the respective one or more displays of the one or more wagering input devices" because, as DeWaal discloses, the "display device" on which the offer is displayed to a user is a component of DeWaal's gaming device that corresponds to the claimed "wagering input device," as explained above with respect to limitation 1[g]. *See, e.g.,* DeWaal ¶ [0052] ("the gaming device includes one or more display devices controlled by the processor."). Therefore, a POSITA would understand that the initiating and causing display of the offer of an award to quit the bonus event was "via the respective one or more displays of the one or more wagering input devices" because the offer is made to each advancing player via the display of the gaming device.

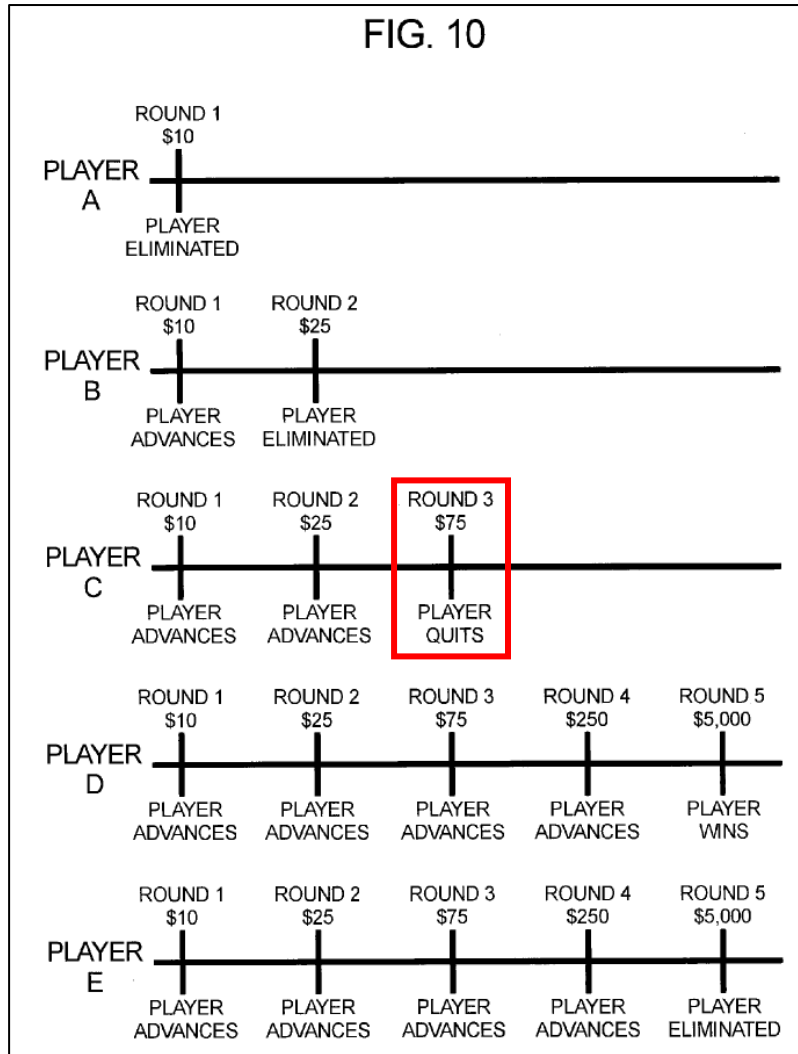
175. The initiating and causing display of at least one of a buy-out offer is done "to any number of the one or more players that are eligible to win at least one jackpot for a portion of said at least one jackpot." As explained above, DeWaal discloses that the offer is made "to the advancing players," which as explained above with respect to limitations 1[h] and 1[i], refers to the players that are eligible to win the jackpot prior to the start of a given round. In greater detail, 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” is one that remains eligible to win the jackpot.

176. And, corresponding to “said buy-out offer or partial buy-out offer being initiated by the trading exchange module at any time before the multi-outcome 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 (via its software functions corresponding to the “trading exchange module,” as explained above) “before the multi-outcome 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 multi-outcome 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).

177. An example timeline of multiple players participating in a bonus event with the offer and acceptance feature is provided, for example, in DeWaal’s FIG. 10, which is shown below, and described in paragraphs [0157] through [0160]. This timeline, and the accompanying description, confirms 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).")*.

178. The description of a "buy-out offer" in the '338 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 '338 Patent states that "the buy-out offer is for buying an entire ticket from a player (i.e., 100%) for an indicated value." '338 Patent at 13:32-34.

179. Therefore, under Patent Owner's apparent construction, where limitation 1[j] does not require "a partial buy-out offer," and thus may be satisfied by a full "buy-out offer" alone, DeWaal discloses limitation 1[j]. Accordingly, under Patent Owner's apparent construction, a POSITA would understand that DeWaal discloses the entirety of limitation 1[j] of the '338 Patent.

180. 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 '338 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." '338 Patent at 15:33-37. 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%." '338 Patent at 14:15-17. 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.,* '338 Patent at

15:37-39 (“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.”).

181. However, in addition to my discussion in the background of the technology section above, 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].

182. 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.

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

[C]onsider a football game with the Patriots vs. the Giants. The Patriots are a +900 long shot. ***A bettor wagers \$100 on the Patriots.*** At halftime, the patriots are winning by +28 points. At this point, a parimutuel halftime betting pool determines that the Giants are now a +1000 long shot. Assuming no house commission for simplicity, a +1000 translates into a 10% probability of occurrence of the Giants winning. Thus, the bettor has a 90% chance of winning \$900, thus the effective value of the original wager is now $0.90 \times 900 = \$810$. ***The bettor can now surrender \$10 of his original wager which is effectively worth \$81.*** This \$81 can now be wagered on the Giants which would result in a \$810 win if the Giants win. ***The***

player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win. Thus, the player is in a no-lost situation and can relax and enjoy the game without worry.

Schugar ¶ [0126]; *see also* Schugar ¶ [0120]. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100 wager such that the original wager remains active, with a lower expected payout, 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.

184. 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 DeWaal's bonus event because Schugar teaches that providing a partial cash-out option can increase revenue to the casino operator through increasing commissions while providing the player the "peace of mind" of at least some "banked" profit. *See, e.g.*, Schugar at ¶¶ [0078 - 79] ("For example, the house can let the surrender [sic] the wager for \$125. The house makes money on this proposition, and the player gets the peace of mind of the sure win. The player can also bank a *portion* of the expected profit the player has earned for later use.... In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.") (emphasis added).

185. 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.

186. 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," Schugar 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[a] and the prior art. In fact, during prosecution of a related

patent in the same family as the '338 Patent, the Applicant admitted that the prior art disclosed a full buy-out offer, as previously described herein.

187. 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, as would be known by a POSITA. 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 payable 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.

188. 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.

189. In addition, in my opinion, this limitation would have been obvious because it is the use of a known technique to improve similar devices, methods, or products in the same way, and because the combination only applies a known technique to a known device and method that is ready for improvement to yield predictable results.

190. 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.

191. For example, a POSITA would have understood that both DeWaal and Schugar are within the same field of endeavor and provide comparable solutions to the same types of problems. As has been described herein, both references disclose techniques that allow a player to cash out of a wagering event, and therefore provide an award to the player, based on the player’s equity position. *See* DeWaal ¶ [0008] (“There is a continuing need to provide new and different gaming machines and gaming systems as well as ***new and different ways to provide awards to players including bonus awards.***”); Schugar ¶ [0003] (“The present inventive concept relates to a wagering game that allows a player to ***alter payouts based on an equity position the player has in the wagering game.***”).

192. 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].

193. 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.”).

k. 1[k] – “receiving an acceptance of the buy-out offer or partial buy-out offer via the input for receiving acceptance of the one or more wagering input devices in response to input from a particular number of the players eligible to win at least one jackpot that have accepted the buy-out offer or partial buy-out offer, each of the players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot, wherein each of the players not accepting the buy-out offer will remain eligible to win the at least one jackpot, and wherein each of the players accepting a partial buy-out offer remains eligible to win at least a portion of the at least one jackpot;”

194. As an initial matter, it is beyond dispute that limitation 1[k] recites “acceptance of the buy-out offer *or* partial buy-out offer” in the disjunctive, such that it can be satisfied by the acceptance or *either* type of buy-out offer, regardless of whether limitations 1[a] and 1[j] require *both* to be “presented” and “display[ed],” respectively. Thus, DeWall discloses this limitation regardless of whether “at least

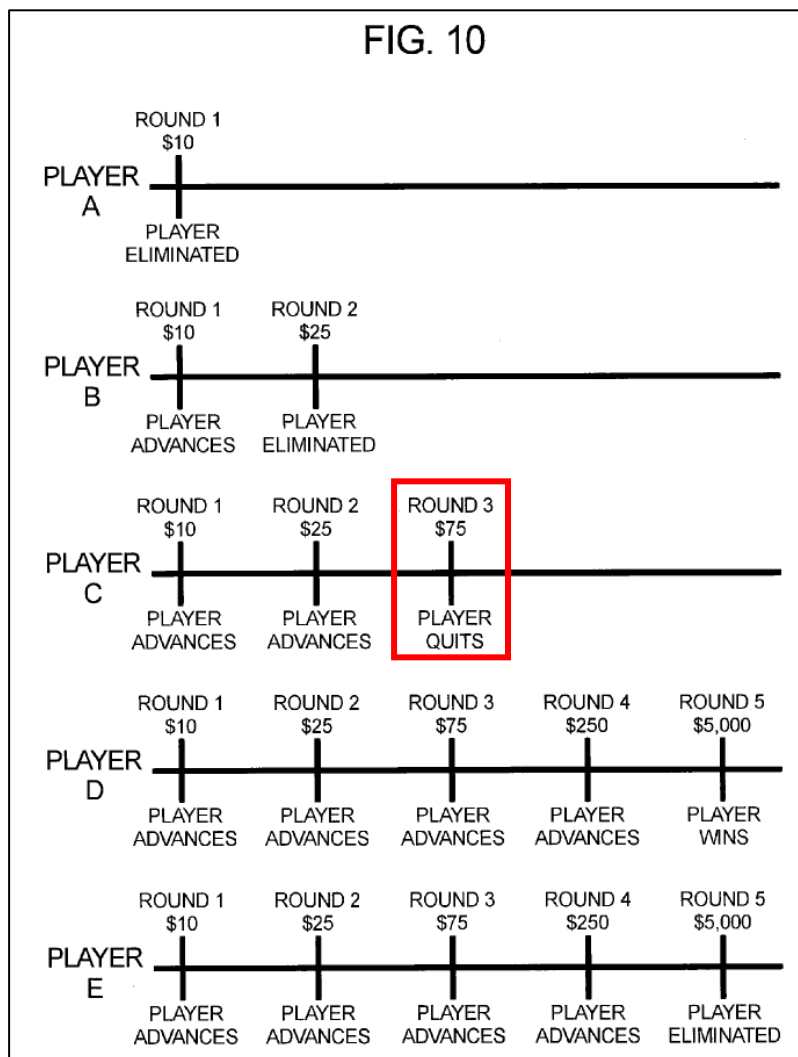
one of a buy-out offer and partial buy-out offer” is written in the disjunctive or conjunctive in limitations 1[a] and 1[j].

195. In my opinion, in addition to the reasons explained above regarding limitation 1[b] and the inputs for receiving acceptance of the buy-out offer, which are herein incorporated by reference, a POSITA would have understood that DeWaal discloses “receiving an acceptance of the buy-out offer ... via the input for receiving acceptance of the one or more wagering input devices in response to input from a particular number of the players eligible to win at least one jackpot that have accepted the buy-out offer” because DeWaal discloses the central controller taking action in direct response to a player accepting the offer of the additional award to quit the bonus event and discloses the server receiving various signals of user inputs from the gaming devices. For example, DeWaal discloses that “the processor of *each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server* The processor of the *central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.*” DeWaal ¶ [0084]; *see also* DeWaal ¶ [0129] (“The central controller receives a signal from gaming machines in the gaming system *corresponding to an input from each player* in each round.”); DeWaal ¶ [0061] (“A player can make decisions and

input signals into the gaming device by touching the touch-screen at the appropriate places.”). Regarding the specific actions taken by the controller when a player accepts the offer to quit, DeWaal explains that “[i]f any of the players quit the bonus event, the central controller provides these players with the accumulated awards associated with the first and second rounds.” DeWaal ¶ [0159]; *see also* DeWaal ¶ [0146] (“If fifty players accept the offer and quit the bonus event, the central controller provides these fifty players with an award portion of \$10.”). A POSITA would therefore understand that DeWaal teaches that the central controller receives an acceptance of the buy-out offer at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event and the central controller takes specific and direct actions in response to a player accepting the offer to quit.

196. In my opinion, a POSTIA would have understood that DeWaal discloses “each of the players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot” because DeWaal discloses that “***[i]f a player accepts the offered portion of the award pool, the player is eliminated*** from the bonus event (i.e., ***the player accepts the offered portion of the award pool in exchange for quitting the bonus event***).” DeWaal ¶ [0146]; DeWaal ¶ [0141] (“As illustrated, one hundred players who qualified to advance to the second round, accepted the offered additional award and quit the bonus event.”). A POSITA would

understand that, if a player was “eliminated” by accepting the offered award for quitting, the player is “no longer eligible to exclusively win the at least one jackpot” at least because the player is no longer eligible to win the jackpot at all. This is illustrated, for example, in FIG. 10, for example, which shows Player C accepting the offer in the third round and ceasing their participation in the bonus event.



DeWaal at FIG. 10 (annotated).

197. In my opinion, a POSITA would have understood that DeWaal discloses “wherein each of the players not accepting the buy-out offer will remain

eligible to win the at least one jackpot” because DeWaal expressly states that “*if a player rejects the offered portion of the award*, that player risk the offered portion of the award to *play a subsequent round of the bonus event*,” i.e., advance to the next round, and as discussed above DeWaal discloses and teaches that players that are eligible to advance to the next round are eligible to win the jackpot for the bonus event. DeWaal ¶ [0146]; *see also* DeWaal ¶ [0019] (“If ten players pick the designated selection in the first round, the central controller offers those ten players to either quit the bonus event and accept the \$25 award or *continue the bonus event and play the second round*.”).

198. Therefore, under Colosuss’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[k] in its entirety.

199. If, for some reason, it is determined that DeWaal does not disclose a full “buy-out offer” and/or that this limitation requires “partial buy-out offer,” Schugar discloses a “partial buy-out-offer” and receiving an acceptance of the partial buy-out offer, as discussed above with respect to limitation 1[j], for example, and those reasons are incorporated herein.

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

201. Regarding the limitation of “receiving an acceptance of the ... partial buy-out offer via the input for receiving acceptance” from the eligible players that “have accepted the ... partial buy-out offer,” a POSITA would understand that in the combination of DeWaal and Schugar described herein, DeWaal’s central controller would receive an acceptance of the partial buy-out offer from the eligible players that have accepted it in the exact same manner that DeWaal already discloses with respect to its offer to quit. As described above, because DeWaal already discloses receiving an acceptance of an offer to quit, the additional instructions for handling the partial cash in offer of Schugar would be minimal, and the signals could likely be bundled with those that already implement DeWaal’s offer and acceptance feature. In this regard, a POSITA would recognize that, because DeWaal’s system is capable of receiving the claimed acceptance with respect to an offer to quit, it would also be capable of receiving an acceptance to partially quit or cash in as disclosed in Schugar. Moreover, Schugar expressly states that the player can also accept the full or partial buy-out offer “electronically with a press of a button which allows the player to bank his or her positive expectation,” which is consistent with how DeWaal’s gaming devices generate the signals that are transmitted to and received by the central controller indicating an acceptance of the buy-out offer. Schugar ¶ [0092].

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

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

[C]onsider a football game with the Patriots vs. the Giants.
The Patriots are a +900 long shot. *A bettor wagers \$100 on the Patriots.* At halftime, the patriots are winning by

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

Schugar ¶ [0126]; *see also* Schugar ¶ [0120]. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100 wager such that the original wager remains active with a lower expected payout, i.e., the player remains eligible to win a 90% portion of the original jackpot.

- 1. 1[l] – “issuing a credit, tokens, currency or an award via the user output of the one or more wagering input devices to the one or more players accepting the buy-out offer or partial buy-out offer;”**

204. Similar to limitation 1[k], it is beyond dispute that limitation 1[l] recites “accepting the buy-out offer *or* partial buy-out offer” in the disjunctive, such that it can be satisfied by the acceptance of *either* type of buy-out offer. It is therefore my

opinion that a POSITA would understand that DeWaal discloses limitation 1[l] of the '338 Patent regardless of whether Patent Owner's apparent construction applies. Specifically, as explained in detail below, a POSITA would understand that DeWaal discloses limitation 1[l] as it concerns a "buy-out offer," and thus discloses this limitation under Patent Owner's construction, but DeWaal does not expressly describe limitation 1[l] as it concerns a "partial buy-out offer" under DraftKings' construction.

205. In my opinion, a POSITA would have understood that DeWaal discloses "issuing a credit, tokens, currency, or an award ... to the one or more players accepting the buy-out offer" because DeWaal discloses the central controller providing players that accept the offer to quit with a monetary award. For example, DeWaal discloses 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]. As shown in FIG. 7, for example, the accumulated "awards" are expressed as values of dollars, which a POSITA would understand is "currency."

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.

206. This mapping is further confirmed by additional disclosures in DeWaal. For example, DeWaal discloses that “[t]he *central controller provides those players with the second additional award.*” DeWaal ¶ [0142]. And, more specifically, in another example “[i]f fifty players *accept the offer and quit the bonus event, the central controller provides these fifty players with an award portion of \$10.*” DeWaal ¶ [0146].

207. Further, regarding the issuing being “via the user output of the one or more wagering input devices,” I incorporate by reference my analysis of the user outputs from limitation 1[b] as if fully set forth in this section. For example, a POSITA would have known that the issuing was performed via such user outputs because DeWaal discloses that a player “may push the cash out button and cash out

to receive *a cash payment or other suitable form of payment* corresponding to the number of remaining credits.” DeWaal ¶ [0060]. DeWaal further explains that the player “receives the coins or tokens in a coin payout tray” or may “receive other payout mechanisms such as tickets or credit slips redeemable by a cashier (or other suitable redemption system) or funding to the player’s electronically recordable identification card.” DeWaal ¶ [0060]. A POSITA would therefore understand that DeWaal’s gaming devices include “a user output” because the player receives such “credit, tokens, currency, or an award” through the various methods described above (*i.e.*, cash out button, payout tray, etc) in order for the controller to issue the award to the player upon accepting the offer to quit.

208. If, for some reason, it is determined that DeWaal does not disclose a full “buy-out offer” and/or that this limitation requires “partial buy-out offer,” Schugar discloses a “partial buy-out-offer” and it would have been obvious to add these features to DeWaal for the reasons previously explained (which are herein incorporated by reference). For example, with respect to “issuing a credit, tokens, currency or an award to the one or more players accepting the ... partial buy-out offer,” Schugar discloses that “*the house can take a portion of the player's wager (such as 10%),* so that the player now has \$90 on the Don't Pass line. *The taken portion can be stored for later redemption by the player.* The \$10 taken actually has an expected value of \$13.33. This \$13.33 (or a number based on this to account for

the house commission) can be *accumulated and disbursed to the player at a later time (either later at the instant game, or later at another game, or by electronic redemption).*” Schugar ¶ [0079]. In other examples of the partial cash in, Schugar further explains that the banked value “can be redeemed by the player for cash,” either “instantly” or “at a later time,” and “can be stored locally and/or on a database which can be accessed at a later time.” Schugar ¶ [0083]. Thus, with respect to both DeWaal’s offer to quit and Schugar’s offer to cash in a portion of the wager, the award for cashing in is “currency” and is issued to the player via one or more well-known techniques using the user outputs for issuing such payments/awards of the gaming machines.

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

209. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[m] of the ’338 Patent because DeWaal discloses that the central controller continues to identify winners and losers of each round until a designated or final round at the conclusion of which the controller determines one or more winners of the bonus event. For instance, corresponding to “completing the remainder of the defined number of legs to finish the multi-outcome wagering event,” DeWaal explains that “the central controller continues to advance any remaining eligible players to a subsequent round until the remaining award pool is

provided to one of the remaining eligible players” in a final round. DeWaal ¶ [0147].

In this way, DeWaal explains that the process for advancing eligible players by determining winners and losers of each round and offering the winners a chance to quit “continues for each round until the central controller determines one or more winning players for the bonus event,” or “until a final round” in which “the central controller determines one or more winning players, if any, of the bonus event as indicated by block 114.” DeWaal ¶ [0143], [0132]. To be sure, DeWaal explains that “the bonus even ends after a designated number of rounds including a final round.” DeWaal ¶ [0181]. Therefore, by continuing to advance players through the designated number of rounds or legs of the bonus event, DeWaal discloses limitation 1[m].

210. 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

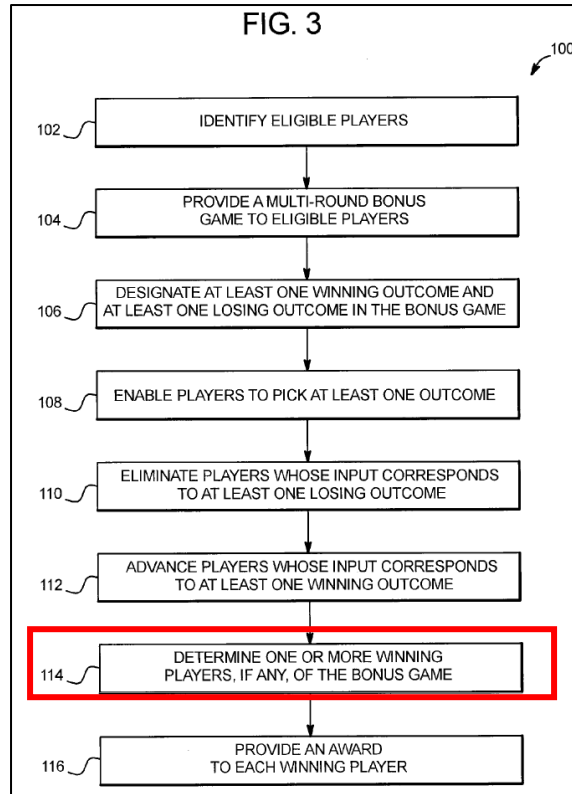
ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

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

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

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

211. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[n] of the '338 Patent because DeWaal discloses that, in the final round, the central controller determines which if any of the players won the final round and therefore won the jackpot or a portion thereof. Specifically, for example, DeWaal discloses that “[i]n the final round, *the central controller determines one or more winning players, if any, of the bonus event* as indicated by block 114.” DeWaal ¶ [0132]. This determination is also illustrated in step 114 of FIG. 3, as shown below.



DeWaal at FIG. 3.

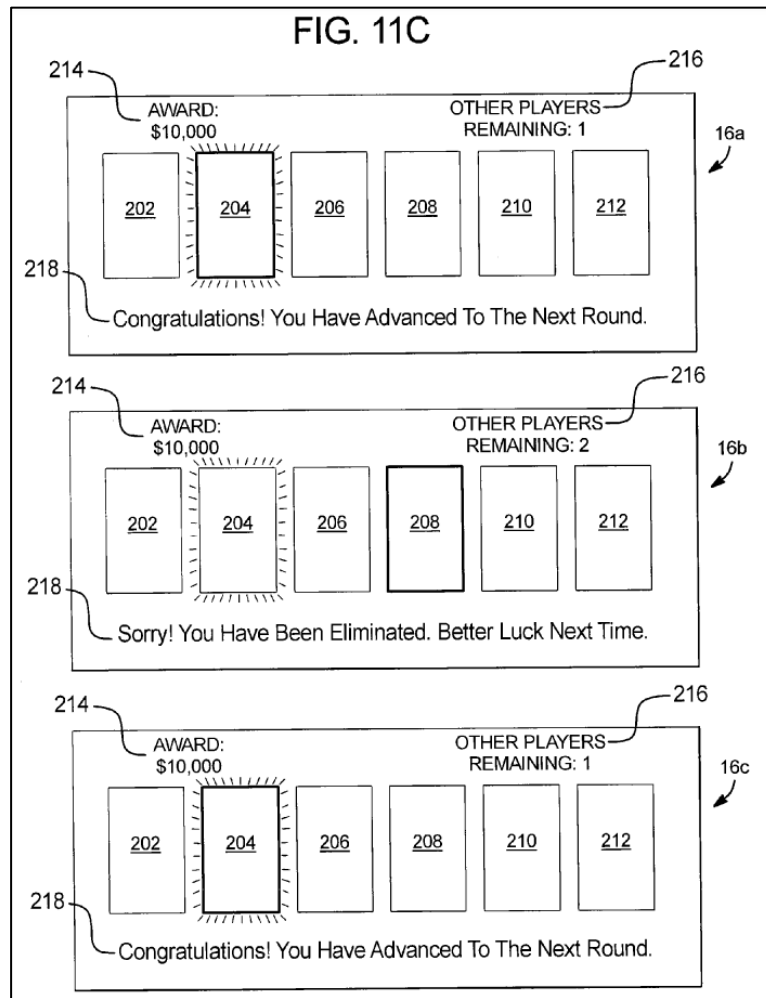
o. 1[o] – “notifying the players that have won the jackpot or portion thereof via the one or more wagering input devices; and”

212. In my opinion, a POSITA would understand that DeWaal discloses “notifying the players that have won the jackpot or portion thereof” because DeWaal provides at least a text alert on the display screen of the gaming device indicating that a player has won the jackpot or a portion of the jackpot. Specifically, for example, DeWaal discloses that when a player “wins the award (i.e., \$10,000) of the bonus event,” which is the top level jackpot for this example bonus event, “appropriate messaging may be provided to the players visually, or through suitable

audio or audiovisual displays. Such messages include “CONGRATULATIONS! YOU HAVE WON \$10,000.” DeWaal ¶ [0179]; *see also* DeWaal ¶ [0169] (“As illustrated, the amount of the award is \$10,000, which is indicated by an award display 214.”). A POSITA would have understood that displaying appropriate messaging to a user that won the bonus event, as described above for example, corresponds to a “notification” to the player(s) that they have won the jackpot or at least a portion thereof, at least because such messaging and visual presentations were and are commonly understood and well-known types of as “notifications.”

213. Furthermore, a POSITA would understand that DeWaal discloses “notifying the players ... via the one or more wagering input devices” because the message/notification is provided on the display of the gaming device. Referencing the example explained above, DeWaal discloses displaying the “appropriate messaging” notifying a player of winning the award for the bonus event on a display device of the respective gaming machines. DeWaal ¶ [0175] (“The *display devices 16 a, 16 b and 16 c may indicate each player's advancement or elimination through appropriate messaging provided to the players* visually, or through suitable audio or audiovisual displays. Such messages include “CONGRATULATIONS! YOU HAVE ADVANCED TO THE NEXT ROUND.” or “SORRY! YOU HAVE BEEN ELIMINATED. BETTER LUCK NEXT TIME.”); *see also* DeWaal ¶ [0179] (“[a]s illustrated, the round display 218 displays

such messages although a separate display area of the display devices 16 a, 16 b and 16 c may be used.”). This is further illustrated in at least FIG. 11C of DeWaal, reproduced below.



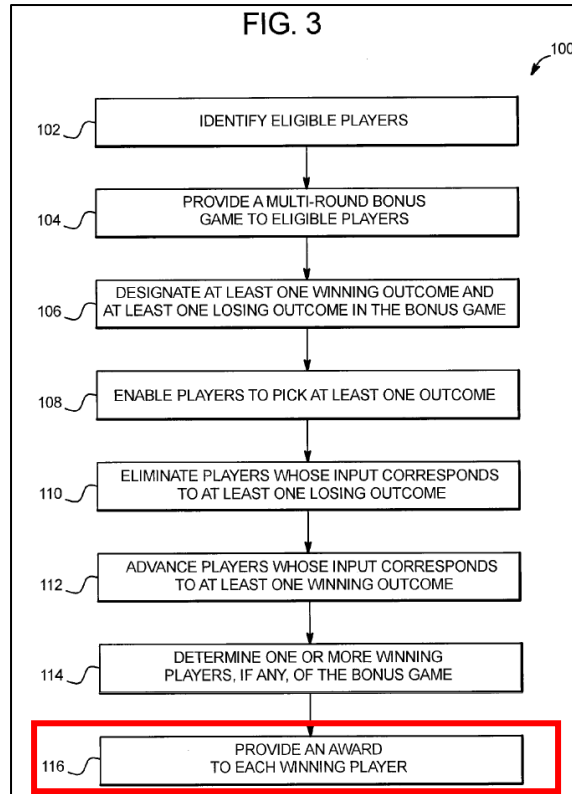
DeWaal at FIG. 11C.

214. A POSITA would understand that the “display device” on which the “appropriate messaging” is displayed to a player of the bonus event is a component of DeWaal’s gaming device that corresponds to the claimed “wagering input device,” as explained above with respect to limitation 1[b]. *See, e.g.,* DeWaal ¶

[0052] (“the gaming device includes one or more display devices controlled by the processor.”). Thus, the “notifying the players that have won the jackpot” was “via the one or more wagering input devices” because the notification containing the “appropriate messaging” is made to each winning player via the display of the gaming device.

p. 1[p] – “issuing a credit, tokens, currency or an award to the players that have won the jackpot or portion thereof via the user output of the one or more wagering input devices.”

215. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[p] because DeWaal discloses providing any jackpot winnings to the player and that such awards are provided using the well-known and conventional user outputs of the gaming machines. For example, a POSITA would have understood that DeWaal discloses “issuing a credit, tokens, currency or an award to the players that have won the jackpot or a portion thereof” because DeWaal discloses providing the award for the bonus game, such as the jackpot, to any winning players. For example, DeWaal states that “the central controller is operable to provide an award to each winning player as indicated by block 116.” DeWaal ¶ [0133]. This step of providing the award to the players that have won the jackpot (or a portion thereof) is illustrated in FIG. 3 of DeWaal, as shown below.



DeWaal at FIG. 3. Further, in the example referenced above with respect to limitation 1[o], for example, where the jackpot was \$10,000, a POSITA would understand such an award to be “currency,” and specific U.S. Dollars currency. *See* DeWaal ¶ [0169] (“As illustrated, the amount of the award is \$10,000, which is indicated by an award display 214.”).

216. Furthermore, a POSITA would understand that DeWaal discloses issuing the award “via the user output of the one or more wagering input devices.” DeWaal discloses that a player wishing to cash out his/her winnings may “push the cash out button” on the gaming device and “receive[] the coins or tokens in a *coin payout tray 40*.” DeWaal ¶ [0060]. A POSITA would understand that the “coin

payout tray 40” of the gaming device disclosed in DeWaal correlates to a “user output of the one or more wagering input devices” because both mechanisms may be used to provide any awards won by a player in the bonus event. Thus, a POSITA would understand that DeWaal discloses “issuing ... an award to the players that have won the jackpot or portion thereof via the user output of the one or more wagering input devices.” In addition, as I have discussed above with respect to limitations 1[b] and 1[l], for example, DeWaal’s gaming devices may be equipped with one or more types of known user outputs for issuing awards, and those analyses are incorporated herein by reference.

217. In conclusion, as stated previously, it is my opinion that DeWaal discloses each and every limitation of claim 1 of the ’338 Patent if “partial buy-out offer” is an optional and unrequired limitation of the claims as Patent Owner currently asserts in related litigation, and that DeWaal in combination with Schugar renders obvious each and every limitation of claim 1 of the ’338 Patent if “partial buy-out offer” is a required limitation of the claims. In either scenario, it is my opinion that Claim 1 of the ’338 Patent would have been either anticipated or obvious to a POSITA for at least the reasons stated herein.

2. Claim 4: “The method of claim 1, wherein the multi-outcome wagering event comprises one or more wagering events, the defined number of legs comprises one or more legs, and wherein each of the defined number of legs comprises at least one of an entire wagering event, a partial wagering event, a divisible component of a wagering event, multiple independent wagering events occurring

sequentially or concurrently, and a compilation of related wagering events, wherein the one or more wagering events comprises one or more selected from the group consisting of sporting events, eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, and fantasy games, and wherein the wager comprises a potential outcome for each of the legs.”

218. In my opinion, a POSITA would have understood that DeWaal discloses the limitations of claim 4. As an initial matter, for the reasons explained above, it is my opinion that DeWaal alone and/or in combination with Schugar discloses or renders obvious “[t]he method of claim 1,” and I incorporate by reference my analyses of claim 1 herein.

219. In addition, a POSITA would have understood that DeWaal discloses “the multi-outcome wagering event comprises one or more wagering events” because, as has been discussed herein, DeWaal’s bonus event is a “wagering event” and the claim only requires “one or more” wagering events, and because DeWaal’s bonus event is a “multi-round selection game that includes *a plurality of rounds* and a number of available outcomes in each round” such that each round corresponds to a wagering event because player’s make wagers (e.g., selections) in each round. DeWaal ¶ [0119]. DeWaal explains that “[t]he central controller enables each eligible player to *make an input* in association with the plurality of outcomes *in each round*.” DeWaal ¶ [0129]. A POSITA would understand that each round in the plurality of rounds of the bonus event is a “wagering event” that requires a player to make an individual selection (i.e., wager). Therefore, since the bonus event

includes “a plurality of rounds,” a POSITA would understand that the bonus event comprises a plurality of “wagering events.”

220. A POSITA would also understand that DeWaal’s bonus event comprises a “defined number of legs” which includes “one or more legs.” As explained above, DeWaal discloses that the bonus event is “multi-round” and that each of the multiple rounds are a component or leg of the bonus event. DeWaal ¶ [0119]. A POSITA would understand that each round of the plurality of rounds of the bonus events correlates to a “leg” of the multi-outcome wagering event, such that the “defined number of legs” of the wagering event “comprises one or more legs.” This mapping of DeWaal’s multiple rounds to the claimed “legs” is consistent with the ’338 Patent specification, which states that “[t]he term ‘leg as used herein should be broadly construed and may comprise any desired number of individual components of any type of event, such as any type of game or sporting event.” ’338 Patent at 5:7-10; *see also* ’338 Patent at 1:54-64 (“The present disclosure is directed ... a unique betting product where players make selections in a number of different legs which, as defined below, can include ***any variety of different discrete events*** ... partial events ... components of events ... multiple independent events ... and/or compilations of events.”). In addition, as has been previously explained herein, the number of “legs” is “defined” in that DeWaal discloses the system operator being

able to “set” the number of legs. *See, e.g.*, DeWaal ¶ [0182] (“the number of rounds ... may be set by the game implementer to any suitable number[.]”).

221. In my opinion, a POSITA would have understood that DeWaal discloses “wherein each of the defined number of legs comprises at least one of an entire wagering event, a partial wagering event, a divisible component of a wagering event, multiple independent wagering events occurring sequentially or concurrently, and a compilation of related wagering events”⁴ because DeWaal’s bonus event (i.e., wagering event) is a “multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round.” DeWaal ¶ [0119]. DeWaal explains that “[t]he central controller enables each eligible player to *make an input* in association with the plurality of outcomes *in each round*.” DeWaal ¶ [0129]. When each round of the bonus event is considered to be an individual wagering event

⁴ While the intrinsic record of the ’338 Patent, including Patent Owner’s express disclaimers during prosecution of its parent, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting *both* a buy-out *and* a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require *either* X *or* Y).

forming the bonus event as a whole, a POSITA would understand that DeWaal's bonus event correlates to "an entire wagering event" or "a compilation of related wagering events." On the other hand, when each round of the bonus event is considered to be an individual wagering event independent from the bonus event as a whole, a POSITA would understand that each round of DeWaal's bonus event correlates to "a partial wagering event" or "a divisible component of a wagering event" or "multiple independent wagering events occurring sequentially or concurrently." This mapping is further supported by DeWaal, which discloses that a player must make an accurate selection in a first round of the bonus event before being eligible to advance to the next round, thereby explaining to a POSITA that the rounds of the bonus event "occur[] sequentially." DeWaal ¶ [0119] ("If at least one of the players picks (or makes an input associated with) the designated outcome in a first round, that player advances to a second round. In the second round, the advancing players make an input in association with, or from, a plurality of available outcomes in an attempt to advance to a third round. In the third round, the advancing players pick from a plurality of available outcomes in an attempt to advance to a final round. 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 is disqualified from winning the award.").

222. In my opinion, a POSITA would have understood that DeWaal discloses “wherein the one or more wagering events comprises one or more selected from the group consisting of sporting events, eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, and fantasy games”⁵ because DeWaal explicitly discloses that the bonus event (correlating to the wagering event) may be any of at least competitive gaming, real games, and virtual games, and suggests that others of the recited types of games could be implemented. For example, DeWaal discloses that “[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, the bonus event includes, but is not limited to, reel/slot games, card games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived

⁵ While the intrinsic record of the '338 Patent, including Patent Owner's express disclaimers during prosecution of its parent, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in the conjunctive (i.e., to require presenting **both** a buy-out **and** a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require **either** X **or** Y).

skill games or games that include one or more rounds of game play.” DeWaal ¶ [0108], [0127]. A POSITA would understand that “competition games” disclosed in DeWaal maps to “competitive gaming” in the limitations of claim 4. A POSITA would also understand that the enumerated examples in DeWaal, including “reel/slot games,” “card games (e.g., poker, blackjack),” “wheel games,” “dice games,” “free spin games,” etc., are all “real games” that may include physical or mechanical components used to implement the game. In another example, DeWaal further explains that “[t]he gaming machine or device may include some or all of the features of conventional gaming machines or devices. The primary or base game may comprise *any suitable reel-type game, card game, cascading or falling symbol game, number game or other game of chance* [...],” all of which would be understood by a POSITA to be “real games” with physical or mechanical components. DeWaal ¶ [0064]. DeWaal supports this interpretation by explaining that “[i]n one embodiment, as illustrated in FIGS. 1A and 1B, a base or primary game may be a slot game with one or more paylines 52. The paylines may be horizontal, vertical, circular, diagonal, angled or any combination thereof. In this embodiment, the gaming device includes at least one and preferably a plurality of reels 54, such as three to five reels 54, in either *electromechanical form with mechanical rotating reels* or video form with simulated reels and movement thereof.” DeWaal ¶ [0065].

223. DeWaal goes on to disclose that that the exemplary “real games” enumerated above may also be implemented as “virtual games” that replace physical or mechanical components with video simulations or representations of those components (“The primary or base game may comprise any suitable reel-type game, card game, cascading or falling symbol game, number game or other game of chance *susceptible to representation in an electronic or electromechanical form*, which in one embodiment produces a random outcome based on probability data at the time of or after placement of a wager. That is, different primary wagering games, such as *video poker games, video blackjack games, video keno, video bingo* or any other suitable primary or base game may be implemented.” DeWaal ¶ [0064]). In another example, DeWaal explains that “the display devices of the gaming device are configured to display at least one and preferably a plurality of game or other suitable images, symbols and indicia such as any visual representation or exhibition of the movement of objects such as mechanical, *virtual or video reels and wheels*, dynamic lighting, video images, images of people, characters, places, things and faces of cards, and the like.” DeWaal ¶ [0055]. A POSITA would understand DeWaal’s bonus event selection game discussed herein to be a “virtual game” at least because it involves the computer-generated display of electronic (virtual) gaming outcomes/indicia on the display device of the gaming machine rather than mechanical or physical presentation of these gaming elements. For example, “FIGS.

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

224. While some of the above-quoted passages 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 as the primary game. DeWaal ¶ [0099]. This understanding is confirmed by DeWaal, which also states that “the bonus or secondary game may be any type of suitable game, either similar to or completely different from the base or primary

game.” DeWaal ¶ [0079]. In this regard, DeWaal’s examples of the bonus game overlap with the examples of the primary game, such that the bonus game may be any of lottery games, real games, or virtual games.

225. Because claim 4 of the ’338 Patent requires that the bonus event comprises “one or more selected from the group,” I understand that the limitation is disjunctive, such that the bonus event comprising any one of the elements listed in the group would satisfy the limitation. Therefore, DeWaal alone would satisfy the limitations of claim 4 by specifically enumerating that the bonus event may be any of at least competitive gaming, real games, and virtual games, as explained above.

226. Furthermore, it is my separate opinion that DeWaal in combination with Schugar discloses that the bonus event comprises at least “sporting events, eSports, e-sports, and electronic sports.” Schugar supplements the disclosure of DeWaal by stating that the event wagered on may be “*a sporting event* (including horse racing, football, etc., simulated by machine or real), a gambling game (e.g., craps, blackjack, etc.), or even a dramatic work (such as a reality show).” Schugar ¶ [0109]. A POSITA would have been motivated to combine DeWaal with Schugar such that the bonus event is a sporting event because both references teach methods and systems of implementing a wagering game and DeWaal already suggests the possibility that the bonus event wagering game may be *any type of game*. Schugar merely provides a game type (i.e., “sporting event”) in the context of a full and partial buy-out feature

and teaches that such an event may be suitable for implementation as a wagering game. The combination would have involved the simple substitution of known elements (i.e., Schugar's sporting event wagering game as the bonus event of DeWaal). Moreover, DeWaal discloses that its gaming machines can support and play "external video sources" via a "video controller 46," such that the bonus event may be conducted in "electronic" or "video" form for each eligible user. DeWaal, ¶ [0061]. DeWaal contemplates displaying video at a gaming machine or peripheral device, which a POSITA would have understood could accommodate display of a "sporting event" or related wagering game. Therefore, a POSITA would have understood to combine DeWaal's disclosure of an "electronic" bonus event with Schugar's disclosure of a "sporting event" such that the bonus event may be "eSports," "e-sports," or "electronic sports." Furthermore, a POSITA would have been motivated to make this combination to add sporting events to be wagered on because sports betting was a popular type of wagering game that attracts bettors that, for example, do not enjoy typical casino-type wagering games and thereby provide an alternative for such potential players.

227. In my opinion, a POSITA would understand that, in DeWaal's bonus game, "the wager comprises a potential outcome for each of the legs" because players of the bonus event "***make an input in association with the plurality of outcomes in each round***" as indicated by block 108" in FIG. 3, and as I explained

above these selected outcomes are potential outcomes of each round/leg. DeWaal ¶ [0129]; *see also* DeWaal ¶ [0013] (“each of the eligible players makes selections from a number of available selections (such as from *a plurality of potential outcomes* or selections) *in each round.*”). Thus, DeWaal’s bonus event wager “comprises” selections from a plurality of “potential outcomes” for “each of the legs” of the bonus event.

3. Claim 5: “The method of claim 4, wherein the games comprise one or more selected from the group consisting of slot machines, keno, poker, video games, football (“soccer”), American football, Australian rules football, baseball, cricket, basketball, golf, hockey, auto racing, legends, rugby, wrestling, surfing, mixed martial arts, racing, lotteries, live events, pre-recorded events, online events, broadcast events, card games, politics, sales, stocks, celebrity gossip, movies, and reality TV.”

228. In my opinion, a POSITA would have understood that DeWaal alone and/or in combination with Schugar discloses and/or renders obvious “the method of claim 4” for the reasons explained above, which are herein incorporated by reference.

229. In my opinion, a POSITA would have understood that DeWaal discloses the limitations of claim 5, which simply recites a list of alternative events that may be wagered upon, because DeWaal expressly discloses several of the event types that are recited in the claim. For example, DeWaal discloses that “[t]he bonus event may be any bonus or secondary game or sequence. For example, in different embodiments, *the bonus event includes, but is not limited to, reel/slot games, card*

games (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, *wheel games, dice games, free spin games*, competition games, skill games, perceived skill games or games that include one or more rounds of game play.” DeWaal ¶ [0108], [0127]. Here, DeWaal discloses that the bonus event can be implemented as a slot machine game, poker game, or other competition or skill based games that that would include “video games and racing.” In another example, DeWaal discloses that “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]. Here, DeWaal expressly discloses that the bonus event can be implemented as a poker game or keno.

230. In the examples above, a POSITA would also understand that “lottery games” disclosed in DeWaal corresponds to “lotteries” in the limitations of claim 5. A POSITA would also understand that the enumerated examples in DeWaal, including “reel/slot games,” “card games (e.g., poker, blackjack),” “wheel games,” “dice games,” “free spin games,” etc., are all “real games” that may include physical or mechanical components used to implement the game. In another example, DeWaal further explains that “[t]he gaming machine or device may include some or all of the features of conventional gaming machines or devices. The primary or base game may comprise *any suitable reel-type game, card game, cascading or falling*

symbol game, number game or other game of chance [...],” all of which would be understood by a POSITA to be “real games” with physical or mechanical components. DeWaal ¶ [0064]. DeWaal supports this interpretation by explaining that “[i]n one embodiment, as illustrated in FIGS. 1A and 1B, a base or primary game may be a slot game with one or more paylines 52. The paylines may be horizontal, vertical, circular, diagonal, angled or any combination thereof. In this embodiment, the gaming device includes at least one and preferably a plurality of reels 54, such as three to five reels 54, in either *electromechanical form with mechanical rotating reels* or video form with simulated reels and movement thereof.” DeWaal ¶ [0065].

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

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

bonus event comprising a virtual game at least because the display device is configured for virtual games and because the bonus event selection game is a virtual/computer-generated game.

232. Furthermore, DeWaal discloses that the bonus event may be “live events, pre-recorded events, online events, or broadcast events” because the bonus event is provided to all eligible players “substantially simultaneously.” DeWaal ¶ [0108] (“One embodiment of the gaming system and method disclosed herein ***substantially simultaneously provides a multi-round bonus event to a plurality of players.***”). A POSITA would understand that in order for each round of the bonus event to be provided “substantially simultaneously” to “a plurality of players,” each player must experience each round of the bonus event, including the final round, either live, in real-time, or synchronized pre-recorded content, thus making the final round of the bonus event a “live” or “pre-recorded” event. In addition, DeWaal discloses that “a plurality of the gaming devices are capable of being connected together through a data network,” and that “the ***data network is an internet*** or intranet.” DeWaal ¶¶ [0097], [0098]. A POSITA would understand that the “internet” is an online computer network capable of serving as a medium for mass communication between devices connected to the network. Therefore, a POSITA would understand that the bonus event disclosed in DeWaal may be implemented on “a plurality of gaming device” connected together on the internet through “a data

network,” which is a mass communications medium capable of broadcasting the bonus event to a plurality of eligible players. Therefore, DeWaal discloses that the bonus event may be “broadcast events” or “online events.”

233. While some of the above-quoted passages 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 as the primary game. DeWaal ¶ [0099]. This understanding is confirmed by DeWaal, which also states that “the bonus or secondary game may be any type of suitable game, either similar to or completely different from the base or primary game.” DeWaal ¶ [0079]. In this regard, DeWaal’s examples of the bonus game overlap with the examples of the primary game, such that the bonus game may be any of lottery games, real games, or virtual games.

234. Since claim 5 of the ’338 Patent requires that the games comprises “one or more selected from the group,” the limitation is disjunctive, such that the bonus game comprising any one of the elements listed in the group would satisfy the limitation. Therefore, DeWaal alone would satisfy the limitations of claim 5 by specifically enumerating the various game types, as explained above.

235. Furthermore, it is my opinion that DeWaal in combination with Schugar discloses that the bonus event comprises at least “sporting events, eSports,

e-sports, electronic sports, and reality TV.” Schugar supplements the disclosure of DeWaal by stating that the event wagered on may be “*a sporting event* (including horse racing, football, etc., simulated by machine or real), a gambling game (e.g., craps, blackjack, etc.), or even a dramatic work (*such as a reality show*).” Schugar ¶ [0109]. A POSITA would have been motivated to combine DeWaal with Schugar such that the bonus event is a sporting event or a reality TV show because both references teach methods and systems of implementing a wagering game and DeWaal already suggests the possibility that the bonus event wagering game may be *any type of game*. Schugar merely provides a game type (i.e., “sporting event,” “reality show”) in the context of a partial buy-out feature and teaches that such an event may be suitable for implementation as a wagering game. The combination would have involved the simple substitution of known elements (i.e., Schugar’s reality show wagering game as the bonus event of DeWaal). Moreover, DeWaal discloses that its gaming machines can support and play “external video sources” via a “video controller 46,” such that the bonus event may be conducted in “electronic” or “video” form for each eligible user. DeWaal, ¶ [0061]. DeWaal contemplates displaying video at a gaming machine or peripheral device, which a POSITA would have understood could accommodate display of a “sporting event” or related wagering game. Therefore, a POSITA would have understood to combine DeWaal’s

disclosure of an “electronic” bonus event with Schugar’s disclosure of a “sporting event” such that the bonus event may be “eSports,” “e-sports,” or “electronic sports.”

236. DeWaal in combination with Schugar discloses other game types in the limitation of claim 5. Similar to the explanation above, Schugar discloses at least that “[t]he event may be a sporting event (including horse racing, *football*, etc., simulated by machine or real, a gambling game (e.g., craps, blackjack, etc.), or even a dramatic work (such as a reality show).” Schugar ¶ [0109].

4. Claim 6: “The method of claim 1, wherein the amount of the buy-out offer and partial buy-out offer are variable and based on at least one of a calculated probability, an originator of the proposal, a negotiation, the one or more players or a third party.”

237. It is my opinion that a POSITA would understand that DeWaal in combination with Schugar discloses “buy-out offer and partial buy-out offer” for the reasons discussed above in limitation 1[j], which is herein incorporated by reference.

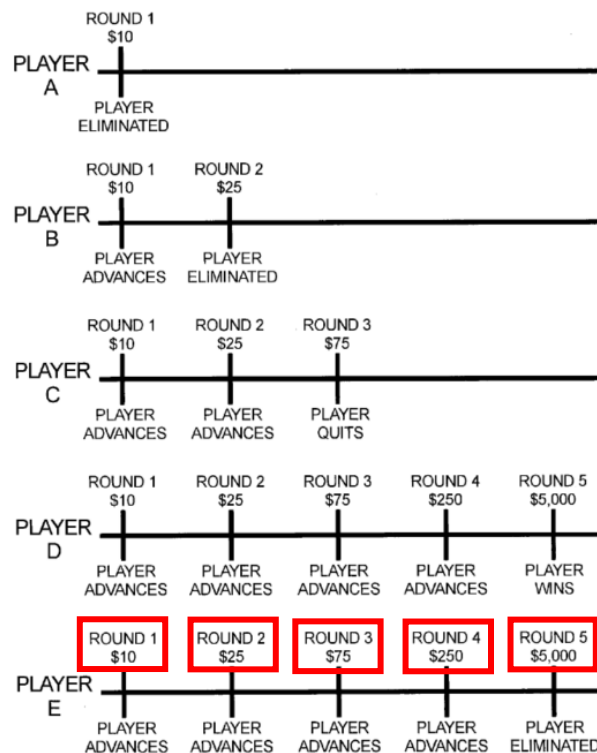
238. Moreover, a POSITA would understand that DeWaal discloses the “amount of the buy-out offer and partial buy-out offer are variable and based on at least one of a calculated probability, an originator of the proposal, a negotiation, the one or more players or a third party.” DeWaal recites “[i]f the first and second rounds are sequentially displayed to the players at different times, *the results* of the first round (i.e., which players advance to the second round or which players win the award or a portion of the award) *may be stored*. The *central controller* is operable to determine a winning player and/or *an amount of the award for the second round*

based on this stored information at a later time, such as 15 minutes after the first round ends.” DeWaal ¶ [0164]. Here, the central controller corresponds to “originator of the proposal” because it generates and determines the offered award amount, as I discussed previously. In addition, regarding this award being “variable,” DeWaal states that “the award values associated with each round,” which may be the award values that are offered in exchange for the player quitting, “may be set to any suitable values by the implementer of the gaming system.” DeWaal ¶ [0144]. A POSITA would understand that, given that the implementer can set the values to any amount, they are variable and not fixed, i.e., they can be changed.

239. Moreover, DeWaal also recites “*the gaming device* randomly *generates awards* and/or other game outcomes *based on probability data*. ... each award or other game outcome is *associated with a probability* and the gaming device *generates the award* or other game outcome to be provided to the player *based on the associated probabilities*.” DeWaal ¶ [0049]. 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. Here, DeWaal discloses an

arrangement where the award is determined based on “calculated probability” data. Furthermore, DeWaal discloses that such offer amount are “variable” in that they may change for each round. As shown in FIG. 10 for example, the award value, i.e., the buy-out offer amount for each round of the bonus event is different, thereby indicating that the amount of the buy-out offer is variable over the duration of the wagering game.

FIG. 10



DeWaal FIG. 10.

240. In addition, Schugar also discloses that “amount of the buy-out offer and partial buy-out offer are variable and based on at least one of a calculated probability, an originator of the proposal, a negotiation, the one or more players or

a third party.” For example, as Schugar explains, the wagering games have “multiple game states,” and throughout the game, Schugar’s method “determines whether the current game state has a positive expectation for the player” and this determined expectation is the amount of the cash out offer because this is the amount that the player has to “choose whether he wishes to bank some or all of.” Schugar ¶¶ [0088]-[0089]. As there are multiple game states, and the amount of the cash out offer depends only on the “current” one of those game states, a POSITA would understand that the amount of Schugar’s cash out offers are variable in that they change depending on the “current” game state.

241. This understanding is also reflected in Schugar’s examples. For example, Schugar discloses that, in the sports betting context, and as was known in the art, that “payout odds for each team winning” a game or a “series can change to reflect the current conditions (as described herein and/or known in the art).” Schugar ¶ [0072]. Therefore, as the team wagered upon in a series wins or loses each game in the series, the odds would change and, as a POSITA would understand from Schugar’s teachings, so would the amount of the cash out offer, for better or worse.

242. In addition, expressly reflecting and leveraging the fact that a player’s expectation value or equity in their wager may change during the course of the wagered upon events, Schugar provides a feature by which a player may automatically accept a cash out offer when it changes in a certain way. For example,

Schugar discloses that “when a player achieves a positive change in his or her expectation, a portion of the increased expectation can be automatically banked for later redemption.” Schugar ¶ [0101].

243. Regarding the cash out offer being variable “and based on ... a calculated probability,” Schugar expressly states, as I have discussed herein, that the amount of the cash out offer (i.e., the player’s expectation in a game based on the current conditions) is based on the “probability of [the] outcome” wagered upon occurring. Schugar ¶ [0090]. This is shown for example in the exemplary formula Schugar discloses for calculating the amount of the cash out offer, as shown below.

For all outcomes, $\sum$ (probability of outcome * reward for the outcome).

Id.

5. Claim 7: “The method of claim 1, wherein the one or more wagering devices comprise at least one of a wagering terminal, a wagering workstation, a personal computer, a smart phone, a tablet computing device, a gaming machine, a slot machine, and a lottery machine.”

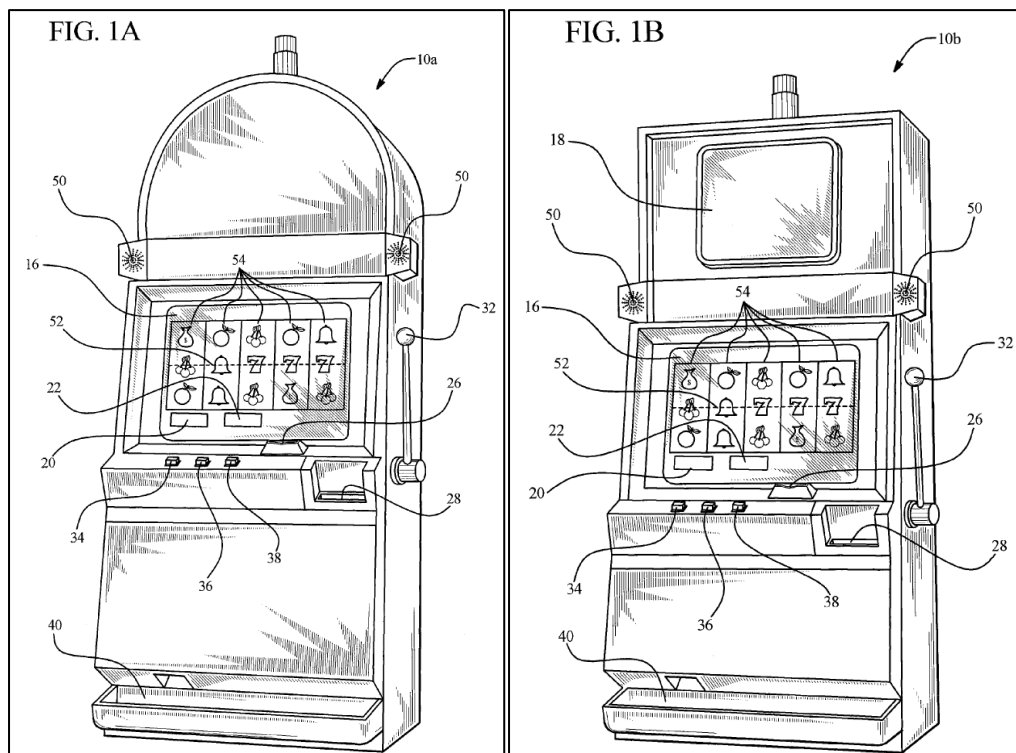
244. In my opinion, DeWaal discloses the limitations of claim 7 because the ’338 Patent admits that the types of “wagering devices” or gaming machines disclosed in DeWaal are suitable for implementing the disclosure of the ’338 Patent. *See* ’338 Patent at 24:4-20.

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

246. In addition, and more specifically, DeWaal discloses "one or more wagering devices comprise at least one of a wagering terminal, a wagering workstation, a personal computer, a smart phone, a tablet computing device, a gaming machine, a slot machine, and a lottery machine."⁶ For example, DeWaal discloses that its system and method "may be implemented in various configurations for ***gaming machines or gaming devices***," which a POSITA would understand corresponds to each of or any one of the recited options. DeWaal ¶ [0042]. The

⁶ While the intrinsic record of the '338 Patent, including Patent Owner's express disclaimers during prosecution of its parent, supports interpreting limitations directed to presenting "at least one of a buy-out offer and a partial buy-out offer" in the conjunctive (i.e., to require presenting both a buy-out and a partial buy-out offer), there is no such disclaimer or support in the intrinsic record for this disjunctively recited limitation. A POSITA would therefore understand this limitation as written in the disjunctive (i.e., to require either X or Y).

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



DeWaal at FIGS 1A and 1B. As shown in FIGS. 1A and 1B, the gaming device “may be a *slot game* with one or more paylines.” DeWaal ¶ [0065]. Further,

DeWaal discloses that the bonus event can include “reel/slot games . . . lottery games” which corresponds to the gaming device being “a slot machine” or “a lottery machine.” DeWaal ¶ [0108].

6. Claim 8: “The method of claim 1, wherein the one or more jackpots, the portion thereof, or the award comprises one or more selected from the group consisting of monetary awards, nonmonetary awards, a prize, a payment, a designated currency, virtual currency, tokens, credits, coupons, services, personal property, real property, virtual property, assets, investments, negotiable instruments, commodities, food, lodging, entertainment, alleviation of obligations, gaming opportunities and wager enhancement”

247. A POSITA would find that DeWaal discloses “the one or more jackpots, the portion thereof, or the award.” DeWaal provides a bonus game scheme that award players either a full award or a portion of an award. *See* DeWaal [0119] (“In one embodiment, the players must pick a designated outcome (i.e., a winning outcome) in each round to *win all or a share of an award* associated with the bonus event.”).

248. Moreover, DeWaal teaches that the award may be in the form of “a designated currency,” “monetary award,” “a prize,” and/or “credits,” among other obvious options. *See* DeWaal ¶ [0065] (“the gaming device *awards prizes* after the reels of the primary game stop spinning”); *see* DeWaal ¶ [0093] (“a *supplemental award of \$10* is provided to the player as part of the predetermined game outcome.”); *see* DeWaal ¶ [0060] (“[i]n one embodiment, when the player cashes out, the player

receives the coins or *tokens* in a coin payout tray”); see DeWaal ¶ [0079] (“in addition to *winning credits* or other awards in a base or primary game, the gaming device may also give players the opportunity to *win credits* in a bonus or secondary game or bonus or secondary round.”). Thus, a POSITA would find that DeWaal discloses obvious “one or more selected from the group consisting of monetary awards ...a prize...a payment ... tokens, credits...” because DeWaal expressly DeWaal expressly says so and because the listed types of awards are completely routine and conventional in the prior art.

7. Claim 9: “The method of claim 1 wherein the wager comprises one or more of fixed odds single wagers, multiple wagers, full cover wagers, full cover wagers with singles, ‘Any to Come’ (ATC) or ‘if cash’ wagers, specialty wagers, forecasts, fixed, variable, guaranteed, parimutuel wagering, fixed-odds wagering, accumulator or parlay wagering, fixed odds, a pool, progressive, fixed pool, variable pool or guaranteed pool.”

249. In my opinion, a POSITA would have understood that DeWaal discloses the limitation of claim 9 because DeWaal at least discloses that the bonus event may comprise “multiple wagers,” “accumulator or parlay wagering,” or “a pool” (including at least “progressive,” “variable pool” and “guaranteed pool”).⁷

⁷ While the intrinsic record of the ’338 Patent, including Patent Owner’s express disclaimers during prosecution of its parent, supports interpreting limitations directed to presenting “at least one of a buy-out offer and a partial buy-out offer” in

250. Regarding the wager of the bonus event comprising “multiple wagers,” DeWaal discloses that the bonus event (i.e., wagering event) is a “multi-round selection game that includes *a plurality of rounds* and a number of available outcomes in each round.” DeWaal ¶ [0119]. DeWaal explains that “[t]he central controller enables each eligible player to *make an input* in association with the plurality of outcomes *in each round*.” DeWaal ¶ [0129]. As explained above with reference to at least claim 1, a POSITA would understand that a player’s selections in each round of the bonus event is equivalent to the player’s “wager” in the wagering event. Thus, a POSITA would understand that each round of DeWaal’s bonus event may be considered an individual wager such that the “plurality of rounds” correlates to “multiple wagers” that comprise the bonus event.

251. Regarding the wager of the bonus event comprising “accumulator or parlay wagering,” a POSITA would first understand that “accumulator” or “parlay wagers” were extremely well-known betting operations and were both similar in nature. Generally, both types of wagers involve placing a single wager that contains

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

multiple individual sub-wagers linked together and where each sub-wager selection must be correct in order to win the bet. If any of the sub-wager selections are not won, then the bet is typically lost. Since the combined odds of winning all sub-wagers is typically lower than the odds of winning any individual bet, parlay or accumulator bets are typically associated with much greater payouts.

252. A POSITA would have understood that DeWaal's bonus event is an accumulator or parlay-type of wagering event because players must make multiple, individual selection (i.e., sub-wagers) on the outcome of each round of the bonus event, and each individual selection must be correct in order for the player to advance to the next round and possibly win the final accumulated award (i.e., jackpot), as I have discussed previously. For example, DeWaal discloses that the "bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round." DeWaal ¶ [0119]. Players must correctly select the "designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event." DeWaal ¶ [0119]; *see also* DeWaal ¶ [0167] ("[i]f one of the players picks the designated selection, that player advances to a subsequent round. If one of the players picks one of the selections other than the designated selection (i.e., a losing outcome or selection), that player is eliminated from the bonus event"). This is precisely how a parlay or accumulator wager works. As explained above with reference to at least claim 1, a POSITA would understand

that a player's selections in each round of the bonus event is equivalent to the player's "wager" in the wagering event. Thus, DeWaal discloses both a parlay and accumulator type of wager.

253. Regarding the wager of the bonus event comprising "a pool," DeWaal discloses this limitation by explicitly explaining that the bonus event may comprise a pool or may be a progressive game, and that the pool may be variable and guaranteed. As an initial matter, I note that a POSITA would have understood that a "pool" generally refers to a method of gambling in which collective money bet on the result of a particular event by a number of people is awarded to one or more winners according to conditions. In addition, a POSITA would have generally understood a "progressive" game to be a game in which the jackpot or award increases each time the game is played but the jackpot is not won. In my opinion, a POSITA would have understood that DeWaal discloses the bonus event to be a pool or a progressive game because DeWaal discloses an award "pool" for each bonus event. DeWaal ¶ [0146] ("[i]n one embodiment, the central controller is operable to maintain at least one *award pool for each bonus event*. The central controller offers a portion of the award pool (or causes a portion of the award pool to be offered) to each player who picked the designated selection in one of the rounds.").

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

In one embodiment, the additional awards accumulate as the players advance through each round of the bonus event. For example, as illustrated, the total accumulated award for the second round (e.g., \$75) equals the amount won by each advancing player in the first and second rounds (e.g., \$25 and \$50, respectively). *In this embodiment, if a player chooses to continue the bonus event and does not advance in a subsequent round, that player loses or forfeits any additional awards accumulated in the bonus event. The total accumulated award for each round is offered to each advancing player along with the option to quit the bonus event. In one embodiment, as illustrated, the total accumulated award offered to the players increases with each round.* It should be appreciated that the award values associated with each round may be set to any suitable values by the implementer of the gaming system. In one embodiment, the awards associated with each round include bonus awards or *progressive awards*.

DeWaal ¶ [0144]. Thus, a POSITA would understand that the bonus event disclosed in DeWaal may be “progressive” in this regard. DeWaal also discloses an embodiment of its bonus event in which “*if no players advance to a final round*, the

bonus event ends and the *award is provided in a subsequent bonus event* [T]he *award may grow* to a relatively large amount because the *award can be carried over to one or more subsequent bonus events* and continually funded (e.g., by player's wagers). This provides increased excitement and enjoyment for the players.” DeWaal ¶ [0023]. Here, DeWaal discloses a progressive-style bonus game where the jackpot is carried over to the next bonus event game where the jackpot increases each time the game is played but not won.

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

players with all of the available awards or other game outcomes over the course of the play cycle and *guarantees the amount of actual wins and losses.*” DeWaal ¶ [0050]; *see also* DeWaal ¶ [0148] (“[i]n one embodiment, each advancing player is guaranteed a portion of the award pool for each round, wherein the guaranteed portion of the award pool increases in each round.”). Thus, a POSITA would understand that the pool of the bonus event is also guaranteed because, while the number of players participating in the bonus event may be variable, each winning player is *guaranteed* his/her portion of the award pool after each round.

8. Claim 10

a. 10[a] – “The method of claim 1, further comprising a cash out option, the system controller further configured to:”

256. In my opinion, a POSITA would have understood that DeWaal in combination with Schugar render limitation 10[a] obvious. As an initial matter, while claim 10 recites that the claim further comprises a “cash out option,” and claim 1, from which claim 10 depends, recites a full “buy-out offer” and a “partial buy-out offer,” the specification of the ’338 Patent suggests that the terms “buy-out” and “cash out” have the same intended meaning. *See, e.g.,* ’338 Patent 29:28-30 (“As should be understood, the terms buy-out and cash-in as used herein have the same intended meaning.”). That is, the ’338 Patent states that whether it is referred to as “buying” or “cashing” “in” or “out,” these terms “have the same intended meaning.”

Id. One additional notable point is that claim 10 uses the term “option” rather than claim 1’s use of the term “offer” in this context of buying or cashing in/out. From the ’338 Patent, a POSITA would understand that the full and partial buy-out offers that are initiated by the central controller have a “cash out option” that is selectable by the user in response to the offers. In other words, the “buy-out offer[s],” full and partial, “offer[] the option of cashing out” the wager in full or in part, respectively, or not at all. *See, e.g.,* ’338 Patent 25:26-30 (“In one embodiment, the player may be ***offered the option of cashing out***”). As such, a POSITA would understand that the “cash out option” recited in claim 10 is effectively the same as the full and partial “buy-out offer” recited in claim 1 in that the ***offers*** provides the player with ***options*** for cashing out. In other words, a POSITA would have understood that a cash out option is what is offered to a player in a full and/or partial buy-out offer, such that these different phrases, practically speaking, refer to the same thing. In fact, the Patent Owner treated these terms the same in their infringement contentions against DraftKings in the parallel district court case, where the entire analysis of claim 10 consists only of bare references back to claim 1. *See, e.g.,* Ex[1048] (Exhibit 338.A to Plaintiffs’ Initial Infringement Contentions, *Diogenes Limited v. DraftKings, Inc.*, C.A. No. 21-1695-MN-CJB) at 106.

257. With this understanding of the plain and ordinary meaning of the claim language, a POSITA would have understood that DeWaal and Schugar disclose the

method of claim 1 “further comprising a cash out option” because DeWaal and Schugar’s buy-out offers provide a player with one or more options for cashing out their wager, i.e., in full, in part, or not at all, as is clear from my explanations above regarding limitations 1[a], 1[j], and 1[k], for example, which are herein incorporated by reference.

258. For example, a POSITA would have understood that DeWaal’s full buy-out offer comprises a “cash out option” to cash out in full during the wager because, as DeWaal states, “the total accumulated award is offered to each advancing player *along with the option to quit.*” DeWaal ¶ [0018]. A POSITA would have understood that this “option” to quit is a “cash out offer” that accompanies the systems “offer” because if the user selects and accepts the option, the player is provided with the award (i.e., the cash) and is eliminated from the wagering event. *See, e.g., id.* ¶ [0146] (“If a player accepts the offered portion of the pool, the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award in exchange for quitting the bonus event).” That is, DeWaal expressly discloses that the buy-out offer includes the “option” to quit in exchange for the award for that round and “cash out.”

259. The same is true with respect to Schugar. For example, a POSITA would have understood that Schugar’s full and partial buy-out offers comprise a “cash out option” to cash out in full or in part during the wager because, as Schugar

states, the pop up window offers the player the “option” to “bank some or all of his recent gains in expectation for later redemption.” Schugar ¶ [0092] (“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 The player can also exercise this option either verbally to a live dealer or electronically with the press of a button which allows the player to bank his or her positive expectation.”). That is, like DeWaal, Schugar expressly discloses that the buy-out offer includes the “option” of “cashing out a portion of a current bet in progress” in exchange for a portion of the current value of the player’s wager. *Id.* ¶ [0127].

b. 10[b] – “receive a selection of the cash out option from any of the one or more players that desire to fully or partially end the wager;”

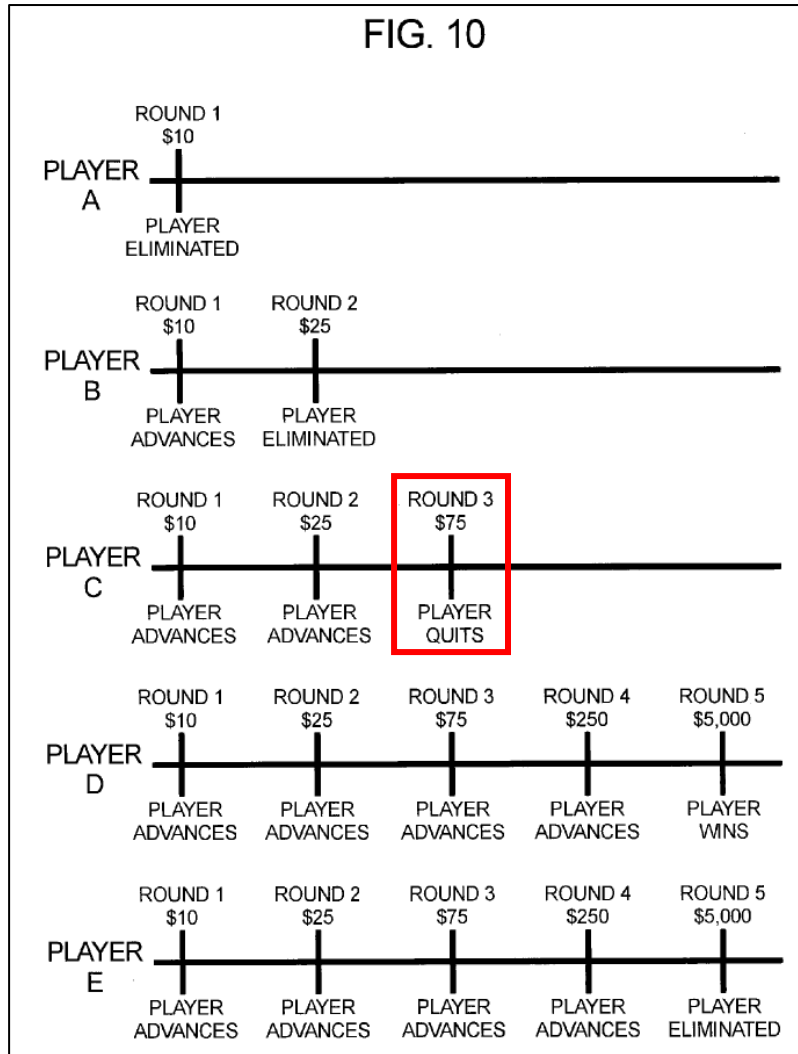
260. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose this limitation and render it obvious in combination. As an initial matter, and in view of the discussion above with respect to the relationship between a buy-out offer and a cash out option, a POSITA would have understood that the limitation of “receive a selection of the cash out option from any one of the one or more players” corresponds to “receiving an acceptance of the buy-out offer or partial buy-out offer ... in response to input from a particular number of the players” as

recited in limitation 1[k] above, my analysis of which is incorporated herein by reference, because a player accepts the offer by selecting the cash out option.

- c. 10[c] – “wherein any of the one or more players selecting the cash out option to fully end the wager no longer participates in the multi-outcome wagering event, and any of the one or more players selecting the cash out option to partially end the wager continues to participate in the multi-outcome wagering event; and”

261. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose this limitation and render it obvious in combination for the same reasons I explained above regarding limitation 1[k], my analysis of which is incorporated herein by reference.

262. For example, corresponding to “wherein any of the one or more players selecting the cash out option to fully end the wager no longer participates in the multi-outcome wagering event,” DeWaal discloses that “[i]f a player accepts the offered portion of the award pool, *the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event.*” DeWaal ¶ [0146]. For the avoidance of doubt, a POSITA would have understood “quitting” to mean “no longer participat[ing]” in accordance with the plain and ordinary meaning of that term. This is illustrated, for example, in FIG. 10, for example, which shows Player C accepting the offer in the third round and ceasing their participation in the bonus event.



DeWaal at FIG. 10 (annotated).

263. With respect to the limitation of “any of the one or more players selecting the cash out option to partially end the wager continues to participate in the multi-outcome wagering event,” Schugar discloses that when the player “exercise[s]” the “option” of “cashing out a portion of a current bet in progress,” “the house can take a portion of the player’s wager (such as 10%),” which the player has “banked” “for later redemption” and the player can “*continue to wager*” such

that, in this example, “the player now has \$90 wagered on the event” of the original \$100 wager. Schugar ¶¶ [0079], [0092], [0127]. For the avoidance of doubt, a POSITA would have understood that Schugar’s description of continuing to wager with the remaining amount that was not cashed out means that the player “continues to participate in the multi-outcome wagering event” but at a lower wagered amount, such as at \$90 in the above example.

d. 10[d] – “issue to the one or more players that selected the cash out option one or more of cash, tickets or credit slips redeemable by the player, funding of a player's electronically recordable identification card or online account, or an award.”

264. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose this limitation and render it obvious in combination for the same reasons I explained above regarding limitation 1[l], my analysis of which is incorporated herein by reference.

265. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose this limitation and render it obvious in combination for the same reasons I explained above regarding limitation 1[l], which are herein incorporated by reference. Further, in view of the discussion above with respect to the relationship between a buy-out offer and a cash out option, a POSITA would have understood that the limitation of “issue to the one or more players that selected the cash out option” corresponds to the limitation of “issuing ... to the one or more

players accepting the buy-out offer or partial buy-out offer” recited in limitation 1[1] above, because a player accepts the offer by selecting the cash out option. Further, regarding the limitation of issuing “one or more of cash, tickets or credit slips redeemable by the player, funding of a player’s electronically recordable identification card or online account, or an award” in response to a player selecting and accepting the cash out option, I previously explained how DeWaal discloses issuing “a cash payment,” “tickets or credit slips redeemable by a cashier (or other suitable redemption system or funding to the player’s electronically recordable identification card” with respect to limitation 1[1], which also satisfies limitation 10[d] because the limitations expressly overlap. DeWaal ¶ [0060].

266. Similarly, with respect to “one or more of cash, tickets or credit slips redeemable by the player, funding of a player's electronically recordable identification card or online account, or an award,” Schugar discloses, for example, that “*the house can take a portion of the player's wager (such as 10%),* so that the player now has \$90 on the Don't Pass line. *The taken portion can be stored for later redemption by the player.* The \$10 taken actually has an expected value of \$13.33. This \$13.33 (or a number based on this to account for the house commission) can be *accumulated and disbursed to the player at a later time (either later at the instant game, or later at another game, or by electronic redemption).*” Schugar ¶ [0079]. In other examples of the partial cash in, Schugar further explains that the banked

value “can be redeemed by the player for cash,” either “instantly” or “at a later time,” and “can be stored locally and/or on a database which can be accessed at a later time.” Schugar ¶ [0083]. Thus, with respect to both DeWaal’s offer to quit and Schugar’s offer to cash in a portion of the wager, the award for cashing satisfies this limitation.

9. Claim 11: “The wagering apparatus of claim 10, wherein the system controller is further programmed to at least one of generate and receive the cash out option via one or more of the wagering input devices, a hand held device, a mobile device, a wireless device, a computing system, a smart phone, a telephone, a tablet computer, text messaging, a PDA, an interactive television, email, Internet browser or a cashier.”

267. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose the limitations of claim 11 and render it obvious. There are several points to make with respect to claim 11. First, claim 11 recites “the wagering apparatus of claim 10,” but claim 10 recites a “method” and does not recite a “wagering apparatus.” For purposes of my analysis herein, I assume that the “wagering apparatus” refers to the system controller and/or the gaming devices, which I previously analyzed for example with respect to limitations 1[a] and 1[b] and I incorporate those analyses herein. Second, the limitations of claim 11 overlap with portions of limitations 10[a] and 10[b] (and 1[k] by incorporation) analyzed above with respect to the “cash out option” and “receiving a selection of the cash out option from any of the one or more players,” and I incorporate by reference my

analysis of those limitations herein. Specifically, my analysis of limitation 10[b] (and 1[k] by incorporation) demonstrated how DeWaal and Schugar disclose the system controller being programmed to “receive the cash out option,” which corresponds to receiving the player’s selection of accepting the full or partial buy-out offer for the reasons explained above. In addition, my analysis of limitations 1[j] and 10[a] above, which are incorporated herein by reference, demonstrate how DeWaal and Schugar disclose the system controller being programmed to “generate ... the cash out option,” which corresponds to initiating a full and partial buy-out offer to the player that comprises options for fully or partially cashing out for the reasons explained above.

268. In addition, DeWaal discloses that the generating and receiving of the cash out option is “via one or more of the wagering input devices, a hand held device, a mobile device, a wireless device, a computing system, a smart phone, a telephone, a tablet computer, text messaging, a PDA, an interactive television, email, Internet browser or a cashier.” 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. 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]. Further, 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 controller generated a cash out option via the display, because displaying is a known technique for providing the player with the choice or “option” of taking the amount of money and quitting (i.e., cashing out) or rejecting the amount and continue playing the subsequent bonus event. A POSITA would also understand that when players input their selection of the cash out option, the controller receives the selection of the cash out option because depending on the players’ selections, the controller awards the cash out amount and eliminates the players from the bonus event or advances the players to the next round, as has been explained herein. 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. . . . In this example, fifty players rejected the offer . . . to play a second round”).

269. Further, DeWaal's generating and receiving the cash out option is done "via one or more of the wagering input devices, a hand held device, a mobile device, a wireless device, a computing system, a smart phone, a telephone, a tablet computer, text messaging, a PDA, an interactive television, email, Internet browser or a cashier" because the "display device" on which the offer is displayed to a user is a component of DeWaal's gaming device that corresponds to the claimed "wagering input devices," as explained above with respect to limitation 1[b]. *See, e.g.,* DeWaal ¶ [0052] ("the gaming device includes one or more display devices controlled by the processor."). Therefore, a POSITA would understand that the cash out option of receiving the accumulated award and quitting the bonus event was presented to the player "via the one or more of the wagering input devices" because this option is made available to each advancing player via the gaming device display.

270. In addition, as discussed above with respect to limitation 1[b], 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.”). As such, a POSITA would understand that DeWaal discloses the controller to generate the cash out option for players through the various gaming devices, which corresponds to the types of wagering devices described in claim 11.

10. Claim 12: “The method of claim 1, wherein initiate and cause display of at least one of a buy-out offer and a partial buy-out offer comprises initiate and cause display of a partial buy-out offer.”

271. In my opinion, a POSITA would understand that DeWaal and Schugar disclose the limitations of claim 12 of the '338 Patent and render claim 12 obvious as has been explained herein. Specifically, as I explained above with respect to limitations 1[a], 1[b], and 1[j], for example, my analysis of which is herein incorporated by reference, the combination of DeWaal and Schugar discloses “wherein initiate and cause display of at least one of a buy-out offer and a partial buy-out offer comprises initiate and cause display of a partial buy-out offer,” with the partial buy-out offer being added from Schugar to DeWaal’s system and wagering games.

11. Claim 13: “The method of claim 1, wherein initiate and cause display of at least one of a buy-out offer and a partial buy-out offer comprises initiate and cause display of a buy-out offer.”

272. In my opinion, a POSITA would understand that DeWaal and Schugar each individually disclose the limitations of claim 13 of the '338 Patent and render claim 13 obvious as has been explained herein. Specifically, as I explained above with respect to limitations 1[a], 1[b], and 1[j], for example, my analysis of which is herein incorporated by reference, DeWaal anticipates, and the combination of DeWaal and Schugar discloses “wherein initiate and cause display of at least one of a buy-out offer and a partial buy-out offer comprises initiate and cause display of a buy-out offer,” with the buy-out offer being disclosed in both DeWaal and Schugar.

12. Claim 14: “The method of claim 1, wherein the buy-out offer comprises a cash in offer or a cash out offer, and wherein the partial buy-out offer comprises a partial cash in offer or a partial cash out offer.”

273. I incorporate by reference my analysis of claim 1. In my further opinion, a POSITA would have understood that DeWaal and Schugar disclose the limitations of claim 14 of the '338 Patent and render claim 14 for the same reasons I explained above with respect to limitations 1[a], 1[b], 1[j], and 10[a], which are herein incorporated by reference. Specifically, as I explained above, the '338 Patent expressly states that “*the terms buy-out and cash-in as used herein have the same intended meaning*,” and therefore my analyses of the “buy-out offer” and “partial buy-out offer” above also apply to show that the offers comprise a “cash in offer” or

“a partial cash in offer” because those terms have the same meaning. *See, e.g.*, ’338 Patent 29:28-30. That is, the ’338 Patent states that whether the offer is referred to as “buying” or “cashing” “in” or “out,” these terms “have the same intended meaning,” and therefore my prior analysis demonstrate how the limitations of claim 14 are also met at least with respect to the “cash in offer” and “partial cash in offer.” *Id.* Indeed, in the context of the “offer,” the ’338 Patent repeatedly uses the terms “buy-out” and “cash-in” interchangeably. *See, e.g.*, ’338 Patent 28:38-42 (“As should be understood, the *buy-out/cash-in offers* can thus come from any source, and also can be utilized in a variety of different implementations, including, as an example and without limitation, games that are organized specifically to have *buy-out/cash-in* as a feature (e.g., as arranged by a system operator).”).

13. Claim 15: “The method of claim 1, wherein the buy-out offer and partial buy-out offer comprises a full cash out on a single.”

274. In my opinion, a POSITA would have understood that DeWaal in combination with Schugar discloses the limitations of claim 15 and renders claim 15 obvious. Regarding claim 15’s recitation of “[t]he method of claim 1,” I previously explained how the entirety of claim 1 was disclosed in or rendered obvious over DeWaal and/or Schugar, including how DeWaal and Schugar disclose and render obvious “the buy-out offer and partial buy-out offer,” and I incorporate by reference my analysis of claim 1 herein.

275. Regarding the limitation in claim 15 that the buy-out offer and partial buy-out offer “comprises a full cash out on a single,” I note as an initial matter that a POSITA would have understood that a “cash out” is the same thing as a “buy-out” at least because the ’338 Patent expressly states that “*the terms buy-out and cash-in as used herein have the same intended meaning.*” ’338 Patent 29:28-30. That is, whether the offer is for “buying” or “cashing” “in” or “out,” the ’338 Patent expressly states that such offers are intended to have the same meaning. *Id.* Indeed, the ’338 Patent repeatedly uses the terms “buy-out” and “cash-in” interchangeably. *See, e.g.,* ’338 Patent 28:38-42 (“As should be understood, the *buy-out/cash-in offers* can thus come from any source, and also can be utilized in a variety of different implementations, including, as an example and without limitation, games that are organized specifically to have *buy-out/ cash-in* as a feature (e.g., as arranged by a system operator).”). Therefore, it is my opinion that a POSITA would understand that DeWaal teaches the “full cash out” limitation of this claim because DeWaal discloses an offer an acceptance feature that corresponds to a full buy-out/cash out and Schugar teaches the “full cash out” limitation of this claim because Schugar discloses the option of “cashing out” “all” of a player’s wager in progress. Therefore, my analyses above of the “buy-out offer” and “partial buy-out offer” apply equally to demonstrating the prior art’s disclosure of a full or partial “cash out” offer.

276. I also note as an initial matter that a POSITA would have understood that a “single” refers to a type of bet in which the bettor bets on a single outcome of a certain event, such as selecting the winner of a card game, the winner of a selection game, the winner of a horse race, or the winner of a football game. The claim does not recite that the buy-out/cash out offer has changed in any way—the only difference is that it is being offered with respect to a particular type of bet, which in this claim is a “single.” As a POSITA would have understood and the ’338 Patent admits, the buy-out/cash out concept is not unique to any particular type of bet such that tying the cash out concept to a particular type of bet is somehow unique or important. *See, e.g.,* ’338 Patent 23:33-43 (“Notably, for example, without limitation, the terms wagers, wagering, bets and betting as referenced herein may include, without limitation and for illustration purposes only, single wagers, multiple wagers, full cover wagers, full cover wagers with singles, ‘Any to Com’ (ATC) or ‘if cash’ wagers, specialty wagers, forecasts, fixed, variable, guaranteed, parimutuel wagering, fixed-odds wagering, ***and any other variations known in the art, etc., alone and in any desired combinations.*** For example, multiple wagers may include parlay or accumulator wager.”). As shown in that passage, the ’338 Patent admits that these types of wagers/bets were “known in the art.” *Id.*

277. With this understanding, I note that claim 15 would have been obvious over the disclosure of DeWaal and/or Schugar because it is simply limiting the

previously disclosed concepts of a buy-out offer to a particular type of bet that was routine and conventional in the prior art. In other words, given the well-known types of bets that were available at that relevant time, it would have been obvious for a POSITA to provide the buy-out offer and/or partial buy-out offer functionality for any type of bet, including singles, and this claim is merely the obvious selection of one type of bet from the types of well-known bets that existed in the prior art.

278. In addition, a POSITA would have understood that DeWaal discloses several types of games and bets that, if the player accepted the buy-out offer, would result in “full cash out on a single.” For example, a POSITA would understand that accepting the offer to quit with respect to a player’s wager in a game of blackjack, on a lottery game, wheel game, dice game, or many other types of games in DeWaal may be a “full cash out on a single” because, in such games, the player bets on a single outcome, such as beating the dealer in blackjack, picking all of the correct lottery numbers in a lottery game, or the wheel stopping on a winning space in a wheel game, for example. As such, a POSITA would have understood that a player accepting an offer to quit in exchange for some value during one of these games would correspond to a full cash out on a single.

279. Similarly, Schugar also discloses a “full cash out on a single” and thus the combination of DeWaal and Schugar would render this limitation obvious. For example, DeWaal discloses that the player’s bet may be “an even money bet,” such

as “+100 moneyline” that “the Yankees will beat the Braves outright.” Schugar ¶ [0120]. A POSITA would understand that this is a “single” bet because it is a bet that a single outcome will occur, i.e., the Yankees beating the Braves outright in a baseball game. And Schugar discloses that the player may be offered the option of banking some or “*all*” of their wager on that single outcome and can accept that option to “cash[] out” all of their wager. *Id.* ¶ [0092]. Therefore, a POSITA would have understood that Schugar discloses a buy-out offer comprising a full cash out on a single.

14. Claim 17: “The method of claim 1, wherein the buy-out offer and partial buy-out offer comprises a full cash out on a multiple, accumulator, parlay or pool.”

280. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose the limitations of claim 17 and render claim 17 obvious. As an initial matter, it is my opinion that a POSITA would understand that DeWaal discloses “the buy-out offer” feature for the reasons discussed above in limitation 1[j], which are herein incorporated by reference. Further, it is my opinion that a POSITA would understand that DeWaal in combination with Schugar discloses the “partial buy-out offer” feature for the reasons discussed above in limitation 1[j], which are herein incorporated by reference.

281. Regarding the limitation in claim 17 that the buy-out offer and partial-buy-out offer “comprises a full cash out on a multiple, accumulator, parlay or pool,”

I note as an initial matter that a POSITA would have understood that a “cash out” is the same thing as a “buy-out” at least because the ’338 Patent expressly states that **“the terms buy-out and cash-in as used herein have the same intended meaning.”** ’338 Patent 29:28-30. That is, whether the offer is for “buying” or “cashing” “in” or “out,” the ’338 Patent expressly states that such offers are intended to have the same meaning. *Id.* Indeed, the ’338 Patent repeatedly uses the terms “buy-out” and “cash-in” interchangeably. *See, e.g.,* ’338 Patent 28:38-42 (“As should be understood, the **buy-out/cash-in offers** can thus come from any source, and also can be utilized in a variety of different implementations, including, as an example and without limitation, games that are organized specifically to have **buy-out/ cash-in** as a feature (e.g., as arranged by a system operator).”). Therefore, it is my opinion that a POSITA would understand that DeWaal teaches the “full cash out” limitation of this claim because DeWaal discloses an offer an acceptance feature that corresponds to a full buy-out/cash out and Schugar teaches the “full cash out” limitation of this claim because Schugar discloses the option of fully “cashing out” “all” of a player’s wager in progress. Therefore, my analyses above of the “buy-out offer” and “partial buy-out offer” apply equally to demonstrating the prior art’s disclosure of a full or partial “cash out” offer.

282. I also note as an initial matter that the ’338 Patent defines parlay or accumulator wager as “compris[ing] a single wager that links together two or more

discrete events and in any combination (e.g., legs or divisible portion thereof) and is dependent on correctly selecting the outcome of the two or more discrete events,” which is consistent with the plain and ordinary meaning of those terms. ’338 Patent at 23:6-10. Further, the ’338 Patent explains that “an accumulator or parlay wager may be placed on a multi-leg event (either in the entirety or a designation portion or portions of legs, etc.), such that the outcome of each leg corresponding to the accumulator/parlay wager must be correctly selected for the accumulator/parlay wager to be eligible for a designated prize or award (e.g., a jackpot) or portion thereof,” which is also consistent with the plain and ordinary meaning of those terms. *Id.* 23:23-30.

283. With this understanding, I note that claim 17 would have been obvious over the disclosure of DeWaal and/or Schugar because it is simply limiting the previously disclosed concepts of a buy-out offer to a particular type of bet that was routine and conventional in the prior art. In other words, given the well-known types of bets that were available at relevant time, it would have been obvious for a POSITA to provide the buy-out offer and/or partial buy-out offer functionality for any type of bet, including multiples, accumulators, parlays, and/or pools, and this claim is merely the obvious selection of certain types of bets from the types of well-known bets that existed in the prior art.

284. In addition, it is my opinion that a POSITA would have understood that DeWaal discloses the buy-out offer comprising “a full cash out on a multiple, accumulator, parlay or pool” because DeWaal’s disclosure of the multi-round selection game and being offered and accepting the offer to quit the selection game maps squarely to the ’338 Patent’s definition and example of an accumulator or parlay wager. For example, DeWaal discloses that the “bonus event is a multi-round selection game that includes a plurality of rounds and a number of available outcomes in each round,” where each round corresponds to a discrete event as referenced in the ’338 Patent. DeWaal ¶ [0119]. Players must correctly select the “designated outcome (i.e., a winning outcome) in each round to win all or a share of an award associated with the bonus event,” which corresponds directly to the ’338 Patent’s disclosure that the parlay or accumulator wager is dependent on correctly selecting the outcome of each of the legs/rounds. DeWaal ¶ [0119]; *see also* DeWaal ¶ [0167] (“[i]f one of the players ***picks the designated selection, that player advances to a subsequent round.*** If one of the players picks one of the selections other than the designated selection (i.e., a losing outcome or selection), that player is eliminated from the bonus event”). Therefore, because players must make an individual selection (i.e., wager) on the outcome of each round of the bonus event, and each individual selection (i.e., wager) must be accurate in order for the player to advance to the next round and possibly win the final accumulated award (i.e.,

jackpot), a POSITA would understand that the player's "selections" on each round of the selection game bonus event as disclosed in DeWaal is equivalent to a wager that is an "accumulator" or "parlay wager," as required by claim 17.

15. Claim 18: "The method of claim 1, wherein the buy-out offer and partial buy-out offer comprises a partial cash out on a multiple, accumulator, parlay or pool."

285. In my opinion, a POSITA would have understood that DeWaal and Schugar disclose the limitations of claim 18 and render claim 18 obvious for the reasons I have previously explained. For example, it is my opinion that a POSITA would understand that DeWaal discloses "the buy-out offer" feature for the reasons discussed above in limitation 1[j], which are herein incorporated by reference. Further, it is my opinion that a POSITA would understand that DeWaal in combination with Schugar discloses the "partial buy-out offer" feature for the reasons discussed above in limitation 1[j], which are herein incorporated by reference.

286. Regarding the limitation in claim 18 that the buy-out offer and partial buy-out offer "a partial cash out on a multiple, accumulator, parlay or pool," I note as an initial matter that a POSITA would have understood that a "cash out" is the same thing as a "buy-out" at least because the '338 Patent expressly states that "*the terms buy-out and cash-in as used herein have the same intended meaning.*" '338 Patent 29:28-30. That is, whether the offer is for "buying" or "cashing" "in" or

“out,” the ’338 Patent expressly states that such offers are intended to have the same meaning. *Id.* Indeed, the ’338 Patent repeatedly uses the terms “buy-out” and “cash-in” interchangeably. *See, e.g.,* ’338 Patent 28:38-42 (“As should be understood, the ***buy-out/cash-in offers*** can thus come from any source, and also can be utilized in a variety of different implementations, including, as an example and without limitation, games that are organized specifically to have ***buy-out/cash-in*** as a feature (e.g., as arranged by a system operator).”). Therefore, it is my opinion that a POSITA would understand that DeWaal in combination with Schugar teaches the “partial cash out” limitation of this claim because Schugar teaches “cashing out a portion of a current bet in progress.” Schugar ¶ [0127].

287. I also note as an initial matter that the ’338 Patent defines parlay or accumulator wager as “compris[ing] a single wager that links together two or more discrete events and in any combination (e.g., legs or divisible portion thereof) and is dependent on correctly selecting the outcome of the two or more discrete events,” which is consistent with the plain and ordinary meaning of those terms. ’338 Patent at 23:6-10. Further, the ’338 Patent explains that “an accumulator or parlay wager may be placed on a multi-leg event (either in the entirety or a designation portion or portions of legs, etc.), such that the outcome of each leg corresponding to the accumulator/parlay wager must be correctly selected for the accumulator/parlay wager to be eligible for a designated prize or award (e.g., a jackpot) or portion

thereof,” which is also consistent with the plain and ordinary meaning of those terms.

Id. 23:23-30.

288. With this understanding, I note that claim 18 would have been obvious over the disclosure of DeWaal and/or Schugar because it is simply limiting the previously disclosed concepts of a buy-out offer to a particular type of bet that was routine and conventional in the prior art. In other words, given the well-known types of bets that were available at that relevant time, it would have been obvious for a POSITA to provide the buy-out offer and/or partial buy-out offer functionality for any type of bet, including multiples, accumulators, parlays, and/or pools, and this claim is merely the obvious selection of certain types of bets from the types of well-known bets that existed in the prior art.

289. In addition, it is my opinion that a POSITA would have understood that Schugar discloses a “partial cash out on a multiple, accumulator, parlay or pool.” Schugar discloses this wagering arrangement because 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. For example, Schugar discloses that the feature of “cashing out a portion of a current bet in progress” can be used to “bet on sporting events, either at intervals on individual games or *series of games*.” A POSITA would have understood that Schugar’s disclosure of betting on a “series of games” included betting on multiple sporting events in succession, i.e., a “series,”

which would correspond to a multiple, parlay, or accumulator bet on the series of games, as was well-known in the art.

290. In addition, when implemented in DeWaal's bonus event, such as the multi-round selection game I have described herein, to provide the ability to partially buy-out/cash-out, Schugar's partial cash out would comprise a "partial cash out on a multiple, accumulator, parlay, or pool" type bet for the same reasons explained above with respect to claim 17, which are herein incorporated by reference, because a wager on DeWaal's multi-round bonus event corresponds directly to a "multiple, accumulator, parlay, or pool" wager.

16. Claim 19

- a. 19[a] – "The wagering apparatus of claim 1, wherein upon acceptance of the proposal by the one or more players, the server system controller is further programmed to cause the one or more wagering devices to at least one or more of:"**

291. As an initial matter, claim 1 does not recite a "wagering apparatus," a "proposal," or a "server system controller" as recited in claim 19. For purposes of this analysis, I have assumed that the "[t]he wagering apparatus of claim 1" refers to "[t]he method of claim 1," and as such I incorporate by reference my analysis of the method of claim 1 above as if set forth in this section. Further, for purposes of this analysis, I assume that "the proposal" refers to the "buy-out offer and partial buy-out offer" that are initiated and displayed to a player as recited above in, for example,

limitation 1[j]. I also assume, for purposes of this analysis, that “the server system controller” refers to the “system controller” recited in limitation 1[b], and I incorporate by reference my analysis of limitation 1[b].

292. Based on these assumptions and understandings, it is my opinion that a POSITA would understand that DeWaal discloses limitation 19[a] of the '338 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 have understood that DeWaal discloses a bonus event with an “offer and acceptance” feature that corresponds to an offer and acceptance of a “buy-out offer” that satisfies limitation 19[a] as it pertains to a “buy-out offer,” but DeWaal does not expressly describe the “partial buy-out offer” portions of this limitation. The prior art, and Schugar in particular, however, discloses the “partial buy-out offer” 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 19[a] under DraftKings' position on this issue at least for the reasons explained above with respect to claim 1, which are herein incorporated by reference.

293. Regarding the limitation of “acceptance of the proposal by the one or more players,” I previously explained above in connection with limitation 1[j] how DeWaal and Schugar disclose the central server/controller receiving an acceptance

of the buy-out offer or partial buy-out offer,” and I incorporate by reference my analysis of limitation 1[j] as demonstrating that this aspect of claim 19 is also disclosed in the prior art.

294. Regarding the limitation of the “server system controller is further programmed to cause the one or more wagering device to at least one or more of,” as I have explained herein, DeWaal discloses that the central server/controller is programmed to control the operation of the wagering devices. *See, e.g.*, DeWaal ¶¶ [0042] (“[T]he central server 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.”), [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.”).

295. With respect to limitation 19[a] and the four following elements 19[b]-19[e], limitations 19[b]-19[e] are disjunctive options based on limitation 19[a]’s use of the term “at least one or more of.” That is, if limitation 19[a] is disclosed in the prior art, which it is as I have described herein, and if any one of limitations 19[b]-19[e] are disclosed in the prior art, which they are as I will explain below, then claim 19 is disclosed in the prior art. In this regard, as I will explain below with respect to

limitation 19[d], DeWaal discloses that limitation such that claim 19 is disclosed by DeWaal alone and/or in combination with Schugar.

b. 19[b] – “transfer an entitlement of the one or more players to at least one third party or another player, so that the at least one third party or another player becomes eligible to win;”

19[c] – “ transfer ownership or partial ownership of the one or more players, in at least a portion of the one or more player's wager, to at least one third party or another player, so that the at least one third party or another player obtains ownership or partial ownership and becomes eligible to win;”

19[d] – “relinquish rights of the one or more players, in at least a portion of the one or more player's wager corresponding to the proposal, before the event has been completed; and”

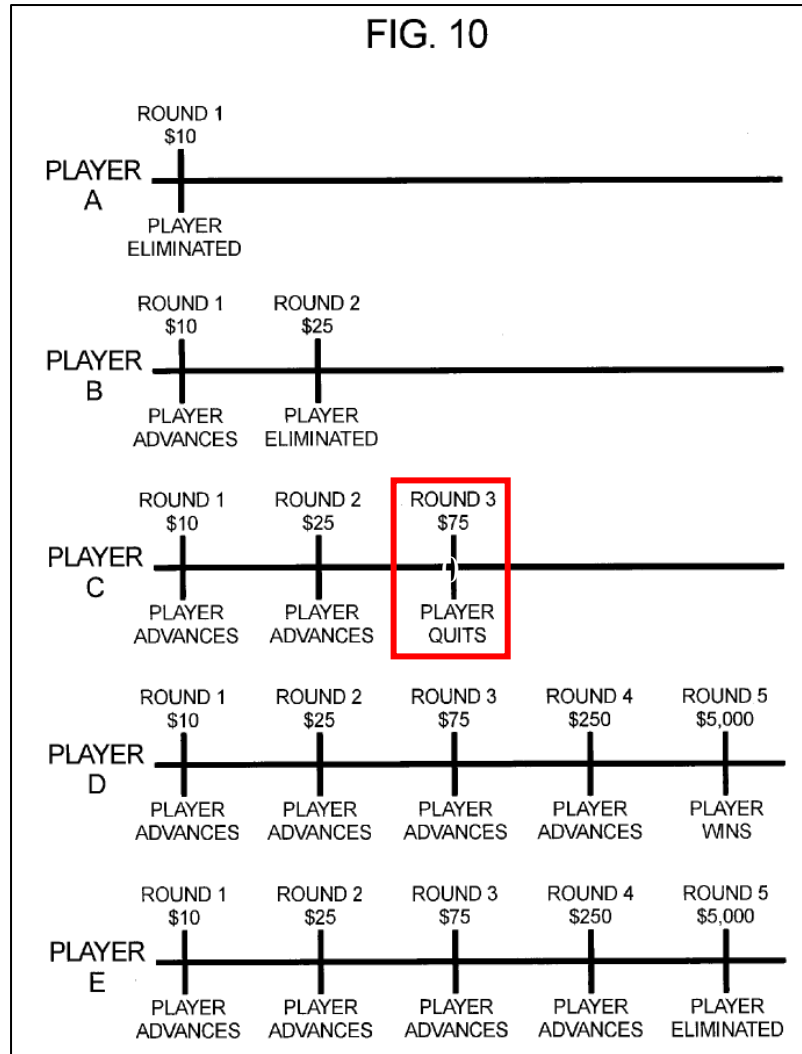
19[e] – “initiate and cause display of at least a portion of the one or more player's wager corresponding to the accepted buy-out offer or partial buy-out offer for at least one of bidding and selection by one or more third parties.”

296. In my opinion, a POSITA would have understood that DeWaal discloses limitation 19[d].

297. For example, a POSITA would have understood that DeWaal discloses “relinquish rights of the one or more players, in at least a portion of the one or more player's wager corresponding to the proposal” because DeWaal discloses that “*if a player accepts the offered portion of the award pool, the player is eliminated* from the bonus event (*i.e., the player accepts the offered portion of the award pool in*

exchange for quitting the bonus event).” DeWaal ¶ [0146]; *see also* DeWaal ¶ [0141] (“As illustrated, one hundred players who qualified to advance to the second round, accepted the offered additional award and quit the bonus event.”). A POSITA would have understood that a player that voluntarily chose to accept the offered portion of the award pool “in exchange for quitting the bonus event” and thereby was “eliminated” from the bonus event relinquished their right to continue playing the bonus event in exchange for the value offered.

298. This is illustrated, for example, in FIG. 10, for example, which shows Player C accepting the offer in the third round and ceasing their participation in the bonus event.



299. DeWaal at FIG. 10 (annotated). Moreover, a POSITA would have understood that a player must relinquish its rights “before the multi-outcome wagering event has been completed” because DeWaal contemplates that the award is granted for quitting event; thus, the event must be ongoing for an award to be granted. *See, e.g.,* DeWaal ¶ [0146]; DeWaal ¶ [0141]. Indeed, in the example provided above in FIG. 10 of DeWaal, Player C relinquished their rights in the bonus event in the third round but the wagering event was not completed until the fifth

round, indicating that Player C relinquished their rights prior to the bonus event being completed.

300 – 315 (Reserved)

17. Claim 32

- a. **32[a] – “A method of conducting a multi-outcome wagering event for one or more players, wherein the wagering event comprises a defined number of legs, and wherein 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, the method comprising the steps of:”**

316. In my opinion, a POSITA would have understood that limitation 32[a] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[a], which are herein incorporated by reference, because limitations 32[a] and 1[a] are identical.

- b. **32[b] – “providing one or more wagering input devices in communication with a system controller through which one or more players may participate in a multi-outcome wagering event, the system controller comprising a trading exchange module, the one or more wagering input devices comprising one or more displays for displaying the at least one of the buy-out offer and the partial buy-out offer after the multi-outcome wagering event begins, the one or more wagering input devices further comprising a buy-out input for receiving an acceptance of at least one of the buy-out offer and**

**the partial buy-out offer, said system controller
being adapted for:”**

317. In my opinion, a POSITA would have understood that limitation 32[b] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[b], which are herein incorporated by reference, because limitations 32[b] and 1[b] are nearly identical. The only portion of limitation 32[b] that is not identically recited in limitation 1[b] is that limitation 32[b] recites “the one or more wagering input devices further comprising *a buy-out input* for receiving an acceptance of at least one of the buy-out offer and the partial buy-out offer,” whereas limitation 1[b] recites “the one or more wagering input devices further comprising *an input* for receiving an acceptance of the at least one of the buy-out offer and the partial buy-out offer. A POSITA would have understood that “an input” that is for receiving an acceptance of the full or partial “buy-out offer[s]” is, by its own language, a “buy-out input,” such that my analysis of this part of limitation 1[b] also applies equally to this part of limitation 32[b] and demonstrates that it is satisfied.

**c. 32[c] –“initiating the multi-outcome wagering event
for one or more players, said multi-outcome
wagering event comprised of a defined number of
legs, wherein one or more jackpots, or a portion
thereof, is awarded at least where a particular
number of the defined number of legs are
completed;”**

318. In my opinion, a POSITA would have understood that limitation 32[c] is anticipated and/or obvious for the same reasons I explained above with respect to

limitation 1[c], which are herein incorporated by reference, because limitations 32[c] and 1[c] are identical.

d. 32[d] – “receiving a wager via the one or more wagering input devices in response to input from a player desiring to participate in the multi-outcome wagering event, wherein the wager coincides with each of the defined number of legs;”

319. In my opinion, a POSITA would have understood that limitation 32[d] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[d], which are herein incorporated by reference, because limitations 32[d] and 1[d] are nearly identical. The only portion of limitation 32[d] that is not identically recited in limitation 1[d] is that limitation 32[d] recites “receiving a wager *via the one or more wagering input devices*,” whereas limitation 1[d] recites “receiving a wager *via* one or more of the user input, the payment acceptor or the link of *the one or more wagering input device*.” While limitation 1[d] further specifies a component of the wagering input device that performs the receiving, both limitations still require the receiving of the wager to be “via the one or more wagering input devices” such that my analysis of limitation 1[d] also applies to limitation 32[d] and demonstrates how it is disclosed in the prior art.

e. 32[e] – “generating a record reflecting the wager associated with the player at the system controller;”

320. In my opinion, a POSITA would have understood that limitation 32[e] is anticipated and/or obvious for the same reasons I explained above with respect to

limitation 1[e], which are herein incorporated by reference, because limitations 32[e] and 1[e] are identical.

f. 32[f] – “receiving input of an outcome of each of the defined number of legs corresponding to the multi-outcome wager event;”

321. In my opinion, a POSITA would have understood that limitation 32[f] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[f], which are herein incorporated by reference, because limitations 32[f] and 1[f] are identical.

g. 32[g] – “generating and causing display via the one or more wagering input devices the outcome of each of the defined number of legs to a player;”

322. In my opinion, a POSITA would have understood that limitation 32[g] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[g], which are herein incorporated by reference, because limitations 32[g] and 1[g] are identical.

h. 32[h] – “identifying one or more players eligible to win each of the defined number of legs based on the wager from among players participating in the multi-outcome wagering event,”

323. In my opinion, a POSITA would have understood that limitation 32[h] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[h], which are herein incorporated by reference, because limitations 32[h] and 1[h] are identical.

- i. **32[i] – “determining any players eligible to win at least one jackpot or a portion thereof based on the potential outcome of each of the defined number of legs in comparison against the record reflecting the wager from among players participating in the multi-outcome wagering event, wherein players eligible to win at least one leg are eligible to win at least one jackpot or a portion thereof;”**

324. In my opinion, a POSITA would have understood that limitation 32[i] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[i], which are herein incorporated by reference, because limitations 32[i] and 1[i] are identical.

- j. **32[j] – “initiating and selectively causing, via the trading exchange module, the respective one or more displays of the one or more wagering input devices to display at least one of a buy-out offer and partial buy-out offer only to any number of the one or more players that are eligible to win at least one jackpot for at least a portion of said at least one jackpot, said buy-out offer or partial buy-out offer being initiated by the trading exchange module at any time before the multi-outcome wagering event has been completed, said displayed buy-out offer or partial buy-out offer including a request for acceptance via user input to the respective buy-out input;”**

325. In my opinion, a POSITA would have understood that limitation 32[j] is anticipated and/or obvious for many of the same reasons I explained above with respect to limitation 1[j], which are herein incorporated by reference, because

limitations 32[j] and 1[j] substantially overlap and such overlapping portions are identical or nearly identical.

326. For example, limitation 1[j] and limitation 32[j] identically recite the following limitations: “the respective one or more displays of the one or more wagering input devices”; “display 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 at least one jackpot for at least a portion of said at least one jackpot”; “said buy-out offer or partial buy-out offer being initiated by the trading exchange module at any time before the multi-outcome wagering event has been completed.” Because these limitations are identical, my analysis provided under limitation 1[j] also demonstrates why they are satisfied for limitation 32[j].

327. Regarding the trading exchange module initiating and “selectively” causing the displays of the wagering input devices to display the buy-out offer and partial buy-out offer, as was explained above regarding limitation 1[j], 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” and “causing display” of a buy-out offer because making the offer is “initiating” it and “caus[ing] the display device to display” the offer to the player is “causing ... the respective one or more displays of the one or more wagering input devices to display at least one of a buy-out offer.” Further, as explained above with respect to limitation 1[b], the software and functions within DeWaal’s central controller (i.e., corresponding to the “trading exchange module”) are what perform the claimed “initiating” and “causing” the display of the buy-out offer.

328. Regarding the initiating and causing display being “selectively” and “only” to the eligible players, a POSITA would have understood that DeWaal discloses these limitations because DeWaal identifies and selects eligible players and only offers the award to quit those eligible advancing players. As explained above, DeWaal discloses that the offer is made “to the advancing players,” which as explained above with respect to limitations 1[h] and 1[i], refers to the players that are eligible to win the jackpot prior to the start of a given round. In greater detail, 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.”). Players that did not select the winning selection in the prior round are not offered the option of quitting prior to the subsequent round because they are eliminated from the event upon selecting the losing outcome. *Id.* ¶¶ [0129] (“Based on the player’s input, the central controller designates (or causes a 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] (“That is, only eligible players may advance to the subsequent round of the bonus event.”), [0146] (“The central controller may cause the display device to display an offer of \$10 to the advancing player.”).

329. Further, corresponding to the limitation of “said displayed buy-out offer or partial buy-out offer including a request for acceptance via user input to the respective buy-out input,” a POSITA would have understood that DeWaal discloses this limitation because the offer is part of an “offer and acceptance” feature and an offer, by its nature as an offer, is something that a player may accept or reject as desired. *Id.* ¶ [0141]. Specifically, DeWaal discloses that “[t]he display” of the

offer 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!’” *Id.* ¶ [0146]. By displaying this offer to a player, a POSITA would have understood that DeWaal’s system was soliciting and requesting acceptance by presenting the offer to the player and providing a means for accepting it “via user input to the respective buy-out input” such as by touching the appropriate location on the touchscreen indicating acceptance of the offer. *See, e.g.,* DeWaal ¶¶ [0061] (“A player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate places.”). I described the acceptance disclosed in DeWaal in greater detail with respect to limitation 1[k], and I hereby incorporate by reference that analysis.

- k. 32[k] – “receiving, responsive to the request for acceptance in the displayed buy-out offer or partial buy-out offer, an acceptance of the buy-out offer or partial buy-out offer via the respective buy-out input of the one or more wagering input devices in response to input from a particular number of the players eligible to win at least one jackpot that have accepted the buy-out offer or partial buy-out offer, each of the players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot, wherein each of the players not accepting the buy-out offer will remain eligible to win the at least one jackpot, and wherein each of the players accepting a partial buy-out offer**

remains eligible to win at least a portion of the at least one jackpot;”

330. In my opinion, a POSITA would have understood that limitation 32[k] is anticipated and/or obvious for many of the same reasons I explained above with respect to limitation 1[k], which are herein incorporated by reference, because limitations 32[k] and 1[k] substantially overlap and such overlapping portions are identical or nearly identical. For example, both limitations recite “receiving” “an acceptance of the buy-out offer or partial buy-out offer” “in response to input from a particular number of the players eligible to win at least one jackpot that have accepted the buy-out offer or partial buy-out offer, each of the players accepting the buy-out offer will no longer be eligible to exclusively win the at least one jackpot, wherein each of the players not accepting the buy-out offer will remain eligible to win the at least one jackpot, and wherein each of the players accepting a partial buy-out offer remains eligible to win at least a portion of the at least one jackpot.” Therefore, at least with respect to these identical limitations, by analysis of limitation 1[k] applies equally to limitation 32[k]. Further, limitation 1[k] recites that the receiving is “via the input for receiving acceptance of the one or more wagering input devices,” whereas limitation 32[k] recites “via the respective buy-out input of the one or more wagering devices,” but as I explained above with respect to limitation 32[b], my analysis of which is herein incorporated by reference, a POSITA would understand that these limitations refer to the same thing such that

my analysis for this portion of limitation 1[k] applies equally to this portion of limitation 32[k].

331. Further, corresponding to limitation 1[k] reciting that the receiving is “responsive to the request for acceptance in the displayed buy-out offer or partial buy-out offer,” a POSITA would understand that DeWaal discloses this limitation 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 responsive to the request for acceptance in the displayed buy-out offer at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event after the controller displays the offer and request for acceptance and the central controller takes specific and direct actions in response to a player accepting the offer to quit.

- 1. 32[I] – “issuing, via the one or more wagering input devices, a credit, tokens, currency or an award to the one or more players accepting the buy-out offer or partial buy-out offer, based on each acceptance received via the respective buy-out input of the one or more wagering input devices;”**

332. In my opinion, a POSITA would have understood that limitation 32[I] is anticipated and/or obvious for many of the same reasons I explained above with respect to limitation 1[I], which are herein incorporated by reference, because limitations 32[I] and 1[I] substantially overlap and such overlapping portions are identical or nearly identical. For example, with respect to the part of limitation 32[I] reciting “issuing, via the one or more wagering input devices, a credit, tokens, currency or an award to the one or more players accepting the buy-out offer or partial

buy-out offer,” limitation 1[1] also recites “issuing ... via the ... one or more wagering input devices” “a credit, tokens, currency, or an award” “to the one or more players accepting the buy-out offer or partial buy-out offer,” but in a slightly different ordering or sentence structure. This difference in ordering makes no difference to my analysis, and thus these common limitations are disclosed for the reasons I previously explained for limitation 1[1].

333. Limitation 32[1] recites the additional limitation of the “issuing” being “based on each acceptance received via the respective buy-out input of the one or more wagering input devices.” A POSITA would have understood that DeWaal disclose this limitation because DeWaal only provides players with the accumulated awards that are offered in exchange for quitting “[i]f any of the players quit the bonus event” by accepting the offer. DeWaal ¶ [0159]. That is, for example, “[i]f fifty players accept the offer and quit the bonus event, the central controller provides these fifty players with an award,” and such an award is provided “in exchange” for the “player accept[ing] the offered portion of the award pool” and “quitting the bonus event.” *Id.* ¶ [0146]. Thus, DeWaal clearly discloses that the awards are issued “based on each acceptance received.” Further, regarding the acceptance being received “via the respective buy-out input of the one or more wagering input devices,” DeWaal discloses, for example, that a “player can make decisions,” such as to accept the buy-out offer, “and input signals into the gaming device by touching

the touch-screen at the appropriate places” such that the appropriate place on the touch screen that allows the user to accept the buy-out offer corresponds to the “buy-out input of the one or more wagering input devices.” *Id.* ¶ [0061].

m. 32[m] – “completing the remainder of the defined number of legs to finish the multi-outcome wagering event, based on a number of eligible players remaining after each acceptance received via the one or more wagering input devices;”

334. In my opinion, a POSITA would have understood that DeWaal discloses this limitation. For example, a POSITA would have understood that DeWaal discloses “completing the remainder of the defined number of legs to finish the multi-outcome wagering event” for the same reasons I explained regarding limitation 1[m] because that limitation is identically recited in limitation 1[m].

335. Furthermore, a POSITA would understand that DeWaal’s bonus event is completed “based on a number of eligible players remaining after each acceptance received via the one or more wagering input devices” because DeWaal discloses an offer and acceptance feature that allows a player to accept a “buy-out offer” and “quit the bonus event.” DeWaal ¶ [0141] (“[a]s illustrated, one hundred players who qualified to advance to the second round, *accepted the offered additional award and quit the bonus event*. Three hundred player who qualified for the second round *rejected the offered additional award and continue to the second round of the bonus event*.”). Since players that accept the buy-out offer “quit the bonus event”

and only eligible players that reject the buy-out offer may advance to the next round, a POSITA would understand that the bonus event is “complet[ed] ... based on a number of eligible players remaining after each acceptance received.” This interpretation is further supported by DeWaal disclosing that “if no players advance to a final round, the bonus event ends.” DeWaal ¶ [0023]. Therefore, a POSITA would understand that the bonus event is “complet[e]” if no eligible players remain, either because no players made the correct selections in the previous round or because all players accepted the buy-out offer.

336. DeWaal further illustrates that the bonus event is completed “based on a number of eligible players remaining after each acceptance is received via the one or more wagering input devices” in FIG. 7, for example.

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.

Id. FIG. 7.

337. As shown above in FIG. 7, for each round, DeWaal's server identifies both "advancing players," who correctly selected the winning outcome for that round, and "continuing players," who correctly selected the winning outcome for that round but were eliminated from the wagering event after doing so by accepting the offer to quit in exchange for being eliminated. *See* DeWaal ¶¶ [0141]-[0143]. The number of "continuing players" identified at the end of a round becomes the starting number of "eligible players" for the next round, as shown above. *Id.* As DeWaal discloses, this process of eliminating players based on the acceptances continues until the final round, here round 5, in which the bonus event is completed such that this limitation is satisfied by DeWaal. *Id.* at FIG. 7.

n. 32[n] – "determining if any of the players have won the at least one jackpot or portion thereof;"

338. In my opinion, a POSITA would have understood that limitation 32[n] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[n], which are herein incorporated by reference, because limitations 32[n] and 1[n] are identical.

o. 32[o] – "notifying the players that have won the jackpot or portion thereof via the one or more wagering input devices; and"

339. In my opinion, a POSITA would have understood that limitation 32[o] is anticipated and/or obvious for the same reasons I explained above with respect to

limitation 1[o], which are herein incorporated by reference, because limitations 32[o] and 1[o] are identical.

p. 32[p] – “issuing a credit, tokens, currency or an award to the players that have won the jackpot or portion thereof via the one or more wagering input devices.”

340. In my opinion, a POSITA would have understood that limitation 32[p] is anticipated and/or obvious for the same reasons I explained above with respect to limitation 1[p], which are herein incorporated by reference, because limitations 32[p] and 1[p] entirely overlap. Specifically, limitation 1[p] recites “issuing a credit, tokens, currency or an award to the players that have won the jackpot or portion thereof via ... the one or more wagering input devices,” such that my analysis of these parts of limitation 1[p] demonstrate how DeWaal discloses limitation 32[p].

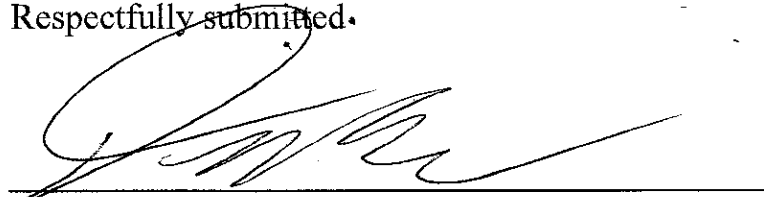
X. Conclusion

341. 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.

342. 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 1st day of December 2022, in WALTON GLADE MO

Respectfully submitted.



Dwight Crevelt