

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 IPR2023-00266
Attorney Docket No.: 087764.0109

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 10,970,969**

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PETITIONER’S EXHIBIT LIST

EX[No.]	Description
1001	U.S. Patent No. 10,970,969 (“’969 Patent”)
1002	File History for U.S. Patent ’969 Patent
1003	File History for U.S. Patent No. 9,117,341
1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
1006	U.S. Patent Application Publication No. 2012/0309503 A1 (“Scott”)
1007	Declaration of Dwight Crevelt
1008	<i>Curriculum Vitae</i> of Dwight Crevelt
1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
1010	Christiani Huguenii, <i>The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated</i> (printed 1741)
1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
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
1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)
1014	Prakash Gorroochurn, <i>Thirteen Correct Solutions to the “Problem of Points” and Their Histories</i> , THE MATHEMATICAL INTELLIGENCER (Springer 2014)
1015	Keith Devlin, <i>The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern</i> (Basic Books 2008)
1016	Anders Hald, <i>A History of Probability and Statistics and Their Applications before 1750</i> (John Wiley & Sons 2003)
1017	Adam Prügel-Bennett, <i>The Probability Companion for Engineering and Computer Science</i> (Cambridge University Press 2019)

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

EX[No.]	Description
1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)
1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov't Printing Office 1952)
1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)
1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)
1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
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
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
1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
1047	U.S. Patent Application Publication No. 2001/0136566 A1 (“Acres”)
1048	Exhibit 338.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1049	Exhibit 341.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1050	Exhibit 439.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1051	Exhibit 516.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1052	Exhibit 716.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1053	Exhibit 779.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

EX[No.]	Description
1054	Exhibit 822.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1055	Exhibit 969.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

I. INTRODUCTION

Petitioner requests review of Claims 1, 2, 8, 9, 13-16, 20-27, 29, and 30 (the “Challenged Claims”) of U.S. Patent No. 10,970,969 (the “’969 Patent”). The Challenged Claims are directed to a known method of conducting a wagering event that comprises a wager being placed on a sporting event and generating a buy/cash out offer for the player’s active wager based on the status of the sporting event. This “buy-out” or “cash out” offer is what the named inventor—Mr. Bernard J. Marantelli—held out as the unique differentiator over the prior art. EX[1024] ¶22; EX[1003] 86 (Dec. 18, 2014 Response to Office Action), 208 (priority application characterizing the “buy-out” offer as the “unique differentiator” of the alleged invention); EX[1007] ¶29. But the concept of such a “buy-out” or “cash out” offer is as old as the theory of probability itself, while its use in online betting platforms began at least two decades ago. See EX[1007] ¶¶30-39.

To the extent Patent Owner has further sought to distinguish the alleged invention from the prior art based on its provision of a “partial” cash out option, this concept also is older than the named inventor himself. See EX[1007] ¶¶40-43. It is no different than the partial exercise of an option to buy or sell stock at a particular price at some future date, which speculators have been doing since at least the 1800s. See EX[1038] 318-320; EX[1039] 47-48. And the ability to exercise such an option,

or cash out a wager, has been in use in online betting platforms for at least fifteen years. See EX[1007] ¶41; EX[1028] 1, 3.

It is no surprise then that these same concepts, and their use in online betting platforms, are disclosed in patents and printed publications (*i.e.*, prior art available under 35 U.S.C. §311(b)) from well before the earliest claimed priority date of the '969 Patent. For example, U.S. Patent Application Publication No. 2008/0113765 to DeWaal (“DeWaal”)—published May 15, 2008—discloses conducting “a multi-round bonus event [that] includes plurality of outcomes in each round,” and “offer[ing] each advancing player an award to quit the bonus event” (*i.e.*, a buy-out) prior to the completion of the event. EX[1004] ¶¶[0128], [0141].

Similarly, U.S. Patent Application Publication No. 2008/0311981 to David Schugar (“Schugar”)—published December 18, 2008—discloses an instance in which a player “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.” EX[1005] ¶[0077]. As such, Schugar discloses a method of “***cashing out a portion of a current bet in progress.***” *Id.* ¶[0127].¹ Schugar provides an example in which a player made a \$100 wager on a Yankee’s game and, by the fifth inning, the expected payout of that wager is \$132. *Id.* ¶[0120]. Schugar explains how, in that

¹ Here and after, emphasis added to quoted text unless otherwise noted.

example, the player “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.*

In other words, methods of conducting a wagering event that comprise a wager being placed on a sporting event and generating a buy/cash out offer for the player’s active wager based on the status of the sporting event have been disclosed in patents and printed publications since at least 2008—four years *before* the earliest claimed priority date of the ’969 Patent. The Challenged Claims are therefore invalid and should be cancelled.

II. MANDATORY NOTICES UNDER 37 C.F.R. 42.8(A)(1)

A. Real Party-in-Interest under 37 C.F.R. 42.8(b)(1)

DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation (“DraftKings” or “Petitioner”) is the Petitioner. DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation is a wholly-owned subsidiary of DraftKings Inc., a Nevada corporation, which is a publicly traded company. Crown Gaming Inc. is also a wholly-owned subsidiary of DraftKings Inc., a Nevada corporation. SBTech (Global) Limited is a wholly-owned subsidiary of DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation.

No other parties exercised or could have exercised control over this Petition; no other parties funded or directed this Petition. See Office Patent Trial Practice Guide, 77 FED. REG. 48759, 48759-60.

B. Related Matters under 37 C.F.R. 42.8(b)(2)

Patent Owner has asserted the '989 Patent against Petitioner in a co-pending litigation, *Diogenes Ltd. et al. v. DraftKings Inc.*, Case No. 1-21-cv-01695, District of Delaware.

C. Lead and Back-Up Counsel under 37 C.F.R. 42.8(b)(3)

Petitioner designates the following: Lead Counsel is Eliot D. Williams (Reg. No. 50,822) of Baker Botts L.L.P.; Back-up Counsel are G. Hopkins Guy III (Reg. No. 35,886), Jamie R. Lynn (Reg. No. 63,666), Thomas C. Martin (Reg. No. 57,677), Bradley S. Bowling (Reg. No. 52,641), and Andrew D. Wilson (Reg. No. 74,093), also of Baker Botts L.L.P. A Power of Attorney is filed concurrently herewith under 37 C.F.R. 42.10(b).

D. Service Information under 37 C.F.R. 42.8(b)(4)

Correspondence to lead and back-up counsel can be provided at the postal and electronic addresses above. Petitioner consents to service by electronic mail at:

Eliot.Williams@BakerBotts.com;	hop.guy@BakerBotts.com;
Jamie.Lynn@BakerBotts.com;	tommy.martin@bakerbotts.com;
brad.bowling@bakerbotts.com;	Andrew.Wilson@BakerBotts.com; and
DLDraftKingsvDiogenes@BakerBotts.com.	

III. CLAIM LISTING

A. Claim 1

1[a]	A method of conducting a wagering event for one or more players, comprising:
1[b]	causing a central server system to initiate a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;
1[c]	causing a wager corresponding to a player of the one or more players that is received by a wagering input device for the sporting event to be transmitted to the central server system;
1[d]	causing the central server system to generate a cash out offer for the player based on the wager and progress of the sporting event, by:
1[e]	monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,
1[f]	identifying that the player's wager is active, and
1[g]	determining an amount of the cash out offer; and
1[h]	causing the central server system to transmit the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.

B. Claim 2

2[a]	The method of claim 1, further comprising:
2[b]	causing the central server system to identify that the cash out offer was accepted; and
2[c]	causing the central server system to issue an electronic ticket corresponding to the cash out offer.

C. Claim 8

8[a]	A system for conducting a wagering event for one or more players, comprising:
8[b]	a processor; and
8[c]	a memory having programming instructions stored thereon, which, when executed by the processor, cause the processor to perform one or more operations, comprising:
8[d]	initiating a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;
8[e]	receiving, from a wagering input device, a wager corresponding to a player of the one or more players;
8[f]	generating a cash out offer for the player based on the wager and progress of the sporting event, by:
8[g]	monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,
8[h]	identifying that the player's wager is active, and
8[i]	determining an amount of the cash out offer; and
8[j]	transmitting the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.

D. Claim 9

9[a]	The system of claim 8, wherein the one or more operations further comprise: identifying that the cash out offer was accepted; and
9[b]	issuing an electronic ticket corresponding to the cash out offer.

E. Claim 13

13	The system of claim 8, further comprising: receiving a second wager from a second player.
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F. Claim 14

14	The system of claim 8, wherein determining an amount of the cash out offer comprises: determining odds of winning with respect to the wager from the first player and the second wager from the second player.
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G. Claim 15

15[a]	A non-transitory computer readable medium having instructions stored thereon, which, when executed by a processor, cause the processor to perform one or more operations, comprising:
15[b]	causing a central server system to initiate a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;
15[c]	causing a wager corresponding to a player of the one or more players that is received by a wagering input device for the sporting event to be transmitted to the central server system;
15[d]	causing the central server system to generate a cash out offer for the player based on the wager and progress of the sporting event, by:
15[e]	monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,
15[f]	identifying that the player's wager is active, and
15[g]	determining an amount of the cash out offer; and
15[h]	causing the central server system to transmit the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.

H. Claim 16

16[a]	The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to identify that the cash out offer was accepted; and
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16[b]	causing the central server system to issue an electronic ticket corresponding to the cash out offer.
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I. Claim 20

20	The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to receive a second wager from a second player.
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J. Claim 21

21[a]	A non-transitory computer readable medium having stored thereon a computer program adapted for use with at least one wagering input device and at least one central server system for conducting a wagering event, the computer program comprising a routine of set instructions, which when executed by a processor cause the processor to perform one or more operations, comprising:
21[b]	causing the at least one central server system to initiate the wagering event for one or more players, wherein the wagering event corresponds to a sporting event;
21[c]	causing the at least one wagering input device to accept a wager corresponding to a player of the one or more players that desires to participate in the wagering event;
21[d]	causing the wager that has been accepted by the at least one wagering input device to be communicated to the at least one central server system;
21[e]	causing the at least one central server system to generate a cash out offer for the player by:
21[f]	evaluating a status of the sporting event,
21[g]	determining if the player is eligible to receive the cash out offer, and
21[h]	determining an amount of the cash out offer;

21[i]	causing the at least one central server system to communicate the cash out offer to the at least one wagering input device;
21[j]	causing the at least one wagering input device to display the cash out offer;
21[k]	causing the at least one wagering input device to identify if the cash out offer has been accepted or rejected by the player; and
21[l]	causing the at least one wagering input device to communicate the acceptance of the cash out offer to the at least one central server system.

K. Claim 22

22	The non-transitory computer readable medium of claim 21, further comprising: causing the at least one wagering input device to issue a credit, tokens, coupon, voucher, award or funding of an account of the player based on the amount of the accepted cash out offer.
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L. Claim 23

23	The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a wagering terminal, a hand held device, a mobile device, a wireless device, a computer, a smart phone, a telephone, a tablet computer, a PDA or an interactive television.
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M. Claim 24

24	The non-transitory computer readable medium of claim 21, wherein the at least one central server system is one or more of remote from the at least one wagering input device, proximate to the at least one wagering input device or a portion of the at least one wagering input device.
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N. Claim 25

25	The non-transitory computer readable medium of claim 21, wherein the amount of the cash out offer is variable and based on at least one of a calculated probability, an originator of the cash out offer, a negotiation, the one or more players or a third party.
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O. Claim 26

26	The non-transitory computer readable medium of claim 21, wherein the cash out offer comprises at least one of or both of a full cash out offer or a partial cash out offer.
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P. Claim 27

27[a]	The non-transitory computer readable medium of claim 26, further comprising: wherein a player accepting the full cash out offer is no longer eligible to win the wagering event; and
27[b]	wherein a player accepting the partial cash out offer remains eligible to win the wagering event.

Q. Claim 29

29	The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a user interface through which the player may input the wager in order to participate in the wagering event and accept or reject the cash out offer.
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R. Claim 30

30	The non-transitory computer readable medium of claim 21, wherein the sporting event comprises at least one of an entire sporting event, a partial sporting event, a divisible component of a sporting event, multiple independent sporting events occurring sequentially or concurrently, and a compilation of related sporting events, wherein the one or more sporting events comprises one or more selected from the group consisting of eSports, e-sports, competitive gaming,
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	electronic sports, fantasy events, real games, virtual games, fantasy games, 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, slot machines, keno, poker, politics, sales, stocks, celebrity gossip, movies, and reality TV.
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IV. REQUIREMENTS UNDER 37 C.F.R. 42.104

A. Grounds for Standing

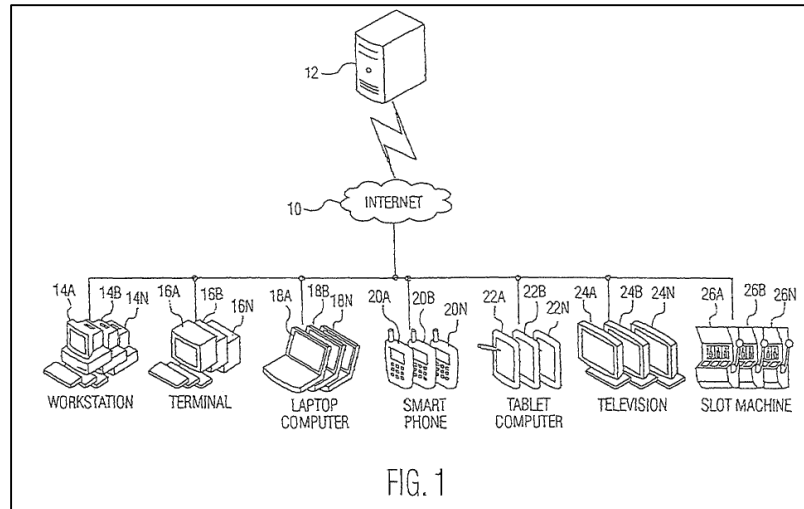
Petitioner certifies that the ’969 Patent is eligible for *inter partes* review and that Petitioner meets the eligibility requirements set forth in 37 C.F.R. 42.104.

B. Identification of Challenge and Statement of Precise Relief Requested

Ground	’969 Patent Claims	Basis for Challenge
1	1, 2, 8, 9, 13-16, 20-27, 29, 30	Obvious over Schugar in view of DeWaal

V. THE ’969 PATENT

The ’969 Patent relates to “a wagering system hardware and network connected to various wagering stations,” as depicted below:



EX[1001] 4:35-37, FIG. 1. Such a system is described as supporting “a wide range of applications ... where betting may be utilized or even scenarios where play is just for fun, such as ... any type of actual or virtual sporting event or any type of game.” *Id.* 5:31-47.

The '969 Patent admits that its wagering hardware are generic and “conventional” components “known in the art.” *Id.* 7:39-44, 13:34-27; *see also id.* 13:63-65, 25:51-53, 6:48-51. It also admits that the basic system functionality for conducting a wagering event and software implementing that functionality were “known in the art.” *Id.* 9:49-62.

The purported differentiator over the prior art is actually the well-known concept of offering players a “buy-out” or “cash out,” which is merely an “opportunity to sell their tickets (in whole or alternatively ... in part (i.e., a fractional amount),” prior to completion of the wagering event (*i.e.*, the Problem of Points). EX[1001] 35:8-23. The '969 Patent describes the concept of a buy-out offer using

several terms that “have the same intended meaning” such as an offer to “buy out,” “buy back,” “cash out,” and “cash in.” *Id.* 14:31-32, 17:56, 29:39, 43:40, 44:47-50, 31:6-8.

A. Embodiments of the '969 Patent²

The '969 Patent describes four steps: (1) initiating a wagering event; (2) receiving a wager on the wagering event; (3) generating a cash out offer for the wager; and (4) transmitting the cash out offer to a player. EX[1001] 50:53-51:5.

As noted, the wagering event may be “any type of actual or virtual sporting event.” *Id.* 5:30-34, 50:53-51:5. This includes “soccer,” “American football,” and “horse racing.” *Id.* 5:37, 5:40-42. Players make wager selections on entire sporting events such as an auto race, parts of sporting events such as an inning of a baseball game, components of sporting events such as an at bat by a particular player, sequences of sporting events such as two sequential or concurrent football games, or compilations of sporting events like a championship series. *Id.* 34:26-35.

The term “wager” in the '969 Patent describes, to “encompass anything that may be designated or otherwise required or optionally to be provided by a player in order to participate in an event,” including “monetary and/or nonmonetary items”

² Nothing herein is an admission that the '969 Patent adequately describes or enables any claim.

such as “currency,” “entertainment,” “recognition,” “gaming opportunities,” “wager enhancement,” or any other benefit. *Id.* 32:39-49, 7:60-8:3.

Generating the cash out offer may involve “determining ... the price that will be offered.” *Id.* 10:54-55. This “should be broadly construed” to cover “a broad range of items,” for example, “monetary or non-monetary,” a “fixed...payout determined in advance and independent of the number of players participating or amounts paid in by participants,” or a “variable...payout determined by the amount paid in.” *Id.* 31:50-32:34.

The payout amount may be based on the status of the sporting event, which may be input into a server by “an operator,” and may include the “results,” “winners,” “final scores,” or “other parameters” such as “point differential.” *Id.* 14:46-51. The cash out offer can be to buy the entire ticket from a player (100%) or may be for buy any portion of the ticket (0%-100%). *Id.* 15:12-16, 31:32, 33:57-65.

The player is “presented with the buy-out offer and may decide if it will sell the ticket at the indicated value,” *i.e.* a full cash out, “not sell at all and retain 100% of the ticket,” *i.e.*, rejecting the cash out offer, or may elect to sell “a different percentage amount and/or a different value,” *i.e.*, a partial cash out. *Id.* 15:16-20.

B. Priority

The '969 Patent was filed on July 18, 2019, and claims priority through a series of continuation and continuation-in-part applications to an application filed September 6, 2012. *See* EX[1001] (21)-(22), (63).

C. Prosecution History

The Examiner allowed claims 1-30 of the '969 Patent without making a single prior art rejection. EX[1002] 30-34. The Examiner's only rejection was based on nonstatutory double patenting over U.S. Patent No. 9,117,341 (the "'341 Patent"), resolved by a terminal disclaimer. *Id.* 54, 60-67.

VI. LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art ("POSITA") at the time of the '969 Patent 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. EX[1007] ¶28. A person with less education but more relevant practical experience may also meet this standard. *Id.*

VII. CLAIM CONSTRUCTION

Petitioner submits that the Challenged Claims should be given their plain and ordinary meaning as understood by a POSITA, as explained herein.

VIII. SUMMARY OF PRIOR ART

A. Schugar (EX[1005])

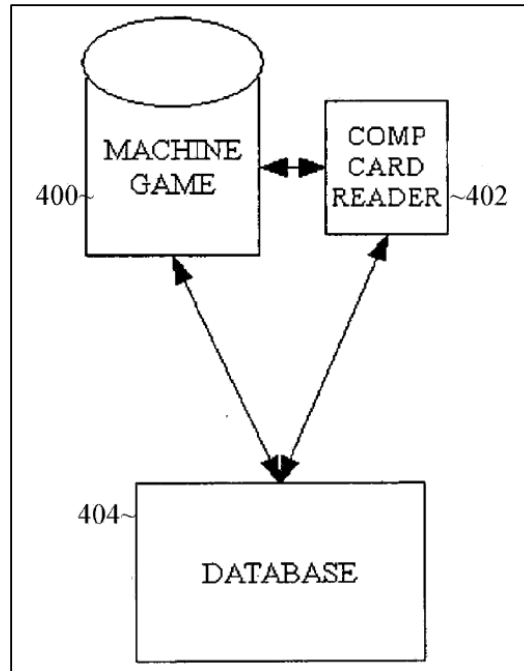
U.S. Patent Application Publication No. 2008/0311981 (*i.e.*, Schugar) published on December 18, 2008. See EX[1005]. It is prior art at least under 35 U.S.C. §102(b).

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.” *Id.* ¶[0003]. The “wagering game” may involve “a sporting event.” *Id.* ¶[0072]. For example, Schugar teaches allowing players of multi-leg sports wagering games to leverage equity concepts by “cash[ing] in on [a] winning state before completing the game.” *Id.* ¶[0077]. Schugar describes a “winning state” as an “equity state” in which “a player has a positive expectation based on his or her wagers and the game state.” *Id.* ¶[0042].

During the sports wagering event, a player is presented with an “automatic pop up window which allows the player to choose whether he wishes to **bank some or all**” of the equity or value of their wager. *Id.* ¶[0092]. The player is presented with the option of partially (“some”) or fully (“all”) “**cashing out ... a current bet in progress.**” *Id.* ¶[0127]. If a player chooses to “cash[] out a portion of a current bet in progress,” the player is awarded the cashed out portion the portion of the bet that was not cashed out “remain[s].” *Id.* ¶¶[0120], [0127]. For example, with respect

to an original \$100 single wager on the Yankees to win that has an “expected value” of \$132 after the fifth inning, a player can cash out \$1.52 of the original \$100 wager to “result in a \$98.48 wager **remaining** on the Yankees.” *Id.* ¶[0120]; *see also id.* ¶[0126] (“The bettor wagers \$100 on the Patriots. At halftime....[t]he bettor can now surrender \$10 of his original wager....The player now has \$90 wagered on the Patriots....”). In this way, Schugar’s feature of “cashing out a portion of a bet in progress” allows the player to “cash[] in on the winning state before completing the game” but also “continue to wager” on the under a reduced amount and pay table. *Id.* ¶¶[0075], [0079], [0127]. It follows then that if a player alternatively chooses to cash out “all” of their expected value, they have no wager remaining and the wagering event ends. *Id.* ¶[0078] (“the house can let the [player] surrender the wager for \$125”).

Schugar teaches its “cash[] out” process as being implemented via a “machine game” 400 and a database 400 that is “accessible by all games in an individual casino or group of casinos,” as depicted below:



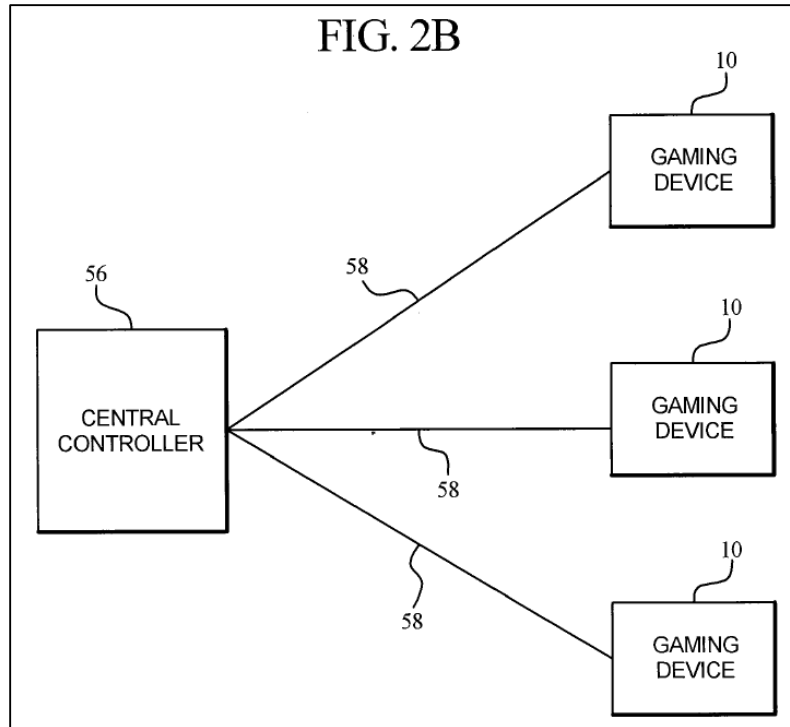
EX[1005] ¶¶[0104]-[0105], FIG. 4. Additionally, by way of a priority application that Schugar incorporates by reference in its entirety, U.S. Patent No. 7,909,694 (“’694 Patent”), Schugar teaches that “any description of a component or embodiment herein also includes hardware, software, and configurations which already exist in the prior art and may be necessary to the operation of such component(s) or embodiment(s),” that “the embodiments described herein can be applied to any type of gaming machine,” and that functionalities may be performed “at a central server and served to local machines.” EX[1027] 10:48-55; EX[1005] ¶[0001].

B. DeWaal (EX[1004])

U.S. Patent Application Publication No. 2008/0113765 (*i.e.*, DeWaal), introduced supra at §I published on May 15, 2008. See EX[1004]. It is prior art

under at least 35 U.S.C. §102(b). In fact, the U.S. Patent that issued from DeWaal—U.S. Patent No. 8,105,149—is incorporated by reference in the '969 Patent. EX[1001] 25:64-67. In other words, DeWaal is also applicant admitted prior art.

DeWaal, which is also prior art to Schugar, describes in detail the server-based systems and machines for implementing a gaming system with a cash out feature. EX[1007] ¶¶60-69. Figure 2B of DeWaal, depicted below, shows the general architecture of such systems.



EX[1004] FIG. 2B, ¶[0032]. The gaming devices 10 are “in communication with each other and/or at least one central server, central controller or remote host 56.” *Id.* ¶[0084].

DeWaal also describes allocation of control between the central server and the client gaming devices. EX[1007] ¶68. In a “thin client” configuration “the computerized instructions for controlling any games are executed by the central server” such that “the central server remotely controls any games...and the gaming device is utilized to display such games...and receive one or more inputs or commands from a player.” *Id.*; EX[1004] ¶[0042].

DeWaal’s “offer and acceptance feature” implements a cash out process on the above-described system whereby a player may fully cash out a bet in progress on a wagering event with multiples stages/rounds. EX[1004] ¶[0141]; EX[1007] ¶62. Between rounds of the game, “the central controller offers each advancing player an additional award to quit the bonus event.” EX[1004] ¶[0141]. If the award is accepted, the player is provided the award and is eliminated from the bonus event prior to completion, “i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event.” *Id.* ¶[0146]. DeWaal presents this full cash out offer to the player with an “appropriate message” on their screen, such as “YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONSU EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!” *Id.*

C. Analogous Prior Art

The references relied upon in the following ground—Schugar and DeWaal—are analogous art because both are directed to cashing out a wager before the

completion of a multi-leg wagering event using a networked electronic betting system. *See supra* §VIII.A, §VIII.B. Schugar teaches a cash-out process and electronic betting system to wager on a series of game events, such as a four-quarter football game. *See* EX[1005] ¶[0126]. DeWaal teaches a cash-out process and electronic betting system that are used to wager on multi-round bonus events, such as a “multi-round selection game [that] includes four rounds and ten outcomes per round.” EX[1004] ¶[0119]. This might be the case, for example, in a four-reel slot machine. *Id.* ¶[0069]. The four-round bonus event taught by DeWaal naturally aligns with the four-quarter sporting event taught by Schugar, where each round of the bonus event corresponds to each quarter of the sporting event and each of those four legs has at least two outcomes, a correct or incorrect selection at the end of each leg. EX[1007] ¶82.

IX. GROUND 1: THE CHALLENGED CLAIMS ARE RENDERED OBVIOUS BY SCHUGAR IN VIEW OF DEWAAL

The Challenged Claims are rendered obvious by Schugar in view of DeWaal. EX[1004] ¶¶71-215. As set forth in the sections that follow, Schugar discloses the claimed method steps and functionalities for conducting a wagering event, and DeWaal discloses the claimed wagering system configuration wherein a central server system or processor performs such functionalities or causes them to be performed by a client wagering device. EX[1007] ¶¶71-72.

A. Obviousness and Motivations to Combine

Schugar discloses the use of “a central server” and “local [gaming] machines,” and recognizes that the necessary hardware and software for implementing its methods in such a server-client system “already exist in the prior art;” however, Schugar does not expressly describe the allocation of control/responsibility for executing the methods among the server and the client. EX[1007] ¶¶71, 74; EX[1005] ¶[0001]; EX[1027] 10:48-55. Rather, Schugar expressly directs the POSITA to look to the hardware, software and configurations that were known in the prior art to implement its functionalities. EX[1007] ¶74. Accordingly, a POSITA would have looked to DeWaal, which was such a prior art wagering system, to discover implementation details of a system that was ready for improvement by the addition of Schugar’s wagering game and cash out techniques. *See supra* §VIII.C. Indeed, not only does DeWaal disclose a system that implements a cash out feature that is analogous to Schugar’s, DeWaal confirms that its system can support “selection games” like Schugar’s sport wagering events where bettors can choose or select potential winning outcomes. EX[1004] ¶[0108].

A POSITA could have implemented Schugar’s method of conducting a sport wagering event on DeWaal’s system hardware and thin-client configuration such that DeWaal’s central server executes the computerized instructions for controlling Schugar’s wagering event and receives inputs or commands from a player via the

gaming device clients. EX[1007] ¶80; EX[1004] ¶[0042]. Schugar expressly recognizes that such a combination/implementation would have involved nothing more than off-the-shelf network components, standard and conventional server-client networking, communication protocols, and graphical user interfaces, and routine mathematical calculations. EX[1005] ¶[0001]; EX[1027] 10:48-55 (“[A]ny description of a component or embodiment herein also includes hardware, software, and configurations which ***already exist in the prior art*** and may be necessary to the operation of such component(s) or embodiment(s)”). In addition, DeWaal discloses that its system is capable of providing numerous different games such that implementing a new game, *i.e.*, Schugar’s methods, on DeWaal’s system would not be a hurdle or prohibited. EX[1004] ¶[0108]. On the contrary, DeWaal invites doing so. *Id.* ¶[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***”).

In combination, Schugar’s wagering methods and DeWaal’s thin-client system each continue to perform their same intended functions—DeWaal’s system continues to facilitate remote access to a wagering platform and Schugar’s wagering methods provide events that allow a bettor to fully or partially cash out of a bet in progress. EX[1007] ¶80. Moreover, a POSITA would have had a reasonable expectation of success in implementing Schugar’s methods on DeWaal’s system in

this way because Schugar states that “the embodiments described herein can be applied to any type of gaming machine.” EX[1027] 10:4-55; EX[1007] ¶81. In addition, as described below in §§IX.B-IX.S, a POSITA would have known which of Schugar’s functions would be performed by the central server in the combination because DeWaal expressly teaches how to allocate wagering game operations between a central server and gaming machine client. EX[1004] ¶[0042].

DeWaal explains that server control is advantageous for several reasons, which would have motivated a POSITA to make the combination. EX[1007] ¶¶69, 73-82. For example, because the computational load on the gaming devices is reduced in a thin-client architecture, players can access the wagering platform using nearly any device with an Internet connection from anywhere. *Id.*; EX[1004] ¶[0098] (“players may access an internet game page from any location where an internet connection and computer, or other internet facilitator is available”). This configuration would have provided a highly accessible and usable wagering platform with greater “opportunities for players to play from an ever-increasing number of remote sites” given the “expansion in the number of computers and number and speed of internet connections in recent years.” EX[1004] ¶[0098]. And, due to the “enhanced bandwidth” and “[h]igher data transmission speeds” that such client-server systems are built upon, the “sophistication and response of the display and

interaction with the player” can be “enhance[ed]” to the player’s enjoyment. *Id.*; EX[1007] ¶69.

In addition, there are many operator-level benefits to implementing DeWaal’s centrally controlled system because “[c]entral production or control can assist a gaming establishment...in maintaining appropriate records, controlling gaming, reducing and preventing cheating or electronic or other errors, reducing or eliminating win-loss volatility and the like.” EX[1004] ¶[0088]. These benefits of centralized control in a gaming system would have been particularly attractive to a POSITA implementing Schugar’s wagering events and methods because of the nature of Schugar’s wagering events themselves. That is, a POSITA would have understood there is a great risk of data error and inconsistency in a sport wagering system if each individual client device independently monitors the sporting event and calculates and recalculates the ever-changing odds and payouts as the sporting event progresses. EX[1007] ¶78. On the contrary, having a centralized controller or server perform such common monitoring and administration of the wagering vent would, as DeWaal states, “assist a gaming establishment” in “controlling gaming” and “reducing and preventing...electronic or other errors” and “win-loss volatility” that could be introduced in a distributed, rather than centralized, computing system. EX[1004] ¶[0088]; EX[1007] ¶78. Similarly, Schugar’s teachings contemplate “pool” and “parimutuel” sports betting, and a POSITA would have understood that

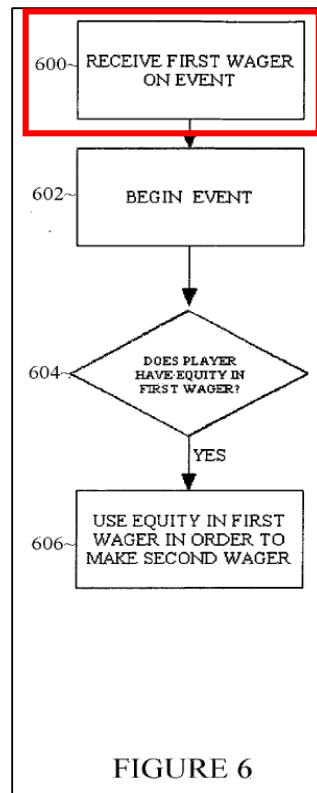
a centralized controller of such a pool or parimutuel bet was the most practical if not the necessary implementation because such betting arrangements require providing and sharing information, often in real time, amongst the plurality of participating bettors to determine awards, odds, and winners, which are tasks well-suited for a central controller. EX[1007] ¶¶79, 95. A POSITA would have therefore found the combination of Schugar and DeWaal discussed herein to be obvious and would have expected success in implementing the combination. EX[1007] ¶81.

In view of the foregoing, and as set forth in the sections that follow, the combination of Schugar and DeWaal discloses each and every element of the Challenged Claims.

B. Claim 1

1. 1[a] – “*A method of conducting a wagering event for one or more players, comprising:*”

Schugar discloses “*a method of conducting a wagering event*” because it discloses “*a method of conducting a wagering game*” that involves “receiving a first *wager on an event*,” as depicted below.



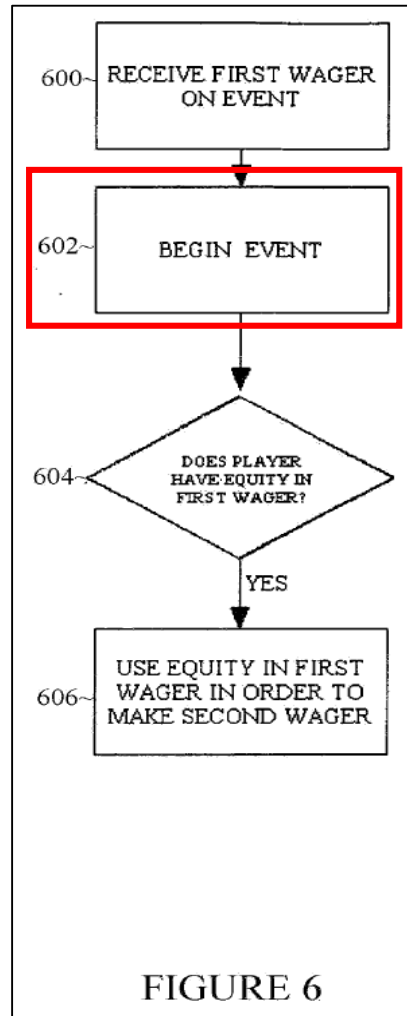
EX[1005] Claim 1, ¶[0122], FIG. 6.

Schugar discloses the method is “*for one or more players*” because it discloses that its wagering game allows a single “*player*” to alter payouts based on an equity position the player has in the wagering game,” and that multiple “*players*” can “bet on sporting events” at “intervals on individual games or series of games.” *Id.* ¶[0072]. Therefore, Schugar discloses limitation 1[a]. EX[1007] ¶¶84-85.

2. 1[b] – “*causing a central server system to initiate a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;*”

Schugar discloses “*initiat[ing] a wagering event for one or more players*” because it discloses that the method includes “*begin[ning] the event,*” as depicted

below, and it is “*for one or more players*” for the reasons explained for limitation 1[a]. EX[1004] ¶[0123].



EX[1005] Claim 1, ¶[0123], FIG. 6.

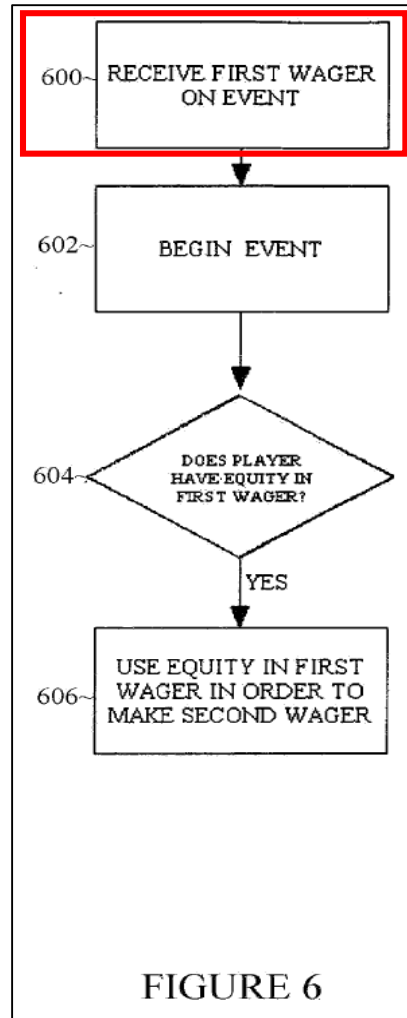
Schugar discloses that “*the wagering event corresponds to a sporting event*” because it discloses that its embodiments can be used “to bet on ***sporting events***, ***either at intervals on individual games or series of games***,” including “***live sporting events***.” *Id.* ¶¶[0072], [0106]. Examples of the sporting event may include “horse

racing, football, etc., simulated by machine or real.” *Id.* ¶[0109]. These are the same “*sporting event[s]*” discussed in the ’969 Patent. EX[1001] 5:39-40.

Regarding “*causing a central server system to*” initiate the sport wagering event, and in addition to the reasons stated above in §§IX.A, it would have been obvious for DeWaal’s “**central server**” to do so in the combination because DeWaal discloses that the function of providing/initiating the wagering event is performed by the server, and because a POSITA would have been motivated to implement Schugar’s techniques using DeWaal’s central server implementation, as explained above. EX[1004] ¶¶[0010] (“***the central controller simultaneously... provides the bonus or secondary event or game...to the identified eligible players.***”), [0123] (“the process 100 is embodied in computerized instructions executed by a central controller or remote host”), FIG. 3 (depicting process 100 including step of “provide a multi-round bonus game to eligible players”). Therefore, the combination of Schugar and DeWaal discloses limitation 1[b]. EX[1007] ¶¶86-90.

3. 1[c] – “*causing a wager corresponding to a player of the one or more players that is received by a wagering input device for the sporting event to be transmitted to the central server system;*”

Schugar discloses “*a wager...that is received...for the sporting event*” because it discloses that the method includes “***receiv[ing] a first wager on an event***” and that the “event can be a ***sporting event***,” as depicted below.



EX[1005] ¶[0122], FIG. 6.

Schugar discloses the wager “*corresponding to a player of the one or more players*” because it discloses that the received wager is “*from a player on a player chosen outcome.*” *Id.* ¶[0007]. For example, the received wager corresponds to a player where “[a] bettor wagers \$100 on the Patriots” to win a football game. *Id.* ¶[0126]. A wager received from a player “*correspond[s]*” to that player. EX[1007] ¶92.

Schugar discloses the wager is received “*by a wagering input device*” because it discloses that “[a]n **electronic gaming apparatus**” comprising a “**computer**” “**perform[s]**” the step of initially “**receiving a wager from a player on a chosen outcome**” and therefore inputs a wager. EX[1005] Claim 9. Such a “computer” is expressly identified in the ’969 Patent as being a “*wagering input device*.” EX[1001] 36:24-27 (“Wagering input devices may include ... computers”). DeWaal also discloses that wagers are received “*by a wagering input device*” because it discloses that “the gaming device includes at least one payment acceptor,” such as a “coin slot,” a “bill acceptor,” “readers or validators for credit cards,” or means for “electronic funds transfer.” EX[1004] ¶[0057].

Regarding “*causing*” the wager received by the wagering input “*to be transmitted to the central server system*,” and in addition to the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to cause the client wagering input device to transmit the wager to the server in the combination because Schugar already discloses the use of a “**player record**” for storing player funds in a centrally accessible database (*see* EX[1005] ¶[0105]) and DeWaal discloses that the client gaming devices transmit the wager to the central server at least for tracking and wagering pool management purposes. EX[1007] ¶¶94-95. For example, DeWaal discloses that the wager is input at a client gaming device and then the “amounts wagered” by the player are “track[ed]” in a “player database” associated

with the central server. EX[1004] ¶¶[0094]-[0096]. That the wager was received at the client device and then gets tracked in a remote server reflects that it was communicated/transmitted from the client to the server and received by the server, just as DeWaal's clients are designed to do. *Id.* ¶¶[0057] (“the gaming device includes at least one payment acceptor 24”), [0084] (“[E]ach 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....[T]he central server is designed transmit and **receive** events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.”); EX[1007] ¶95. Therefore limitation 1[c] is disclosed by the combination Schugar and DeWaal. EX[1007] ¶¶91-96.

4. 1[d] – “*causing the central server system to generate a cash out offer for the player based on the wager and progress of the sporting event, by:*”

Schugar discloses “*generate a cash out offer for the player*” because it discloses determining whether the player's current game state has a “positive expectation **for the player**” (i.e., whether the player has positive “equity” in their wager) and then generating 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.**” EX[1005] ¶[0092]; *see also id.* ¶[0127] (“[E]ven if the player is in a negative expectation situation, the player can still utilize the method described

herein of **cashing out** a portion of a current bet in progress”). Schugar expressly refers to this ability to “bank some or all” of the player’s equity in the wager as **“cashing out ... a current bet in progress.”** *Id.* ¶[0127]. And Schugar expressly refers to such types of pop up windows as “offering” a choice to the player. *See, e.g., id.* Claim 7. Schugar’s offer to “cash[] out” “some or all” of a bet in progress maps squarely to the description of the buy-out of cash out offer in the ’969 Patent. EX[1001] 35:17-21 (“offered a ‘buy-out’ or an opportunity to sell their tickets (in whole or alternatively may be in part”).

Schugar discloses that the cash out offer is generated “*based on the wager and progress of the sporting event*” because it discloses that “each game state may have a different expected return for the player,” *i.e.*, a different expected value, “**based on the player’s wagers and the current game state.**” EX[1005] ¶[0054]. For example, in the formula for calculating the expected value (*i.e.*, the amount of the cash out offer) depicted below, the “reward for the outcome” variable reflects the “**win amount**” based on the amount wagered and the odds and the “*probability of the outcome variable*” reflects the “**probability of the bettor winning**” as of the “**current game state.**”

For all outcomes, $\Sigma(\text{probability of outcome} \times \text{reward for the outcome})$.
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Id. ¶¶[0090], [0120]; *see also id.* ¶[0118] (“**the current payouts based on the current state can be used to determine a current value of already placed wagers**”), [0071] (“the surrender value ... is based on equity in his position **based on events that have occurred in the game.**”).

Regarding “*causing the central server system to generate*” the cash out offer, and in addition to the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to do so in the combination because DeWaal discloses the function of generating the cash out offers is performed by the server. For example, DeWaal states that “**the central controller offers** each advancing player an additional award to quit the bonus event” by “caus[ing] the display device” of the wagering input device “to display an offer.” EX[1004] ¶[0146]. Therefore, the combination of Schugar and DeWaal discloses limitation 1[d]. EX[1007] ¶¶97-106.

5. 1[e] – “*monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,*”

Schugar discloses “*monitoring progress of the sporting event*” because the sports wagering event has “multiple game states” that are “continuous” such that “the game automatically advances” and method “**records the event states** ... on digital media, on video capture, etc.” of the system after the sporting event begins. EX[1005] ¶¶[0087], [0110]. Such recording of the event states is consistent with the ’969 Patent’s description of monitoring the progress of the sporting event by

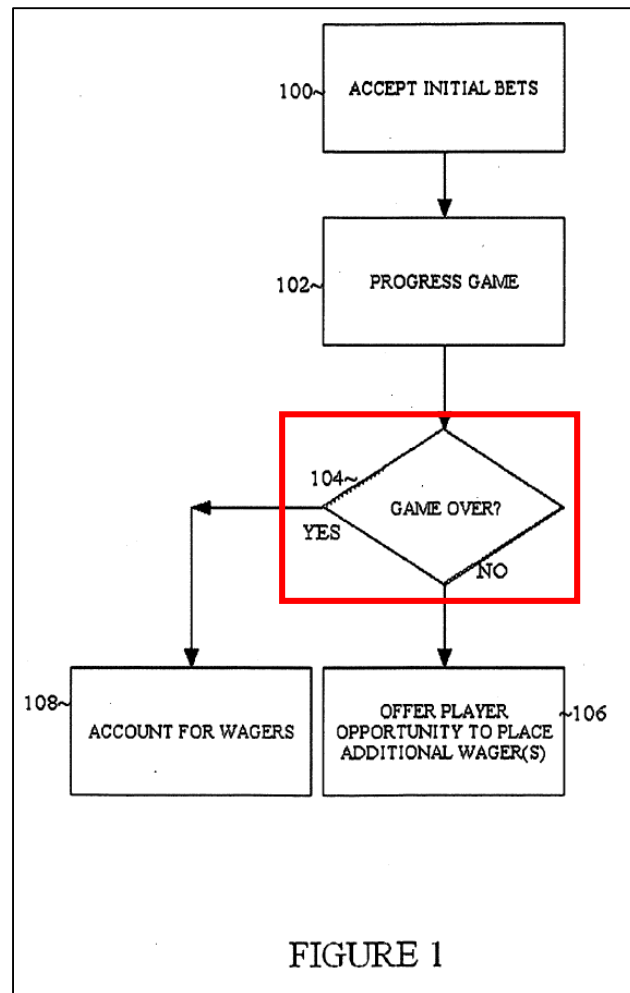
“allowing an operator to enter the results of the sporting events, the winners of the matches or games, the final scores and/or other parameters such as the total score of the game or the point differential.” EX[1001] 14:26-51. Schugar discloses that such monitored progress of the sporting event comprises “*at least a current status*” because it identifies, from among the “plurality of game states,” which is the “***current game state.***” EX[1005] ¶[0054]. And Schugar discloses that the cash out offer is generated based on this monitored progress of the sporting event “each game state may have a different expected return for the player,” *i.e.*, a different expected value, “***based on...the current game state.***” *Id.* ¶[0054]; *see also id.* ¶[0092] (“If the *current game state has a positive expectation (or positive expected profit for the player, then the method...determines whether the player chooses to bank his or her positive expectation.*”). For example, Schugar discloses monitoring the progress and current status of a sporting event to determine the expected value of the wager and generate a corresponding cash out offer amount “[a]fter the fifth inning” of a baseball game, “[a]t halftime” of a football game, or at the “halfway point” of a horse race. EX[1005] ¶¶[0126]-[0127]; EX[1007] ¶109.

Regarding “*causing the central server system*” to “*monitor[]*” the progress of the sporting event, and in addition to the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to do so in the combination because DeWaal discloses that the function of monitoring the progress of the wagering event

is performed by the server. EX[1004] ¶[0094] (“***[T]he central server or controller monitors the activities and events occurring on the plurality of gaming devices.***”). Therefore, the combination of Schugar and DeWaal discloses limitation 1[e]. EX[1007] ¶¶107-111.

6. 1[f] – “*identifying that the player’s wager is active, and*”

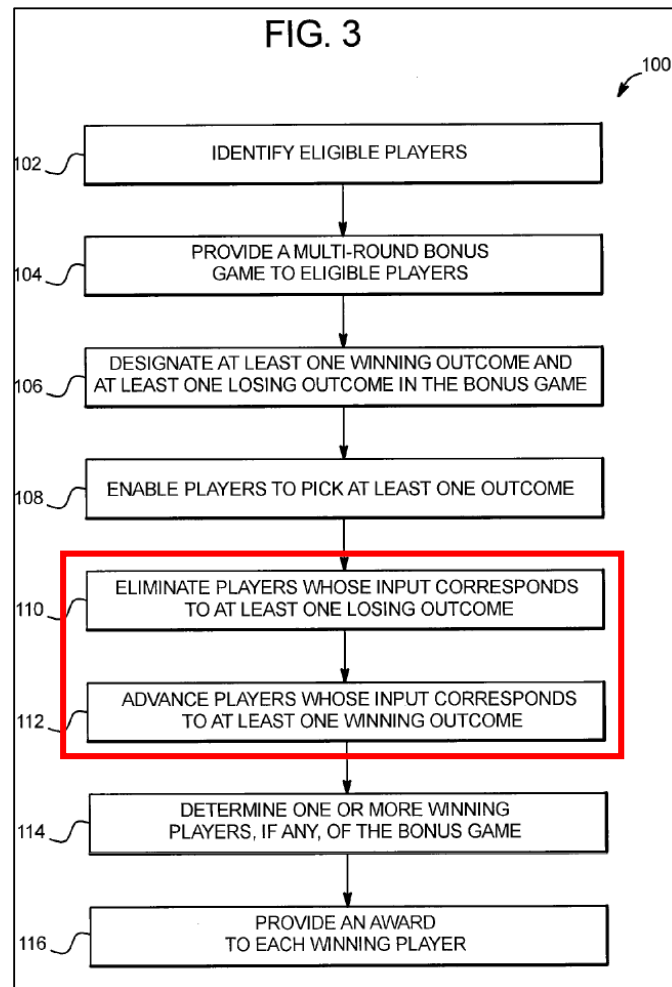
Schugar discloses that the central server system generates the cash out offer including by “*identifying that the player’s wager is active*” because it identifies a wager as being “***current***” and “***in progress***” for determining the cash out value. EX[1005] ¶[0120]. Indeed, the method described in Schugar is for “cashing out...***a current bet in progress.***” *Id.* ¶[0127]. Further, Schugar discloses that a wager is “*active,*” “***current,***” and “***in progress***” so long as the event has not reached a “terminating game state” at which point “the game is over.” *Id.* ¶[0054]. Schugar confirms the wager is active by “***check[ing] to see if the game is over,***” which may be indicated by “variable parts of the game state” being “in a terminating condition.” *Id.* ¶[0057]. This determination is illustrated in Figure 1, depicted below.



Id. FIG. 1; *see also id.* ¶[0077] (“When 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.”).

Regarding “*causing the central server system*” to generate the cash out offer including by “*identifying that the player’s wager is active,*” and in addition to the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to do so in the combination because DeWaal discloses that the central server determines whether each player’s wager is eligible (*i.e.*, active) as a precondition to

providing the cash out offer before each round of the wagering event. EX[1007]
¶113-115. Specifically, for each round of the wagering event, DeWaal's server
executes "computerized instructions" that "eliminate[] players whose input
corresponds to at least one losing outcome" and "advance[] players whose input
corresponds to at least one winning outcome" for the round, as depicted below.



EX[1004] FIG. 3, ¶[0123]. The offer to take the accumulated award for each round
“along with the option to quit the bonus event” is only provided to “each advancing
player,” which as described above, refers to players whose wager is still

active/eligible in the wagering event because they did not select a losing outcome and thus were not eliminated. EX[1004] ¶¶[0130]-[0131], [0144]; EX[1007] ¶114. DeWaal's identification of the players whose wagers remain active in the wagering event is depicted below in the column outlined in red.

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.

EX[1004] FIG. 7. As shown above, of the 800 players participating in the first round, only 400 “qualified to advance” to a second round by selecting a winning outcome for the first round. *Id.* ¶[0141]. Prior to the second round, “the central controller offers each advancing player an additional award to quit the bonus event,” thereby demonstrating that the server determined the players were active/eligible

prior to providing the cash out offer. *Id.* Therefore, the combination of Schugar and DeWaal discloses limitation 1[f]. EX[1007] ¶¶112-115.

7. 1[g] – “*determining an amount of the cash out offer; and*”

Schugar discloses “*determining an amount of the cash out offer*” because it discloses a formula, depicted below, for determining whether the current game state has a “positive expectation (or positive expected profit) for the player,” and if so, the amount of the expected value. EX[1005] ¶¶[0089]-[0092].

For all outcomes, $\Sigma(\text{probability of outcome} * \text{reward for the outcome})$.

Id. ¶[0090]. For example, utilizing that formula, a player betting on a Yankees baseball game was provided with a cash out offer amount of \$132 on an original \$100 wager and a player betting on a Patriots football game was provided with a cash out offer amount of \$810 on an original \$100 wager. *See id.* ¶¶ [0120], [0126]. Indeed, Schugar states that it is this expected value based on the current game state that the player is provided the choice of “whether he wishes to bank some or all” of it. *Id.* ¶ [0092].

Regarding “*causing the central server system*” to generate the cash out offer by determining the amount of the amount of the offer, and in addition to the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to do so in the combination because DeWaal discloses that “***[t]he central controller is operable to determine...an amount of the award***” for a given round. EX[1004]

¶[0164]. Similarly demonstrating the central server determines the amount of the offered award, DeWaal discloses that the “**central controller offers a portion of the award pool...**to each player who picked” a winning selection in one of the rounds by displaying or causing to be displayed a message containing the determined amount of the offer “in exchange for quitting the bonus event.” *Id.* ¶ [0146]. That portion of the award pool is a determined amount that is “**equal to the amount of the award associated with the bonus event divided by the number of eligible players in the bonus event.**” *Id.* ¶[0170]. Therefore, the combination of Schugar and DeWaal discloses limitation 1[g]. EX[1007] ¶¶116-119.

8. 1[h] – “causing the central server system to transmit the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.”

Schugar discloses “prompting the player to accept or reject the cash out offer” via the wagering input device because it discloses displaying 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.**” EX[1005] ¶[0092]. That is, the pop up window, a well-known type of prompt, encourages and facilitates the player to make a choice—“whether he wishes to bank some or all” of the wager’s value and thereby accept the offer, or whether he wishes to reject the offer and “continue” playing normally. *See, e.g., id.* ¶¶[0092], [0071] (demonstrating that the player can reject the offer and “continue” playing normally). Schugar explains that players are “**alerted**”

by such pop up windows as to the choice before them, thus further confirming that the pop up window “*prompt[s]*” the player to accept or reject the cash out offer. *Id.* ¶[0084].

Regarding “*causing the central server system to transmit the cash out offer to the wagering input device,*” in addition the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to do so in the combination because DeWaal discloses that “[t]he central controller may cause the display device to display an offer of \$10 to the advancing players” in exchange for quitting the bonus event.” EX[1004] ¶[0146]. DeWaal discloses that the central server, from its remote location, can cause the gaming devices to display such an offer because it is “designed to transmit ... events, messages, commands or any other suitable data or signal,” and thus communicate, “between the central server and each of the individual gaming devices.” *Id.* ¶¶[0042], [0084]. Therefore, the combination of Schugar and DeWaal discloses limitation 1[h]. EX[1007] ¶¶120-123.

In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 1 and renders it obvious.

C. Claim 2

1. 2[a] – “*The method of claim 1, further comprising:*”

See supra §IX.B; EX[1007] ¶125.

2. 2[b] – “*causing the central server system to identify that the cash out offer was accepted; and*”

Schugar discloses “identify[ing] that the cash out offer was accepted” because it discloses that the player can “***exercise this option***” to cash out “some or all” of a bet in progress “with ***the press of a button which allows the player to bank his or her positive expectation.***” EX[1005] ¶[0092]. In other words, pressing the button on an “electronic input device” serves to “*identify*” or “***indicate***” the player’s “desire” to accept an offer. *Id.* ¶[0135]. Schugar demonstrates that an acceptance of the cash out offer is identified because in response to the acceptance the “value the player has banked for later use” may be stored in a “remote database for later retrieval.” *Id.* ¶[0093]. That is, Schugar’s disclosed response to the acceptance of the offer (banking the cashed-out value in a database) demonstrates that the input was identified as acceptance, as opposed to a rejection, for example. EX[1007] ¶126.

Regarding “*causing the central server system*” to identify the acceptance, in addition the reasons stated above in §IX.A, it would have been obvious for DeWaal’s central server to do so in the combination because DeWaal discloses that the central server must receive and identify the user’s input as an acceptance because “***[i]f any of the players [accept the offer and] quit the bonus event, the central controller provides these players with the accumulated awards.***” EX[1004] ¶[0159]; see also *id.* ¶[0146] (“***If fifty players accept the offer*** and quit the bonus event, ***the central controller provides these players with an award*** portion of \$10.”). As with Schugar,

DeWaal's response of providing the player with an award being conditioned on "if...players accept the offer" demonstrates that an input was identified as an acceptance if the player was provided with the award. EX[1007] ¶128. Therefore, the combination of Schugar and DeWaal discloses limitation 1[b]. *Id.* ¶¶126-129.

3. 2[c] – *“causing the central server system to issue an electronic ticket corresponding to the cash out offer.”*

Schugar discloses creating *“an electronic ticket corresponding to the cash out offer”* because it discloses *“stor[ing] the value the player has banked,”* i.e., the amount of the cash out offer, in the player's “current machine” and/or a “remote database” *“using the player record”* such that the player can redeem it later by *“electronic redemption.”* EX[1005] ¶¶[0079], [0093], [0105]. This stored value is *“electronic”* because it is stored using the player record in an electronic gaming machine or a remote *“database”* for *“electronic redemption”* and it is an *“ticket corresponding to the cash out offer”* because it entitles the player to *“redeem[]”* the value that was cashed out based on the cash out offer. EX[1005] ¶¶[0079], [0083].

Regarding *“causing the central server system to issue”* the electronic cash out ticket, and in addition to the reasons stated above in §IX.A, it would have been obvious for DeWaal's *“central server”* to do so in the combination because DeWaal discloses that such accounting and record keeping functions are performed by the central server. Specifically, DeWaal's central server system includes an operably coupled *“real-time or on-line accounting and gaming information system”* that

includes, *inter alia*, “**a credit system for providing automated casino transactions**” that the server uses to, for example, issuing electronic tickets or records that enable a player to redeem value corresponding to a cash out offer. EX[1004] ¶[0094]. For example, with respect to players that accept DeWaal’s cash out offer, it is the DeWaal’s “**central controller [that] provides these players with the accumulated awards,**” and it may do so by “transmit[ting]” a “message ... or any other suitable data or signal” to cause the cash out offer amount to be “**fund[ed] to the player’s electronically recordable identification card,**” which is “coded with a player’s ... **credit totals** (or related data)” including the cash out offer amount, by using “**electronic funds transfer.**” EX[1005] ¶¶[0042], [0060], [0084], [0057], [0159]; EX[1007] ¶132. Therefore, the combination of Schugar and DeWaal discloses limitation 1[c]. EX[1007] ¶¶130-132.

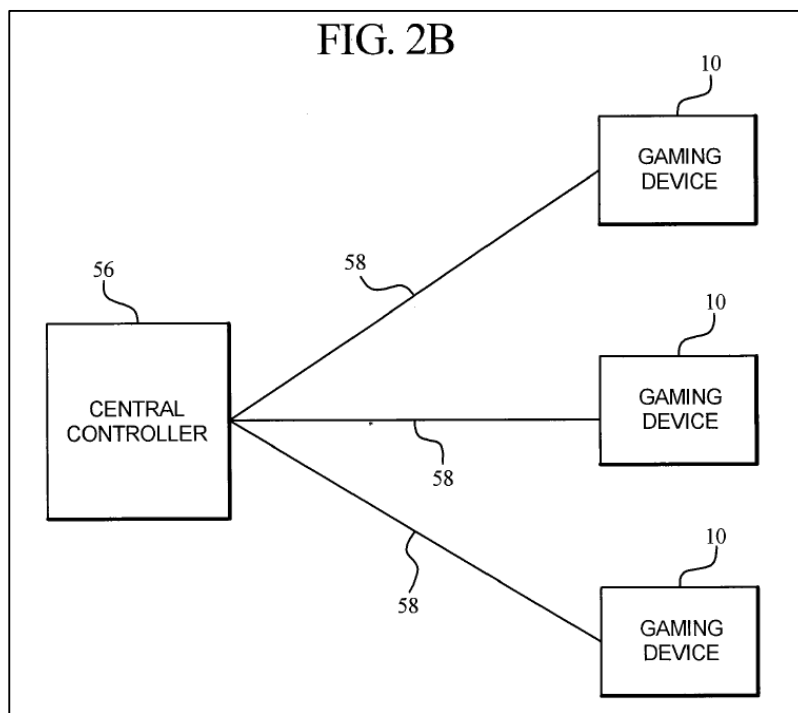
In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 3 and renders it obvious.

D. Claim 8

Claim 8 is nearly identical to claim 1, except that it recites “a system” rather than a “method” and generic system components of a “processor” and executable instructions stored on a “memory.” The instructions, when executed, are claimed to perform the same method recited in claim 1.

1. 8[a] – “A system for conducting a wagering event for one or more players, comprising:”

The proposed combination of Schugar and DeWaal discloses “a system for conducting a wagering event for one or more players” because Schugar discloses a method “for conducting a wagering event for one or more players,” as discussed in §IX.B.1, *supra*, and DeWaal discloses a “gaming **system**” for wagering games. EX[1005] ¶¶[0004], [0041], [0084]. DeWaal’s “gaming **system**” is depicted below as comprising “**one or more gaming devices 10...in communication with...at least one central server**, central controller or remote host 56 **through a data network or remote communication link 58**” such as the “**internet**”:



EX[1004] FIG. 2B, ¶¶[0084], [0098]. Therefore, the combination of Schugar and DeWaal discloses limitation 8[a]. EX[1007] ¶¶133-134.

2. 8[b] – “a processor; and”

In the proposed combination, DeWaal discloses the system comprising “a processor” because it discloses that “***the central server...includes at least one processor.***” EX[1004] ¶[0084]. Therefore, the combination of Schugar and DeWaal discloses limitation 8[b]. EX[1007] ¶135.

3. 8[c] – “a memory having programming instructions stored thereon, which, when executed by the processor, cause the processor to perform one or more operations, comprising:”

In the proposed combination, DeWaal discloses the “memory” because it discloses that the “***central server...includes...at least one memory storage device.***” EX[1004] ¶[0084]. DeWaal discloses the memory “having programming instructions stored thereon, which, when executed by the processor, cause the processor to perform one or more operations” recited in limitations 8[d]-8[j] because it discloses that “the central server or controller is capable of ***storing...program code*** or other similar data” such as a process for conducting a wagering game, *e.g.*, process 100, are “embodied in one or more ***software programs stored in one or more memories and executable by one or more processors, such as the central controller of the gaming system.***” *Id.* ¶¶[0086], [0122]. Where the process for conducting the wagering event stored in the server’s memory implements Schugar’s wagering method, as in the proposed combination, executing the program code causes the server’s processor to perform the operations recited in limitations

8[d]-8[j]. Therefore, the combination of Schugar and DeWaal discloses limitation 8[c]. EX[1007] ¶136.

4. $8[d] - 8[j]$

See supra §§IX.B.2–IX.B.8 (limitations 1[b]-[h]); EX[1007] ¶¶137-143.

In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 8 and renders it obvious.

E. Claim 9

1. $9[a] - 9[b]$

See supra §§IX.C.1–IX.C.3 (limitations 2[a]-[c]); EX[1007] ¶¶144-147. In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 9 and renders it obvious.

F. Claim 13: “The system of claim 8, further comprising: receiving a second wager from a second player.”

In the combination, and in addition to the analysis in §IX.B.3, *supra*, Schugar discloses that its wagering method includes “*receiving a second wager from a second player*” because Schugar discloses, with respect to “bet[ing] on sporting events, that multiple “***players can make wagers*** during” series of games and “during particular games.” EX[1005] ¶[0072]. For example, multiple players’ wagers may be received by the server in the combination where the sports wagering event involves a “***parimutuel...betting pool***” that groups together multiple bettors’ wagers on a particular event. EX[1005] ¶[0126]; EX[1007] ¶149. Further, Schugar explains

that a “first wager” and a “second wager” may be received on the same wagering event, and from the method and system’s view, it makes no difference whether the first and second wager were submitted by the same or different players. EX[1005] ¶[0125]; EX[1007] ¶150. Therefore, the combination of Schugar and DeWaal discloses claim 13. EX[1007] ¶¶148-151.

G. Claim 14: “The system of claim 8, wherein determining an amount of the cash out offer comprises: determining odds of winning with respect to the wager from the first player and the second wager from the second player.”

Schugar discloses determining an amount of the cash out offer by “*determining odds of winning with respect to the wager from the first player and the second wager from the second player*” because an input to the formula used to determine the amount of the cash out offers is the “***probability of [an] outcome***” occurring, which translates to the “*odds of winning.*” EX[1005] ¶[0090]; EX[1007] ¶153. Such “***odds can be determined for the outcomes***” on a “***pari-mutuel basis,***” which means that a player’s chance of winning and the potential payout amount, *i.e.*, the cash out offer amount, depends on how many other players submitted wagers and how many wagered on the winner. EX[1005] ¶[0118]; *see also id.* (“the current payouts based on the current state can be used to determine a current value of already placed wagers”); EX[1007] ¶154. That is, at least with respect to Schugar’s parimutuel sports wagers, the amount of the cash out offer depends on both the first

and second player's odds of winning. EX[1007] ¶154. Therefore, the combination of Schugar and DeWaal discloses claim 14. EX[1007] ¶¶152-154.

H. Claim 15

Claim 15 is nearly identical to claims 1 and 8, in that it is directed to the components of the “system” of claim 8 performing the identical method recited in claim 1. The combination of Schugar and DeWaal discloses each limitation of claim 15 for the same reasons discussed in §§IX.B (claim 1) and IX.D (claim 8).

1. 15[a] – “A non-transitory computer readable medium having instructions stored thereon, which, when executed by a processor, cause the processor to perform one or more operations, comprising:”

DeWaal discloses limitation 15[a] for the same reasons explained above in and §IX.D.2 (limitation 8[b]) and §IX.D.3 (limitation 8[c]) because the central server's “**memory or storage device**” is a “non-transitory computer readable medium” and the “**program code**” or “**software programs**” stored thereon are “instructions” that are “executed” by the “**one or more processors**” of the “**central controller of the gaming system.**” EX[1004] ¶¶ [0084], [0122]; EX[1007] ¶¶136, 156.

2. 15[b] – 15[h]

See *supra* §§IX.B.2–IX.B.8; EX[1007] ¶¶157-163.

In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 15 and renders it obvious.

I. Claim 16

1. 16[a] – *“The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to identify that the cash out offer was accepted; and”*

See supra §IX.C.2 (limitation 2[b]); EX[1007] ¶¶164-165.

2. 16[b] – *“causing the central server system to issue an electronic ticket corresponding to the cash out offer.”*

See supra §IX.C.3 (limitation 2[c]); EX[1007] ¶166.

In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 16 and renders it obvious.

J. Claim 20: “The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to receive a second wager from a second player.”

See supra §IX.F (claim 13); EX[1007] ¶167.

In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 20 and renders it obvious.

K. Claim 21

1. 21[a] – *“A non-transitory computer readable medium having stored thereon a computer program adapted for use with at least one wagering input device and at least one central server system for conducting a wagering event, the computer program comprising a routine of set instructions, which when executed by a processor cause the processor to perform one or more operations, comprising:”*

The combination of Schugar and DeWaal discloses “[a] non-transitory computer readable medium having stored thereon a computer program...the computer program comprising a routine of set instructions, which when executed by

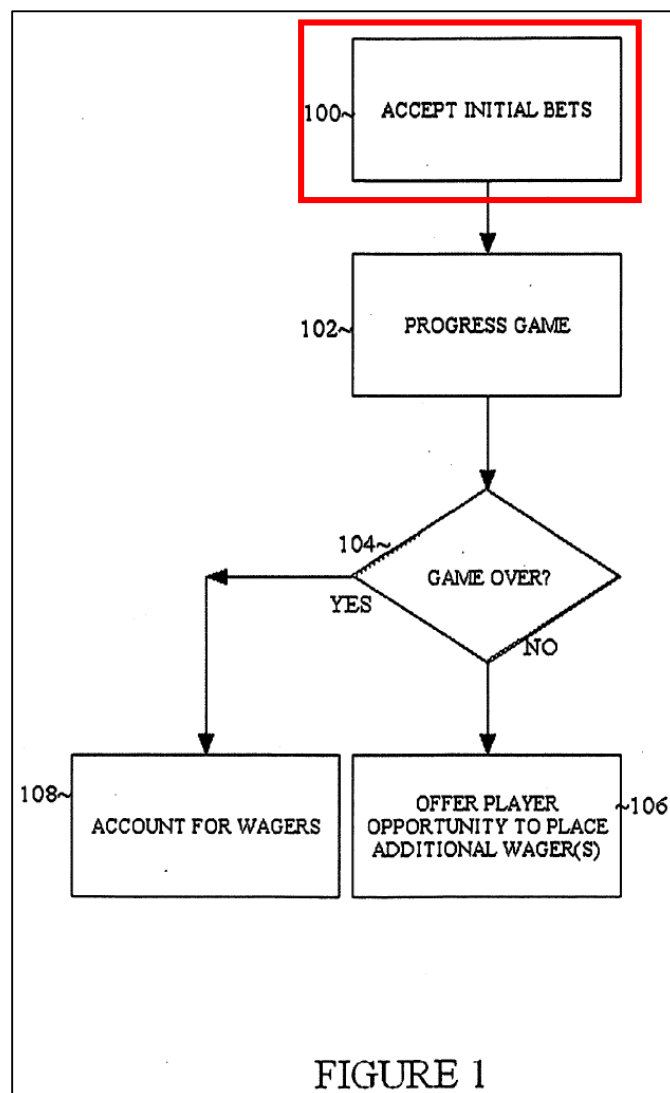
*a processor cause the processor to perform one or more operations” for the same reasons explained in §IX.H.1 (limitation 15[a]) because the central server’s “**software program**” or “**program code**” is a “computer program.”* EX[1007] ¶¶168-172. In the combination, DeWaal discloses “*at least one wagering input device*” and “*at least one central server system*” for the reasons explained in §§IX.B.2 (limitation 1[b]), IX.B.3 (limitation 1[c]), and IX.B.8 (limitation 1[h]). Schugar discloses the method “*for conducting a wagering event*” in the combination for the reasons explained in §IX.B.1 (limitation 1[a]). And, in the combination, the program code is “*adapted for use with at least one wagering input device and at least one central server system for conducting a wagering event*” because the program code in DeWaal’s system is what enables “***the central server [to] remotely control[] any games...and the gaming device is utilized to display such games,***” and “***enables a central controller to cause the system gaming machine to provide***” ***Schugar’s wagering events “to a plurality of players.”*** EX[1004] ¶¶[0123]-[0124]; EX[1007] ¶170. Therefore, the combination of Schugar and DeWaal discloses limitation 21[a]. EX[1007] ¶¶168-172.

2. 21[b] – “*causing the at least one central server system to initiate the wagering event for one or more players, wherein the wagering event corresponds to a sporting event;*”

See §IX.B.2 (limitation 1[b]); EX[1007] ¶173.

3. 21[c] – “causing the at least one wagering input device to accept a wager corresponding to a player of the one or more players that desires to participate in the wagering event;”

Schugar and DeWaal disclose limitation 21[c] for the same reasons explained in §IX.B.3 (limitation 1[c]), *supra*. Regarding this limitation’s use of the word “accept” rather than “receive” as in limitation 1[c], Schugar also discloses that its method for conducting a wagering event includes “***accept[ing] initial bets,***” as depicted below.



EX[1005] FIG. 1.

Regarding this limitation's recitation that the wager corresponds to "*a player of the one or more players that desires to participate in the wagering event,*" Schugar confirms that a player can "indicat[e] his or her desire on an electronic input device." EX[1005] ¶[0135]. Submitting a wager via a "**payment acceptor**" like that disclosed in DeWaal therefore indicates the player's desire to participate in the wagering event. EX[1004] ¶[0057]; EX[1007] ¶¶175-176. Therefore, the combination of Schugar and DeWaal discloses limitation 21[c]. EX[1007] ¶¶168-176.

4. 21[d] – "*causing the wager that has been accepted by the at least one wagering input device to be communicated to the at least one central server system;*"

Schugar and DeWaal disclose limitation 21[d] for the same reasons explained in §IX.B.3 (limitation 1[c]). EX[1007] ¶177.

5. 21[e] – "*causing the at least one central server system to generate a cash out offer for the player by:*"

Schugar and DeWaal disclose limitation 21[e] for the same reasons explained in §IX.B.4 (limitation 1[d]). EX[1007] ¶178.

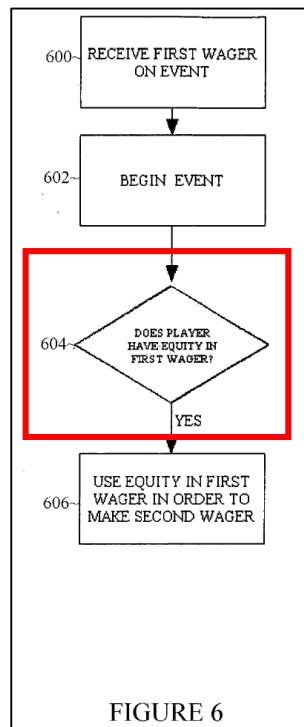
6. 21[f] – "*evaluating a status of the sporting event,*"

Schugar and DeWaal disclose limitation 21[e] for the same reasons explained in §IX.B.5 (limitation 1[e]). EX[1007] ¶179. For example, Schugar discloses "*evaluating a status of the sporting event*" because it discloses identifying, from a "**plurality of game states,**" which is the "**current game state**" upon which the cash

out offer will be generated. Schugar discloses that its evaluation of the current game state may include, for example, determining that “[a]fter the fifth inning, the Yankees are winning by 4 runs,” or determining that “[a]t halftime, the Patriots are winning by +28 points.” EX[1005] ¶¶[0120], [0126]. Therefore, the combination of Schugar and DeWaal disclose limitation 21[f]. EX[1007] ¶¶179-181.

7. 21[g] – “*determining if the player is eligible to receive the cash out offer, and*”

Schugar discloses “*determining if the player is eligible to receive the cash out offer*” because it discloses, in certain embodiments, that only “*if...the player has equity in the first wager,*” then “the player can [cash out and] use some or all of his or her equity in order to make a second wager.” EX[1005] ¶[0125]. This precondition for cashing out to make a second wager is depicted below.



Id. FIG. 6. Thus, if the player does not satisfy this precondition, they are not eligible to receive the cash out offer to facilitate making a second wager. EX[1007] ¶183. Schugar explains there is an “advantage” to conditioning the ability to cash out to place a second wager on whether the player has positive expected value because it can allow the bettor to put himself into a “no-lose situation.” EX[1005] ¶[0126]. Therefore, the combination of Schugar and DeWaal discloses limitation 21[g]. EX[1007] ¶¶182-183.

8. 21[h] – “determining an amount of the cash out offer;”

See supra §IX.B.7 (limitation 1[g]); EX[1007] ¶184.

9. 21[i] – “causing the at least one central server system to communicate the cash out offer to the at least one wagering input device;”

See supra §IX.B.8 (limitation 1[h]); EX[1007] ¶185.

10. 21[j] – “causing the at least one wagering input device to display the cash out offer;”

Schugar discloses “at least one wagering input device to display the cash out offer” because it discloses alerting the player with 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.**” EX[1005] ¶[0092]. Schugar’s descriptions of pop up windows confirms that the screen “comprises offering the player” the option to cash out their wager in full or in part by “displaying” the opportunity on the screen. EX[1005] Claim 7. In combination with DeWaal, the central controller would

“caus[e]” the gaming device to display the cash out offer because in the “thin client” configuration of DeWaal’s system, “the central controller remotely controls any games (or other suitable interfaces) and the gaming device is **utilized** to display such games (or suitable interfaces) and receive one or more inputs or commands from a player.” EX[1004] ¶[0123]. Therefore, the combination of Schugar and DeWaal discloses limitation 21[j]. EX[1007] ¶¶186-187.

11. 21[k] – “causing the at least one wagering input device to identify if the cash out offer has been accepted or rejected by the player; and”

Schugar discloses “the at least one wagering input device to identify if the cash out offer has been accepted or rejected by the player” because, similar to the analysis in §IX.C.2, *supra*, it discloses that the “player can...exercise this option” or “indicate his or her desire” to cash out “**with the press of a button**” or other “**electronic input device (e.g., touchscreen, keyboard, etc.)**, “**which allows the player to bank his or her positive expectation.**” EX[1005] ¶¶[0092], [0135]. That is, the gaming device identifies acceptance or rejection, *i.e.*, whatever the bettor “desire[s],” based on the inputs from the player at the gaming device such as whether or not they pressed the button. EX[1007] ¶188. Therefore, the proposed combination discloses limitation 21[k]. *Id.* ¶¶188-189.

12. 21[l] – “causing the at least one wagering input device to communicate the acceptance of the cash out offer to the at least one central server system.”

In the combination, DeWaal's central server "*caus[es] the at least one wagering input device to communicate the acceptance of the cash out offer to the at least one central server system*" because the central server "remotely controls any games (or other suitable interfaces)," and the gaming device is "utilized to ... receive one or more *inputs or commands from a player*," such as the electronic input "*indicating his or her desire*" to cash out, and is "*designed to transmit*" such "*messages, commands, or other suitable data or signal between the individual gaming device and the central server.*" EX[1005] ¶¶[0042], [0092], [0084], [0135]; see also *id.* ¶[0129] ("The *central controller receives a signal from gaming machines* in the gaming system corresponding to an input from each player in each round."). That the player's input accepting the offer is communicated to the central server from the gaming device that initially received it, via the push of a button for example, is apparent because the central controller subsequently provides those players with the award. *Id.* ¶ [0146] ("*If fifty players accept the offer and quit the bonus event, the central controller provides these fifty players with an award*"). Therefore, the proposed combination discloses limitation 21[1]. *Id.* ¶¶190-192.

In sum, the combination of Schugar and DeWaal discloses each and every limitation of claim 21 and renders it obvious.

L. Claim 22: "The non-transitory computer readable medium of claim 21, further comprising: causing the at least one wagering input device to issue a credit, tokens, coupon, voucher, award or

funding of an account of the player based on the amount of the accepted cash out offer.”

Schugar discloses “*the at least one wagering input device to issue a credit...based on the amount of the accepted cash out offer*” because it discloses that when the player accepts the offer and the offer amount is “banked for later use,” it can be “redeemed for cash instantly” and “***returned to the player’s current credit meter***” on the gaming device, for example. EX[1005] ¶[0083]. Therefore, the proposed combination discloses claim 22 and renders it obvious. EX[1007] ¶¶193-194.

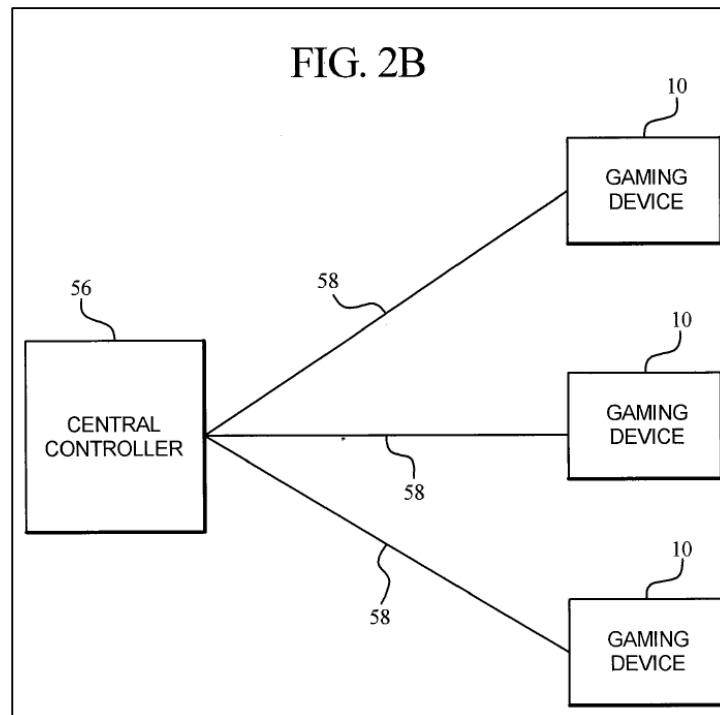
M. Claim 23: “The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a wagering terminal, a hand held device, a mobile device, a wireless device, a computer, a smart phone, a telephone, a tablet computer, a PDA or an interactive television.”

Schugar discloses “*the at least one wagering input device comprises...a computer*” because it discloses an “***electronic gaming device to conduct a wagering game***” that “***receiv[es] a wager***,” and is therefore a “wagering input device,” comprises “***a computer***.” EX[1005] Claim 9. Therefore, the proposed combination discloses claim 23 and renders it obvious. EX[1007] ¶195.

N. Claim 24: “The non-transitory computer readable medium of claim 21, wherein the at least one central server system is one or more of remote from the at least one wagering input device,

proximate to the at least one wagering input device or a portion of the at least one wagering input device.”

DeWaal discloses “*the at least one central server system is...remote from the at least one wagering input device*” because it discloses that its central server is “**remote**” from and “**remotely**” controls any games. EX[1004] ¶[0042]. In addition, DeWaal discloses that “one or more of the gaming devices 10” communicate with the central server through “a data network or **remote** communication link 58,” as depicted below:



Id. FIG. 2B, ¶[0084]. Therefore, the proposed combination discloses claim 24 and renders it obvious. EX[1007] ¶196-197.

- O. **Claim 25: “The non-transitory computer readable medium of claim 21, wherein the amount of the cash out offer is variable and based on at least one of a calculated probability, an originator of**

the cash out offer, a negotiation, the one or more players or a third party.”

Schugar discloses “*wherein the amount of the cash out offer is variable.*” EX[1007] ¶199. For example, Schugar discloses that the cash out offer amount (the amount of positive expectation) varies “based on the player’s wagers and the current game state.” EX[1005] ¶[0054]. For example, Schugar demonstrates that the amount varies depending on what the “current game state is,” because in one current game state an initial \$100 wager may have a cash out value of \$132, but in another current game state an initial \$100 wager may have a cash out value of \$810. *Compare id.* ¶[0120] with ¶[0126]. That is because the formula for determining the amount, shown below, depends on the probability or odds of winning in the current game state, and the “*payout odds for each team winning...can change to reflect current conditions.*” *Id.* ¶[0072].

For all outcomes, Σ (probability of outcome*reward for the outcome).

Id. ¶[0090]. In this regard, Schugar discloses that the cash out is “*based on...a...probability*” because the formula for determining the cash out amount is expressly based on the “*probability of [the] outcome*” the player wagered upon occurring. *Id.* The probability, and thus the amount of the cash out offer, may be determined on “*a pure mathematical basis,*” e.g., based on a “*calculated probability,*” a “*pari-mutuel basis,*” e.g., based on “*the one or more players,*” “*using*

a handicapper,” e.g., based on a “third party,” “or any other method.” Id. ¶[0118].

Therefore, the proposed combination discloses claim 25 and renders it obvious.

EX[1007] ¶¶198-202.

P. Claim 26: “The non-transitory computer readable medium of claim 21, wherein the cash out offer comprises at least one of or both of a full cash out offer or partial cash out offer.

Schugar discloses “*wherein the cash out offer comprises at least one of or both of a full cash out offer or partial cash out offer*” because it discloses that a player can “*choose whether he wishes to bank some or all* of his recent gains in expectation,” and thereby offers both a full cash out (*e.g.*, banking “all”) and a partial cash out (*e.g.*, banking “some”). EX[1005] ¶[0092]. Therefore, the proposed combination discloses claim 26 and renders it obvious. EX[1007] ¶¶203-205.

Q. Claim 27

1. 27[a] – “*The non-transitory computer readable medium of claim 26, further comprising: wherein a player accepting the full cash out offer is no longer eligible to win the wagering event; and*”

Schugar discloses “*wherein a player accepting the full cash out offer is no longer eligible to win the wagering event*” because it discloses that if a player elects to cash out “*all*,” as opposed to “some” or none, of their wager, *i.e.*, a “*full cash out*,” they “surrender the wager,” or “withdraw[]” or “relinquish” it in its entirety (*i.e.*, “all”) to the house. EX[1005] ¶¶[0078], [0125]; *see also id.* ¶[0071] (“[T]he player can choose[] to continue...(and win or lose) or accept the surrender value...which

is based on equity...in the game.”). After fully cashing out “all” of their expectation in a wager, a player is no longer eligible to win the wagering event because their expectation is reduced is \$0. EX[1007] ¶208. Therefore, the proposed combination discloses limitation 27[a]. *Id.* ¶¶207-208.

2. 27[b] – “*wherein a player accepting the partial cash out offer remains eligible to win the wagering event.*”

Schugar discloses “*wherein a player accepting the partial cash out offer remains eligible to win the wagering event*” because it discloses that if a player elects to cash out “**some**,” as opposed to “all” or none, of their wager, i.e., a “*partial cash out*,” the cashed out amount is “subtracted from the...original wager” but they still have some amount “remaining” under the original wager. EX[1005] ¶[0120]. For example, if a bettor chooses to cash out “some,” i.e., “\$10 of his original [\$100] wager” on the Patriots to win a football game, then the “player now has \$90 wagered on the Patriots” and is eligible for a win of \$810 if the Patriots win.” *Id.* ¶[0126]. Therefore, the proposed combination discloses limitation 27[b]. EX[1007] ¶209.

Therefore, the proposed combination discloses each element of claim 27 and renders it obvious. *Id.* ¶¶206-209.

R. Claim 29: “The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a user interface through which the player may input

the wager in order to participate in the wagering event and accept or reject the cash out offer.”

Schugar discloses “*wherein the at least one wagering input device comprises a user interface through which a player may input the wager in order to participate in the wagering event*” because it discloses an “***electronic gaming apparatus to conduct a wagering event***” that comprises “a computer” and “***receiv[es] a wager from a player,***” thereby making it a “*wagering input device,*” and Schugar discloses the apparatus having a “***comp card reader***” input device, which was known in the art as a user input device/interface for receiving and accepting a wager from a player via electronic funds transfer. EX[1005] Claim 9, ¶[0104]; EX[1007] ¶211; EX[1004] ¶[0057] (“money may be transferred to a gaming device through electronic funds transfer”). Schugar’s user interface also includes additional user input devices “*through which they player may...accept or reject the cash out offer,*” such as a “***button,***” “***touch screen, keyboard***” or other “***electronic input device***” that the player can use to “***choose whether he wishes to bank some or all of his recent gains in expectation.***” EX[1005] ¶¶[0092], [0135]. Therefore, Schugar discloses that the gaming apparatus includes a user interface comprised of at least a payment acceptor input device that allows the user to fund the device for wagering and an “electronic input device” that enables a user to elect their option to cash out. EX[1007] ¶212. Therefore, the combination discloses claim 29 and renders it obvious. *Id.* ¶¶210-212.

- S. **Claim 30: “The non-transitory computer readable medium of claim 21, wherein the sporting event comprises at least one of an entire sporting event, a partial sporting event, a divisible component of a sporting event, multiple independent sporting events occurring sequentially or concurrently, and a compilation of related sporting events, wherein the one or more sporting events comprises one or more selected from the group consisting of eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, fantasy games, 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, slot machines, keno, poker, politics, sales, stocks, celebrity gossip, movies, and reality TV.”**

Schugar discloses “*wherein the sporting event comprises at least one of an entire sporting event*” because it discloses that its methods can be used to bet on “*sporting events*” such as on “*individual games.*” *Id.* ¶¶[0072], [0109]. Schugar also discloses the sporting event comprising “*multiple independent sporting events occurring sequentially or concurrently*” because it discloses betting on a “*series of games,*” such as a “*best 4/7 series.*” *Id.* The sporting event may also comprise “*a partial sporting event*” or a “*divisible component of a sporting event*” by way of a “*proposition wager within [an] event*” or “*any outcome*” such as whether a “*game will go into extra innings.*” *Id.* ¶¶[0113], [0120].

Schugar discloses “*wherein the one or more sporting events comprises one or more selected from the group consisting of...real games, virtual games*” because it discloses that the sporting events may be “*simulated by machine or real.*” *Id.*

¶[0109]. The sporting events may also be “*football*,” “*horse racing*,” “*or even a dramatic work (such as a reality show)*,” and thus may be “*American football*,” “*racing*,” or “*reality TV*” as recited in the claim. *Id.*

Therefore, the combination discloses claim 30 and renders it obvious.
EX[1007] ¶¶213-214.

X. SECONDARY CONSIDERATIONS

Petitioner is aware of no evidence of secondary considerations that would meaningfully rebut a finding of obviousness.

XI. DISCRETIONARY DENIAL IS NOT APPROPRIATE

A. § 314(a)

Petitioner makes a *Sotera*-style stipulation not to pursue, in the co-pending district court proceeding, any argument that the Challenged Claims are invalid on any ground that was raised or could have been reasonably raised in this IPR, should a Final Written Decision issue here. *See* Memorandum, Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings With Parallel District Court Litigation at 3 (June 21, 2022).

B. § 325(d)

The factors considered under the two-step framework established in *Advanced Bionics* (IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020) (designated precedential Mar. 24, 2020)) do not support discretionary denial of this Petition under 35 U.S.C. §325(d).

First, this Petition relies on entirely new prior art of Schugar as the primary reference in an obviousness combination to meet nearly all of the limitations of the Challenged Claims. The *Advanced Bionics* inquiry therefore fails at step one because no similar art or arguments were presented to the Examiner.

Second, even if the second step is reached, as explained further below, the Examiner erred by misinterpreting the claims to require both a “buy-out offer **and** partial buy-out offer,” as the Applicant had successfully argued during prosecution of a parent application to the ’969 Patent, despite the Applicant’s use of different claim language and inclusion of dependent claims in the ’969 Patent that contradict such an interpretation. Based on this flawed interpretation of the claims, the Examiner erred in its evaluation of the prior art.

1. Advanced Bionics: Step One

This Petition does not present “substantially the same art” or “substantially the same arguments previously presented to the Office.” *See Advanced Bionics*, Paper 6 at 7. Schugar, the primary reference presented in this Petition, was not cited or considered by the Examiner during prosecution and is not “substantially the same” as the prior art of record. Although U.S. Patent No. 8,105,149 (“DeWaal ’149”)—which issued from the same DeWaal publication that is the primary reference here—was cited by Patent Owner during prosecution (EX[1002] 329), the Examiner did not rely on, cite to, or demonstrate consideration of DeWaal (or DeWaal ’149) in

any Office Action. “The fact that [the reference] was not the basis of rejection weighs strongly against exercising [the Board’s] discretion to deny institution.” *Intel Corp. v. Qualcomm Inc.*, IPR2019-00047, Paper 8 at 13 (P.T.A.B. July 9, 2019). Because the inquiry fails at step one, the Board need not consider step two.

2. *Advanced Bionics: Step Two*

Even if the Board considers step two, institution should be granted because the Examiner erred in evaluating the prior art of record in view of the claims. As background, during prosecution of one of the ’969 Patent’s parents—U.S. Patent No. 9,117,341 (the “’341 Patent”)—Applicant unambiguously argued that the limitation of “at least one of a buy-out offer and [a] partial buy-out offer” require both of a “buy-out” offer and a “partial buy-out” offer. Applicant made this argument in response to the Examiner’s finding that U.S. Patent Application Publication to 2011/0136566 to Acres (“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, more particularly, that “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] 109 (September 29, 2014 Non-Final Office Action). In other words, the Examiner interpreted the limitation “at least one of a buy-out offer and [a] partial

buy-out offer” as being written disjunctive, such that either a “buy-out offer” **or** a “partial buy-out offer” satisfied that limitation.

Applicant responded to the Examiner by arguing 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] 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.**” *Id.* 86, 87.

Based on Applicant’s argument that “at least one of a buy-out offer **and** [a] partial buy-out offer” is a conjunctive limitation (i.e., requiring both a “buy-out” offer **and** a “partial buy-out” offer), rather than a disjunctive limitation (i.e., requiring either a “buy-out” offer **or** a “partial buy-out” offer), the Examiner withdrew its anticipation rejection over Acres. EX[1003] 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.

The same Examiner examined both the ’341 Patent and the ’969 Patent, and the Examiner’s error is demonstrated by the Examiner’s nonstatutory double patenting rejection issued during prosecution of the ’969 Patent. Specifically, based

on the Examiner's evaluation of the claims of the '969 Patent, the claims were rejected as being "not patentably distinct" from the claims of the '341 Patent. EX[1002] 64. That is notable because claim 1 of the '969 Patent only recites "generate a cash out offer" whereas claim 1 of the '341 Patent recites presenting/initiating "at least one of a buy-out offer and [a] partial buy-out offer," the latter of which the Examiner previously accepted as being conjunctive such that both a full buy-out offer and a partial buy-out offer were required during prosecution of the '341 Patent, as described above.

The new claim language in the '969 Patent, however, does not specify whether it is a full and/or partial "cash out offer," yet the examiner appeared to interpret it the same as "at least one of a buy-out offer and partial buy out offer," *i.e.*, requiring both a full and partial cash out offer. This is notable because the Examiner's interpretation conflicts with several new dependent claims submitted by the Applicant in the '969 Patent. For example, dependent claim 3 recites "wherein the cash out offer is a partial cash out offer," which broadens independent claim 1 in conflict with the Examiner's interpretation because claim 1, in view of dependent claim 3, may or may not comprise a "partial cash out offer." EX[1002] 256; *see also id.* 258 (claim 17—same).

Had the Examiner recognized that the Applicant's use of new claim language regarding the cash out offer in conjunction with new dependent claims conflicted

with the Examiner's understanding that the term "cash out" had the same meaning as "at least one of a buy-out offer and [a] partial buy-out offer," such that the term "cash out offer" does not require a partial cash out offer, the Examiner could have made a prior art rejection over the Acres reference that the Examiner was already aware of as "clearly anticipating" the similar claims of the '341 Patent. EX[1003] 109. Therefore, the Examiner erred in failing to make a prior art rejection during prosecution of the '969 Patent based on prior art that disclosed at least a full cash out/buy out offer due to a flawed interpretation of the claims.

Accordingly, the Board should decline to exercise its discretion under 35 U.S.C. §325(d).

XII. CONCLUSION

Petitioner respectfully requests that IPR of claims 1-2, 8-9, 13-16, 20-27, 29, and 30 of the '969 Patent be instituted and that the Challenged Claims be cancelled.

Respectfully Submitted,

December 1, 2022

/ Eliot D. Williams /
Eliot D. Williams (Reg. No. 50,822)
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, NY 10112-4338
212.408.2500

Jamie R. Lynn (Reg. No. 63,666)
Thomas C. Martin (Reg. No. 57,677)

Andrew D. Wilson (Reg. No. 74,093)

BAKER BOTTS L.L.P.

700 K Street Northwest Suite 900,

Washington, DC 20001-5692

202.639.7700

G. Hopkins Guy III (Reg. No. 35,886)

BAKER BOTTS L.L.P.

1001 Page Mill Road

Building One, Suite 200

Palo Alto, CA 94304-1007

650.739.7500

Attorneys for Petitioner, DraftKings, Inc.

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §§42.6(e) and 42.105, the undersigned certifies that on December 1, 2022, a complete and entire copy of the **PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 10,970,969** (“Petition”) including exhibits and testimony relied upon were served on the Patent Owner at the correspondence address of record for the subject patent and counsel for Patent Owner in the District Court Litigation, as included below:

IP Group of DLA Piper LLP
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, PA 19103

Date: December 1, 2022

/ Eliot D. Williams /

Eliot D. Williams
BAKER BOTTS L.L.P.
700 K Street Northwest Suite 900,
Washington, DC 20001-5692
202.639.7700

Attorneys for Petitioner, DraftKings, Inc.

CERTIFICATION UNDER 37 C.F.R. §42.24(d)

Pursuant to 37 C.F.R. §42.24(d), the undersigned hereby certifies that the word count under §42.24(a)(1) for the foregoing Petition for *Inter Partes* Review totals 12,824 words, within the 14,000 word limit allowed under §42.24(a)(1)(i).

Date: December 1, 2022

/ Eliot D. Williams /

Elito D. Williams
BAKER BOTTS L.L.P.
700 K Street Northwest Suite 900,
Washington, DC 20001-5692
202.639.7700

Attorneys for Petitioner, DraftKings, Inc.