1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 _____

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 _____

5 DraftKings Inc., a Delaware Corporation,
Petitioner,

6 v.

7 Diogenes Limited,
8 Patent Owner.

9 _____

IPR2023-00262
10 U.S. Patent No. 9,117,341 B2

11 _____

IPR2023-00266
12 U.S. Patent No. 10,970,969

13 _____

IPR2023-00267
14 U.S. Patent No. 10,997,822 B2

15 _____

ZOOM DEPOSITION OF OLAF VANCURA, Ph.D.,
16 (Reported Remotely via Web videoconference)

17 Las Vegas, Nevada, (Deponent's location)

18 Friday, November 17, 2023

19 Volume 2

20

STENOGRAPHICALLY REPORTED BY:
21 REBECCA L. ROMANO, RPR, CSR, CCR
California CSR No. 12546
22 Nevada CCR No. 827
Oregon CSR No. 20-0466
23 Washington CCR No. 3491

24 JOB NO. 8252

25 PAGES 204 - 383

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16

17 DEPOSITION OF OLAF VANCURA, Ph.D, taken
18 on behalf of the Petitioner, with the deponent
19 located in Las Vegas, Nevada, commencing at
20 9:00 a.m., Friday, November 17, 2023, remotely
21 reported via Web videoconference before
22 REBECCA L. ROMANO, a Certified Shorthand Reporter,
23 Certified Court Reporter, Registered Professional
24 Reporter.

25

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1 I N D E X

2 DEPONENT EXAMINATION

3 OLAF VANCURA, PH.D., PAGE
VOLUME 2

4

5 BY MR. WILSON 210

6 BY MR. MINUTOLI 368

7

8

9 E X H I B I T S

10 NUMBER PAGE

11 DESCRIPTION

12 Exhibit C Vancura Depo Mockup; 228

13

14 Exhibit D Exhibit D Annotated Excerpt 355

15 from Ex. 2017 to

16 IPR2023-00266;

17

18 Exhibit E Exhibit E Annotated Excerpt 360

19 from Ex. 2017 to

20 IPR2023-00266.

21

22 (Exhibits Premarked)

23 NUMBER PAGE

24 Ex. 2017 Deposition Transcript of

25 Dwight Crevelt;

1 Las Vegas, Nevada; Friday, November 17, 2023
2 9:00 a.m.
3 ---o0o---
4
5 OLAF VANCURA, Ph.D.,
6 having been previously administered an oath, was
7 examined and testified as follows:
8
9 EXAMINATION(resumed)
10 BY MR. WILSON:
11 Q. Good morning, Dr. Vancura.
12 A. Good morning.
13 Q. I hope you had a nice extended break
14 between deposition days.
15 A. Yes, sir.
16 Q. I'd just like to remind you and get your
17 understanding that you are -- you understand that
18 you remain under oath?
19 A. Yes.
20 Q. And agree to testify truthfully today,
21 right?
22 A. Yes.
23 Q. And you recall that just before breaking
24 on Monday evening, or afternoon, that we discussed
25 conversations with counsel for patent owner.

DraftKings, Ex. 1058, p. 7
DK Crown v. Diogenes, IPR2023-00266

1 Do you recall that?
2 A. Could you be more specific or give some
3 more details?
4 Q. Yeah, in the context of whether
5 conversations with counsel for patent owner would
6 be -- are allowed --
7 A. Oh, yes.
8 Q. -- and you wouldn't engage in any over
9 the break?
10 A. Yes, sorry.
11 Q. So just confirming that you did not have
12 any conversations with counsel for patent owner
13 regarding the substance of your testimony over the
14 break?
15 A. That is correct.
16 Q. I wanted to start out today by talking
17 generally about your experience with DraftKings
18 products.
19 You are aware that DraftKings provides
20 mobile and Web-based fantasy sports and iGaming
21 products, are you not?
22 A. Yes.
23 Q. Have you ever used any of those products?
24 A. No.
25 Q. Not at all?

1 A. No.
2 Q. Have you ever seen them used?
3 A. I mean, I've seen commercials for them.
4 Yeah, I'm mean, I'm familiar with the name and
5 generally what DraftKings does.
6 Q. Have you ever seen DraftKings kiosks in
7 person?
8 MR. MINUTOLI: Objection. Outside the
9 scope.
10 THE DEPONENT: Not that I recall.
11 Q. (By Mr. Wilson) Have you ever seen any
12 technical documents describing those products or
13 services from DraftKings?
14 MR. MINUTOLI: Same objections.
15 THE DEPONENT: No.
16 Q. (By Mr. Wilson) Have you had any
17 conversations with other experts involved in the
18 ongoing litigation between DraftKings and Colossus?
19 A. No.
20 Q. And no discussions regarding DraftKings
21 source code with anyone?
22 MR. MINUTOLI: Outside the scope.
23 THE DEPONENT: As far as I know, no.
24 I mean, it's possible, before I became an
25 expert, that maybe somebody posed that question.

1 But that would be the extent of any discussions
2 regarding their DraftKings source code.
3 Q. (By Mr. Wilson) So nothing since the
4 time that you -- of your engagement on this matter?
5 A. To my recollection, that's correct.
6 Q. Do you recall, on Monday, we were talking
7 about a declaration you submitted in what we
8 referred to as the '341 patent case, and that's
9 IPR 202300262.
10 Do you recall that?
11 A. Yes.
12 Q. Do you have a copy of that handy?
13 A. I'll pull it up, just give me just a
14 moment.
15 '341?
16 Q. Yes.
17 A. My declaration?
18 Q. Yes, and that's Exhibit 2003 --
19 A. Yup.
20 Q. -- in the '341 patent case.
21 And if you turn to page 21 and 22.
22 You see there a listing of the substitute
23 claims?
24 A. Sorry, I'm still rearranging my screen.
25 Okay. Just a moment.

1 Okay. What paragraph?
2 Q. Just below paragraph 54.
3 Do you see there a listing of the
4 substitute claims?
5 A. Yes.
6 Q. And under substitute claim 42, do you
7 see, in limitation 42(a), it says "The method of
8 claim 41, wherein the multi outcome wagering event
9 comprises one or more virtual games."
10 Do you see that?
11 A. Yes.
12 Q. What is an example of a virtual game?
13 A. Well, the way -- again, I would defer to
14 what is stated in the patent itself as opposed to
15 what I think it is.
16 But, in my opinion, a virtual game as
17 used in this patent is a -- an example would be
18 video poker, a video embodiment of a game.
19 Q. Do you know whether the '341 patent uses
20 that term, "virtual game," in the specification?
21 A. I think it does.
22 Q. Do you know where in specific?
23 A. No.
24 Q. Do you consider video Keno to be a
25 virtual game?

DraftKings, Ex. 1058, p. 11
DK Crown v. Diogenes, IPR2023-00266

1 A. Again, I would defer to the way the --
2 the patent uses the term, or the way it defines it.
3 I personally would say yes.
4 Q. And what about live sports?
5 Are live sports a virtual game?
6 A. I would say -- if you're just wagering on
7 the sport itself, I would say no.
8 Q. What if there's a digital video stream of
9 the live sporting event?
10 Does that change the calculus?
11 A. Again, I would defer to the patent on all
12 these.
13 But in my opinion, a digital -- so like a
14 live stream of a sporting event?
15 Q. Yes.
16 A. I'm not sure I understand the question.
17 Am I wagering on the live stream, or am I
18 wagering on the sporting event?
19 Because the wagering event here is a
20 wagering event. It's not a...
21 Q. I suppose it could be either.
22 (Simultaneously speaking.)
23 A. If you're wagering on -- I'm wagering on
24 whether the live stream will be interrupted or --
25 I'm wagering on the underlying event, right. If

1 somebody chooses to live stream something that I'm
2 wagering on -- I'm not sure I understand the
3 question.
4 Q. Does the fact that there's a live stream
5 available change whether the sporting event would
6 be considered a virtual game?
7 A. Again, I would defer to whatever the
8 patent says.
9 In my opinion, it would not, if I
10 understand the question correctly. I'm wagering on
11 the underlying sporting event, so the live stream
12 in that case wouldn't matter.
13 Q. Do you have an understanding as to what a
14 person of skill in the art would understand a
15 "virtual game" to mean?
16 A. I would say it's -- I mean, in the gaming
17 space, I wouldn't say it's a term that's commonly
18 used, in terms of precisely what it means.
19 But, I mean, "virtual," by its nature,
20 implies it's not, you know, real.
21 Q. So a video game, would that be a virtual
22 game?
23 A. Just like an arcade game?
24 Q. Yes.
25 A. I would say that would be a virtual game.

1 But, again, I would defer to the patent; but if
2 you're asking me my opinion, I would say yeah.
3 Q. Do you have a copy of the '341 patent
4 before you?
5 A. I'll pull it up.
6 Q. And that's Exhibit 1001 to the '341
7 patent case.
8 A. Okay. I have it.
9 Q. Flipping through this document, are you
10 able to refresh your recollection as to where the
11 virtual game --
12 A. I would --
13 Q. -- is discussed in the specification?
14 A. I would probably just do a search on that
15 term.
16 Q. Okay.
17 A. Okay.
18 Q. Does that refresh your recollection as to
19 how the term "virtual game" is used?
20 A. I think so.
21 It probably helps.
22 I mean, I haven't -- I haven't gone
23 through the entire document, but I'm just looking
24 at the first few instances of it.
25 Q. Okay. And what specifically?

DraftKings, Ex. 1058, p. 14
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1 A. Well, so, for example -- I'm just
2 starting at the beginning.
3 I'm looking at column 3, lines 53 to 54.
4 It says "Other events such as games," and then it
5 parenthetically says "(both virtual and real),
6 including, not but limited to, virtual and real
7 card games."
8 And then in column 4, lines 31 to 42, it
9 says -- or actually, let me say lines 28 to 42.
10 Line 28 would -- that sentence begins "In
11 addition, as an example and without limitation, a
12 leg may comprise any desired number of individual
13 components of any game or a game in its entirety,
14 virtual and real."
15 Later, it talks about slot machines, and
16 it says whether they're virtual or mechanical; and
17 a card game, whether virtual -- well, I think that
18 sheds some light on it.
19 Q. And what specifically would a POSITA
20 understand from those disclosures the term "virtual
21 game" to mean?
22 A. Yeah, I mean, if you're talking about
23 virtual and real card games, I think the contrast
24 is being made between virtual and real.
25 If you're talking about slot machines,

1 whether each reel is virtual or mechanical, the
2 contrast is being drawn between the two. And I
3 believe, in that case, virtual is used as video
4 there, because the major types of slots are either
5 video or mechanical.
6 So he's drawing a contrast between
7 something virtual and something real, something
8 virtual and something mechanical in the specific
9 case of slots, and apparently, also, with respect
10 to card games.
11 I mean, there's other instances of
12 virtual. This is just the first page that I'm
13 looking at here now.
14 Q. So you mentioned a distinction between --
15 strike that.
16 You mentioned that the specification
17 draws a distinction between virtual and real by
18 using those terms.
19 But I guess what -- what is that
20 distinction, if you're able to say?
21 A. Well, I'd prefer to look at the rest of
22 the specification, because I don't want to limit
23 the use of virtual just to these first few
24 instances.
25 If you want, I can look quickly at the

1 rest of the -- how it's used, but --
2 Q. Before you do that, would a POSITA need
3 to review the specification in order to understand
4 what a virtual game is; or would a POSITA have some
5 understanding of what a virtual game is?
6 MR. MINUTOLI: Objection. Form.
7 THE DEPONENT: I would say there would be
8 some understanding, but the word -- in my view, the
9 word "virtual" is not commonly used in gaming.
10 So that would be my answer.
11 Q. (By Mr. Wilson) So it's not a term of
12 art?
13 A. Well, I mean, with regard to slot
14 machines, I would say it's not a term of art.
15 Q. What about in general?
16 A. Well, let -- let me back up. Let me
17 just -- sorry, I want -- I want to be clear on
18 that.
19 With regard to slot machines, I would say
20 it is a term of art; let me correct that.
21 But the way we use a virtual reel in a
22 slot machine is a little bit different than the way
23 it's used here. In a slot machine, for example,
24 you would have a video reel. We would call it a
25 video reel. That's a term of art, obviously.

1 And to the extent that you did not --
2 that the -- in the design of the machine, you did
3 not want each symbol to be equally likely as it
4 appears, for example, on a pay line, then you can
5 utilize what's known as a virtual reel.
6 In that instance, a virtual reel is a
7 reel that is not shown or presented to the player,
8 not known to the player. There's no manifestation
9 of the reel at all in terms of appearance in the
10 game. It's all done, you know, if you will, in
11 memory through an algorithm.
12 But through the use of the virtual reel,
13 typically, the way it's done is there's a -- let's
14 say you had -- I don't know -- you had, you know,
15 20 stops on -- on your video reel, 20 positions
16 that the reel could stop at. And you wanted one of
17 those positions to not be 1-in-20 but, for
18 argument's sake, let's say you wanted it to be
19 1-in-200, like the best symbol, like the Wild.
20 So your virtual reel would have 200
21 stops, and you might have -- one of those stops
22 might be a Wild position. And so your RNG would
23 then draw a number between 1 and 200 to get what
24 that symbol is that would actually be shown. And
25 then you're -- I say physical, but it might be

1 video -- your video reel stops at -- at what's been
2 drawn based on the virtual reel.
3 That may have been more than you wanted.
4 Q. So, in that example, there's a physical
5 manifestation of the direction of the virtual reel;
6 is that what you're getting at?
7 A. Yes, yes.
8 And in a sense, there's a contrast there
9 between real and virtual, as well, which is why
10 it's a virtual. But anyway, but that's not a reel
11 that's seen by the players.
12 Q. And, in that context, would you consider
13 that system a virtual game?
14 A. Well, I think the way it's used in this
15 patent, if it's a video slot, it's a virtual game.
16 That would be my reading of this.
17 Q. So then the example you just gave would
18 not be a virtual game?
19 A. Well, it would be if it's a video slot.
20 I think if -- I'm reading it through the lens of
21 this patent. If it's a video slot, I would say it
22 would be considered a virtual -- again, I would
23 defer to what the patent says, but that's my read
24 of it.
25 And if it's a -- if it has physical reels

DraftKings, Ex. 1058, p. 19
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1 or mechanical reels, I would say, in this patent's
2 particular way of using it, whether or not it uses
3 a virtual reel underneath the hood to drive what's
4 shown on the mechanical reels, I would say that the
5 teaching is that that would be a considered a
6 mechanical --
7 (Court Reporter asks for clarification.)
8 THE DEPONENT: The word "mechanical."
9 Q. (By Mr. Wilson) So a POSITA would
10 understand "virtual game" to include a video slot
11 machine; is that right?
12 A. I think so, yes.
13 Q. Any other games a POSITA would understand
14 a virtual game to include?
15 A. Well, let me -- let me just keep going
16 here, because I'm only looking at the first page.
17 So he uses "virtual currency." So again,
18 I would argue that's probably -- he's contrasting
19 actual currency or real currency. Virtual property
20 assets.
21 I'm on column 11. He's contrasting
22 actual and virtual currency.
23 So I'm on column 22. He's discussing
24 slot machines. He says "As noted above, each reel
25 may be a virtual reel (as in a video or electronic

1 slot machine, for example), or a mechanical reel,
2 as in conventional slot machines."
3 And then it looks like the remainder of
4 virtual (audio distortion) on the claims.
5 That's it.
6 So that would be my sense is he's using
7 virtual to contrast with real, whether it's a game
8 or a slot machine or money.
9 He may not completely understand what
10 happens in a slot machine underneath the hood, but
11 that's how he's using "virtual" here.
12 Q. Would a POSITA ever understand a live
13 sporting event to be a virtual game?
14 A. I mean, I think a -- I guess, in my view,
15 you know -- I mean, if you're talking like fantasy
16 or something, I think components of that live
17 sporting event put together can make up a virtual
18 game.
19 But if you're asking about the game
20 proper, like the entire game, just that as a
21 wagering event, I would say no.
22 Q. What about a combination of live sporting
23 events, like in a parlay? Would that be -- would
24 that ever be considered a virtual game?
25 A. I'm going to have to -- I'm going to have

1 to look back at the specification again to see how
2 he uses it.
3 I don't see here that he discusses that,
4 so could you repeat your question in terms of the
5 POSITA?
6 Q. Sure.
7 You had testified that -- that a sporting
8 event, a live sporting event, would not be
9 considered a virtual game.
10 And my question was, what about a
11 combination of live sporting events?
12 Would that ever be considered a virtual
13 game?
14 A. I'm not sure the answer to that.
15 I mean, the live sporting event itself, I
16 don't think.
17 But once you begin to combine those into
18 a wagering event that's not recognized in and of
19 itself -- I would say a parlay is a -- a wager
20 on -- on a series or a groupings of real events;
21 but the parlay itself, you know, is artificial in
22 the sense that you -- you're grouping unrelated
23 things, in principle.
24 I don't know if that answers your
25 question.

DraftKings, Ex. 1058, p. 22
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1 By way of example, I mean, if I bet on,
2 you know, the Golden Knights winning a hockey game,
3 and I parlay that with the, you know, Utah Jazz
4 winning a basketball game, those have no relevance
5 to each other. That's an artificial construct that
6 I can tie those two together.
7 Q. So then, at that point, once you've
8 combined them in a parlay, it then becomes a
9 virtual game; is that right?
10 A. No, I'm not saying that. I'm saying I'm
11 wagering on a grouping of real games. But the fact
12 that I can group them, to me, is arbitrary or
13 artificial. They're not -- they're not related to
14 each other.
15 They can be. I mean, I can do a parlay
16 on, you know, who will win the basketball game
17 tonight with -- you know, whether the game will go
18 over or under. I can do that.
19 So I can group parlays according to
20 related events, or I can group them according to
21 unrelated events. But in each case, the events
22 themselves would be real. But the grouping -- I'm
23 not sure.
24 I mean, it's -- it's kind of in between
25 to me. It's in between wagering on a singular

1 event and something like a fantasy, where you're
2 waging on components or metrics of events that are
3 then combined into -- into a -- into a virtual
4 league or a virtual realm.
5 Q. You're just -- you're not able to say
6 whether a parlay would be considered a virtual
7 game; is that fair to say?
8 MR. MINUTOLI: Objection. Form.
9 THE DEPONENT: I mean, I would lean
10 towards it being real, just because you're wagering
11 on a grouping of real events.
12 Q. (By Mr. Wilson) Okay. I wanted to
13 rehash a discussion we had and sort of drill down
14 more from a topic from Monday.
15 You have before you substitute claim 41.
16 Again, that's listed right below your paragraph 54
17 of your declaration in the '341 patent case.
18 And you see those limitations, 41[c-1] to
19 41[c-3]?
20 A. Yes, sir.
21 Q. I'm going to drop a PDF in the chat, and
22 I'll ask you to open it, download it and open it.
23 Did you see that come through?
24 A. Yes, I'm just saving it off here. Just
25 give me a moment.

1 MR. WILSON: And I'll ask that this be
2 marked as -- I think we're at Exhibit C, for this
3 deposition.
4 (Exhibit C was marked for identification
5 by the Court Reporter and is attached hereto.)
6 THE DEPONENT: Okay. I have it up.
7 Q. (By Mr. Wilson) Can you see on page 1,
8 there's a series of blocks?
9 A. Yes.
10 Q. Or rectangles.
11 And those are labeled A, B and C, and XY.
12 Do you see that?
13 I'm sorry, you might have dropped out.
14 Do you see the series of blocks?
15 A. Yes, yes.
16 Sorry if I dropped out.
17 Q. I'd like to explore the use of that term
18 "continuously" in substitute claim 41 in regard to
19 this example here.
20 And let's assume here that this series of
21 rectangles is a timeline from the start of A to the
22 end of block C. And let's say that this timeline
23 represents the entirety of a hockey game, with the
24 periods being A, B, C, three periods, and
25 intermissions between those periods denoted as X

DraftKings, Ex. 1058, p. 25
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1 and Y in the demonstrative.
2 Are you following me there?
3 A. Yes.
4 So A is 20 minutes of playing time?
5 Q. Yes.
6 A. And X represents 20 minutes of
7 intermission?
8 Q. Yes.
9 I think it's slightly -- maybe
10 18 minutes, but, yeah, that's roughly 20 minutes,
11 we can assume.
12 A. Okay.
13 Q. So let's assume that the system -- that a
14 system receives data during A, B and C, during the
15 periods of play of the hockey game, but does not
16 receive any data during the intermissions at X and
17 Y.
18 Would that system be continuously
19 receiving data over the course of the hockey game,
20 in your opinion?
21 A. Let me just look at the claim real quick
22 here.
23 Am I looking at the original claims or
24 the amended claims?
25 I'm looking at the amended claims, step

DraftKings, Ex. 1058, p. 26
DK Crown v. Diogenes, IPR2023-00266

1 41[c-1], [c-2], [c-3]. Is that what you would like
2 me to look at?
3 Q. Yes.
4 A. And then your question -- could you
5 repeat the question?
6 Q. Would the hypothetical that was posed
7 satisfy that claim language?
8 MR. MINUTOLI: Objection. Form.
9 THE DEPONENT: And -- and just so I
10 understand, you're saying that it continuously
11 receives during period 1, does not receive any data
12 during the intermission, continuously receives
13 during period 2, does not receive any data during
14 the intermission, continuously receives during
15 period 3?
16 Q. (By Mr. Wilson) The question -- or the
17 hypothetical, I think, was just receives, receives
18 during period A, receives during period B, receives
19 during period C, but does not receive during
20 intermissions.
21 A. Receives -- what does it receive, though?
22 I mean, you're asking me whether -- I
23 thought the question was related to the claim.
24 Q. Yes.
25 Receives data related to the wagering

1 event.
2 A. Okay. And you're asking me whether I
3 think that the claim covers that in this -- in this
4 example that you're citing?
5 Q. Yes.
6 A. I would say it does.
7 I think we discussed this on Monday.
8 Q. And what if we reverse that example so
9 that data related to the wagering event is only
10 received during intermissions, and no data related
11 to the wagering event is received during the
12 periods A, B and C?
13 A. So the question is --
14 MR. MINUTOLI: Objection. Form.
15 THE DEPONENT: You --
16 MR. MINUTOLI: Go ahead, Olaf, I'm sorry.
17 THE DEPONENT: No, it's okay.
18 So just so I understand it, you're now
19 asking if, during play, no data is received at all;
20 but during intermissions, data is continuously
21 received?
22 Q. (By Mr. Wilson) Just received.
23 A. So was the answer to the previous one
24 received or continuously?
25 I may have misunderstood the question --

1 sorry, the original question.
2 Q. Yeah, both hypotheticals just deal with
3 receiving data.
4 The first hypothetical was during periods
5 A, B and C, and not during intermissions X and Y.
6 And the second example that we're
7 discussing now is receiving data related to the
8 wagering event only during intermissions X and Y;
9 and not receiving data related to the wagering
10 event during the periods A, B and C.
11 A. Okay. So my original answer, then, I
12 assumed it was continuously receiving data during
13 the periods of play, so that -- that was my answer
14 for that.
15 So I apologize if I misunderstood the
16 question.
17 Q. Okay.
18 A. Let me think about this one now.
19 Okay. So, in my view -- and there are
20 other limitations here that we haven't discussed
21 here, like is this just one game? Are we talking
22 about, you know, the one or more winners in step
23 41[e]?
24 I'm ignoring those and focusing only on
25 41[c-1], [c-2], [c-3]; is that the way you want me

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1 to?
2 Q. Yeah, and specifically, we're probing
3 your definition or your understanding of
4 "continuously."
5 A. So I would say, I mean, based on my read
6 of this particular claim 41, this proposed amended
7 claim, that the -- the "continuously receiving data
8 in real time related to the wagering event," which
9 is I think what you are asking about, I -- I would
10 say it need not occur while the wagering event is
11 live in terms of, like, the clock is running.
12 So in between periods, I think, would
13 count.
14 Q. So receiving data related to the wagering
15 event only between periods would constitute
16 continuously receiving data related to the wagering
17 event; is that right?
18 A. If it's --
19 MR. MINUTOLI: Objection. Form.
20 THE DEPONENT: -- continuously receiving
21 data, and if it's related to the wagering event, I
22 would -- I can imagine it could, yeah.
23 I mean, to me, related to the wagering
24 event doesn't -- isn't -- it's what -- I think in
25 my report, it's what I contrast as internal.

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1 There is internal data related to the
2 wagering event, like internal metric, current
3 score, who's got the ball, how much time is left,
4 foul trouble, all that stuff for a basketball game;
5 possession arrow, you know, all that stuff.
6 As opposed to external data that's still
7 related to the wagering event, which might be
8 current odds on who's going to win, you know,
9 current line, the current point spread for an
10 in-game wager, that kind of stuff.
11 So -- so, in my view, even though the
12 game might be paused for an intermission, like at
13 halftime or in between periods in a hockey game, in
14 principle, as long as you're continuously receiving
15 data related -- related to the wagering event,
16 and -- I don't see any limitation here that that
17 needs to only occur during play.
18 In my view, it can occur during play, but
19 it...
20 Q. (By Mr. Wilson) And you're referring to
21 the real time aspect of the limitation there?
22 A. I'm looking specifically at step 41[c-1],
23 "continuously receiving data in real time related
24 to the wagering event."
25 Q. So --

1 A. You know, it's -- I mean, in between
2 periods of a hockey game, or in between --
3 you know, at an intermission in a basketball game,
4 or, frankly, in between innings of a baseball game,
5 the play proper would be stopped for the
6 intermission, but still continuously receive data
7 in real time related to the wagering event based
8 on, you know, lines that are moving or things that
9 might be happening.
10 Q. All right. So let's take it from the
11 top, hypothetical 1, only -- with the clarification
12 that we are only discussing receiving data during
13 the periods A, B and C.
14 Can you clarify -- and -- and just to
15 continue the hypothetical, not receiving any data
16 during the intermissions X and Y.
17 Can you clarify whether you would
18 consider that to satisfy substitute claim 41?
19 MR. MINUTOLI: Objection. Form.
20 THE DEPONENT: I -- I mean, I'm just
21 looking at claim 41 and, you know, it's a method of
22 conducting a wagering event in the preamble. You
23 provide the input devices and communication with
24 the system controller, and the system controller is
25 adapted for this.

1 So is the system controller adapted to
2 continuously receive data in real time related to
3 the wagering event? I think we're assuming the
4 answer is yes.
5 So if it -- for a period of time
6 continuously receives, and then doesn't, and then
7 continuously receives again, I think it's
8 contemplated by this claim.
9 Q. (By Mr. Wilson) But I think that answer
10 sort of assumes what we're trying to drill down at,
11 and that is, it assumes there's continuous
12 reception.
13 And the question is whether there -- if
14 having reception of data at these time periods and
15 then no reception of data at other time periods,
16 whether that constitutes continuously receiving
17 data as claimed in limitations 41[c-1] to [c-3]?
18 MR. MINUTOLI: Objection. Form.
19 THE DEPONENT: And I think my answer is,
20 while it's continuously receiving data, yes.
21 Q. (By Mr. Wilson) All right. Let's shrink
22 the timeline and consider the same figure with a
23 different hypothetical.
24 So let's consider a three-minute
25 timeline. There are stretches of receiving data

1 through the times marked A, B and C. And then
2 there are shorter pauses at X and Y, in between A,
3 B and C, where no data is received.
4 Would you consider that scenario to
5 satisfy the limitations of substitute claim 41?
6 MR. MINUTOLI: Objection. Form.
7 THE DEPONENT: I think, generally, if you
8 continuously receive data -- I mean, my answer
9 would be the same as the one I just answered.
10 If -- if you continuously receive data,
11 then you continuously receive data. And if there's
12 a gap in that, then it doesn't negate that you've
13 continuously received data either pre- or postgap,
14 if we're talking about that one step.
15 Q. (By Mr. Wilson) All right. What if we
16 consider the timeline to be one second long. And
17 we have an evaluation process that runs in a loop
18 for, like, five times during time A; then pauses
19 for like a quarter second at period X; and then
20 again, in period B, runs in a loop five times;
21 again, pausing at Y; again, running in a loop at C.
22 Would you consider that scenario to meet
23 the limitations of substitute claim 41?
24 MR. MINUTOLI: Objection. Form.
25 THE DEPONENT: Are we only looking at the

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1 evaluation step now?
2 We're assuming the -- the rest have met
3 their burden, if you will, of -- of the claim?
4 Q. (By Mr. Wilson) Yeah, let's look at the
5 evaluation --
6 A. Just -- just isolating that one step, in
7 other words?
8 Q. Yeah.
9 A. Okay. And so I -- I would defer to what
10 the claim says: If it continuously evaluates the
11 recalculated wager information, then, yes, it meets
12 this claim.
13 Q. And where in that hypothetical is there a
14 continuous evaluation, in your opinion?
15 A. Well, if you say -- I think the way you
16 posited it was that there would be a loop that
17 would just be running continuously for a period of
18 time, and that loop is the one that's continuously
19 evaluating.
20 So I would say that it meets this claim,
21 at least that step 41[c-3].
22 Q. And then the pauses at X and Y for a
23 quarter of a second, in your opinion, would not be
24 continuous evaluation?
25 A. Yeah, I think we touched on this last

1 time.
2 It would -- it would depend on how the
3 code was structured. I mean, if it's -- if the
4 continuously evaluating continues to run, and,
5 you know, it's just processing the same input
6 value, then the -- then it could still be
7 continuously evaluating.
8 I mean, you and I might say, well, it's
9 kind of silly; it's continuously evaluating the
10 same input, so it's going to evaluate to the same
11 output. We would agree.
12 But the question is, is it continuously
13 evaluating.
14 If that's the question, then I would say
15 if you set it up that way, then it would still be
16 continuously evaluating. If you set it up that the
17 evaluation function stops or pauses, then it's not
18 continuously evaluating at that moment in time.
19 Q. Okay. Drilling down just a little bit
20 further, let's say period A, the evaluation
21 function loops two times. It then pauses at X.
22 Loops two times again at period B.
23 Is it your opinion that that scenario
24 also falls under limitation 41[c-3]?
25 A. Well, to be clear -- I just want to be

1 clear.
2 41[c-3], we're talking about the
3 continuously evaluating, but it's continuously
4 evaluating the recalculated wager information. So
5 if it's being -- I was just going to say, if it's
6 being presented the same input value, I suppose
7 that could be recalculated as well.
8 Anyway, but to answer your question, I
9 would say, while it's continuously evaluating, it's
10 continuously evaluating. I mean, I'm just kind of,
11 I think, stating the obvious. But to me, a gap
12 does not negate that it does continuously evaluate
13 when -- when it does so.
14 Q. So a scenario where, in block A, the
15 evaluation function runs twice, then pauses at X,
16 and then runs again two times in a loop at B, in
17 your opinion, does that operation fall under
18 limitation 41[c-3], continuously evaluating?
19 A. I mean, that's kind of an extreme
20 example. I mean, for that thing to complete -- to
21 do an evaluation twice would be, you know, almost
22 instantaneous.
23 But, again, I'm assuming this is a
24 hypothetical. So in the hypothetical, if it's
25 looping for, you know, a period of time, so it's

1 running -- a loop might be a way of running this
2 thing continuously. I think we mentioned on Monday
3 that, you know, a go-to statement or some other
4 kind of infinite loop where you're not counting
5 would be another way.
6 But if you -- I would say that for the
7 period of time it's continuous, it's continuous. I
8 mean, I'm kind of just repeating myself, but
9 it's -- that would be my answer.
10 I -- you know, I think we kind of went
11 over this on Monday. I don't know -- I don't know
12 where that breaks down at some limitation in terms
13 of cycle speed, but...
14 Q. So two loops is continuous, in your
15 opinion?
16 MR. MINUTOLI: Objection. Form.
17 THE DEPONENT: I mean, if something is
18 looping, and if we agree that that's continuous,
19 then it's continuous while it's looping, yes.
20 You know, I'm just -- you're asking a lot
21 of hypotheticals, and the way my mind works is it
22 tends to go out a little bit.
23 I would say, I think we discussed this on
24 Monday that a loop is a way of doing something
25 continuously, but it's not sufficient. You can

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1 have pauses in your loop, or you can require,
2 you know, an input in your loop or a trigger in
3 your loop to make it not continuous.
4 But a loop would be a way of making
5 something continuous if you wanted.
6 Q. (By Mr. Wilson) Understood.
7 All right. So just to put a point on
8 this, executing an evaluation function two times in
9 a row, you would consider to be continuous?
10 MR. MINUTOLI: Objection. Form.
11 THE DEPONENT: I think it's -- I think I
12 would be careful with the way I phrased that, in my
13 opinion.
14 I mean, I think if it's in a loop, where
15 it's clearly -- at that time, that's what it's
16 continuously doing, then that's fine.
17 If you -- I guess I'd have to think about
18 it a little bit more.
19 If it's not a loop, and you just
20 hard-code an evaluation function twice in a row, I
21 mean, I guess, arguably, it's still continuous,
22 you know, if that's mathematically equivalent while
23 it's doing it. It's still just doing that, even
24 though you've hard-coded it, it's not in a loop.
25 Q. (By Mr. Wilson) I see.

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1 So any scenario where you are evaluating
2 twice back-to-back --
3 A. Well --
4 Q. -- you would consider to be continuous?
5 A. I don't know that I would go that far.
6 I -- I can't think of all counterexamples right
7 now, under the gun.
8 But, I mean, all I was saying earlier is
9 if, instead of a loop, I -- I literally take the
10 contents of the loop and cut and paste them twice
11 in a row and run that code instead of running the
12 loop twice, those -- those would be mathematically
13 equivalent.
14 In that instance, to me, it seems they're
15 probably the same. Those would both probably be
16 considered continuously. That's the example as I
17 understand it correctly.
18 But I wouldn't necessarily say that just
19 because I do something twice in a row that that
20 would be continuously. I don't know.
21 I mean, I'm just thinking, if I go order
22 a burger, and then order another burger, have I
23 continuously ordered the burger? Probably not.
24 I don't know, I think it just depends on
25 the situation.

1 I'm trying to accommodate your question.
2 Q. So is there a time period between
3 evaluations that you think would disqualify a
4 system from continuously evaluating?
5 A. I mean, to me, it's -- it's -- it is what
6 it is. I mean, if it's continuously evaluating, so
7 you haven't put in a pause or a gap, then I would
8 say it's continuously evaluating.
9 I mean, if you -- if you -- I mean, if
10 you continuously -- I'm not sure I understand the
11 question.
12 Are you saying like I continuously
13 evaluate for a while, and then purposely pause? I
14 would say while you're continuously evaluating, you
15 meet the claim for that step of the claim.
16 I guess it -- I'm not sure.
17 Did I understand it correctly?
18 Q. I think so.
19 I mean, so I think that -- and correct me
20 if I'm wrong -- that you've established there's no
21 number of times required to do something in order
22 for it to be considered continuous; that it can be
23 simply twice that something's performed.
24 Is that wrong?
25 A. I think twice during the twice meets --

1 meets this in this hypothetical.
2 You said there's no number, so that would
3 be one. I think if you do it once, I'm not sure.
4 Probably not.
5 Q. Is it possible that evaluating something
6 once could be considered continuously evaluating
7 it?
8 A. Well, the way I'm thinking about
9 "continuously evaluating," it's a -- it's -- it's
10 in a loop, like in the hypothetical you're giving,
11 and the valuation portion of the function itself
12 doesn't take up, let's say, a 20-minute
13 intermission -- I mean, in a period. I don't know
14 what value that would have in terms of time
15 wagering.
16 So if -- if it only does it one time, I
17 mean, I can see a situation where, if the -- the
18 input to the evaluation function -- let me just
19 look at the claim -- is continuously evaluating the
20 recalculated wager information, so if -- you know,
21 if the recalculated wager information -- I'm -- I'm
22 going to make this up -- takes .01 seconds, and the
23 evaluation takes .1 seconds then, you know, it
24 would -- it might be continuous even though it's
25 one time, because it takes so long relative to the

1 input.
2 But if it only runs one time -- I would
3 have to say no, I think one time is not
4 continuously.
5 Q. So we established that once is not enough
6 for continuous; twice is enough for continuous.
7 And now, I'm trying to drill down on
8 whether there's a -- a time limit between those two
9 executions as to what would constitute continuous.
10 A. To be continuous, maybe it's less.
11 You know, I appreciate your example of
12 the two, or the 20 minutes. But to me, perhaps
13 it's less a number of times and just more of how
14 is -- how -- how is the, you know, system
15 controller adapted for this.
16 How is it adapted for this?
17 Is it adapted to continuously evaluate or
18 not?
19 So I could cut-and-paste the inside of a
20 loop a thousand times, and, you know, that would be
21 continuous, in principle.
22 Q. Okay. I'd like to turn to page 2 of that
23 demonstrative that was just sent over that I'm
24 referring to as Exhibit C.
25 A. Yes.

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1 Q. And do you see there's two rectangles
2 there?
3 A. The -- the pink vertical rectangles, yes.
4 Q. Yes.
5 And you see a series of notifications
6 coming from right to left.
7 Do you see that?
8 A. Yes.
9 Q. Do you understand what a sequence diagram
10 is?
11 A. A flowchart diagram?
12 Q. It's a little bit different than a
13 flowchart.
14 A. Okay.
15 Q. But if you'll indulge me, let's consider
16 the pink or red bar on the right to be a process
17 that's generating notifications regarding wagering
18 information.
19 And the process on the left is listening
20 for notifications, and receiving those, and then
21 evaluating -- performing some evaluation as
22 designated right after receiving the notification.
23 In your opinion, is what's shown here
24 continuously evaluating?
25 A. I think this is similar to --

1 MR. MINUTOLI: Objection. Form.
2 THE DEPONENT: I think this is similar to
3 what we chatted about on Monday in terms of
4 listening.
5 If there's no other communication between
6 the box on the left -- so the box on the left is
7 essentially one -- a process, is that correct, or a
8 processor?
9 And the box on the right is some other
10 processor, or some other process?
11 Q. (By Mr. Wilson) Yeah.
12 A. So if there's no other communication
13 between the box on the left and the box on the
14 right other than a triggering notification -- A, B
15 or C, like you have here -- which triggers an
16 evaluation function, then I would say the
17 evaluation is not continuously.
18 Q. And that would be true no matter the time
19 interval between the notifications; is that right?
20 A. I would just be careful if -- I don't
21 know.
22 I mean, if notification B comes in
23 while -- because you have, you know -- each of
24 these you have is an instant in time. In the
25 evaluation, actually, if time goes down in this

1 arrow here -- the time is pointing downward -- so
2 the evaluation after notification A is going to
3 take some period of time.
4 If it runs into and over notification B,
5 then, in principle, that evaluation might become
6 continuous. In other words, it's processing
7 notification A, but then B comes in, and so it just
8 keeps going on that. It says, oh, I got new info;
9 I got to work on this now.
10 So that would be a continuous evaluation,
11 in all likelihood.
12 Q. (By Mr. Wilson) Interesting.
13 So, in your opinion, the time it takes to
14 evaluate --
15 A. Yeah, I was trying to allude to that
16 earlier, with the other example you gave, the first
17 figure, and I may have botched that up.
18 But here, it might be easier to see what
19 the point is.
20 Q. Yeah, thank you for that.
21 MR. MINUTOLI: Olaf, let him finish the
22 question.
23 Sorry, Andrew.
24 THE DEPONENT: I'm sorry, what?
25 MR. MINUTOLI: You cut him off on this

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1 question. So give him a chance to finish his
2 question.
3 Q. (By Mr. Wilson) Yeah, for this example,
4 let's assume that the evaluation, you know, is
5 completed within that narrow black stripe within
6 the pink bar.
7 Here, fair to say that this is not
8 continuous evaluation?
9 A. I think, provided the caveats that I
10 mentioned earlier are met -- if there's no other,
11 you know, data being received between these two
12 pink bars other than and only the notifications;
13 and the notification triggers the evaluation; and
14 the evaluation completes prior to the next
15 notification -- then I would say yes, it's not
16 continuously evaluating.
17 Q. I'd like to drill down a little bit on
18 that.
19 So because -- in your opinion, because
20 more data is received during the evaluation, then
21 that renders the evaluation -- that act of
22 receiving data renders that evaluation continuous
23 at that time; is that right?
24 A. Can be.
25 I mean, it depends how your function is

1 written.
2 Q. And how so?
3 A. Well, so, for example, I mean, I might be
4 in the process -- so I've received data, and
5 I've -- I'm going to go back to the patent.
6 I've received data, and I've
7 recalculated. So -- so the recalculated
8 information is the input to the evaluation step.
9 So I might be evaluating the -- the recalculated
10 wager information from notification A, and I might
11 be working on that when I get new data pushed to
12 me.
13 And if my evaluation step is such that it
14 says, oh, if this changes at all, you need to go
15 ahead and just recalculate this whole -- just
16 re-evaluate everything, then it could be continuous
17 in that sense that it's -- it didn't finish the
18 prior evaluation; it continues to evaluate with
19 updated data.
20 And so I would say that it's -- it's
21 continuously evaluating.
22 Q. So the evaluation step 41[c-3] you are
23 referring to is dependent on having some
24 recalculated wager information; is that right?
25 MR. MINUTOLI: Objection. Form.

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1 THE DEPONENT: No, I wouldn't say that.
2 I mean, this was a hypothetical where I
3 said it did update. It would still be continuous
4 if it did update.
5 You're asking like the opposite question
6 now of, it only evaluates if it's updated. I would
7 say, no, it doesn't have to.
8 I mean, we've talked about that prior.
9 Q. (By Mr. Wilson) All right. So in your
10 opinion, it's not necessarily the time between, in
11 this example, receiving notifications; but, rather,
12 it's whether the evaluation function overlaps with
13 receiving the next notification?
14 A. It could be that.
15 I'm not saying it's necessarily that.
16 Remember, there's three steps in 41[c]:
17 There's receiving, recalculating, evaluating.
18 So the recalculating is based on the
19 received data. The evaluating is you're evaluating
20 the recalculated wager information. So I would say
21 if the -- if the evaluating overlaps the next
22 receiving data step -- let me go back to that; I'm
23 looking at the claim.
24 So like the evaluation, which is,
25 you know, kind of depicted here as an instantaneous

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1 bar -- it's that black bar -- where it just
2 continued down, overlapping the next evaluation
3 step or the next notification step, then I would
4 say it could lead to continuously evaluating.
5 But there's another step in here that's
6 not shown, which is the recalculation step.
7 Q. And how would that recalculation step
8 impact this?
9 A. Well, I mean, the recalculation step
10 presumably takes some amount of time. So it could
11 offset everything slightly in -- in terms of where
12 these boxes overlap.
13 Q. Okay. So any two instances of overlap of
14 evaluation, and then we're into continuous
15 evaluation.
16 Is that your testimony?
17 MR. MINUTOLI: Objection. Form.
18 THE DEPONENT: Let me make sure I
19 understand.
20 Any two -- any -- any instances of one
21 evaluation stepping over the next one would make it
22 continuous?
23 Is that what you're asking?
24 Q. (By Mr. Wilson) Yes.
25 A. I would have to go back to the claim and

1 see if -- if something that, you know, occurs not
2 by design but just happens is contemplated by that
3 claim. I'm not looking at the claim right now.
4 Q. Okay. Yeah, please do.
5 A. I guess I have a question for you, which
6 is, are we assuming this is continuously received
7 data or are we just ignoring step 41[c-1]?
8 Q. We're just focusing on 41[c-3], and we're
9 determining -- we're trying to drill down on what
10 "continuously evaluating" is.
11 A. I guess my question, though, is, if the
12 data's not continuously received, are we asking
13 questions about continuously evaluating that are
14 not germane because another step has not been met.
15 In other words, it's -- it's a
16 nonsensical hypothetical.
17 Q. I mean, we can assume -- we can assume
18 that data is continuously received.
19 Let's assume that, if that will help your
20 analysis.
21 A. So we're not looking at that figure
22 anymore?
23 Q. No, we are, but perhaps the continuous
24 reception is met by some other aspect other than a
25 notification.

1 A. Okay. And so, I mean, if I'm
2 continuously receiving data and recalculating that
3 in real time, then, presumably, I'm continuously
4 evaluating it.
5 I mean, I think I discuss that in the
6 report.
7 I'm not sure I understand the question.
8 Sorry.
9 Q. The question is whether any two instances
10 of overlapping evaluation constitute, in your
11 opinion, continuously evaluating?
12 A. I -- again, this -- I -- this is a
13 hypothetical. I have not thought about this prior
14 to right now.
15 So I would have to answer it this way:
16 It says system controller being adapted for this;
17 so if it's adapted in such a way that it
18 contemplates that this continuous might have to
19 encounter what we are discussing right now, then I
20 would say that would be continuous, because of the
21 way this claim is written.
22 MR. WILSON: Okay. We've been going a
23 little bit over a hour.
24 Do you want to take a five- or ten-minute
25 break?

1 THE DEPONENT: As you wish.
2 MR. WILSON: All right.
3 (Recess taken.)
4 MR. WILSON: Back on the record.
5 Q. (By Mr. Wilson) Dr. Vancura, you recall
6 that we were talking about limitations 41[c-1] to
7 [c-3] before the break?
8 A. Yes.
9 Q. And, particularly, I'm trying to drill
10 down on this term "continuously."
11 A. Yes.
12 Q. And you recall, we were discussing
13 examples where there would be no activity, no
14 reception of data; and then there would be a brief
15 interval within which the system is receiving data.
16 Do you recall that?
17 A. Yes.
18 Q. And particularly in regard to page 1 of
19 that Exhibit C -- do you have that before you?
20 A. Yes.
21 Q. And so let's assume, you know, again, a
22 long stretch of, you know, 20 or so minutes in
23 period A where no data is being received at all.
24 Okay?
25 And then in period X, a very, very short

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1 time period of five seconds where data is being
2 received.
3 And, again, in period B, 20 minutes, no
4 data is being received.
5 Do you understand that hypothetical?
6 A. Yes.
7 Q. And in that hypothetical, would you
8 consider that to be continuously receiving data?
9 A. If you're telling me that during the time
10 period of X, it's continuously receiving, then I
11 would say it's continuously receiving.
12 Q. But I'm not saying continuously receiving
13 data. I'm just saying receiving some data at
14 period X for a very brief time period.
15 A. Okay. I mean, I would need to know how
16 it's received. I mean, if, you know -- I mean,
17 there's just a gamut of ways it could be received,
18 so...
19 Q. And that's what we're trying to figure
20 out is, what the line is for what makes something
21 continuously receive data.
22 A. Okay.
23 Q. So you cited to a construction that
24 contrasts "continuous" with "discrete," right?
25 A. Yes.

1 Q. So does that provide any insight as to
2 what might not be considered continuous?
3 A. Well, I think -- I think the PTAB panel
4 utilized a continuous as excluding discrete points
5 in time.
6 I would agree with that.
7 Q. Okay. Does reception of data include
8 receiving discrete points?
9 MR. MINUTOLI: Objection. Form.
10 THE DEPONENT: Does reception of data
11 exclude receiving discrete points of data, or data
12 at discrete points in time?
13 Q. (By Mr. Wilson) I'm sorry, let me
14 rephrase that.
15 Does continuously receiving data include
16 receiving data at discrete points?
17 A. I mean, I think you can continuously
18 receive data that's the same data except for
19 changes that are at discrete points.
20 But if the only data you receive is
21 triggered at discrete points or occurs at discrete
22 points, and there's no received data except for
23 those discrete points, then I would say that's not
24 continuous.
25 Q. How can data be received at times that

1 are not discrete?
2 A. I mean, are you talking about clock -- is
3 that a clock speed question, or what is the
4 question?
5 Q. Are you aware of a way that data can be
6 received in nondiscrete times?
7 A. I would say continuously is nondiscrete
8 times.
9 Q. Would you agree that a clock cycle of a
10 CPU is a discrete interval?
11 A. Yes.
12 Q. So for a computer operating with a CPU,
13 wouldn't a computer -- or how does a computer
14 continuously receive data that's not discrete
15 points?
16 MR. MINUTOLI: Objection. Form.
17 THE DEPONENT: Well, I think in my
18 view -- I mean, in the PTAB panel's report, I mean,
19 I think this was covered with respect to the --
20 you know, the one dissention and the discourse on
21 this.
22 So, I mean, I agree with the majority,
23 the way that they viewed it.
24 Q. (By Mr. Wilson) So, specifically, how
25 did they view it in regard to that question?

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1 A. Well, I think that real time -- I mean,
2 continuously, to me, is used in the sense that we
3 would appreciate that it's -- that something is
4 continuous.
5 And so the -- the computer, essentially,
6 works as fast as it can. And for all intents and
7 purposes, it's absorbing or receiving this data
8 much faster than -- much faster than things that
9 occur in real time. I mean, we're talking about
10 clock speeds that are, you know, hundreds of
11 millions of hertz, is my guess.
12 So, I mean, it's -- in my view, it's a --
13 in my view, a POSITA would have known that
14 computers operate with clocks and with -- at
15 certain speeds, but, nevertheless, they can receive
16 continuous data.
17 Q. And, in your opinion, if a computer works
18 as fast as it can for something like a half-second,
19 is that continuously receiving data?
20 MR. MINUTOLI: Objection. Form.
21 MR. WILSON: Strike that. I'll reask.
22 Q. (By Mr. Wilson) In your opinion, if a
23 computer works as fast as it can to receive data
24 for a period of a half-second, is that continuously
25 receiving data?

1 THE DEPONENT: I think it depends on the
2 data.
3 Q. (By Mr. Wilson) Can you explain?
4 A. Yeah, I mean, if the data is a halftime
5 score, and that's it, it's two numbers; and if the
6 computer takes half a second to process that -- or
7 to receive that, not even to process it or
8 calculate or do any -- you know, do any algorithm
9 on it, just to receive that data, I would have to
10 say that's not continuously receiving, probably.
11 Q. So because the data's so small relative
12 to the processing capacity of the computer that it
13 would not be considered continuous?
14 Is that your opinion?
15 A. I would say -- I mean, in this example,
16 are you talking about, you know, a few bytes of
17 data, and you're telling me it takes half a second
18 to process, and you're asking me if that -- if
19 that -- that situation that you just described is
20 continuously receiving data -- well, I guess my
21 question would be, what is it doing for the half a
22 second?
23 Maybe I should ask that, because I think
24 I'm thinking in term of processing it.
25 So, I mean, what is it doing? Is it just

1 saving it to a buffer, and it just takes half a
2 second?
3 So I think if it's -- if it's in the --
4 if it's -- if what it's trying to do is receive the
5 data -- I'd have to go back to the patent and see
6 what it says, to be honest.
7 My answer would be just what I answered
8 earlier: It doesn't seem to be continuous. But I
9 don't want to read something into it that's not
10 there in terms of the step.
11 Q. And just because the questions are kind
12 of getting lost in the mixture, the question that
13 you're responding to is: If the computer works as
14 fast as it can to receive data for a half-second,
15 then, in your opinion, that is not continuously
16 receiving data.
17 Is that what you're saying?
18 MR. MINUTOLI: Objection. Form.
19 THE DEPONENT: That was my first thought,
20 but I think I've confused that with processing.
21 So I'm thinking back to the other example
22 we just talked about prior to this, the evaluation
23 stuff that we spent some time on prior to the
24 break.
25 So if the computer, in the step of

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1 receiving -- and, again, I would ask what -- what
2 do you mean by "receiving."
3 But if the -- if the computer takes half
4 a second, and then, within that half-second,
5 another little bit of data comes, and that takes
6 another half-second, so -- so the computer
7 essentially is having difficulty keeping up with
8 the data coming in, does that make it continuously
9 receiving?
10 I'd have to go back and look at the claim
11 language and see exactly what it says. It says
12 "continuously receiving data in real time."
13 I would say probably -- that would
14 probably make it continuous. On the other hand,
15 it's probably not in real time anymore. It's
16 starting to fall behind. It's not keeping up, step
17 41[c-1].
18 Q. (By Mr. Wilson) So it sounds like
19 there's a shift in the hypothetical to, now, what
20 you're responding to is a scenario where two bits
21 of data are coming in, and the system is having
22 trouble receiving both of those bits of data --
23 let's call them scores.
24 So in a scenario where the system is
25 having difficulty receiving both of those incoming

1 scores, then that's a scenario that you -- that you
2 would consider to be continuously receiving data;
3 is that right?
4 A. It depends what -- what you mean by
5 "difficulty." I mean, if the connection is bad,
6 it's probably not receiving anything.
7 If it's receiving -- again, I keep asking
8 what -- what is the computer doing during this
9 receiving step in your question.
10 But if it's somehow processing or saving
11 off to a buffer or somehow receiving; and it takes
12 it -- and it takes this several bytes of data,
13 you know, half a second or a second to -- to do;
14 and in that second interval, the next few bytes
15 come in; and it just continues to receive, so it
16 never catches up, I would say that's probably
17 continuous.
18 But as it -- as it falls behind, it's no
19 longer in real time. Both of those are cited in
20 step 41[c-1].
21 Q. But, on the other hand, if the system,
22 again, is listening or -- or processing to receive
23 data for a half-second, it receives multiple
24 scores, and it is able to keep up with that, is
25 that, in your opinion, continuously receiving data?

1 MR. MINUTOLI: Objection. Form.
2 THE DEPONENT: I think that would depend
3 on the data. I mean, if, in the structure of how
4 it's set up -- like, you know, for example, your
5 Figure 1 that we've looked at.
6 If the data is discrete, at discrete time
7 points, and there's no other communication other
8 than, you know, triggering at discrete -- discrete
9 time points, and receiving discrete data at those
10 discrete time points, then -- then it's probably
11 not continuous, or is not.
12 Q. (By Mr. Wilson) So just circling back to
13 that hypothetical that we opened the questioning
14 with.
15 The computer, again, receives no data for
16 20 minutes, then receives data for a half-second,
17 and then receives no data again for the next
18 20 minutes.
19 You're following that hypothetical?
20 A. Yes.
21 Q. Is there a circumstance where that
22 half-second of receiving data satisfies limitation
23 41[c-1], "continuously receiving data in real time
24 related to the wagering event"?
25 A. I -- is that different than the question

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1 you asked earlier?
2 Q. No, I think it's the same, but I don't
3 know that we got a straightforward answer.
4 A. So if it continuously receives data for
5 any time interval during a wagering event, then I
6 think it meets step 41[c-1], assuming all the rest
7 of the stuff is met.
8 Q. I think you've added the word
9 "continuously" in there, which sort of presupposes
10 the answer.
11 A. Oh, okay. Can you rephrase it?
12 Q. Well, it's the same hypothetical:
13 20 minutes, no data is received; half a second,
14 data is received; and 20 minutes, no data is
15 received.
16 Would you consider that to meet
17 limitation 41[c-1]?
18 MR. MINUTOLI: Objection. Form.
19 THE DEPONENT: I mean, when the data is
20 received -- it's going to be a function of how the
21 data is received.
22 During that period of time when the data
23 is received, is it -- is there no other
24 communication except for triggering events, and
25 then it receives some data?

1 Or is it continuously receiving data,
2 which might be, you know, continuously receiving,
3 for example, streaming data?
4 Q. (By Mr. Wilson) Okay. If it receives
5 one data point within that half-second of receiving
6 data, is that continuously receiving data?
7 A. I would -- I would -- I mean, the way the
8 question is posed, I would have to say no. But
9 there are caveats with respect to what's actually
10 happening during the receiving step.
11 What do you mean by that?
12 Q. Does receiving two data points within the
13 half-second listening time, does that --
14 A. I would say, again, it's -- it has to do
15 with what's meant by "receiving."
16 If it -- if it's still processing the
17 first point while the second one comes in, so that
18 whatever this receiving function is that's --
19 that's working or running then becomes continuous
20 because it can't keep up, I would say it's
21 continuous, but probably not -- no longer in real
22 time, starting to fall behind.
23 Q. And where does that notion of falling
24 behind or keeping up -- where does that come in in
25 the claims?

1 A. Well, I think it, in -- in my view,
2 it's -- when it says "continuously receiving data
3 in real time," that's -- it's -- it's not in the --
4 it's not literally in the claim, but it's -- that's
5 one of the distinctions between continuous and real
6 time.
7 Q. So it's dependent on the processing
8 capacity of the computer.
9 Is that what you're saying?
10 MR. MINUTOLI: Objection. Form.
11 THE DEPONENT: I -- I mean, I think in
12 principle, the answer might be yes. But -- but
13 this is a system controller adapted to continuously
14 receive data in real time.
15 So it's -- in my view, it's -- what's
16 contemplated here is that the -- the processor has
17 the ability to continuously receive data and keep
18 up in real time.
19 But I -- again, I keep going back to what
20 is meant by "receiving," because I don't know that
21 we've really flushed that out. When you say
22 "processor" and "processing," my mind kind of goes
23 towards calculations and valuations. You know,
24 you're manipulating something at that point.
25 Q. (By Mr. Wilson) Well, what do you

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1 understand that term, "receiving," as used in the
2 claim to mean?
3 A. I think, for example, "accepting" would
4 be another word that could be used there. You're
5 accepting the data; you're -- you know, like in
6 football, receiving a pass. You're accepting it;
7 you're absorbing it; you're bringing it in.
8 Q. And could that be satisfied by manually
9 entering information into a system?
10 A. Well, I think if it was manual data,
11 you know, it would be -- you're going to struggle
12 with the real time for sure, and it's probably not
13 continuous.
14 Q. So the data has to be coming from a --
15 from a computer, essentially, in order to be
16 continuously received?
17 A. Well, I mean, I -- to be honest, I'm kind
18 of thinking in terms of one data stream here, or
19 one data input, but it doesn't have to be. I mean,
20 I think it can continuously receive data, some of
21 which is automated and some of which might be
22 manually, as long as it's continuous.
23 Q. So a human is capable of continuously --
24 I'm sorry -- a system --
25 A. I think a human, in and of itself, or in

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1 and of him or herself, probably -- I would say is
2 probably incapable of continuously transmitting
3 data.
4 I mean, if I'm typing, I can type
5 continuously, and I suppose that -- you know, I
6 suppose there could be -- you know, if you guys are
7 watching my screen, or like you're looking at me
8 now, I suppose that's continuously. You're
9 continuously receiving data in real time.
10 Maybe there's a way a human could --
11 could -- you know, could create data continuously,
12 for example, by typing on a keyboard. But the --
13 but the issue would be -- no, I guess it's
14 possible. I guess a human being could create data
15 continuously, which could be transmitted to someone
16 else, who would continuously receive that data in
17 real time. Possibly, yes.
18 Q. And even though there may be some delay,
19 for example, if a human is -- is entering scores,
20 would you consider that to be in real time?
21 A. I would have to go back and see how that
22 term is used, if it's used in the patent, what's
23 meant by that.
24 Let me look real quick.
25 It doesn't look like it's in there.

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1 Q. Okay. Do you have any notion or
2 understanding of what an acceptable lag for real
3 time would be?
4 A. I mean, to me, real time means, you know,
5 concurrent, contemporaneous, those kinds of words.
6 So if -- if you're not keeping up with
7 something, then it doesn't become real time
8 anymore. You start to -- you're losing track of
9 time, if you will; you're not contemporaneous
10 anymore. So that would be my sense of -- of how
11 it's likely to be used.
12 I don't -- I don't think it's in here,
13 but, you know, obviously, the patent discusses time
14 sensitivity, and so I think it's -- it's probably
15 using in that similar sense that things can change
16 quickly in a -- in a -- in a wagering event.
17 Q. So as long as you're keeping up with the
18 data, even though there may be a delay, as long as
19 you're able to keep up with the data with that same
20 delay, then, in your opinion, that's real time?
21 A. No, I think, again, that would be
22 necessary but not sufficient. I mean, if I'm
23 processing data from yesterday's games, that's not
24 real time data anymore.
25 Q. What about like a 5-second delay?

1 A. I would probably have to relate that to
2 the wagering event.
3 So -- sorry, is somebody saying
4 something?
5 Sorry.
6 I mean, if I am at halftime of
7 basketball, 5 seconds is probably close enough to
8 real time.
9 If I'm -- I don't know, like I might
10 imagine situations where five seconds is probably
11 not enough in -- in practicality. I'm hard-pressed
12 to think of one now, but I could imagine some -- I
13 mean, like the examples of -- of a slot machine
14 that he gives, you know, the slot reels tend to
15 probably stop .3, .4 seconds interval between. So,
16 you know, 5 seconds would be -- the whole spin
17 would be over.
18 Q. Is there some point -- in that basketball
19 example that you gave, so 5 seconds would probably
20 be considered real time.
21 What about a 10-second delay? Would that
22 be considered real time?
23 A. Well, one of the things that crossed my
24 mind, when -- when we watch sporting events live,
25 there is a -- there is a delay. You know, I think

1 the reason they introduced that was so that they
2 can bloop things out in case the announcer would
3 say something, or -- and that's on screen they
4 don't want. And I believe the delay is roughly 5
5 to 10 seconds, but it might be 20 seconds. I'm not
6 sure.
7 But it's still considered a live event.
8 It's different than real time.
9 But I don't know the answer. I mean, I
10 think it's -- I think for slots, real time would
11 probably have to be fraction of a second.
12 Some sporting events, maybe it could be a
13 few seconds.
14 Q. Sounds like 30 seconds might be too long
15 of a time --
16 A. I would --
17 Q. -- for real time?
18 A. I would -- I would say 30 seconds is
19 probably too long, yes. Things can change too
20 quickly in 30 seconds.
21 Q. All right. So I'd like to circle back
22 one more time. I think I know the answer, but I'd
23 just like to pose the question.
24 In that hypothetical system, we have
25 20 minutes, receiving no data; half-second,

1 receiving data; 20 minutes, receiving no data; and,
2 again, a continuous half-second receiving data.
3 In your opinion, there is a circumstance
4 in that configuration where the receiving of data
5 for that half-second would satisfy the limitation
6 of substitute claim 41[c-1]?
7 MR. MINUTOLI: Objection. Form. Asked
8 and answered.
9 THE DEPONENT: Yes.
10 Q. (By Mr. Wilson) I'd like to turn now to
11 your declaration in the '822 patent case.
12 A. Okay.
13 Q. And, specifically, paragraph 68.
14 A. Okay.
15 Q. And there, you state that "The substitute
16 claims do not add new matter and are supported by
17 the original disclosure and priority application."
18 Do you see that?
19 A. I -- paragraph 68 is right after
20 Section X?
21 Q. Yeah, and it's actually the title of the
22 section.
23 A. Oh, yes, I see it.
24 Q. And in this section, in the paragraphs
25 that follow, you provide support for that opinion,

1 right?
2 A. Yes.
3 Q. And, specifically, you cite to two
4 priority documents, one being the '616 application
5 filing from which the '822 issued, and that's
6 labeled Exhibit 2002.
7 Do you see that?
8 A. Yes.
9 Q. And the second is the '813 application,
10 which is the earliest priority document, and that's
11 labeled Exhibit 2001.
12 Do you see that?
13 A. Yes.
14 Q. And below paragraph 71 of your
15 declaration, you provide a chart with support from
16 those exhibits.
17 Do you see that?
18 A. Yes.
19 Q. If you turn to limitation 30[d-1].
20 And just let me know when you're there at
21 the top of page 31.
22 A. Yes.
23 Q. You cite to -- I believe it's six
24 paragraphs here in the right-hand column --
25 A. Yes.

1 Q. -- corresponding to 30[d-1].
2 A. Okay.
3 Q. And the first citation is to
4 Exhibit 2001.
5 Do you see that?
6 A. Yes.
7 Q. And that is the '813 application, again,
8 the earliest priority application in the family,
9 right?
10 A. I would have to go up and check which one
11 is which. I believe 2001 is first. I mean, let me
12 just -- yes.
13 Q. All right. And back down to that first
14 quote, the top of page 31 -- or I'm sorry, the
15 bottom of page 31, continuing on to page 32 in the
16 table.
17 That first quote, you don't see the
18 phrase "continuously receive" there, do you?
19 A. No.
20 Q. And, again, this limitation 30[d-1]
21 recites "Continuously receiving data in real time
22 related to the wagering event."
23 Do you agree with that?
24 A. Yes.
25 Q. And the second quote, again, cites to

1 Exhibit 2001.
2 Do you see that?
3 A. Yes.
4 Q. Again, the second quote also does not
5 recite "continuously receive data," does it?
6 A. No.
7 Q. It says "Continuous cash-in ability."
8 Do you see where it says that?
9 A. Yes.
10 Q. That's different from continuously
11 receiving data, in your opinion, right?
12 A. I mean, I think continuous cash-in
13 ability, it's different.
14 Q. The third quote, again, to Exhibit 2001.
15 Do you see that?
16 A. Yes.
17 Q. It says "Ability to trade or sell will be
18 continuous."
19 Do you see where it says that?
20 A. Yes.
21 Q. But this -- this quote here also does not
22 recite "continuously receiving data," right?
23 A. Yes.
24 Q. If we turn down to the fourth quote, do
25 you see that cites to Exhibit 2002?

1 A. Yes.
2 Q. And that is the application of the --
3 that corresponds to the '822 patent, right?
4 A. Yes.
5 Q. And do you see here, this -- this quote
6 is similar, if not identical, to the first quote in
7 this row?
8 A. Yes.
9 Q. And the quotes that follow, do you see
10 they also cite to Exhibit 2002?
11 A. Yes.
12 Q. And they also reproduce quotes that also
13 appear in this row above corresponding to
14 Exhibit 2001.
15 Do you see that?
16 A. Yes.
17 Q. And nothing else in this chart for
18 limitation 30[d-1] other than those six quotes; is
19 that correct?
20 A. That's correct.
21 Q. Is it fair to say that "continuously
22 receiving data" is not expressly disclosed in these
23 quoted sections?
24 A. It's not explicitly disclosed.
25 Q. Paragraph 77, if you could turn to that,

1 of your declaration.
2 A. Yes.
3 Q. You state here that a POSITA would have
4 been motivated to gather the requisite data in an
5 automated manner based on the '822 patent
6 specifications disclosure that
7 purchase/sale/cash-in of tickets would be
8 continuous.
9 Do you see that?
10 MR. MINUTOLI: Objection. Form.
11 THE DEPONENT: Right, I mean, I see part
12 of what you're saying, yes.
13 It's "'continuous'... 'extremely time
14 sensitive'... and 'during live play,'" yes.
15 Q. (By Mr. Wilson) Do you see where you say
16 "gather the requisite data in an automated manner"?
17 A. Yes.
18 Q. Are you referring to any particular claim
19 limitation there?
20 A. I don't think so.
21 Q. Do any of the claim limitations of the
22 substitute claims require gathering data in an
23 automated manner?
24 A. Well, I mean, it's -- I don't know if
25 this -- to me, this is related to an earlier

1 question about whether manually input data could be
2 received continuously. And I think -- I think my
3 answer was, hypothetically, it could be.
4 But that would not be -- the POSITA would
5 not have gone in that direction to do so for
6 reasons cited here.
7 Q. So it's your opinion that the '822
8 specification would inform a POSITA that the
9 process of substitute claim 30, for example, would
10 be performed in an automated manner?
11 A. I think I discuss this -- I'm looking
12 through my declaration here.
13 I would -- I would point to my
14 paragraph 83, so -- well, frankly, maybe 82, as
15 well.
16 So the PTAB panel "stated, with respect
17 to slightly different claim language, 'We note that
18 continuously retrieving wagering event data,
19 recalculating wager information, and evaluating the
20 recalculated wager information as recited in the
21 challenged independent claims would be necessary
22 for certain wagers...'".
23 I'm going to leave off the rest of that
24 quote.
25 And so in paragraph 83, what I say is "a

1 POSITA would have recognized and understood that to
2 provide the 'continuous' ability to cash-in tickets
3 (and under an 'extremely time sensitive' paradigm)
4 the precise method utilized is a design choice.
5 The steps of 'receiving' and 'evaluating' lend
6 themselves to be done continuously with real-time
7 data. For, if the data is not contemporaneous with
8 the current game situation, or has temporal gaps,
9 the resultant real-time calculations may not
10 accurately reflect instantaneous actual
11 probabilities/odds of an outcome. This, in turn,
12 may lead to mispricing the offer. Similarly, and
13 in concert, a continuous evaluation,
14 contemporaneous with the calculation output,
15 preserves accuracy and eliminates temporal gaps."
16 Q. All right. So this opinion in
17 paragraph 77, does this support the ultimate
18 conclusion that you render that the specifications
19 of the original application, or the application
20 that went to the '822, provide support for the
21 claims -- by the substitute claims? Excuse me.
22 A. Well, I think they do, because the patent
23 clearly speaks of continuous terms of -- you know,
24 continuous ability to cash-in, extremely time
25 sensitive and so on.

1 And the patent speaks of, you know, data
2 input from other sources, which, you know, is
3 useful for calculations and evaluation steps.
4 So -- and a POSITA, knowing those and
5 knowing, you know -- knowing what's written here in
6 paragraphs 82 and 83, for example, that the precise
7 method is -- is a design choice, but the -- the
8 steps clearly lend themselves to be done in this
9 way, as claimed.
10 Q. But gathering requisite data in an
11 automated manner doesn't necessarily mean
12 continuously receiving data; is that fair to say?
13 A. Gathering data in an automated manner
14 does not necessarily mean continuously, yeah, I
15 would say that's fair.
16 Q. In paragraph 78, you identify three steps
17 that must be completed in order for a system
18 controller to complete the cash-in.
19 Do you see that?
20 A. Yes.
21 MR. MINUTOLI: Objection. Form.
22 THE DEPONENT: Yes.
23 Q. (By Mr. Wilson) Step 1, "data related to
24 the wagering event must be obtained."
25 Do you see that?

1 A. Yes.
2 Q. You don't say "continuously obtained,"
3 right?
4 You just say "data related to the
5 wagering event must be obtained"?
6 A. Yes.
7 Q. And you begin analyzing the step 1 in
8 paragraph 79 of your declaration.
9 Do you see that?
10 A. Yes.
11 Q. And here, you provide support for the
12 notion that data must be obtained in the system
13 described in the '822 patent, right?
14 A. Yes.
15 Q. And here, you are not specifically
16 talking, again, about continuously obtaining data,
17 right?
18 A. Well, again, I mean, just going back to
19 78, I mean, in my view, if the -- if -- "in order
20 for a system controller to complete a cash-in" --
21 I'm looking at line 2 of my paragraph 78 -- "the
22 price must be determined."
23 Several steps are required.
24 If it's halftime of a game, arguably, the
25 data does not need to be continuously received, in

1 my view.
2 On the other hand, if it's during a game,
3 as I state otherwise and as we've discussed, I
4 think that it lends itself clearly to doing that,
5 because -- because time is of the essence, as
6 disclosed in the specification.
7 So paragraph 78 is just kind of a general
8 statement, "data related to the wagering event must
9 be obtained." You can't do anything without data,
10 so it's just saying that.
11 Q. Got it.
12 And I'm just making the point that you're
13 not discussing here, in this 78 or 79, the concept
14 of continuously receiving data?
15 A. Let me -- let me look through 79.
16 It doesn't seem to be explicit, no.
17 Q. So you begin, in paragraph 79, discussing
18 the Micro Tote 408 routine and Gateway 520.
19 Do you see that?
20 A. Yes.
21 Q. But these -- and these are quotes from
22 the '822 patent?
23 A. Yes.
24 Q. Again, these portions don't describe
25 continuously receiving, right?

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1 MR. MINUTOLI: Objection. Form.
2 THE DEPONENT: Not explicitly in here,
3 no.
4 Q. (By Mr. Wilson) And as I think you
5 stated previously, the remainder of this
6 paragraph 79, it's not addressing the continuously
7 receiving aspect, right?
8 A. Not directly. I mean, I talk about
9 internal metrics elsewhere in this declaration and
10 how they're time sensitive, but it doesn't
11 explicitly say "continuous."
12 Q. Turning down to paragraphs 80 and 81, you
13 are then discussing the steps 2 and 3 that were
14 introduced in your paragraph 78.
15 Do you see that?
16 A. Yes.
17 Q. And step 2 is the calculations must be
18 performed on said data; and step 3 is an evaluation
19 or determination of said calculations must take
20 place.
21 Do you see that?
22 MR. MINUTOLI: Objection. Form.
23 THE DEPONENT: Yes.
24 Q. (By Mr. Wilson) And neither of those
25 concepts are directed to the concept of

1 continuously receiving data, which is addressed in
2 your step 1, right?
3 A. Yes.
4 Q. Strike that.
5 Neither of them are directed to the
6 concept of receiving data, which is addressed in
7 your step 1; is that fair to say?
8 A. Yes.
9 Q. And so it follows that the discussion in
10 paragraphs 80 and 81 of your declaration also are
11 not directed to the concept of receiving or
12 continuously receiving data; is that fair to say?
13 A. Yes.
14 Q. And then, in paragraph 82 of your
15 declaration, you revisit the concept of receiving
16 data.
17 Do you see that?
18 A. Yes.
19 Q. And I think, as you mentioned earlier,
20 you quote that '779 institution decision.
21 Do you see that?
22 A. Yes.
23 Q. And you cite that for the proposition
24 that continuously receiving data would be necessary
25 for certain wagers, such as the score and point

1 differential of teams.
2 Do you see that?
3 A. Yes.
4 Q. And before this point in this section of
5 your declaration, beginning at paragraph 68 up
6 until paragraph 83 -- excuse me -- up until
7 paragraph -- up until paragraph 81, so 68 to 81,
8 this paragraph 82 is the first direct mention of
9 "continuously receiving data"; is that fair to say?
10 MR. MINUTOLI: Objection. Form.
11 THE DEPONENT: It appears that way.
12 Q. (By Mr. Wilson) On paragraph 83, you
13 cite "a POSITA would recognize to provide the
14 'continuous' ability to cash-in tickets... the
15 precise method utilized is a design choice."
16 Do you see that?
17 A. Yes.
18 Q. Then you say "the steps of 'receiving'
19 and 'evaluating' lend themselves to be done
20 continuously with real-time data."
21 Is that correct?
22 A. Yes.
23 Q. So here, you're saying that a POSITA
24 would have understood "continuously receiving data"
25 to be a design choice for implementing the

1 continuous ability to cash-in tickets; is that
2 right?
3 MR. MINUTOLI: Objection. Form.
4 THE DEPONENT: Well, what I'm trying to
5 say is, in the first sentence, it says "the precise
6 method utilized is a design choice."
7 So, you know, it was claimed as kind of
8 having these three steps: Receiving,
9 recalculating, evaluating.
10 But what I'm trying to say is -- is
11 combining those, and where the lines of demarcation
12 are between those, is somewhat of a design choice.
13 Q. (By Mr. Wilson) So given a disclosure of
14 receiving data, it's your opinion that a POSITA, at
15 the relevant time, would have understood that
16 receiving data continuously is a design choice for
17 implementing reception of data?
18 MR. MINUTOLI: I'm going to object to the
19 form.
20 THE DEPONENT: Could you repeat the
21 question?
22 Q. (By Mr. Wilson) Yeah.
23 (Court Reporter asks for clarification.)
24 MR. WILSON: No, I'll repeat it.
25 Q. (By Mr. Wilson) So it's your -- it's

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1 your opinion that, given a disclosure of receiving
2 data, that a POSITA, at the relevant time, would
3 have understood "continuously receiving data" was a
4 design choice in terms of implementing the concept
5 of receiving data?
6 MR. MINUTOLI: Same objection.
7 THE DEPONENT: I would say what I say
8 here. I mean, it lends itself to be done
9 continuously with real time data.
10 So what I'm trying to say is the precise
11 method utilized is a design choice in terms of
12 where these lines of demarcation are, what is
13 considered evaluation versus recalculating, those
14 kind of steps.
15 I mean -- I mean, you have to get data,
16 so -- I'm sorry, I don't -- I don't know how to
17 answer that question. I mean, it's a --
18 Q. (By Mr. Wilson) Well, it looks like
19 you're -- you know, in paragraph 83, this first
20 sentence, that you're -- you're saying "a POSITA
21 would have recognized that to provide the
22 'continuous' ability to cash-in tickets," which is
23 a discrete concept from continuously receiving
24 data, that the precise method of doing that is a
25 design choice; is that correct?

1 MR. MINUTOLI: Objection. Form.
2 THE DEPONENT: Yes.
3 Q. (By Mr. Wilson) And then the steps of
4 receiving and evaluating data lend themselves to be
5 done continuously.
6 Do you see that?
7 A. Yes.
8 Q. So aren't you saying here that
9 continuously receiving data is one of those design
10 choices that a POSITA would have understood was
11 available in order to implement the continuous
12 ability to cash in tickets?
13 A. Well, I mean, under an extremely
14 time-sensitive paradigm -- I just stand by what I
15 say here. It lends itself "to be done continuously
16 with real-time data."
17 At halftime, you don't have to have that,
18 but, you know, if you're trying to set up a system
19 that's able to function under extremely
20 time-sensitive situations, where you want existing
21 ticket holders to have the continuous ability to
22 cash in, then I think it lends itself to do it this
23 way.
24 If you're willing to relax some of those
25 assumptions, then you can probably do it other

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1 ways. Like, for example, the next sentence, "if
2 the data is not contemporaneous with the current
3 game situation, or has temporal gaps, the resultant
4 real-time time calculations may not" be accurate.
5 I mean, if you're willing to -- when you
6 don't have -- when you don't have, you know -- when
7 you're not receiving data, real time data, so
8 there's a gap, if you're willing to not be able to
9 offer cash-in during that period of time, then you
10 can probably choose a different method.
11 But if you want a solution for the entire
12 game that's continuous throughout the game, and,
13 frankly, in between games or in between legs, and
14 some of those situations are going to be extremely
15 time-sensitive, then I think, like I say here, that
16 the step of receiving lends itself to be done
17 continuously.
18 Q. And creating a system that would
19 continuously receive data, in your opinion, is that
20 within POSITA's general knowledge at the relevant
21 time?
22 A. I'm sorry, could you reask the question?
23 Q. Yeah.
24 Could a POSITA implement a system that
25 continuously received data at the relevant time?

1 A. In -- in my estimation, yes.
2 Q. And what about evaluating, continuously
3 evaluating?
4 A. Well, I mean, you know, in my view, the
5 step of receiving or evaluation, I mean, you know,
6 provided that that's in sort of a loop, where
7 you're just continually trying to grab this
8 information or analyze it, then that would be
9 continuous. And for the reasons cited here, I
10 think it lends itself to being done this way.
11 You know, I mean, to your prior example,
12 could -- could the data be somehow triggered by
13 events that somehow initiate this, I mean, I don't
14 know.
15 I'm having -- I'm having trouble deciding
16 what's a design choice versus what is led -- you
17 know, lends itself to be done in a particular way
18 that a POSITA would have said, well, I'm going to
19 do it this way, because I'm going to -- I'm going
20 to create a system that needs to function under
21 these difficult situations where it's continuous; I
22 have to continuously off -- you know, be able to --
23 to provide this cash-in ability; it has extremely
24 time sensitive; you know, those kind of --
25 understanding that those are, if you will,

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1 requirements or design requirements, I think it
2 lends itself to that.
3 I don't want to get hung up on the design
4 choice thing, but in engineering, the requirements
5 will often dictate how -- how a system is
6 structured or architected or coded.
7 And so that's what I'm trying to say here
8 is that it -- a POSITA, with these -- with these
9 requirements, these things lend themselves to
10 this -- to this -- what I say in that paragraph.
11 Could it be done other ways? Probably.
12 It depends what the requirements are.
13 So I'm just -- I'm just basing this based
14 on what the -- what the contemplated, if you will,
15 restrictions or gating factors are in the
16 specification as to how a POSITA would look to that
17 to design this or put it together. That's what I'm
18 trying to say there.
19 Q. Understood.
20 So given the time constraints in the
21 system, a POSITA would have understood that -- that
22 the system lends itself to using continuous
23 evaluation; is that what you're saying?
24 A. I think what I'm saying is, it could be
25 designed so that triggers lead to the data, per

1 your earlier hypothetical; and it could be designed
2 so triggers, based on the output of the
3 recalculation, trigger the evaluation.
4 But, you know, if -- if a trigger is
5 missed or doesn't come through, you don't have the
6 continuous being done. Then, for the reasons
7 stated here, those are -- those are the -- those
8 would be the risks, right. The resultant
9 calculations may not reflect instantaneous
10 probabilities, and it may lead to mispricing.
11 And then a continuous valuation,
12 presumably, if this is all being done in real time,
13 you want that evaluation to be done as instantly as
14 you can.
15 And -- anyway.
16 So -- so I don't know if that answers the
17 question or not. But anyway, so I would -- I think
18 what's stated here is correct, the precise method
19 utilized is a design choice in terms of what's done
20 at each step and -- and how -- and how it's carried
21 out.
22 MR. WILSON: I think we've reached a good
23 stopping point.
24 Would you like to take a short break? Or
25 happy to break for lunch, if you'd like, or we can

1 continue through.
2 MR. MINUTOLI: It's up to you, Olaf.
3 (Discussion off the stenographic record.)
4 (Recess taken.)
5 MR. WILSON: Back on the record.
6 Q. (By Mr. Wilson) Dr. Vancura, I'd like to
7 switch gears and move to the '969 patent case.
8 And I've dropped in the chat for the
9 benefit of the court reporter --
10 MR. MINUTOLI: Hey, Andrew, do you think
11 it's okay, then, to invite either Matt or Steve on
12 the line now?
13 MR. WILSON: Yeah, I think that's fine.
14 MR. MINUTOLI: Cool, thank you.
15 MR. WILSON: Apologies, I should have let
16 you know before the break.
17 MR. MINUTOLI: It's fine.
18 Q. (By Mr. Wilson) Dr. Vancura, you do, in
19 fact, have a copy of that Exhibit 2016, your second
20 declaration to the '969 patent, before you, do you
21 not?
22 A. Yeah, I'm looking in the chat for that.
23 Should I just bring up the one I had from before?
24 Q. Yeah, I think that would be best. Just
25 for background, I just dropped it in the chat for

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1 the benefit of the court reporter, that document,
2 because I don't think she has it yet.
3 A. Sure.
4 The second or the first?
5 Q. Second, Exhibit 2016.
6 A. Okay.
7 Q. And if you go to -- first, I'll ask, do
8 you recognize this document?
9 A. Yes.
10 Q. It does, in fact, appear to be your -- a
11 declaration that you submitted in -- in
12 IPR 2023-00266; is that correct?
13 A. Yes.
14 Q. If you go to paragraph 63 of this
15 declaration.
16 Do you see you're addressing claim
17 construction there?
18 A. Yes.
19 Q. And you have a general understanding of
20 principles of claim construction, do you not?
21 A. Yes.
22 Q. And what, in your opinion, is relevant to
23 consider in conducting a claim construction
24 analysis?
25 A. Well, I think it just generally has to do

1 with the way terms are used and what they mean and
2 how they're defined in the specification, to the
3 extent there's some ambiguity.
4 Q. So the specification -- what about the
5 use of the claim terms in the claims themselves?
6 In your opinion, does that -- or is that
7 relevant to evaluation of a claim construction?
8 A. I have a vague recollection that this has
9 come up some point in my career.
10 I'm not an attorney. I would have to
11 say, it seems fair that the way the terms are used
12 in the claim construction would -- would also
13 count.
14 Q. And are you familiar with the concept of
15 the terms "intrinsic and extrinsic evidence" in the
16 context of claim construction?
17 A. I probably am, but if you could refresh
18 me, that would be fine.
19 Q. Well, I don't want to advise you here, so
20 let me -- let me refrain from doing that.
21 And I was just trying to identify terms
22 that -- that we can -- you know, groupings of
23 evidence that we can refer to with terms.
24 A. Sure.
25 Q. But it's not necessary for this -- for

1 this questioning, so...
2 A. Okay.
3 Q. You understand, though, that there is a
4 scale of relevance or persuasiveness with regard to
5 evidence with regard to the claim construction
6 determination.
7 Do you understand that?
8 A. I would have to say -- I'm not an
9 attorney, but just generally speaking, I would say
10 yes.
11 Q. It would be fair to say that the way that
12 the patent specification, for example, talks about
13 a claim term is probably of more relevance than the
14 way that something extrinsic to the patent, that's
15 not related to the inventor and may be in a
16 different technological field than something like
17 that, would have on the bearing of a claim term.
18 Does that make sense?
19 A. That's my understanding, yes.
20 Q. Turning to paragraph 63, and in
21 paragraph 63 to 68, you construe the term "cash-out
22 offer"; is that correct?
23 A. Yes.
24 Q. And turning to paragraph 68, would it be
25 fair to say that this paragraph contains your

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1 construction of that term, "cash-out offer"?
2 A. Well, I'd like to clarify what 68 says,
3 actually, in terms of -- there's a few paragraphs
4 here where I think what I wrote needs to be
5 clarified.
6 So I think we touched on this on Monday,
7 but now that we're on to this case, you know, we
8 can discuss it more fully.
9 In my view, a cash-out offer does
10 require, as it says here in paragraph 68, providing
11 funds to the player that are unrestricted, or for
12 discretionary use, in exchange for ending a wager
13 early.
14 That's the player's perspective. So it
15 requires providing that.
16 On the other hand, the system, you know,
17 that's disclosed in '969, you know, clearly
18 articulates the capability of providing that -- I'm
19 going to jump down a few paragraphs, if it's okay,
20 Andrew, so we can just discuss this up front here
21 in terms of -- of what's stated.
22 So I think it's 92.
23 What I stated is "My understanding is the
24 claimed 'cash-out offer' is generated and made to
25 'all of the tickets.'"

1 That is taught, but in rereading the
2 patent last week, prior to this, getting ready for
3 this deposition, I realized that -- and, frankly,
4 rereading this -- I realized that it's also taught
5 that it doesn't need to be done to all people.
6 For example, in paragraph 51 of this
7 declaration, I cite what I -- what I read in '969,
8 as I was preparing for this. And somewhat to my
9 horror, I cite it in here.
10 But it basically says, in one embodiment,
11 at any desired time -- I'm going to skip forward --
12 any desired number of players who remain eligible
13 for -- for a prize may be offered a buyout.
14 So -- so that is more correct than what I
15 put in paragraph -- able to be generated and made
16 for all the tickets. It's certainly taught that
17 it's generated for all the tickets.
18 But it's also taught that it may be -- it
19 may be made to any desired number of players that
20 remain eligible to win.
21 So -- and then the rest of that sentence
22 would be -- in my view is true, and just continues,
23 the funds received are for discretionary use. In
24 other words, it's actual cash; it's not restricted
25 in some way. You don't have to do something with

1 it.
2 Q. I see.
3 So -- and apologies, I should have
4 offered you an opportunity to correct or revise
5 your declaration testimony.
6 A. No worries.
7 I just wanted to clarify this or amend it
8 now, so...
9 Q. Okay. And so, just to be clear, where --
10 where in your declaration are you setting forth the
11 construction; and then where -- where -- what are
12 we changing?
13 A. Well, in my view, the cash-out offer, in
14 principle, is capable of being generated and made
15 to all tickets, right. It's clear -- in my view,
16 it's clearly taught. The cites are there.
17 But in my view also, and I -- the --
18 well, that would be the correct way of saying it.
19 It's -- it's not that it -- the claimed cash-out
20 offer is or must be or is required to be generated
21 and made in this way.
22 And I apologize.
23 Q. So, for example, in paragraph 68, where
24 you say the claimed cash-out offer requires
25 providing, and then in parentheses, you have "to

1 all active players," it's no longer your opinion
2 that -- that the cash-out offer requires
3 providing -- is provided to all active players;
4 rather, it's a subset of the players.
5 Is that correct?
6 A. My opinion is it's capable of providing
7 it to all the players, but there's specific
8 teaching in '969 that it doesn't need to be -- it
9 doesn't need to be provided to all.
10 Q. And this construction is of the term
11 "cash-out offer" as it appears in, for example
12 claim 1 of the '969 patent; is that right?
13 A. That's my understanding of what's meant
14 by a cash-out offer.
15 Q. And, I'm sorry, I'm just trying to get a
16 precise construction, and I understand that -- that
17 it may be difficult to do here.
18 But have you formulated a revised
19 construction?
20 I understand the -- the correction, and I
21 understand the disclosure of the -- that you're
22 pointing to in the '969 patent. But is there a
23 particular construction, then, that you are wishing
24 to replace this construction with?
25 A. Well, we alluded to this on Monday a

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1 little bit.
2 In my view, the cash-out offer, it
3 requires funds -- if you're -- from the player's
4 perspective, the funds must be unrestricted, or, as
5 stated here, discretionary.
6 From -- from the system perspective,
7 there's a ticket, or an e-ticket, that is issued
8 for the -- in this case, I think '969 refers to
9 sporting events. So there would be a ticket that
10 issues to that.
11 And to the extent that the cash-out offer
12 is generated and made and accepted, then there's
13 transference of ownership to those -- to the rights
14 associated with that ticket.
15 So it may -- if I'm cashing out, then,
16 from my perspective, I get my -- my money. That's,
17 you know, unrestricted to me, and I'm done.
18 But from the -- from -- from the system
19 perspective or from the ticket perspective, there's
20 now a new owner; there's new ownership rights
21 associated with that. And the event continues to
22 its conclusion.
23 I would also say that -- so that would
24 be, if you will, my -- my understanding or my
25 definition, if you will, of what -- what comprises

1 a cash-out offer.
2 And I think also what '969 teaches is
3 that the cash-out offer can be in the -- in
4 particular, the tickets can be generated to all
5 active players for the site. It need not be
6 submitted or made or transmitted or offered to
7 all -- to all players, but the offer amount can be
8 generated for all players.
9 That's without regard for what -- what
10 particular game state they're in. They don't have
11 to be winning. They don't have to be losing. They
12 just -- the ticket just still has to be active.
13 Q. Okay. You mentioned the concept of --
14 well, a few concepts in that answer.
15 But one of them is --
16 A. Yeah.
17 Q. -- that the -- from the system
18 perspective or ticket perspective that that ticket
19 is ongoing still, or still live.
20 Do you recall mentioning that?
21 A. Yes.
22 Q. But if we turn -- if you look at
23 paragraph 68, your construction requires ending a
24 wager early.
25 Do you see that?

1 A. Yes.
2 Q. So isn't -- well, strike that.
3 The concept of -- of the wager or the
4 ticket is still alive and just ownership of it has
5 transferred seems to be inconsistent with -- with
6 this part of your construction.
7 A. Well, exactly.
8 I'm trying -- I'm trying to -- and,
9 again, I apologize; I'm trying to clarify and amend
10 what's stated here.
11 But this paragraph 68 is from the
12 player's perspective. So the claimed cash-out
13 offer, you can read it as, requires providing funds
14 to the player for discretionary use, so for his use
15 or her use, in exchange for ending the wager. So
16 from the player's perspective, he ends the wager
17 early.
18 But the wager itself, the wagering event,
19 the rights to the ticket, in my view, what's taught
20 in '969, those continue. The only example cited,
21 and every example cited, speaks to that. It may be
22 purchased by the system operator. It may be
23 purchased by a third party. But someone now has
24 those rights that this player has exchanged those
25 rights for -- for money.

1 In the case of -- that would be in the
2 case of completely ending -- you know, the player
3 may also just do a partial sale, in which case,
4 the -- the player would preserve some rights, and
5 whoever acquired -- acquired the other part of that
6 ticket would -- would acquire those corresponding
7 rights.
8 Q. Okay. Sorry, I would like you -- I would
9 like to give the opportunity for you to propose,
10 you know, a new or different construction.
11 Are you able to do that?
12 A. I mean, other than what I did right now?
13 Q. Right.
14 I mean, it seems like we're discussing
15 sort of embodiments. And -- and unless I've missed
16 it, I haven't heard sort of a direct construction
17 of the term "cash-out offer" which is proposed
18 here.
19 A. Are you saying I should go offline and do
20 this, or are you -- do you want me to --
21 Q. No, I'm just asking if you're prepared --
22 if you have a construction, and if you're able to
23 testify as to it today.
24 A. I think I do.
25 I can try to articulate it one more time.

1 Q. I would appreciate that, and apologies if
2 I missed it before.
3 A. No, and I -- I apologize again for this.
4 So, in my view, cash -- well, let me back
5 up and say, in my view, what's taught in '969
6 versus what meant by "cash-out offer" in the
7 claims.
8 So, in my view, what's taught is the
9 cash -- there's -- when you -- when there's a
10 wagering event, someone wagers upon it, there's a
11 ticket, a ticket or an e-ticket. A ticket
12 represents some rights to the wager.
13 In whole or in part, that ticket may then
14 be sold in what's known as a cash-out offer. The
15 rights to all or part of that ticket may be sold.
16 It might be to the system operator; it might be to
17 another person.
18 And it can be in whole or in part, so
19 that's what's taught.
20 It can -- the amount of the offer is --
21 is generated, can be generated, for all tickets.
22 That's taught.
23 It doesn't necessarily need to be made to
24 all tickets, as -- as I cite here earlier that we
25 looked at.

1 But to the extent that a cash-out offer
2 is made, it's an offer that is for all or part of
3 this ticket.
4 The ticket doesn't go away. The game
5 does not get reset as a result of this. The event,
6 in other words, continues and concludes at some
7 point. But the rights to this ticket, in whole or
8 in part, are transferred.
9 The funds that are given are
10 unrestricted. It's cash. You can do nothing with
11 it; you can do whatever you want with it.
12 And what's also disclosed is that this
13 can be made across all tickets. And so, in
14 principle, the generation of an amount that's
15 across all tickets, then, in principle, that -- you
16 know, those tickets might be ahead; they might have
17 a positive expectation. They might be behind; they
18 might have a negative expectation. But, in
19 principle, the offer can be made to all of the
20 tickets.
21 So that's my understanding.
22 So in terms of the cash-out offer itself,
23 my thought process is this: I -- in terms of
24 what's in the specification, I look at, you know,
25 what is fundamental to the teaching -- this is the

1 way I approach it -- versus what is a design choice
2 or, you know, could be done in different orders and
3 things like that.
4 So I -- in my view, the fact that you get
5 unrestricted funds out is fundamental. It's all
6 that's taught. You know, it's -- it's -- anyway.
7 The -- the fact that it can be whole or
8 part continually is throughout the specification.
9 It might be claimed in whole; it might be claimed
10 in part, you know, a partial cash-out. But the
11 ability to do that at any given time seems to be
12 there.
13 The ability to generate an amount, a
14 cash-out offer amount, all tickets is explicitly
15 stated.
16 It doesn't need to be made. The offer
17 itself doesn't need to be made to all active
18 tickets, but the ability to generate it is there.
19 And then, again, this transference of
20 this ticket, to me, seems fundamental. That's all
21 that's ever taught. It's not like whether it's a
22 slot machine or whether it's a sporting event.
23 It's not that, if you accept the cash-out offer,
24 then the game ends.
25 Like in the slot machine example, there's

1 no example cited that, you know, you're one reel
2 away from winning this jackpot, and you decide to
3 sell, it doesn't say, well, the slot machine just
4 ends then. No, it says that you spin that last
5 reel, and whoever has the rights to it now will
6 receive those rights, win or lose.
7 And, you know, same would be true for a
8 sporting event.
9 So, to me, the fundamental parts of that
10 are the unrestricted funds; and the fact that
11 there's this transference of rights; and that the
12 underlying event, then, is finished to its
13 conclusion.
14 So that would be the short summary.
15 Q. Okay.
16 A. That was a long answer, sorry.
17 Q. And just looking at your claim
18 construction section, you know, paragraphs 63 to
19 68, you don't provide support for that
20 interpretation here, do you?
21 A. I think -- you mean that specific
22 interpretation?
23 Q. Yeah.
24 A. I'm not sure what you mean by that.
25 I mean, it talks about discretionary use,

1 which is the same as unrestricted, in terms of the
2 funds.
3 It talks about offer to buy out a ticket
4 holder or the price that will be offered.
5 Is that what you mean or...
6 Q. Yes.
7 So that's your -- it's your testimony
8 that that's your support for this new construction?
9 MR. MINUTOLI: Objection. Form.
10 THE DEPONENT: I -- forgive me, whether
11 it's here or elsewhere, in this declaration or
12 others, I think, you know, what I've said has --
13 has all been disclosed.
14 It might not be in this section.
15 Q. (By Mr. Wilson) Okay. So I think that,
16 you know, we'd be able to revise your declaration,
17 you know, particularly if you have a -- or redline
18 it, particularly if you have, you know, a direct
19 construction of cash-out offer ready to give.
20 Do you have -- I mean, I hate to ask it
21 again, but it would probably, you know, have to be
22 more direct and shorter than your previous answer.
23 But do you have a construction to propose
24 here?
25 A. I think my proposed construction would be

1 something -- well, I mean, if we -- if we want to
2 come off of 68, for example.
3 Q. Okay.
4 A. Then I would rephrase it as -- as
5 something like this: The claim cash-out offer,
6 from my understanding, requires providing funds to
7 the player for discretionary use in exchange for
8 ending a wager early.
9 And then something like, said wagering
10 event continues to its conclusion, and any rights
11 relinquished by the player are to the benefit of
12 the acquirer.
13 Something like that.
14 Q. Okay. And I understood there to be a
15 change as to the -- you know, to all active players
16 for --
17 A. Yeah, I think --
18 (Simultaneously speaking.)
19 A. Precisely.
20 Q. All the tickets that are still potential
21 winners.
22 So is there a revision to that part as
23 well?
24 A. I mean, instead of "is," it can say "may
25 be"; may be generated and made to all the tickets,

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1 and the funds received are provided.
2 Q. And you're referring to paragraph 92 or
3 68?
4 A. I was specifically referring to 92. I
5 thought you were directing me to that.
6 Q. Okay. Reviewing paragraphs 63 to 68, we
7 had mentioned at the top of the section, but you
8 thought that the claims may be a source of -- of
9 evidence that's used in interpreting the claim
10 terms.
11 Do you recall that?
12 A. Yeah, again, I'm not an attorney. I
13 don't know the answer to that. It seems reasonable
14 to me.
15 Q. And in paragraph 63 to 68, it would be
16 fair to say that you don't analyze how the term
17 "cash-out offer" is used in the claims, the
18 challenged claims, or the claims of the '969 patent
19 in rendering your construction?
20 MR. MINUTOLI: Objection. Form.
21 THE DEPONENT: I mean, I think I did, but
22 I don't -- I don't recall explicitly the answer.
23 Q. (By Mr. Wilson) And you don't see it
24 described here or explained here in paragraph 63 to
25 68, do you?

1 A. Well, are we referring to -- to what I'm
2 saying is the cash-out offer now?
3 Or are you referring to the text as
4 written?
5 Q. Yeah, let's -- let's imagine that we've
6 redlined your declaration with the new -- you know,
7 in the manner that -- that you just described in
8 paragraph 68, and then in paragraph 92.
9 But the remaining portions -- you know,
10 paragraphs 63 to 67 -- you don't provide an
11 analysis of how the term "cash-out offer" is used
12 in the actual claims of the '969 patent, do you?
13 MR. MINUTOLI: Objection. Form.
14 THE DEPONENT: I -- if you're asking do I
15 look to the claims themselves to help define what
16 "cash-out offer" means, I would say I don't, if
17 that's the question.
18 Q. (By Mr. Wilson) Yeah. Yeah. Thank you.
19 Also, in your claim construction section,
20 you don't contend that the '969 patent provides any
21 type of formal definition for the term "cash-out
22 offer," do you?
23 A. I would defer to what the '969 says about
24 itself. I'm sure it uses -- as we've discussed, I
25 mean, "cash-out offer," "cash-in offer," "buyout

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1 offer," it uses those terms somewhat
2 interchangeably. Perhaps someone -- depending on
3 the perspective of what's happening, from whose
4 perspective it's being told.
5 But the -- in my view, there's enough
6 there that, as I stated, the -- the two key
7 elements that seem to me are -- are not changeable,
8 that the -- you know, there's tickets with ticket
9 rights, and those rights are what's being
10 transferred in terms of a cash-out offer; they're
11 transferred to someone else, and the underlying
12 event concludes at some point.
13 And second of all, that the -- you know,
14 as implied by the word "cash," the cash-out offer,
15 you know, is -- is for -- is not restricted in
16 terms of -- I mean, I suppose the parties could
17 agree as they sell something, because there's a lot
18 of stuff discussed in '969 about, you know, parties
19 can agree to do this or that or whatever. But I
20 suppose it could be something other than cash.
21 But, I mean, explicitly, if it says
22 "cash-out offer," my read of '969 is it's cash.
23 Q. But that's not contained in any sort of
24 definitional statement in the '969 patent; is that
25 fair to say?

1 A. There's no one explicit statement saying,
2 I'm using cash-out offer in this way? Which I
3 understand some patents do do that.
4 If that's the question, I agree. I don't
5 think there's one single sentence or definition
6 saying, here's my definition.
7 Q. Paragraphs 63 to 68, you're not citing to
8 or relying on anything in the prosecution history
9 of the '969 patent or any family members in
10 rendering your construction of cash-out offer; is
11 that fair to say?
12 A. I recall in some of the prosecution
13 history, there is some discussion about some of the
14 prior references that the examiner found and
15 what -- you know, what's happening in the cash-out
16 offer.
17 But in -- in 63 to 68, I don't reference
18 those.
19 Q. I'd like to direct you to paragraph 93 of
20 your declaration. And I think this -- well, do you
21 see about -- one, two, three, four, five -- about
22 five lines down, there's a sentence that says it
23 starts "However, regardless what Schugar calls..."
24 Do you see that?
25 A. Yes.

1 Q. You say "However, regardless what Schugar
2 calls its 'banking process,' Schugar does not
3 disclose 'cash-out offer' as taught in the
4 '969 patent and properly construed, namely an offer
5 generated for all potential winners and payment in
6 discretionary funds."
7 Do you see that?
8 A. Yes, I do.
9 Q. Is this another -- well, let me ask, do
10 you stand by this statement?
11 A. This would be -- this would similarly be
12 amended.
13 Q. And the amendment here would be?
14 A. My view, the amendment here would be,
15 it's an offer -- I guess I would switch it around.
16 It would be namely -- okay.
17 So, namely, an offer -- you know, it
18 would say something like, namely, an offer to
19 purchase -- to purchase rights in and to an
20 underlying event, or something like that.
21 I'm kind of making this up on the fly, so
22 forgive me if it's a little off.
23 But, namely, an offer to purchase
24 ticketed rights to an underlying event from -- for
25 an active ticket, with payment in discretionary

1 funds.
2 And then there would need to be something
3 to the extent that the underlying event at some
4 point concludes. You know -- with -- with
5 resolution of the ticket, right.
6 Q. Okay. And so I noticed here that there
7 was no concept of multiple -- of offering the
8 cash-out offer to multiple players. Instead, it
9 was just for an inactive ticket.
10 Is that concept of multiple -- that the
11 cash-out offer must be made to multiple players
12 still -- still in your construction, or has that --
13 has that been stricken?
14 MR. MINUTOLI: Objection. Form.
15 THE DEPONENT: I think what's taught is
16 it can be made to any desired number of players.
17 So it could be all; it could be one; it could be
18 anything in between.
19 Q. (By Mr. Wilson) And do you have a copy
20 of claim 1 handy by any chance? It should be
21 Exhibit 1001 in the '969 patent case.
22 A. Yeah, I'll bring it up.
23 Q. And if you could turn to claim 1.
24 A. Yes.
25 Q. Do you see there, there's a "causing the

1 central server" to -- "server system to generate a
2 cash-out offer for the player."
3 Do you see that?
4 A. Yes.
5 Q. Would it be fair to say that claim 1, at
6 least, only requires generating a cash-out offer
7 for one player?
8 A. An event for one or more players; second
9 step, causing a wager corresponding to a player of
10 the one or more players; causing the central server
11 system to generate a cash-out offer for the player.
12 (Court reporter initiates discussion off
13 the record.)
14 THE DEPONENT: Yeah, I'm sorry about
15 that, Rebecca.
16 So are you asking is it -- if -- could
17 you rephrase the question one more time?
18 Q. (By Mr. Wilson) Would it be fair to say
19 that claim 1 requires generating a cash-out offer
20 to only one player?
21 A. In my view, no.
22 Q. Does claim 1 require generating a
23 cash-out offer for multiple players, in your
24 opinion?
25 A. Generating, or -- so the step of causing

1 the central server system to generate; or the step
2 of -- later down, causing the central server system
3 to transmit; or both?
4 Q. Well, let's start with the generating
5 stuff.
6 A. That's -- that's the distinction I was
7 drawing earlier between generating and making,
8 which I think is what is taught in that paragraph
9 that I cited in my -- earlier in my -- let me go
10 back to that, if I have it.
11 It's paragraph -- I'm referring to
12 paragraph 51, where I cite from the '969.
13 So it says "any desired number of players
14 who remain eligible for a prize."
15 So the generation is, you know, of active
16 tickets. And then there's a subset of that: Any
17 desired number of players who are eligible or who
18 still have active tickets can receive -- can -- it
19 says here "may be offered."
20 So that's the make the offer as opposed
21 to generating the offer itself, the amount of the
22 offer.
23 So, I'm sorry, back to your question
24 for -- so "causing the central server... to
25 generate a cash-out offer for the player."

1 Well, the way I read this claim, it's --
2 the method itself in the preamble is for one or
3 more players.
4 And then -- then you skip down a couple
5 steps to "causing a wager corresponding to a player
6 of the one or more players" that -- generally, my
7 understanding of "a player" is it can be one. It
8 doesn't necessarily have to be one.
9 But I'm not -- again, I'm not an attorney
10 in terms of claim language of "a."
11 But -- and then "causing the central
12 server" -- now it's -- now that you have a player
13 that has made the wager that is received by the --
14 you know, so on and so forth, now you're "causing
15 the central server... to generate a cash-out offer
16 for the player." So now you're referring to this
17 "a player" that was referred to earlier.
18 So, in my view, it's -- there's one or
19 more players. One or more of those have now
20 made -- make a wager that's received and
21 transmitted. And then you cause the central server
22 to generate a cash-out for -- for this player, the
23 player.
24 But it doesn't necessarily negate that
25 might be to more than this player. But the -- but

1 the cash-out offer is for the player that initiated
2 this wager.
3 It doesn't initiate.
4 Q. I think I understand.
5 So claim 1 doesn't exclude generating
6 cash-out offers for multiple players.
7 A. In my --
8 Q. Is that --
9 A. In my view, it does not.
10 Q. But it also -- but claim 1 also includes
11 generating a cash-out offer and transmitting that
12 cash-out offer to just one player; is that fair to
13 say?
14 MR. MINUTOLI: Objection. Form.
15 THE DEPONENT: In my view, it -- one
16 player would be included, but I would defer to the
17 language. For example, the central server
18 transmits the offer to the device, as opposed to
19 the player, but yes. I think the answer to what
20 you're asking is yes.
21 It doesn't preclude that would just be
22 one player. It would include one player.
23 Q. (By Mr. Wilson) Okay. I'd like to turn
24 to paragraph 94 of your declaration.
25 We talked a bit about the concept of --

1 of discretionary use. And here, you render an
2 opinion about discretionary use.
3 Do you see that?
4 A. Yes.
5 Q. And here, you say that "a POSITA would
6 understand 'discretionary use'" means that "no
7 restrictions or limitations are tied to the
8 cashed-out funds"; is that correct?
9 A. Yes.
10 Q. And discretionary use of cashed-out funds
11 is a requirement of your construction of the
12 cash-out offer, is it not?
13 A. Yes.
14 Q. And you draw a distinction between full
15 and unrestricted use of funds as -- is that
16 correct?
17 MR. MINUTOLI: Objection. Form.
18 THE DEPONENT: Are you asking -- what's
19 the distinction between?
20 Sorry.
21 Q. (By Mr. Wilson) I'm sorry.
22 You draw a distinction between
23 unrestricted use and restricted use of funds.
24 Would that be fair to say?
25 A. Yes.

1 Q. And you contend that the term "cash-out
2 offer" requires only unrestricted funds to be
3 offered; is that right?
4 A. In my view, yes.
5 Q. And that's distinguishable, in your
6 opinion, from the system of Schugar, correct?
7 A. Yes.
8 Q. And, specifically, in paragraph 105 of
9 your declaration, you contend that Schugar's
10 disclosed ability to bank equity in a wager is not
11 a cash-out offer as properly construed, because
12 "any requirement to pay for an additional wager
13 makes the purported cashed-out funds
14 non-discretionary."
15 Is that right?
16 A. I don't see where you're reading from
17 that, but that sounds right, yes.
18 Q. Do you see that last sentence of
19 paragraph 105?
20 A. I see it, yes.
21 Q. You say "Any requirement to pay for an
22 additional wager makes the purported cashed-out
23 funds non-discretionary"?
24 A. Yes.
25 Q. And, again, that term "discretionary" is

1 part of your construction of cash-out offer, right?
2 A. Yes.
3 Q. And it's part of your revised
4 construction of cash-out offer too; is that
5 correct?
6 A. I believe it was in the original, but,
7 yes, it is part of the revised as well, yes, that
8 term or a term like it.
9 Q. Can we turn back to paragraphs 63 to 68,
10 the claim construction section of your declaration.
11 Do you see in paragraph 63, you cite to
12 an Exhibit 2017?
13 A. Yes.
14 Q. And do you know what that exhibit refers
15 to?
16 A. If I recall, I think that's Crevelt's
17 deposition.
18 Q. Do you have a copy of that handy?
19 A. Yes.
20 Shall I pull it up?
21 Q. Yeah, please do.
22 A. Okay.
23 Q. Do you see you cite to page 14, lines 2
24 to 5, of that Exhibit 2017 in paragraph 63 of your
25 declaration?

1 A. Yes.
2 Q. And you state that "Petitioner's expert
3 stated during his deposition that the definition of
4 'cash out' that he used during his declaration's
5 analysis was 'providing funds to the player for his
6 discretionary use.'" [as read]
7 Do you see that?
8 MR. MINUTOLI: Objection. Form.
9 THE DEPONENT: Yes.
10 Q. (By Mr. Wilson) And you cite to that
11 same Exhibit 2017 in paragraph 68 of your
12 declaration.
13 Do you see that?
14 A. I cite to -- I cite to this area?
15 Is that what you're asking?
16 Q. Yeah, you cite to the same portion,
17 page 14, at lines 2 to 5, of the Crevelt deposition
18 transcript --
19 A. Yes.
20 Q. -- in paragraph 68.
21 Do you see that?
22 A. Yes, I do.
23 Q. Did you read all of Mr. Crevelt's
24 testimony?
25 A. I did, at least a preliminary form of it,

1 yes.
2 Q. Do you know whether the '969 patent ever
3 uses that term, "discretionary"?
4 A. I don't believe it does.
5 Q. Isn't it true that the only source that
6 you cite to here that uses that term,
7 "discretionary," is Mr. Crevelt's cross-examine
8 deposition testimony, Exhibit 2017?
9 A. Is it my understanding that -- that
10 he's -- that -- that "discretionary" is only used
11 by Crevelt and not by the -- the -- the actual
12 '969?
13 Q. Yes, and that it's the only source that
14 you cite to for that word, "discretionary," in your
15 claim construction section?
16 A. That is correct; that's my understanding.
17 Q. Do you know what Mr. Crevelt was
18 referring to when he used that term,
19 "discretionary"?
20 MR. MINUTOLI: Objection. Form.
21 THE DEPONENT: I'm -- yeah, I'm -- as I
22 think I may have alluded to earlier, I mean,
23 "discretionary," to me -- in gaming, we would use
24 "unrestricted" versus "restricted."
25 So I don't think "discretionary" is a

1 term of art. I'm using it because that's the term
2 he used.
3 To me, "discretionary" just means it's at
4 your discretion. You can do what you want.
5 Q. (By Mr. Wilson) And as you put it below
6 in your declaration, "Any requirement to pay for an
7 additional wager makes the purported cashed-out
8 funds non-discretionary."
9 Do you recall that section of your
10 declaration?
11 A. Yes.
12 Q. And it's your opinion that that's what
13 Mr. Crevelt was referring to as well; is that
14 right?
15 A. Well, I mean, in -- in my cite here, it
16 says his answer is if you're "providing funds to
17 the player for his discretionary use." So he's
18 using it in the sense of it's the player's
19 discretion.
20 And then he says, "whether it's for
21 another wager or something else, yes, that would be
22 a cash-out."
23 So, to me, it's clear he's using it that
24 way.
25 Again, so I'm -- when I say

1 "discretionary," I think the term of art would be
2 "unrestricted."
3 And when he says -- or when I say
4 "non-discretionary," or he does -- I'm sorry; I
5 forgot the question -- but that would refer to
6 "restricted."
7 Q. And it's your opinion that Mr. Crevelt
8 had that same distinction in my mind between
9 "without restriction" and -- well, strike that.
10 A. Well, it...
11 Q. Do you know if the term "unrestricted" is
12 in the '969 patent?
13 A. I would be speculating, but I don't
14 believe it is.
15 I'm not sure though. I would say no.
16 Q. Is it your opinion that Mr. Crevelt also
17 understood that any requirement to pay for an
18 additional wager would also make funds
19 non-discretionary?
20 MR. MINUTOLI: Objection. Form.
21 THE DEPONENT: I would need to reread
22 what he says. Let me just look at it here.
23 Well, he seems to be somewhat
24 inconsistent, I guess, is what I would say.
25 Q. (By Mr. Wilson) Does Mr. Crevelt

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1 understand -- well, strike that.
2 Is it your opinion that Mr. Crevelt used
3 that term, "discretionary," to also describe the
4 situation where the funds were restricted to only
5 allow the user to place additional wagers?
6 MR. MINUTOLI: Objection. Form.
7 THE DEPONENT: That seems to be what he's
8 saying later. That's why I say it's somewhat
9 inconsistent.
10 I'm not sure.
11 Maybe he misunderstood the question. I
12 don't know.
13 I mean, he seems to be inconsistent
14 with -- with his answers.
15 Q. (By Mr. Wilson) So it would be fair to
16 say that Mr. Crevelt's testimony, in total, does
17 not support the meaning that you ascribe to it?
18 MR. MINUTOLI: Objection. Form.
19 THE DEPONENT: Well, I mean, he seems to
20 use the last -- the -- hang on, one more here.
21 Sorry.
22 He seems inconsistent. The first answer,
23 it seems to me, he's -- he uses "discretionary" in
24 the way that "unrestricted."
25 In his subsequent answers, he seems to

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1 say -- like, you know, there's a question, "the
2 funds would be discretionary, is what you're
3 saying?"
4 And he says, "As to how he actually uses
5 them on one wager, yes."
6 So he seems to be using "discretionary"
7 in a lesser form than completely unrestricted.
8 Q. (By Mr. Wilson) So he contemplates --
9 Mr. Crevelt, that is -- that there may be some
10 restrictions on discretionary funds, and they would
11 still be considered discretionary; is that fair to
12 say?
13 MR. MINUTOLI: Objection. Form.
14 THE DEPONENT: I would say yes.
15 Well, at least for some of his answers,
16 yes.
17 Q. (By Mr. Wilson) And do you disagree with
18 Mr. Crevelt in that?
19 A. Again, I would say, to me,
20 "discretionary" -- again, as I stated earlier, I
21 don't believe it's a term of art. We would use the
22 term "unrestricted."
23 I use them interchangeably, because
24 "discretionary" to me means you have discretion;
25 there are no restrictions, there is no limitations

1 on what you can do.
2 Q. Would it be fair to say that
3 Mr. Crevelt's use of that term, "discretionary," in
4 other sections of his deposition transcript is
5 inconsistent with the meaning of "discretionary"
6 that you applied in this claim construction?
7 A. I would say he's -- like I stated
8 earlier, I think he's somewhat inconsistent, or
9 perhaps he didn't understand the questions as
10 posed. He either didn't understand it or he's --
11 he's inconsistent.
12 My use -- again, I would just say, my use
13 of "discretionary" is "unrestricted." And whatever
14 Mr. Crevelt, you know, testified to is not relevant
15 to my conclusions.
16 I'm not sure why he chose the word
17 "discretionary" anyway, but I adopted it because it
18 was a term that he used.
19 Q. So when you say he's inconsistent, you
20 mean he's also inconsistent with how you're
21 interpreting "discretionary"; is that correct?
22 A. I would say that his first answer is
23 consistent, how I used "discretionary" that I cite
24 to.
25 But in -- in reviewing it now with you

1 here, it appears to me that he's inconsistent with
2 himself, inconsistent with me, on some of his
3 subsequent answers.
4 Q. In your opinion, is Mr. Crevelt's
5 understanding of the term "discretionary" relevant
6 to the meaning of "cash-out offer"?
7 A. His meaning or my meaning?
8 Q. Is Mr. Crevelt's understanding of the
9 term "discretionary" relevant to the meaning of
10 "cash-out offer" as recited in the claims of the
11 '969 patent?
12 A. I would have to say, I think his first
13 answer is consistent. His says it's "for another
14 wager or something else," so, you know, that's
15 discretionary, right.
16 But elsewhere, he's inconsistent with
17 himself. And so I would say his -- his two
18 subsequent answers, or however many there are -- I
19 think it's two, or thereabouts -- seem to be
20 inconsistent with his earlier answer and, I would
21 say, are inconsistent with how "cash-out offer" is
22 used in '969.
23 Q. (By Mr. Wilson) Okay. I'll have you
24 turn to paragraph 18 of your declaration.
25 (Court Reporter initiates discussion off

1 the stenographic record.)
2 MR. WILSON: Dr. Vancura, would you like
3 to take a break?
4 THE DEPONENT: Sure.
5 (Recess taken.)
6 (Steve Kellner and Matthew Middleton are
7 present in the Zoom Web conference.)
8 MR. WILSON: Back on the record.
9 Q. (By Mr. Wilson) Dr. Vancura, any -- I
10 just want to confirm, no conversations with counsel
11 of patent owner at any intervening time?
12 A. That's correct.
13 Q. One of the points that you had been
14 describing is this concept of a transference of a
15 ticket involved in the cash-out offer term, or your
16 construction thereof.
17 Do you recall that?
18 A. Yes.
19 Q. And we had talked about the original
20 construction. There was an idea of ending a wager
21 early, but you had explained that that's in terms
22 of the -- of what the end user sees.
23 Do I have that correct?
24 A. That is correct.
25 Q. So the construction of cash-out offer

1 that you're proposing requires that that ticket or
2 that wager remain active, remain alive; just that
3 it be transferred to some -- whether it be a
4 third party, or whether it be an operator or the
5 house; is that correct?
6 A. Well, I think the offer would only be
7 made to an active ticket. So if the ticket has --
8 like in a multi-leg wager, if you have to get them
9 all right, let's say a parlay, and, you know, the
10 first game out of the chute, you get wrong, that's
11 not an active ticket anymore. So there wouldn't be
12 any offer made for that ticket. There wouldn't be
13 any exchange of rights on that ticket, because it's
14 worthless.
15 So, yeah, so what you're saying is right
16 insofar as the ticket is active at the time of
17 the -- you know, the offer being made and accepted.
18 Q. And it would remain active. Just
19 ownership of that ticket would -- would change; is
20 that correct?
21 A. Yes, that's my understanding.
22 Q. And that's required under your
23 construction of cash-out offer; is that right?
24 A. I'm trying to think if there's any
25 exceptions. I can't think of one.

1 I believe it's required. I mean, it's --
2 it has to be an active ticket.
3 I believe that's correct, yeah.
4 It's -- I mean, it's -- it's fair to say
5 it's active at the time it's -- it exchanges -- it
6 changes hands. And, you know, the ticket may
7 ultimately lose, right. I mean, the ticket may
8 ultimately become inactive, because if it's a
9 parlay and, I don't know, I get the first three
10 right, and I sell it to someone, and I need to get
11 three more right, and I get the fourth one right,
12 and the guy loses -- the guy that now owns the
13 right loses --
14 (Technical difficulty; Remote Connection
15 lost.)
16 THE DEPONENT: So even though the
17 sixth -- the sixth one didn't come about, that's --
18 that's the way the parlay works. That's the rule
19 of the game.
20 So I think -- yeah, I think I'm agreeing
21 with you. I'm trying to think of exceptions, but I
22 don't believe there are any.
23 Q. (By Mr. Wilson) So if the ticket were to
24 remain -- or, I'm sorry.
25 If a ticket were to be extinguished --

1 you know, not just from the perspective of the
2 ticket holder, but if the ticket itself were to be
3 extinguished after the cash-out offer was accepted,
4 that would not be included under your
5 interpretation of cash-out offer?
6 A. I'm trying to understand the nature of
7 the question.
8 You mean like the original ticket is not
9 issued a new ticket number that has the same rights
10 or --
11 Q. Yeah, let me rephrase and be a little bit
12 more precise.
13 So if a ticket were to be extinguished or
14 terminated -- and strike that. Let me restart
15 again.
16 If an active ticket were to be
17 extinguished or terminated as a result of accepting
18 the cash-out offer, that would no longer be -- that
19 would not be included in your interpretation of a
20 cash-out offer, right?
21 A. Well, I mean, it might be equivalent to
22 extinguish the ticket and then immediately initiate
23 a new ticket under the same exact terms. That
24 would be equivalent to just keeping the ticket.
25 Also, the other example I can think of is, if I

1 sell 50 percent of my ticket, it's very possible
2 that my one ticket may reissue as two. But the --
3 the point is, the rights of the ticket have not
4 been eliminated, the rights associated with the
5 ticket.
6 So, you know, whether or not you --
7 whether or not my one ticket retains its original
8 identity and is now worth 50 percent because I sold
9 half, I mean, to me, that would be equivalent to
10 reissuing a new ticket.
11 Does that answer your question?
12 Q. Yeah, that's helpful. Thank you.
13 Dr. Vancura, you're aware of the general
14 concepts and differences between anticipation and
15 obviousness grounds, are you not?
16 A. Yes.
17 Q. And anticipation requires that an
18 invention be disclosed in the prior art as it's
19 recited in the claims; is that right?
20 A. Yes, I believe so.
21 Q. Are you also aware that express
22 disclosure of a claimed invention is not required
23 under an obviousness analysis?
24 MR. MINUTOLI: Objection to form.
25 THE DEPONENT: The -- I mean, my -- my

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1 understanding of -- I'm sorry.
2 Could you repeat the question?
3 Did you move on to obviousness?
4 Q. (By Mr. Wilson) Yes. Yes.
5 A. Oh, then yes.
6 Q. The question was just that express
7 disclosure is not required --
8 A. Yes.
9 Q. -- in an obviousness analysis?
10 A. I thought you were talking about
11 anticipations.
12 Q. And regarding obviousness, an obviousness
13 analysis allows for some differences between the
14 claimed invention and the prior art, or requires
15 showing that the subject matter as a whole would
16 have been obvious to a POSITA at the relevant time.
17 Does that sound right to you?
18 MR. MINUTOLI: Objection. Form.
19 THE DEPONENT: Sounds right.
20 Q. (By Mr. Wilson) Can we turn to
21 paragraph 92 of your declaration.
22 Do you see the title of that section?
23 And, again, this is -- yeah, this is
24 Exhibit 2016, your second declaration to the '969
25 patent case.

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1 A. I'm on the wrong --
2 Q. IPR 2023-00266.
3 A. I apologize, I'm on the wrong tab here.
4 This is the second declaration for '969?
5 Q. Yes.
6 A. Let me go down to 92.
7 Okay.
8 Q. Do you see the title there, it says
9 "Schugar Fails to Disclose 'Cash Out Offer' as
10 Claimed When Properly Construed"?
11 A. Yes.
12 Q. And, specifically, it says "Schugar Fails
13 To Disclose," only, right.
14 Do you see that?
15 A. I do.
16 Q. In paragraph 109, which I believe is at
17 the end of this subsection, you say "The record
18 shows that Schugar, even if combined with DeWaal,
19 fails to disclose 'cash-out offer' as claimed when
20 properly construed."
21 Do you see that?
22 A. Yes.
23 Q. So it's your opinion that neither Schugar
24 nor DeWaal individually discloses a cash-out offer
25 under your construction; is that correct?

1 MR. MINUTOLI: Objection. Form.
2 THE DEPONENT: Yes.
3 Q. (By Mr. Wilson) But you don't render an
4 opinion what the references teach or suggest to a
5 POSITA, do you?
6 A. I'd have to go back and look and see.
7 Q. Yeah, if you need to refresh your
8 recollection.
9 A. Let me just take a second.
10 Q. Sure.
11 A. More than a couple.
12 I mean, in paragraph 94, I -- I reference
13 a POSITA. That's with regard to the discussion we
14 had earlier.
15 Q. And is that interpreting the teachings of
16 Schugar?
17 A. Oh, sorry.
18 Let me just -- let me just go back.
19 I'm sorry, what paragraph was that?
20 94.
21 Q. Yup.
22 A. I -- I would say yes.
23 I mean, it's not -- I don't think Schugar
24 uses -- are discretionary either, but I think what
25 he teaches, just that -- what I'm saying here and

1 what I conclude.
2 Q. And specifically conclude that "full and
3 unrestricted cash-out as claimed is vital to the
4 innovation of the '969 patent"?
5 Or another conclusion?
6 A. Where are you now?
7 Q. Still 94.
8 A. Oh, no, I was just -- just -- just --
9 well, I mean, to me, full -- no, that's not related
10 to Schugar, per se.
11 That's my opinion, though.
12 Q. Let me put it this way: You don't, in
13 your declaration in paragraphs 92 to 109, render an
14 opinion that Schugar does not teach or suggest to a
15 POSITA a cash-out offer, do you?
16 A. I'm not sure I understand the question.
17 I don't think Schugar -- I don't think he
18 discloses and I don't think he teaches a cash-out
19 offer as found in '969.
20 Q. And where, specifically, do you address
21 what a POSITA would have understood from the
22 disclosures of Schugar beyond what's expressly
23 disclosed by Schugar?
24 A. I don't know that I do.
25 Q. Okay. I'd like to change gears again.

1 Do you recall that we previously -- and
2 this was on Monday -- but previously discussed what
3 you considered as the time of the invention for
4 purposes of rendering your opinion in these cases?
5 Do you recall that?
6 A. Yes.
7 Q. And that was about the 2012 time period;
8 is that right?
9 A. Yes.
10 Q. Are you aware of any third-party sports
11 wagering information services that would have been
12 available as of that 2012 time frame?
13 A. Not offhand.
14 My guess is there probably were some.
15 Q. And do you know whether Mr. Crevelt
16 testified as to the existence of any such services
17 at the relevant time?
18 A. As I sit here right now, I don't recall.
19 Q. Can we turn to paragraph 113 of your
20 declaration?
21 A. The second declaration?
22 Q. Yeah, sorry, the Exhibit 2016, second
23 declaration in the '969 patent case.
24 A. Okay. Yeah.
25 Oh, I guess the answer to your prior

1 question, I think -- in one of these declarations,
2 I -- there were some references or citations
3 that -- that -- you know, like the -- I think we
4 discussed the -- oh, I don't know what it was
5 called, Bet Angel or something like that, with
6 regard to that affair.
7 But, again, I don't remember the exact
8 question that you asked, but that's -- you know,
9 that's with regard to its sports exchange.
10 Q. Okay. I appreciate that.
11 A. Yeah, and that was prior to the priority
12 date.
13 Q. I didn't mean to catch you off guard
14 without context.
15 A. That's okay. It just occurred to me,
16 so...
17 Q. So back to paragraph 113, at the bottom
18 of that paragraph, do you see that you say
19 "However, when looking at the hardware of both
20 Schugar and DeWaal, it is clear that neither
21 contemplates a system with a central server having
22 the ability to monitor an 'external sporting event,
23 like horse racing or football.'"
24 Do you see that?
25 A. I do.

1 Q. You don't dispute that Schugar teaches
2 wagering on sports, do you?
3 A. No.
4 Q. And here, you're just saying that Schugar
5 doesn't contemplate monitoring an external sporting
6 event, right?
7 A. Yes.
8 Q. And what did you mean by "external" as
9 you have it here?
10 A. Well, I mean, Schugar, in this --
11 you know, in his disclosure of the sporting events
12 refers to -- well, he's -- he's -- he's basically
13 teaching -- it's in the section of, you know,
14 taking an existing wager, and being able to take
15 part of those funds associated with that wager in
16 order to place another wager.
17 And he's referring, in this section, to
18 the use of -- I believe it's either a handicapper
19 or a pari-mutuel are the examples he gives for how
20 you would basically determine the probability of
21 the first wager, you know, coming to pass, or the
22 second one that you're going to wager on now.
23 And so, you know, he gives an example of
24 baseball, and I think it's Yankies/Braves. And he
25 gave an example of football. I think it's, I don't

1 know, Patriots/Giants or something. And so he
2 says, you know, you can use a handicapper or you
3 can use a pari-mutuel.
4 And my issue is, a handicapper,
5 you know -- I don't know how you're going to tie in
6 to a handicapper that's sitting there next to you.
7 Are you just going to ask him, what are the current
8 odds; what do you think -- what do you think the
9 chance is right now that -- that the Patriots will
10 win this game?
11 You know, or a pari-mutuel, and I --
12 pari-mutuel to me is a very, very odd choice for
13 Schugar -- Schugar to include there. I'm not aware
14 of a pari-mutuel wager on a sporting event between
15 two football teams or two baseball teams, period.
16 That's always a house bank situation with fixed
17 odds. The odds may change, but at the time you
18 make the wager, the odds are fixed.
19 So to -- you know, to -- to kind of go in
20 that direction, that you can use a pari-mutuel to
21 do this, it's just a really odd choice to me. It's
22 not -- it's almost as if he's not familiar with
23 sports wagering.
24 Like I said, I'm not familiar -- I'm
25 familiar with pari-mutuel, not for head-to-head

1 matchups of a particular sporting -- or sport. So
2 I find that very odd.
3 And so when I consider that in terms of
4 those are -- those are the sources he would want or
5 teach, that he would use, then I have to ask
6 myself, well, how do you -- how does -- how does he
7 get to that information?
8 Well, if he's -- I don't know how you
9 hook in, you know, via a central server to a
10 handicapper. I just don't know how you interface,
11 unless he's a cyborg.
12 Second problem, there are no pari-mutuels
13 on a given football game or baseball game, to my
14 knowledge. So how do you hook into those?
15 So the only other option is, you build
16 your own, you know, where he would build his own
17 pari-mutuel system to try to create a market that
18 doesn't exist right now in sports wagering.
19 So that's why this is kind of written the
20 way it is.
21 That may be a long-winded answer, but...
22 Q. So that term, "handicapper," is it your
23 understanding that typically refers to a human?
24 A. I think so.
25 When I read it, that was my take on it.

1 Q. Are there any -- are you aware of any
2 electronic handicapping services?
3 A. Well, I mean, I'm sure there are now. I
4 don't know back in 2012. But, you know, I mean,
5 ESPN now, if you just go visit their site, will
6 give you their -- their modeled, predicated
7 probability of winning for a particular game in
8 progress.
9 Q. And is that -- is that what handicapping
10 refers to, is providing the odds or probabilities?
11 A. To me, handicapping is kind of a general
12 term. It can -- it can refer to, you know,
13 analyzing the probability of a team winning or
14 covering a point spread.
15 It can also, at the same time, in
16 conjunction with that, refer to which side you
17 should be betting on that. In other words,
18 you know, I -- I've evaluated that, I don't know,
19 the Giants have a 50 percent chance of winning, so
20 if I'm offered plus 120, I should take that, for
21 example.
22 Kind of a general term that -- it does
23 encompass what you said.
24 Q. Are pari-mutuel pools common for any --
25 any sports?

1 A. Well, I would say they are common for
2 horse racing, for example, which is sometimes
3 distinguished from a sport. Like a racing sports
4 book, you have a race part, and you have a sports
5 part.
6 They can be used, for example, on futures
7 betting. Like if I'm going to bet who's going to
8 win the Stanley Cup this upcoming year, you can use
9 a pari-mutuel system to -- to move the odds. But,
10 generally, that's not the way sports books are set
11 up.
12 So if I were to bet on the Golden Knights
13 right now to win the Stanley Cup -- I don't know
14 what their odds are; let's say 4-to-1 -- I would
15 get 4-to-1, and it doesn't matter how much money
16 came in after me, you know, for or against them. I
17 would be locked in at 4-to-1. I get that fixed
18 odds.
19 Pari-mutuel, the odds are going to
20 fluctuate until the event goes off or your until
21 you close betting.
22 So I may think I'm going to get 4-to-1,
23 but if a lot of money comes in on the Golden
24 Knights in the next, you know, three months or
25 whatever, I may end up with 2-to-1.

1 So there's a distinction there in terms
2 of how the -- how -- whether you're locked in or
3 not as a bettor in -- in -- with respect to odds.
4 Q. Were there known betting services at the
5 time of the invention that offered pari-mutuel
6 betting?
7 A. Not that I'm aware of.
8 Like I said -- I mean, not that I'm aware
9 of. I've been betting sports many, many years.
10 Q. If you turn to paragraph --
11 A. Sorry, specifically, I just want to say,
12 it's specific to like a head-to-head game,
13 you know, like -- like the two examples that
14 Schugar gives. I'm not aware of any pari-mutuel
15 betting on that situation, Team A against Team B.
16 Q. I see.
17 But outside of a head-to-head sports
18 competition, are you aware of any pari-mutuel
19 betting services?
20 A. I mean, it's been used, I think,
21 historically on horse racing. I assume it's the
22 same for dog racing and, you know, some of those
23 other, you know, animal sports events or something
24 like that, where you have multiple entrants or
25 multiple participants in -- you know, that are

1 going to finish an event, and one is going to win,
2 and so on and so forth.
3 But with respect to sports proper, I'm
4 not aware.
5 Q. So when you say "external" in that
6 paragraph --
7 A. Yes.
8 Q. -- paragraph 113, when you say "external
9 sporting events," do you mean external sporting
10 event or external information, betting information
11 service?
12 MR. MINUTOLI: Objection to form.
13 THE DEPONENT: I think, in this
14 particular sentence, the way I'm using it, I mean
15 the sporting event.
16 But, by extension, I mean, you know, in
17 my view, Schugar and DeWaal are -- whether it's the
18 sporting event proper or something related to that,
19 I don't -- it's -- it would be the same answer.
20 Q. (By Mr. Wilson) The system of Schugar
21 does offer sports wagering, right?
22 A. By "system," do you mean his method or
23 his teaching, or do you mean there's some hardware
24 required?
25 Because I -- in my read of Schugar, I --

1 when he starts discussing sports wagering, in my
2 view, it's predominantly a method. And when he
3 refers to a handicapper or a pari-mutuel -- and
4 we've already discussed pari-mutuel, how that's not
5 really applicable here.
6 So I -- I literally think he's -- he's --
7 you could -- the way he's thinking about it -- and
8 I don't want to be a mind-reader.
9 But my view, when -- when I read that,
10 and as I reread, it just strikes me as somebody
11 just looking over towards an odds board and asking
12 someone. It doesn't strike me as a complete system
13 for doing this.
14 Q. Fair enough.
15 To offer sports wagering, though,
16 wouldn't you need some capacity to determine, say,
17 the winner or loser of that event?
18 A. After the event is over?
19 Q. Any time.
20 A. To offer a sports wager, you would need
21 some way to resolve the wager at the end, I would
22 say yes.
23 Q. And wouldn't that include some
24 monitoring, at least, of that -- you know, in this
25 example, the limited data point of the outcome

1 of -- of the game?
2 A. Well, I mean, I wouldn't say that's
3 monitoring. I would say that's -- at some point
4 you need to determine who won the game.
5 Determining.
6 Q. So fair to say that Schugar contemplates
7 at least determining the outcomes of its sporting
8 events?
9 A. I -- I don't even know if he goes that
10 far. I could relook at it right now. I really
11 think it's mostly a methodology.
12 He's not -- he's not really concerned
13 with resolving the wager at the end. He's talking
14 about stuff you can do during a game to place an
15 additional -- in order to, just the language he
16 uses, make an additional wager.
17 Q. Fair enough.
18 If a POSITA, though, had the -- the
19 Schugar reference --
20 A. Yes.
21 Q. -- would he or she not have an
22 understanding that there would be some need to
23 monitor the sporting event in order to conclude the
24 wager?
25 A. Well, I -- I don't think Schugar uses

1 "monitor."
2 I mean, I -- you know, the -- the -- the
3 embodiment in which he discusses keeping track of,
4 for lack -- for lack of a better word, or what
5 happens during a game is -- is -- I believe is
6 the -- in the embodiment of a conditional wager,
7 where he's teaching that you can make this
8 conditional wager prior to the game beginning. And
9 if the condition is met during the game, then that
10 wager will become active.
11 But his teaching with regard to this
12 tracking the game or -- I can't remember the exact
13 word he uses; I don't believe it's "monitoring" --
14 is that, in his actual flowchart, he has that you
15 check for the condition as to whether or not it
16 occurred after the game is over.
17 So it's not real time. I wouldn't
18 characterize it as monitoring. It's almost like
19 you're just checking or determining once the game
20 is done, did this condition occur. Like, for
21 example, you know, was -- I don't know -- were the
22 Golden Knights up by two goals after two periods.
23 Q. I think I'd like to give you an
24 opportunity -- you know, you recall you proposed an
25 amendment to a construction earlier today?

1 Do you recall that?
2 A. Yes.
3 Q. And I just wanted to share with you a
4 markup that I tried to -- tried to reflect that
5 amendment sort on the fly. And I just want to make
6 sure that you are okay with that, or if you have --
7 you know, make sure that that is, in fact, your
8 amendment to the claim construction section.
9 So would it be okay if I shared with you
10 what we'll call Exhibit D? And I'll upload to the
11 chat, I think, after we finalize it here.
12 But why don't I go ahead and share it
13 with you, and you can revise it.
14 (Exhibit D was marked for identification
15 by the Court Reporter and is attached hereto.)
16 Q. (By Mr. Wilson) Dr. Vancura, are you
17 able to see that?
18 A. Yes.
19 Q. And you see this is an excerpt of your
20 Exhibit 2016 from the -00266 case?
21 A. Yes.
22 Q. Do you see that?
23 That's your claim construction section,
24 right?
25 A. Yes.

1 Q. And we discussed certain amendments to
2 paragraph 68, and I just want to make sure that we
3 reflect accurately what was said.
4 So I'll give you a second to read, and
5 then I'd ask you --
6 A. I think -- yeah, I think that is -- I
7 think that is what I said. It was kind of on the
8 fly, so I'm going to need to think about it. That
9 was a good job of capturing it.
10 I mean, that's pretty close. I think
11 it's not exactly -- you know, now that I look at
12 it, it's not exactly my position.
13 So I would say, provided that we
14 understand "discretionary" means "unrestricted,"
15 that's fine.
16 "In exchange for ending a wager early."
17 I would say something like "said wagering event
18 continuing and any rights," and get rid of "to its
19 conclusion."
20 "And any rights relinquished by the
21 player are to the benefit of" -- yeah, I think
22 that's right.
23 I think "relinquish" should have a "n"
24 before the "q"; and acquirer probably -- that
25 second "i" doesn't belong.

1 Q. Any other changes?
2 A. That looks correct to me.
3 Q. All right. Thank you for that.
4 MR. WILSON: At this time, I'd like to
5 propose, you know, a brief break, if you'd be okay
6 with that, Dr. Vancura.
7 THE DEPONENT: Sure.
8 MR. WILSON: Maybe five minutes?
9 THE DEPONENT: Sure.
10 (Recess taken.)
11 MR. WILSON: Back on the record.
12 THE DEPONENT: Sorry, Andrew, to
13 interrupt.
14 Can I just say something real quick?
15 Q. (By Mr. Wilson) Yeah.
16 A. The definition we just came up with,
17 about a minute after we got off, I said, oh, it's
18 not right.
19 Because if a player only wants to sell a
20 portion of his ticket, then the wager has not ended
21 for him.
22 In other words, that "ending the wager
23 early" phrase or clause or whatever, that would
24 only be applicable from the player's perspective if
25 he sold his entire interest.

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1 Q. Got it.
2 Okay. And I actually, also, with the
3 help of my colleagues listening in, noticed an
4 issue with two "ands."
5 A. Oh.
6 Q. So fair if I remove the second "and," I
7 assume?
8 A. (Deponent nods head.)
9 Q. Okay. And then did you have a specific
10 revision -- first of all, can you see my screen?
11 A. Yes, I can.
12 Yes, I can; I can see it fine.
13 I would say probably something like "in
14 exchange for relinquishing" -- to use the language
15 we already have there -- "relinquishing at least a
16 portion of" -- yeah, "in exchange for" -- instead
17 of "ending the wager early," saying something like
18 "in exchange for relinquishing at least a portion
19 of the" -- of a -- of a wager -- "of a wager's
20 rights," or something like that.
21 "In exchange for relinquishing a portion
22 of the rights associated with a wager upon a
23 wagering event," if you want to be precise.
24 Q. "Relinquishing a portion of the rights
25 associated with the wager"; is that right?

1 A. "In exchange for relinquishing at least a
2 portion of the rights associated" -- this is way I
3 view it -- "of the rights associated with the
4 wagering event."
5 Or "at least a portion of the wager
6 rights" -- I don't know -- "or ticket rights".
7 I don't know what the right word is
8 there. I don't want to -- that's the essence of
9 it.
10 Q. Okay. And then everything past this
11 "ending of a wager early," does this remain, or is
12 this striked?
13 A. "Ending the wager early" would go away.
14 That would be applicable if -- to the player if you
15 sold the entire rights. But, like I said, as soon
16 as we kind of hung on and went on gap there, the --
17 I realized that, you know, if you only sold
18 partial, then it's not applicable, so...
19 And I'm just making this general, Andrew.
20 I don't know if there's specific claim language
21 that might read on not that or is that. But
22 it's -- generally, that's what cash-out offer is.
23 Q. Okay.
24 A. Maybe it should say "some portion."
25 I don't know. I mean, I don't -- I'm

1 just, you know -- the point is, it doesn't
2 necessarily end the wager even for the original
3 ticket holder.
4 Q. "Relinquishing some portion of the ticket
5 rights associated with the wagering event, said
6 wagering event continuing and any rights
7 relinquished by the player are to the benefit of
8 the acquirer."
9 How's that?
10 A. I mean, as I sit here right now, it looks
11 good.
12 MR. MINUTOLI: Do you want to make that
13 Exhibit E, I guess, keep the record clear?
14 MR. WILSON: Yeah, I think that makes
15 sense.
16 (Exhibit E was marked for identification
17 by the Court Reporter and is attached hereto.)
18 MR. MINUTOLI: Thank you.
19 MR. WILSON: Yep, and I'm sorry, I'm just
20 editing the cover, the slip -- the cover page of
21 this.
22 All right. I just uploaded that
23 Exhibit E to the chat.
24 Q. (By Mr. Wilson) Dr. Vancura, I just
25 wanted to turn back one more time to -- to the

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1 portion of your declaration, "external" -- where
2 you say "external."
3 Do you recall that?
4 I think it was paragraph 113.
5 A. Yes.
6 Q. And here, you say "However, when looking
7 at the hardware of both Schugar and DeWaal, it is
8 clear that neither contemplates a system with a
9 central server having the ability to monitor an
10 'external sporting event like horse racing or
11 football.'"
12 Do you see that?
13 A. I do.
14 Q. And here and throughout your -- your
15 opinion in this section, you're referring strictly
16 to the disclosures of Schugar and DeWaal; is that
17 right?
18 A. I -- I am referring to the disclosures,
19 but I -- well, I am referring to the disclosures.
20 I don't know if I would say strictly the
21 disclosures.
22 I mean, it's -- you know, the absence of
23 things is important as well.
24 Q. And in paragraph 128 of your
25 declaration --

1 A. Yes.
2 Q. -- I see you say "Schugar and DeWaal both
3 fail to disclose a central server system that is
4 configured to generate a cash-out offer."
5 Do you see that?
6 A. I do.
7 Q. And then it continues "for the player
8 based on the wager and progress of the sporting
9 event by monitoring progress of the sporting
10 event."
11 Do you see that?
12 A. I do.
13 Q. So here, you're rendering an opinion
14 about -- about what Schugar and DeWaal disclosed,
15 right?
16 A. Yes.
17 Q. And you're not rendering an opinion about
18 what Schugar would suggest to a POSITA, or what a
19 POSITA would understand when reading Schugar in
20 view of POSITA's general knowledge; is that fair to
21 say?
22 MR. MINUTOLI: Objection. Form.
23 THE DEPONENT: I'm -- I'm not sure how to
24 answer that.
25 It's -- explicitly what you stated, it's

1 about disclosure, but I -- I -- I think one of the
2 points I'm trying to make is that a POSITA --
3 you know, if you wanted to set up the system of
4 '969, I'm not sure why you would combine Schugar
5 with DeWaal to get there when neither, you know, in
6 my view do the things that we're talking about
7 here.
8 They don't -- they don't get you there.
9 Q. (By Mr. Wilson) But you don't render an
10 opinion that a POSITA would not have found it
11 obvious to arrive at this particular limitation
12 that you recite in paragraph 128, in view of
13 Schugar; is that right?
14 A. I mean, I'd have to look back and see
15 what these limitation steps are that -- explicitly
16 that I'm referring to here.
17 But, in my view, these -- you know, as I
18 discuss in here, Schugar and DeWaal are, in my
19 view, basically closed systems.
20 I mean, you have asked about the
21 handicapper and the pari-mutuel odds that Schugar
22 discloses. But, again, as I said when I first read
23 it, it just occurred to me as, you know, somebody
24 just looking over and asking their handicapper
25 buddy or looking over at an odds board to see what

1 the odds were.
2 I don't think -- I don't think either of
3 them, you know, even contemplate what's being
4 taught in '969; and nor do I think that, if you
5 started with Schugar, you would go to DeWaal to
6 fill in the gaps.
7 DeWaal is essentially a closed bonusing
8 system. It can be over the Internet, but the only
9 nonclosure part of it would be some -- some
10 interface into a player tracking system, which is
11 typically a different system than the bonusing
12 system. But nevertheless, it's all self-contained
13 slots -- slot-type discussion and teaching.
14 You know, DeWaal's bonus game has nothing
15 to do with anything having to do with sports. So
16 why would -- why would it need to monitor or have
17 anything to do with a sporting event?
18 The -- my other issue with Schugar, as I
19 stated -- as we talked about earlier, I -- I don't
20 think he gets there. He -- the -- the -- the -- I
21 don't believe he discloses the word "monitoring."
22 And what -- what -- you know, tracking a game or
23 reviewing a game after the fact or determining
24 whether a conditional bet was made after the game
25 is over is not the same as the teaching of '969,

1 where things are done on the fly in real time.
2 Furthermore, you know, getting some cash
3 out of an existing wager in order to make another
4 wager on the same game so that you can hedge your
5 bet, which is what Schugar talks about in his
6 sports wagering, it's not the same as a cash-out.
7 And, in particular, you know, the
8 football example he gives with the Patriots and the
9 Giants, where, you know, the Patriots are the long
10 shot going in, and they're up by, I don't know, 28
11 points or something at halftime, you know, his
12 teaching is, so, therefore, check what the odds
13 are -- you know, pari-mutuel or handicapper or
14 whatever he says -- check what the odds are to see
15 what you can get for some part of your Patriots bet
16 coming out, and then put that same amount on the
17 Giants.
18 And his conclusion is, if you read
19 through his math -- and I think in some instances
20 his math is just wrong.
21 But assuming it's correct here, what you
22 end up with is a situation where he says, so if the
23 Patriots win, you win $810, roughly; if the Giants
24 win, you win $810, roughly; so now, you can sit
25 back, relax and enjoy the game.

1 Fair enough, but with the math that he
2 provides, if -- if he had possessed something
3 similar to what is in '969, what he could have said
4 in that paragraph is, at halftime, you cash in your
5 entire Patriots wager for, surprise, surprise,
6 exactly $810 -- what you would have had -- and then
7 you're done.
8 So, you know, you wouldn't have to hedge.
9 And, you know, hedging is not the same as cashing
10 out, as taught in '969, because hedging requires an
11 additional bet, and it requires additional time.
12 But the player -- the player who made the wager
13 could have been done in -- with -- in Schugar, with
14 what he was talking about, with just surrendering
15 his bet, if you will, at halftime, to the same --
16 to the same net profit outcome that he gives.
17 But he doesn't disclose that. And,
18 you know, this is all in the context of a section
19 about, you know, taking out -- some money out of an
20 existing wager in order to make another wager.
21 So it's -- the only examples he cites are
22 positive expectation as kind of a -- almost like
23 a -- almost like a throwaway, saying that you can
24 do it in -- you can -- you can -- you don't have to
25 check if you're positive. But all of the examples

1 he gave -- he gives to where it's not positive,
2 it's always in order to place another wager.
3 Always.
4 And so I don't think he's really
5 captured -- I'm not sure he's captured some of what
6 he discusses, just, you know, like we talked about
7 with the pari-mutuel and whatnot, that that's just
8 not done for sports betting.
9 But I'm not sure, with the math mistakes
10 he makes and other stuff, that he's really --
11 you know, I just don't think he gets there.
12 And the other thing I was going to say
13 is, you know, he's got -- he's got kind of this
14 throwaway sentence at the end of the one paragraph
15 with respect to -- I think it's the -- I don't
16 know -- the Yankies and the Braves or someone, the
17 baseball example he gives.
18 And the throwaway sentence is something
19 like, you know, someone that's not in a positive
20 expectation is -- might be less likely to make
21 another bet. But -- but still, you know, this --
22 you know, the step of checking that you're in a
23 positive expectation need not be done.
24 Well, that almost teaches away, you know,
25 from -- from '969, which is that you can -- you can

1 cash out -- even if you're losing, you can cash
2 out, just take the loss and lick your wounds.
3 Q. So to be clear, your analysis of the
4 obviousness grounds of the petition based on
5 Schugar and DeWaal were primarily directed to, I
6 guess, what's contained in the four corners of
7 those Schugar and DeWaal references; is that fair
8 to say?
9 A. I would say it's primarily contained in
10 what's disclosed and taught, yes.
11 MR. WILSON: All right. I think that's
12 all for me.
13 Gianni, we pass the witness.
14 MR. MINUTOLI: Yeah, thanks.
15 Thanks, Olaf.
16 I'm going to ask you maybe four or five
17 questions; is that okay?
18 It's been a long day.
19 THE DEPONENT: Sure.
20 EXAMINATION
21 BY MR. MINUTOLI:
22 Q. So we'll start with the topic we were
23 just talking about, which was whether you only
24 relied on disclosure or teachings of DeWaal and
25 Schugar.

1 Do you recall that?
2 A. Yes.
3 Q. Can you look at paragraph 111 of your
4 declaration, please, and review it?
5 A. Okay.
6 Q. Did you reach a conclusion in that
7 paragraph?
8 A. Yes.
9 Q. And can you -- what's your conclusion?
10 A. Well, I mean, there's a couple sentences
11 at the end, "Neither Schugar nor DeWaal contemplate
12 any sort of data connections to components (except
13 possibly for DeWaal's disclosure of player
14 tracking...) that are external to each of their
15 respective systems," and so on and so forth.
16 And then the last sentence, "neither" --
17 "neither reference, alone or in combination,
18 discloses, teaches or suggest, at least,
19 limitations 1[d], 1[e]," et cetera.
20 Q. And is that still your opinion today?
21 A. Yes.
22 Q. I'm going to try to do this; hopefully, I
23 can do it right.
24 Can you pull up Exhibit E?
25 A. Oh --

1 Q. That's the --
2 A. I didn't download that after we edited
3 it.
4 Q. Yeah, could you please download it?
5 Just let me know when you have it.
6 A. Okay.
7 Q. You got it?
8 Now I have to get it, I'm sorry.
9 That Exhibit E is a change or a
10 clarification of paragraph 68 of your second '969
11 declaration?
12 A. Yes.
13 Q. In that paragraph, there's some stricken
14 language. It starts with "without" and ends with
15 the parenthetical "to all active players."
16 Do you see that?
17 A. Yes.
18 Q. Was it your intention to remove the
19 "without any conditions or requirements that the
20 player be in a particular game state" from your
21 construction of the cash-out offer?
22 A. Well, I think if -- in my view, if the
23 operative word is "requires" there, the way this --
24 the way this claim is written, it is -- the issue
25 is, is it required.

1 So it -- it can be. I mean, the -- the
2 cash-out is taught in '969, or the cash-out offer,
3 you know, which is generated and made, as taught in
4 '969, can -- if you wanted to, it could require
5 that there's no conditions or requirements placed
6 on the player.
7 But it also can require, if -- if
8 desired, you know, per the earlier paragraph -- I
9 can't remember now what number it was; the one that
10 we looked at earlier, where I cite a section of
11 '969 here in this report -- it -- it can be to any
12 desired number of players that are still eligible.
13 So -- so, in essence, it can be,
14 you know, you funnel all your active -- you have
15 your entire universe of players. You funnel that
16 down to all active tickets because you're not
17 interested in the ones that aren't -- that aren't
18 eligible anymore; they've already lost. Then you
19 funnel that down further to any desired number of
20 players.
21 And, you know, so in my view, yeah, that
22 should be removed here in -- in the -- in the
23 general sense of what is a cash-out offer.
24 On the other hand, if you wanted to have
25 that, if you wanted to make a cash-out offer to all

1 active players, it could be. The system -- '969
2 clearly teaches that as well.
3 Q. Are you done? I don't want to cut you
4 off.
5 A. Sorry. Yes.
6 Q. No, that's fine.
7 So I asked a bad question.
8 So my question was, the language "without
9 any conditions or requirements that the player be
10 in a particular game state," that stricken
11 language, was it your intention to keep that in the
12 construction shown in Exhibit E, or take it out?
13 I'm not asking about the active players
14 part.
15 A. Are you asking -- well, my point is,
16 there can be conditions or requirements that the
17 player be in a game state if you want it. But the
18 only way you can do that is if you have the
19 capability of doing it without any conditions.
20 Does that make sense?
21 So like, for example, if I say I want
22 all -- I don't know. I want -- I want all tickets
23 that are a thousand dollars or more that were made
24 in the last 24 hours to be my condition.
25 They have to be active, obviously.

1 That's the thought in there. But the -- to be able
2 to do that, I need to be able to do all tickets.
3 But in my view, the -- the -- where I'm
4 at with this cash-out offer is, I'm trying to
5 associate what is required, what is fundamental,
6 versus what is -- can also be done in terms of
7 capabilities.
8 So in my view, what's here is
9 fundamental. If addition -- you know, if
10 additional -- that's just my opinion. If -- if
11 there were additional -- if additional limitations
12 were desired onto these claims, then, you know, you
13 can add back some of the stuff that I've removed.
14 Q. Are you done?
15 Are you done with the answer?
16 Sometimes I can't tell.
17 A. Yes.
18 Q. Okay. I think understand what you're
19 saying.
20 A. In other words, what I'm trying to say
21 is, the cash-out offer, in principle, has the
22 capability of doing this.
23 But if we add language like that's in
24 there now, it says "requires providing" this, then
25 that's what -- that's what's required; that's

1 what's fundamental.
2 Q. When you say "this," you mean --
3 A. The --
4 (Simultaneously speaking.)
5 Q (By Mr. Minutoli) -- the rest of the
6 sentence.
7 A. Yeah, the rest of the sentence.
8 Q. Okay. So I've just got to clarify.
9 So in your Exhibit 2016, paragraph 100 --
10 A. Is that this same exhibit?
11 Q. No, it's different.
12 In fact, scratch that.
13 No, let's go to it.
14 Paragraph 100 is your second
15 '969 declaration, in your second '969 declaration.
16 So if it's not Exhibit E, it's Exhibit 2016.
17 Do you still have that?
18 A. Yeah, my bad.
19 I thought I was in that exhibit. I
20 didn't realize that was Exhibit E, which was a
21 picture of that.
22 Q. Yeah, that's fine, I understand.
23 A. Let me just make sure this is that.
24 Okay. I think I got it.
25 Q. So do you maintain the position, or your

1 opinion, that the '969 patent does not put any
2 limitations and no restrictions of what a player
3 must do with his or her cash-out compensation once
4 received?
5 A. Yes.
6 Q. Do -- is a cash-out offer restricted only
7 to people with a positive expectation in the
8 '969 patent?
9 A. I mean, as taught and disclosed, no.
10 Q. So someone with a negative expectation or
11 neutral expectation can get a cash-out offer,
12 according to the '969?
13 A. They could, yes.
14 Q. So wouldn't that be -- shouldn't that be
15 part of your construction in Exhibit E,
16 paragraph 68?
17 A. Yeah, as -- as I -- I've been -- I've
18 been pondering over this for a bit, like I said,
19 this last week, when I came across this and
20 realized it wasn't written well.
21 In my view, it just goes back to what's
22 is fundamental. I think what's fundamental --
23 you know, throughout this specification.
24 So in my view, the cash-out being
25 unrestricted is fundamental. The active ticket

1 portion is fundamental. The rights being
2 transferred is fundamental.
3 You know, arguably, I would say even,
4 you know, that it -- that it could be a part of it
5 or all of the ticket appears to be fundamental.
6 And it appears to disclose that. Everywhere it
7 discloses one of them, it discloses both.
8 The -- the actual expected value
9 question, which is what you're asking, is not --
10 you know, it's not explicit as to, I should always
11 do this.
12 It does say "all active tickets," though.
13 Implicit in that discussion or teaching is that
14 some of these tickets are going to have a positive
15 expectation, and, in principle, some of them might
16 have a negative expectation. The EV is something
17 greater than zero, obviously, but less than your
18 wager.
19 So I think that's -- I think that's
20 implicit in the fact that it says that you're going
21 to generate an offer for all tickets. So what's
22 taught there is, if you're going to generate an
23 offer for all tickets, what's taught, then all
24 tickets are going to include this whole spectrum of
25 where they're at in terms of their expected value.

1 So I think the question you're asking is,
2 does it rise to this level of fundamental, or is it
3 less than fundamental?
4 I don't really know. I think it's
5 clearly taught. Clearly, in my view, it could --
6 you know, it's there.
7 But I'm being asked about the --
8 specifically, the '969, so I'm answering
9 specifically.
10 Q. Okay. Are you done with your answer?
11 A. Yes.
12 Q. Okay. I'm terrible remotely, so I want
13 to make sure I don't talk over you.
14 So I have one more -- one more or two
15 more questions for you.
16 In Exhibit 2017, do you have that?
17 That's Mr. Crevelt's deposition transcript, 2017.
18 A. Yes, I have it.
19 Q. So we've been talking a lot about an
20 answer on page 14, lines 2 to --
21 A. Yeah.
22 Q. -- 2 to 5, I think it is.
23 Do you recall that --
24 A. Yes, I do.
25 Q. -- where --

1 A. Yes.
2 Q. So we haven't -- we haven't discussed the
3 question at all.
4 So can you go back one page and see what
5 the question is that was asked of Mr. Crevelt?
6 A. Yup, I see.
7 Q. Do you see that?
8 Did Mr. Crevelt say he didn't understand
9 the question?
10 A. No.
11 MR. MINUTOLI: Thank you.
12 I think I'll pass you back to Andrew. He
13 looks like he wants to ask you something.
14 Hopefully not, but he's yours.
15 MR. WILSON: Thanks.
16 No further questions here.
17 Thank you, Dr. Vancura.
18 MR. MINUTOLI: Thanks, Olaf.
19 Can I put on the record that he needs to
20 read and sign his transcripts and errata before any
21 notary?
22 THE COURT REPORTER: Same copy orders as
23 Monday?
24 MR. MINUTOLI: Yes, we'll take a rough.
25 MR. BAKER: Yes. Thank you.

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1 THE COURT REPORTER: Thank you.

2 (Deposition concluded at 2:48 p.m.)

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1 I, OLAF VANCURA, Ph.D., do hereby declare
2 under penalty of perjury that I have read the
3 foregoing transcript; that I have made any
4 corrections as appear notes; that my testimony as
5 contained herein, as corrected, is true and
6 correct.
7 Executed this ____ day of _____,
8 2023, at _____, _____.
9
10
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12 _____
OLAF VANCURA, Ph.D.
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1 I, Rebecca L. Romano, a Registered
2 Professional Reporter, Certified Shorthand
3 Reporter, Certified Court Reporter, do hereby
4 certify:
5 That the foregoing deposition testimony was
6 taken remotely before me at the time and place
7 therein set forth; that any deponent in the
8 foregoing deposition, prior to testifying, was
9 administered an oath; that a record of the
10 deposition was recorded stenographically by me and
11 which was thereafter transcribed under my
12 direction; that the foregoing transcript is a true
13 record of the testimony given.
14 Further, that if the foregoing pertains to the
15 original transcript of a deposition in a Federal
16 Case, before completion of the proceedings, review
17 of the transcript [X] was [ ] was not requested.
18 I further certify I am neither financially
19 interested in the action nor a relative or employee
20 of any attorney or any party to this action.
21 IN WITNESS WHEREOF, I have subscribed my
22 name this 22nd day of November, 2023.
23
24 _____
Rebecca L. Romano, RPR, CCR
25 CSR. No 12546

DraftKings, Ex. 1058, p. 178
DK Crown v. Diogenes, IPR2023-00266

1 DEPOSITION ERRATA SHEET

2 Case Name: DraftKings vs. Colossus
Name of Deponent: Olaf Vancura, Ph.D.
3 Date of Deposition: November 17, 2023
Job No.: 8252
4 Reason Codes: 1. To clarify the record.
2. To conform to the facts.
5 3. To correct transcript errors.

6 Page _____ Line _____ Reason _____

7 From _____ to _____

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

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19 From _____ to _____

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21 From _____ to _____

22 _____ Subject to the above changes, I certify that the transcript is true and correct

23 _____ No changes have been made. I certify that the transcript is true and correct.

24

25 _____
OLAF VANCURA, Ph.D.

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