

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

DIOGENES LIMITED, COLOSSUS (IOM) LIMITED,
Patent Owner

Case IPR2023-00267
Patent 10,997,822

**DECLARATION OF DWIGHT CREVELT IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
10,997,822**

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EXHIBIT LIST

Exhibit No.	Description
Ex.1001	U.S. Patent No. 10,997,822 (“’822 Patent”)
Ex.1002	File History for U.S. Patent ’822 Patent
Ex.1003	File History for U.S. Patent No. 9,117,341
Ex.1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
Ex.1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
Ex.1006	U.S. Patent Application Publication No. 2012/0309503 A1 (“Scott”)
Ex.1007	Reserved
Ex.1008	<i>Curriculum Vitae</i> of Dwight Crevelt
Ex.1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
Ex.1010	Christiani Huguenii, <i>The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated</i> (printed 1741)
Ex.1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
Ex.1012	Jui-Pin Cheng, <i>The Origin of Probability and The Problem of Points</i> (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
Ex.1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)
Ex.1014	Prakash Gorroochurn, <i>Thirteen Correct Solutions to the “Problem of Points” and Their Histories</i> , THE MATHEMATICAL INTELLIGENCER (Springer 2014)
Ex.1015	Keith Devlin, <i>The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern</i> (Basic Books 2008)
Ex.1016	Anders Hald, <i>A History of Probability and Statistics and Their Applications before 1750</i> (John Wiley & Sons 2003)

Exhibit No.	Description
Ex.1017	Adam Prügel-Bennett, <i>The Probability Companion for Engineering and Computer Science</i> (Cambridge University Press 2019)
Ex.1018	Elizabeth A. Killick & Mark D. Griffiths, <i>In-Play Sports Betting: a Scoping Study</i> , 17 INT J MENT HEALTH ADDICTION 1456 (Apr. 16, 2018)
Ex.1019	<i>What is In-Play Betting: Live Betting Explained by William Hill</i> , WILLIAMHILL.COM (Apr. 20, 2021), https://news.williamhill.com/betting-guides/in-play-betting/
Ex.1020	Mark O’Haire, <i>The History of Betting</i> , TheSetPieces (2021), https://thesetpieces.com/latest-posts/the-history-of-betting/
Ex.1021	U.S. Patent No. 9,117,341 (“the ’341 Patent”)
Ex.1022	Chris Summers, <i>How Does a Betting Exchange Work?</i> , BBC News (Dec. 7, 2007)
Ex.1023	Landi, Gianluca, <i>Betting Exchange: The Sports Trading Revolution</i> (StreetLib 2017)
Ex.1024	Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 (Jun. 18, 2016)
Ex.1025	Vaughan Williams & Donald S. Siegal, <i>The Oxford Handbook of the Economics of Gambling</i> (Oxford University Press 2013)
Ex.1026	Mark Davies <i>et al.</i> , <i>Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering</i> , 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005)
Ex.1027	U.S. Patent No. 7,909,694 (“Schugar ’694”)
Ex.1028	Betfair Trading Software, <i>About Bet Angel Software</i> (via The Wayback Machine dated Dec. 26, 2007)
Ex.1029	Green All Over Blog (Dec. 7, 2008)
Ex.1030	Dan Thomas, <i>Betfair’s ‘Cash Out’ Trading Tool Used for the Millionth Time</i> , BETTFAIR (Sept. 13, 2011)
Ex.1031	Betfair Financial Statement (Jun. 29, 2011)
Ex.1032	Dan Thomas, <i>Cash Out Comes to Betfair Mobile</i> , Betfair (Dec. 19, 2011)
Ex.1033	Michael Taylor, <i>Cash In My Bet with William Hill</i> , WILLIAMHILL.COM (Dec. 18, 2012)
Ex.1034	Tal Grant <i>et al.</i> , <i>UK Gaming</i> , Credit Suisse (Aug. 14, 2017)
Ex.1035	James Conrey McMath, <i>Speculation and Gambling in Options, Futures and Stocks in Illinois</i> (Hawkins & Loomis 1921)

Exhibit No.	Description
Ex.1036	LeRoy Gross, <i>The Conservative Investor's Guide to Trading Options</i> (Wiley 1999)
Ex.1037	Stuart Banner, <i>Speculation: A History of the Fine Line Between Gambling and Investing</i> (Oxford University Press 2017)
Ex.1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)
Ex.1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov't Printing Office 1952)
Ex.1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)
Ex.1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)
Ex.1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
Ex.1043	Betfair Community, <i>Football Forum</i> (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader
Ex.1044	Betfair Community, <i>Golf Forum</i> at 1 (Apr. 9, 2010), https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53
Ex.1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
Ex.1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
Ex.1047	U.S. Patent Application Publication No. 2001/0136566 A1 ("Acres")
Ex.1048	Exhibit 338.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1049	Exhibit 341.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1050	Exhibit 439.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1051	Exhibit 516.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1052	Exhibit 716.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

Exhibit No.	Description
Ex.1053	Exhibit 779.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1054	Exhibit 822.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1055	Exhibit 969.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

I, Dwight Crevelt, declare as follows:

I. Introduction

1. I have been retained on behalf of DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation (“DraftKings” or “Petitioner”) for the above-captioned *inter partes* review (IPR) proceeding. I am being compensated for my time in connection with this IPR at my standard hourly consulting rate. I understand that this proceeding involves U.S. Patent No. 10,997,822 (“the ’822 Patent”) titled “WAGERING APPARATUS, METHODS AND SYSTEMS” by Bernard J. Marantelli.

2. I have been asked to provide my technical review, analysis, insights, and opinions regarding the ’822 Patent and the prior art references that form the basis for the grounds of unpatentability set forth in the Petition for *Inter Partes* Review of the ’822 Patent.

II. Materials Considered

3. The analysis that I provide in this Declaration is based on my education, research, and experience, as well as the documents I have considered, including the ’822 Patent (Ex.1001) and its prosecution history (Ex.1002). I have reviewed and am familiar with the specification of the ’822 Patent. I have reviewed and am familiar with the file history of the ’822 Patent.

4. In preparing this Declaration, I have also reviewed and am familiar with the each of the documents identified in the exhibit list above and/or discussed in my declaration below.

III. Qualifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Legal Understanding

A. My Understanding of Claim Construction

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

B. My Understanding of Obviousness

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

20. To obtain a patent, a claimed invention must have, as of the priority date, been nonobvious in view of the prior art in the field. I understand that an invention is obvious when the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

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

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

the references exists so as to avoid impermissibly applying hindsight when considering the prior art. I understand this test should not be rigidly applied, but that the test can be important to avoiding such hindsight. I note that, based on my understanding, an **express** motivation to combine taught by a secondary reference is neither circular nor rooted in hindsight because it is expressed in the prior art itself—necessarily before the invention.

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

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

testimony addresses the underlying facts and factual analysis that would support a legal conclusion of obviousness or non-obviousness, and when I use the term obvious, I am referring to the perspective of one of ordinary skill at the time of invention.

C. Level of Ordinary Skill in the Art

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

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

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

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

28. Based on the disclosure of the ’822 Patent, a POSITA would be a person with a bachelor’s degree in electrical engineering, computer science, or a

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

V. Background of the Technology

29. I understand that analyzing the state of gaming systems during the years prior to the earliest possible priority date of the '822 Patent can provide valuable insight into what people of ordinary skill in the art were aware of at the time, and in what direction the industry was going.

A. Cash Out and the Problem of Points

30. At the heart of the '822 Patent is the concept of offering and calculating payouts, or “cash outs,” before a wagering event is complete:

In one embodiment, at any desired time after initiation of an event (such as at any time after a “ticket” is purchased until completion of an event, after each leg has been completed, between legs, including potentially as a leg is “in-play”, and/or during a designated span of time before, during and/or after any of the legs), any desired number of players who remain eligible for a prize (and potentially those still eligible for bonus and/or consolation prizes) or to win or have correct (win) predictions for each of the events or legs that are completed, may be offered a “buy-out” or an opportunity to sell their tickets (in whole or

alternatively may be in part (*i.e.*, a fractional amount) to the game operator or through the game operator (or alternatively directly) to a third party (e.g., one or more system operator(s), business entity or entities such as a merchant(s), one or more other persons, other player(s), etc.).

'822 Patent 35:8-23. Originally known as the “Problem of Points,”¹ this concept is as old as the theory of probability itself. In fact, it is the very foundation of the theory.

31. The Problem of Points was first identified as a mathematical thought experiment in 1400. See C.C. Heyde & E. Seneta, *Statisticians of the Centuries* at 5 (Springer 2001) (Ex.1011); Jui-Pin Cheng, *The Origin of Probability and The Problem of Points* at 2 (2000), <https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html> (Ex.1012). In a manuscript dated to this time, an unknown author correctly solved the problem

¹ Today, this concept is known as “Expected Value.” See, *e.g.*, Vishal Jain & Jyoti Moy Chatterjee, *Machine Learning with Health Care Perspective* at 319 (Springer 2020) (Ex.1009); Christiani Hugonii, *The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated* at 2 (printed 1741) (Ex.1010).

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

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

33. The solution ultimately involved counting combinations and summing binomial coefficients. See Hammond at 44; Devlin at 67. But, because the labor of

calculating all the different combinations was “excessive,” Pascal devised a “shortcut,” or “abridgement,” that involved a ground-breaking procedure for calculating expectations recursively. Hammond at 44; Hald at 59-60.

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

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

B. Cash Out and In-Play Betting

36. “In-play” betting refers to wagering on an event that has already started but not yet finished. Elizabeth A. Killick & Mark D. Griffiths, *In-Play Sports Betting: a Scoping Study*, 17 INT J MENT HEALTH ADDICTION 1456, 1457 (Apr. 16,

2018) (Ex.1018); *What is In-Play Betting: Live Betting Explained by William Hill*, WILLIAMHILL.COM (Apr. 20, 2021), <https://news.williamhill.com/betting-guides/in-play-betting/> (Ex. 1019). This form of betting first appeared in the 1990s when bookmakers began taking bets over the telephone while a sporting event was in progress. Killick at 1457; Mark O’Haire, *The History of Betting*, TheSetPieces at 2 (2021), <https://thesetpieces.com/latest-posts/the-history-of-betting/> (Ex. 1020). It gained even more popularity with the birth and growth of the internet. *Id.*; O’Haire at 2-3.

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

38. The rise of the internet and advances in computing also led to the advent of the betting exchange marketplace, which first appeared in 2000. Chris Summers, *How Does a Betting Exchange Work?*, BBC News at 1 (Dec. 7, 2007) (Ex.1022); Gianluca Landi, *Betting Exchange: The Sports Trading Revolution* at 17 (StreetLib 2017) (Ex.1023); *see also* Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 at ¶ 2 (Jun. 18, 2016) (Ex.1024) (“Around 2001 I was introduced to betting exchanges, primarily the leading exchange Betfair, which had launched in 2000.”). A betting exchange is a marketplace that allows bettors to “back” (*i.e.*, bet that an outcome will occur) and “lay” (*i.e.*, bet that an outcome will

not occur) a wager on the outcome of an event. Summers at 2; Landi at 25. It is characterized by real-time online betting with attributes analogous to a modern stock exchange. Vaughan Williams & Donald S. Siegal, *The Oxford Handbook of the Economics of Gambling* at 138, 140 (Oxford University Press 2013) (Ex.1025). Betfair—the first such marketplace—is the most recognizable and popular example of a betting exchange. Williams at 140 (citing Mark Davies *et al.*, *Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering*, 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005) (Ex.1026)); Summers at 1.

39. Leveraging on the exchange, Betfair permitted a way to “Cash Out” that was called “greening up,” whereby bettors on the Betfair betting exchange were able sell, or trade back, their bets in the middle of a wagering event as the odds changed, thereby locking in profits before the wagering event concluded. Betfair Trading Software, *About Bet Angel Software* at 1, 3 (via The Wayback Machine dated Dec. 26, 2007) (Ex.1028);² Green All Over Blog at 8-9 (Dec. 7, 2008) (Ex.1029). Betfair subsequently rebranded this technology as “Cash Out” in

² MPEP 2128 II E. Wayback Machine (“Prior art obtained via the Wayback Machine® sets forth a prima facie case that the art was publicly accessible at the date and time provided in the time stamp.”).

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

C. Partial Cash Outs

40. It is no coincidence that betting exchanges, like Betfair, operate like a modern stock exchange. Playing the stock market has long been likened to gambling, particularly options trading. See, *e.g.*, James Conrey McMath, *Speculation and Gambling in Options, Futures and Stocks in Illinois* at 3-5 (Hawkins & Loomis 1921) (Ex.1035); LeRoy Gross, *The Conservative Investor's Guide to Trading Options* at 96 (Wiley 1999) (Ex.1036); Stuart Banner, *Speculation: A History of the Fine Line Between Gambling and Investing* at 1, 73, 76, 83 (Oxford

University Press 2017) (Ex.1037). And the concept of the partial exercise, or partial cash out, of a position in an option is as old as the concept of the option itself. See, e.g., E.V. Smalley, *Northern Pacific Railroad Book of Reference* at 318-320 (E. Wells Sackett & Rankin 1883) (Ex.1038); Wesley A. Sturges *et al.*, *Stock Option and Stock Purchase Plans* at 47-48 (U.S. Gov't Printing Office 1952) (Ex.1039).

41. A “partial exercise” allows the owner of an option to sell, or cash out, a portion of his or her position before the strike date while holding the remainder until the actual strike date. See, e.g., Smalley at 320; Michael C. Thomsett, *Getting Started in Options* at 322 (Wiley 2007) (Ex.1040); see also, e.g., Lawrence G. McMillan, *McMillan on Options* at 595 (Wiley 2011) (Ex.1041) (“partial profits”). Betfair began allowing players to do this via its betting exchange at least as early as December 2007. Specifically, Bet Angel software allowed bettors to partially “green up” on the Betfair betting exchange by selling, or trading back, a portion of a bet at a profit while allowing the remainder of the bet to play out until the conclusion of the wagering event. See, e.g., Betfair Trading Software, *About Bet Angel Software* at 1, 3 (via The Wayback Machine dated Dec. 26, 2007) (Ex.1028); The Sports Trader, *The Diary of a Betdaq Trader* at 4 (Dec. 5, 2007), https://thesportstrader.typepad.co.uk/the_sports_trader/2008/09/index.html (Ex.1042); Betfair Community, *Football Forum* at 1 (Dec. 11, 2009), <https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt->

think-you-got-your-green-until-after-events-were-

finished?post_id=421340998#421340998#flvWelcomeHeader (Ex.1043); Betfair Community, *Golf Forum* at 1 (Apr. 9, 2010), <https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53> (Ex.1044); Betfair Community, *General Betting Forum* at 2 (Dec. 10, 2010), https://community.betfair.com/general_betting/go/thread/view/94082/26488561/greening-up?liveView=0 (Ex.1045); Betfair Community, *General Betting Forum* at 3 (Jun. 8, 2011), https://community.betfair.com/general_betting/go/thread/view/94082/27736281/greening-up---does-it-really-pay-long-term?liveView=0&pg=2 (Ex.1046).

42. This concept also began appearing in patent applications at around the same time. For example, U.S. Patent Application Publication No. 2008/0311981 to Schugar (Ex.1005) (“Schugar”) discloses an instance in which a bettor “can be ‘winning’ before the game is over” and, therefore, “may wish to have a way to cash in on the winning state before completing the game.” Schugar at ¶ [0077]. Schugar discloses an example in which a bettor has made a \$100 wager on a Yankee’s game and by the fifth inning the expected payout of that wage is \$132. *Id.* at ¶ [00120]. In this instance, bettor “may use \$1 of that amount and make a second wager,” which will result in \$1.52 (*i.e.*, the adjusted value of that dollar based on the new odds)

being “subtracted from the original \$100 wager to result in a \$98.48 wager remaining on the Yankees.” *Id.* Thus, Schugar discloses a partial cash out method similar to what was available in Betfair at the time. Schugar also makes clear that “the player need not be in a positive expectation situation in order to utilize the method of cashing in value for a current wager in progress in order to place a second wager.” *Id.*

43. In addition, Schugar explains that its partial cash out method “can be applied to all games, including live table games or live sporting events,” and that it also may be implemented in “any wagering machine game, such as a slot machine, video poker machine, or machine game which plays any game which can have multiple states (*e.g.*, games which a player can wager on a progression).” Schugar at ¶¶ [0104], [0106]. Thus, real-time partial cash-outs also were well known prior to the earliest claimed priority date of the Asserted Patents.

VI. The ’822 Patent

A. Priority Date

44. The application that led to the ’822 Patent was filed December 2, 2020, as U.S. Patent Application No. 17/109,616, and is a continuation of U.S. Patent Application No. 16/515,916 filed July 18, 2019, which is a continuation of U.S. Patent Application No. 15/884,876 filed January 31, 2018, which is a continuation-in-part of U.S. Patent Application No. 15/422,348 filed February 1, 2017, which is

a continuation-in-part of U.S. Patent Application No. 15/212,392 filed July 18, 2016, which is a continuation of U.S. Patent Application No. 14/990,535 filed January 7, 2016, which is a continuation of U.S. Patent Application No. 14/833,572 filed August 24, 2015, which is a continuation of U.S. Patent Application No. 14/449,541 filed August 1, 2014, which is a continuation-in-part of U.S. Patent Application No. 14/275,136 filed May 12, 2014, which is a continuation of U.S. Patent Application No. 13/958,028 filed August 2, 2013, which is a continuation-in-part of U.S. Patent Application No. 13/605,813, which was filed September 6, 2012.

B. Overview

45. The '822 Patent, entitled "Wagering Apparatus, Methods and Systems," states that it is directed to "the creation of unique betting products where multiple players can combine their resources when participating in the betting product," such as by "crowdfund[ing] or rais[ing] contributions for a single wager." '822 Patent 2:6-10. None of the challenged claims of the '822 Patent, however, recite or appear to require any such "crowdfund[ed]" wagers, the techniques for crowdfunding a wager discussed in the specification, or the like.

46. Rather, the challenged claims appear to be directed to a "wagering system" that offers a player the ability to "cash out" or "buy-out" in the context of a traditional betting exchange or marketplace, where one player may offer to buy

another player's wager in a wagering event by making a "cash out" or "buy-out."

Describing the concept of cashing/buying out, the '822 Patent states as follows:

Between legs, and preferably after several of the games or matches have been completed, but potentially also during the course of an event for example at the half-time of a match or event, players with "live" tickets may be ***offered the option of selling all or a portion of their tickets back to the system operator (or alternatively, directly or indirectly through the system operator, or directly to, any designated third party, such as, without limitation, one or more third-party operator(s), business entities or entities such as merchant(s), one or more other persons, etc.) or to retain their tickets and see whether their correct score predictions will unfold for the remaining games.***

Id. 20:32-43; *see also id.* 20:43-46 ("As should be understood, any reference to system operator herein should be construed to apply equally to any third party as an alternative, event if not specifically mentioned."). This "buy-out option will preferably be communicated through the wagering station 14, wagering terminal 16, or internet connected computing devices 18-24 from which the respective wager was placed and ticket purchased." *Id.* 20:46-50.

47. The concept of a cash out described in the '822 Patent is broad. For example, the '822 Patent explains that "the value or price of any full and/or partial

buy-out/cash-in offers and acceptances, as well as the form in which they are made, should be broadly construed.” *Id.* 31:51-54. Further, “buy-out/cash-in offers and acceptances may cover a broad range of items that may be provided from one (1) party to another or others, or exchanged between two (2) or more parties that are involved in a transaction. As an illustration and without limitation, a buy-out/cash-in offer/acceptance may involve any monetary or nonmonetary value or item, etc. transferred from Party A to Party B in return for Party B’s ‘ticket.’” *Id.* 31:57-64.

48. The ’822 Patent also uses several different terms to describe this same concept. For example, the ’822 Patent describes the buy-out concept as, for example, a buy out, buy in, buy back, cash out, cash in, etc. Indeed, the ’822 Patent states that “the terms buy-out and cash-in as used herein have the same intended meaning.” *Id.* 31:7-8. Therefore, in this context, the terms “buy” and “cash” refer to the same thing and the terms “in” and “out” refer to the same things under the meaning prescribed to those terms in the ’822 Patent.

49. With respect to the use of the buy-out offer concept in the context of betting exchanges or between players, the ’822 Patent states as follows, recognizing certain of the betting systems discussed in the background section:

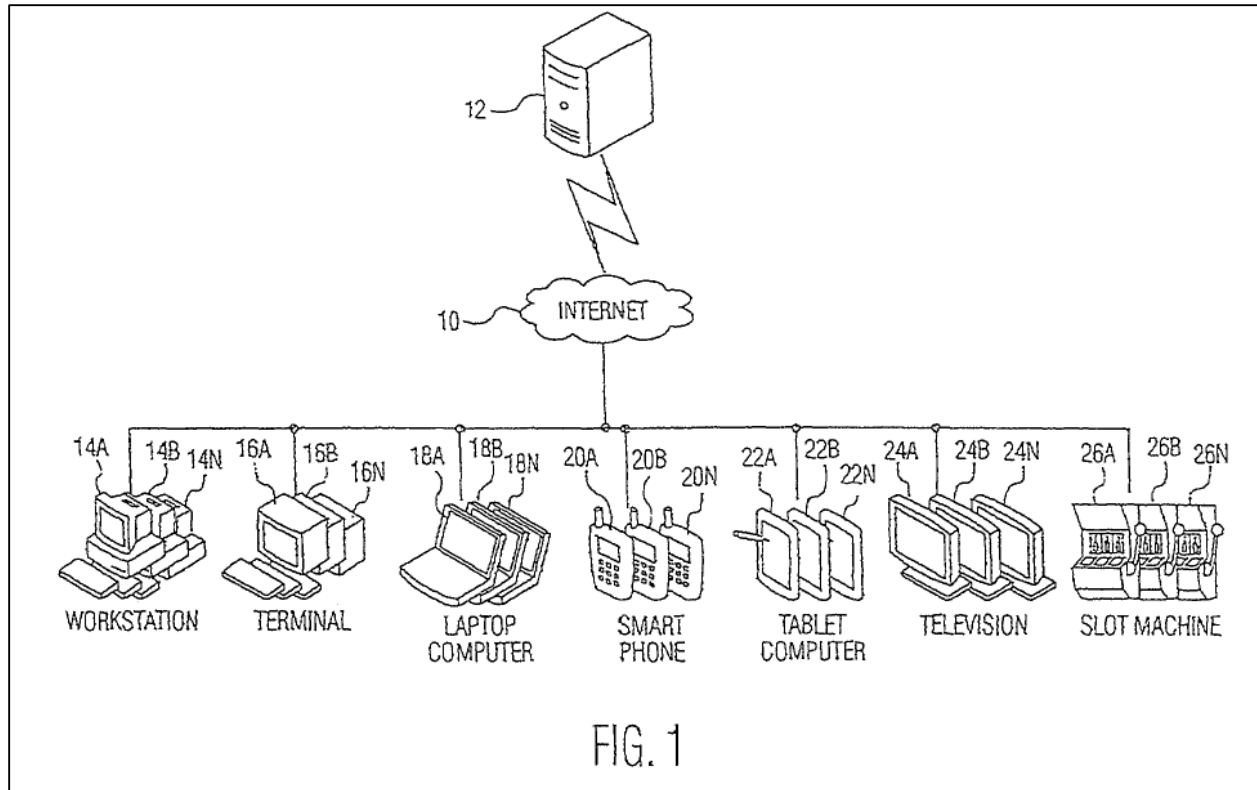
However, it is also contemplated that the system operator may use the central server system 12 to solicit offers from third parties that would be communicated to the active ticket holder. In this embodiment, the central server

system 12 could communicate the details of the outstanding active tickets through all or a select number of wagering terminals 16 and allow bids for the outstanding active tickets to be submitted via the wagering terminals 16. As another alternative embodiment, it is contemplated that the system operator could facilitate the ability of members of the public to buy and sell active tickets like in the manner of a person to person betting exchange, such as, without limitation, of the type offered by Betfair. Thus, it is also contemplated that the central server system 12 could allow the posting of available buy-back options so that the public could place buy-back offers for example through the wagering terminals 14 and the ticket holder could select the buy-back bid of his or her choosing.

Id. 23:66-24:16.

50. As to the wagering system in which the cash out concept may be used, as shown in FIG. 1 below, the system includes “a system controller” such as a “central server system 12 being interconnected through the internet 10 to a plurality of wager input devices such as wagering stations 14, wagering terminals (including self-service wagering terminals) 16, and internet connected computing systems 18.”

Id. 6:36-44.



Id. FIG. 1.

51. Briefly addressing the primary components of the system, as the '822 Patent states, the wager stations and wagering terminals may be a “conventional wager terminal” “as known in the art.” *Id.* 7:39-44; *see also id.* 13:34-37 (“The embodiments as generally illustrated in FIG. 1 may include, as known in the art, a display device which displays the betting options.”), 13:63-65 (“Any other suitable types of products or devices commercially known may also be utilized where desired in accordance with the needs of a particular implementation.”), 25:51-53 (“The present disclosure may be implemented in various configurations for gaming machines or wager terminals known in the art.”). The wager stations and terminals

include a plurality of “input devices,” which “can include any suitable device which enables the player to produce an input signal which is received by the processor” of the wager station or wager terminal. *Id.* 14:35-40.

52. Similarly, the controller or server is described as being “one or more rack mounted server computers 120 each with at least one central processing unit (CPU) or other processing device and associated memory,” such as a known commercial rack mounted server such as the “PowerEdge R420 Rack Chassis devices having a 300 GB hard drive, one or two Intel Xeon E5-2450 processors, 24 GB memories with RAID connectivity using a RAID controller card.” *Id.* 8:59-67. Notable with respect to my analysis and opinions herein, the ’822 Patent recognizes that its “present disclosure” may be implemented in the “gaming machines and their respective operations in both stand alone and pool or progressive games ... disclosed in detail in U.S. Patent No. 8,105,149, incorporated herein by reference,” which is the DeWaal reference that I have analyzed throughout this declaration. *Id.* 25:51-67.

53. In addition to the system components being conventional and well-known, the ’822 Patent also recognizes that many of the basic operations of the wagering system for providing a wagering event, and the software for implementing those operations, were well-known in the prior art. For example, the ’822 Patent states that the server “may include software programs for wagering software

functionality such as registration, deposit tracking, withdrawals, account sections that may include current and previous bet histories, fixtures, results, historical data, rules and regulations,” but recognizes that “[t]hese types of software programs having these functionalities are in place in various totalizer facilities and are thus known in the art.” *Id.* 9:49-56; *see also id.* 9:59-61 (“The program for the known functionality of a totalizer facility noted above would be incorporated in the Micro Tote 408 program, as discussed further below.”).

C. Prosecution History

54. I have reviewed the prosecution history for the ’822 Patent (Ex.1002). In the first non-final office action, the Examiner asserted a nonstatutory double patenting rejection for all pending claims, 1-29, in the application. ’822 Patent File History 41-49. Subsequently, the Examiner approved a terminal disclaimer filed by the applicant. *Id.* 64-70. Claims 1-29 were ultimately allowed without issuing a single prior art rejection. *Id.* 1, 28-37.

55. The ’822 Patent belongs to a family of patents that all stem from U.S. Patent Application No. 13/605,813, and I have also considered the prosecution history of several patents that are related to the ’822 Patent and that share common and similar claim terms. Specifically, in addition to the ’822 Patent prosecution history, I have also reviewed the prosecution history of the following U.S. Patents: 8,721,439 (“’439 Patent”); 9,117,341 (“’341 Patent”); 9,275,516 (“’516 Patent”);

9,424,716 (“’716 Patent”); 9,704,338 (“’338 Patent”); 10,970,969 (“’969 Patent”); and 11,200,779 (“’779 Patent”). All of these related patents were examined by the same patent Examiner, Adetokunbo Olusegun Torimiro. And, all of these related patents, including the ’822 Patent are directly or indirectly terminally disclaimed over the ’439 Patent.

56. For example, the ’822 Patent is related to U.S. Patent Application No. 14/275,136, which issued as the ’341 Patent. See ’822 Patent 2 (Related U.S. Application Data). The claims of the ’341 Patent include limitations regarding presenting and/or initiating “at least one of a buy-out offer and [a] partial buy-out offer.” See, e.g., EX[XXXX] (’341 Patent FH) at 77 (Listing of claims in Dec. 18, 2014 Response to Office Action). Similarly, claim 1 of the ’822 Patent recite the term “cash out offer,” which as noted above is described in the ’822 Patent as having the same meaning as a “buy-out offer,” And, by virtue of “claim dependency,” this term also is in dependent claims that depend from claim 1, including challenged claim 7 of the ’822 Patent. Further, claim 15 of the ’822 Patent recite “a buy-out offer ... or a partial buy-out offer,” and, by virtue of “claim dependency,” this term also is in challenged claim 21 that depends from claim 15. Therefore, the ’822 Patent and the ’341 Patent are directly related patents in the same family that share common and similar limitations. During prosecution of the ’341 Patent, the Applicant made

statements regarding these common limitations that are relevant to my analysis of the claims of the '822 Patent and the prior art discussed herein.

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

58. The Applicant responded to the September 23, 2014 Office Action on December 18, 2014. See '341 Patent FH 76-89 (Dec. 18, 2014 Response to Office

Action). In the response, the Applicant argued that “Claim 1, for example, recites a unique ability to offer **both** a buy-out offer and a partial buy-out offer to any number of players that are involved in a wagering event.” ’341 Patent FH 86 (Dec. 18, 2014 Response to Office Action). Applicant then argued that “Acres fails to disclose or even contemplate the claimed capability to provide a ‘buy-out’ **and** ‘partial buy-out’ feature,” and that “Acres does not appear to disclose the claimed feature of a ‘partial buy-out’ **and** ‘buy-out’ that may be **offered as alternatives to players.**” ’341 Patent FH 86, 87 (Dec. 18, 2014 Response to Office Action). Therefore, in my opinion, a POSITA would understand that the Applicant took the position during prosecution that the claim limitation of “at least one of a buy-out offer and [a] partial buy-out offer” required “both” be provided and initiated “as alternatives to players.” This ability to offer a player both of an option to fully buy-out and an option to partially-buy out as alternatives is what the Applicant represented was the “innovation and utility of the claimed invention,” as opposed to either an offer to buy-out or partially buy-out individually. ’341 Patent FH 26 (May 27, 2015 Response to Office Action dated Mar. 12, 2015).

59. This understanding of the term “at least one of a buy-out offer and [a] partial buy-out offer” as requiring both of an option to buy-out and an option to partially buy-out as alternatives, rather than either one individually or on its own, is consistent with and confirmed by Applicant’s admissions regarding the prior art.

Specifically, the Applicant admitted that “Acres discusses offering a player a **full buy-out offer** ... in return for the player surrendering his hand and the entirety of his potential win.” See ’341 Patent FH at 86 (Dec. 18, 2014 Response to Office Action). Applicant, however, distinguished Acres from the claims by explaining that “**a buy-out offer for a player’s entire interest (as described in Acres) is not equivalent to purchasing only a portion of a player’s interest in potential winnings where the player retains an interest in the potential winnings.**” ’341 Patent FH 86 (Dec. 18, 2014 Response to Office Action). To the contrary, Applicant argued, “**a ‘partial buy-out offer’ is defined in the specification as an offer to purchase a portion of a player’s interest in any potential winnings resulting from the wagering event, where the player retains any unsold portion in said interest and remains eligible to win at least a portion of an award.**” ’341 Patent FH 86 (Dec. 18, 2014 Response to Office Action). As such, according to Applicant’s statements regarding the claim scope, “Acres does not anticipate Claim 1” because “Acres (at a minimum) fails to disclose or even contemplate the claimed partial buy-out feature.” ’341 Patent FH 88 (Dec. 18, 2014 Response to Office Action). Therefore, the Applicant plainly distinguished a “buy-out” from a “partial buy-out.” Based on the Applicant’s clarification or narrowing of the plain language of the claim, the Examiner found that “Applicant’s arguments ... are persuasive” and withdrew the anticipation rejection. ’341 Patent FH 69 (March 13, 2015 Office Action). No additional prior

art rejections were made in any subsequent Office Action during the prosecution of the application leading to the '341 Patent.

60. Therefore, according to the Applicant's arguments to secure allowance of related patents to the '822 Patent and other limitations similar to those in the claims of the '822 Patent, prior art like Acres that discloses offering only a full "buy-out offer" may not satisfy the claims if they require the option for both. Had the Applicant not narrowed the limitations of presenting and initiating "at least one of a buy-out offer and [a] prior buy-out offer" to require presenting and initiating both a buy-out offer and a partial buy-out offer that a player can alternatively select and accept or reject, it appears that the Examiner would have maintained the anticipation rejection over Acres. If this term did not require an offer that includes both alternatives (fully buy-out and partially-buy out), then Applicant's arguments regarding Acres' purported failure to disclose a partial buy-out offer would have been irrelevant and unsuccessful because the claim could then be satisfied with only a full "buy-out" offer, which the Applicant admitted was disclosed in the prior art. Given the Applicant's statements and the context in which they were made (e.g., in view of the anticipation rejection and the prior art applied thereunder), a POSITA would have understood that Applicants were representing that neither of a buy-out offer or partial buy-out offer individually is sufficient to satisfy the claims because the prior art admittedly disclosed presenting and initiating a full buy-out offer and

the Applicant successfully argued that such prior art did not teach presenting and initiating “at least one of a buy-out offer and [a] partial buy-out offer” as recited in the claims because it did not disclose a partial buy-out offer, which is not equivalent to and is distinguishable from a full “buy-out” offer.

61. On December 2, 2022, many years after the Applicant made these statements regarding the scope and meaning of the terms “buy-out” and “partial buy-out,” the Applicant filed the Application leading to the ’822 Patent, which, as described above, issued without a single prior art rejection, despite the claims reciting only a full “cash out offer” or specifying that a “buy-out offer” “*or*” a “partial buy-out offer” are made. See ’822 Patent claims 1, 15.

62.

63. Further, despite successfully arguing to the same examiner that the terms presenting and initiating “at least one of a buy-out offer and [a] partial buy-out offer” require “both” to distinguish the prior art during prosecution of the ’341 Patent, and that a full “buy-out” is distinguishable from a “partial buy-out,” the application leading to the ’822 Patent was filed with dependent claims that a POSITA would understand conflict with the Applicant’s prior definitions of the scope of those terms. For example, despite the specification of the ’822 Patent itself stating that the terms buy-out and cash-in have the same meaning, and despite successfully arguing to the Examiner that the term “buy-out offer” means a full buy-

out and therefore is distinguishable from a “partial buy-out offer” during prosecution of the earlier ’341 Patent, dependent claim 26 of the ’822 Patent recites “wherein the cash out offer comprises at least one of or both of a full cash out offer or a partial cash out offer.” ’822 Patent 54:7-9.

64. For the reasons explained herein, however, a POSITA would have understood, based on the Applicant’s arguments regarding the difference between a “buy-out” and a “partial buy-out” and the statements in the ’822 Patent that equalize a buy-out and a cash out, that this dependent claim directly contradicts the Applicant’s argument during prosecution of the ’341 Patent that a “buy-out” or cash out was distinguishable from a “partial buy-out” or cash out.

VII. Claim Construction

65. I have been instructed that the challenged claims of the ’822 Patent are to be given their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention in light of the specification and the prosecution history pertaining to the patent. I have followed these principles in my analysis set forth in this document.

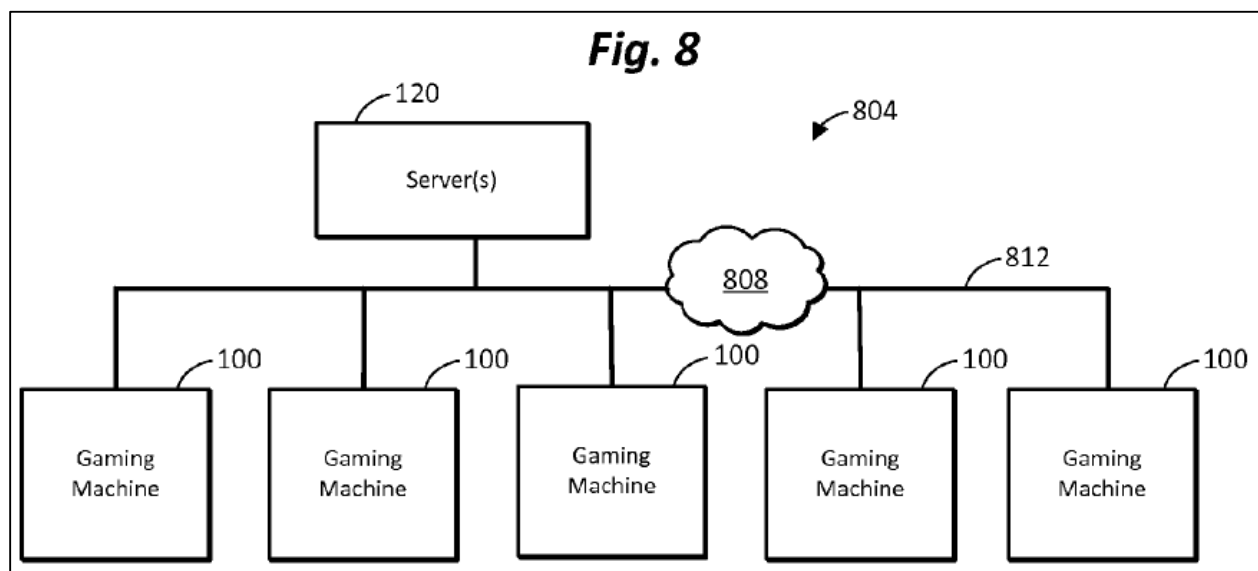
66. Based on this understanding it is my opinion that no terms of the ’822 Patent require construction beyond their plain and ordinary meaning.

VIII. Overview of Prior Art

A. Overview of Scott (Ex.1006)

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

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



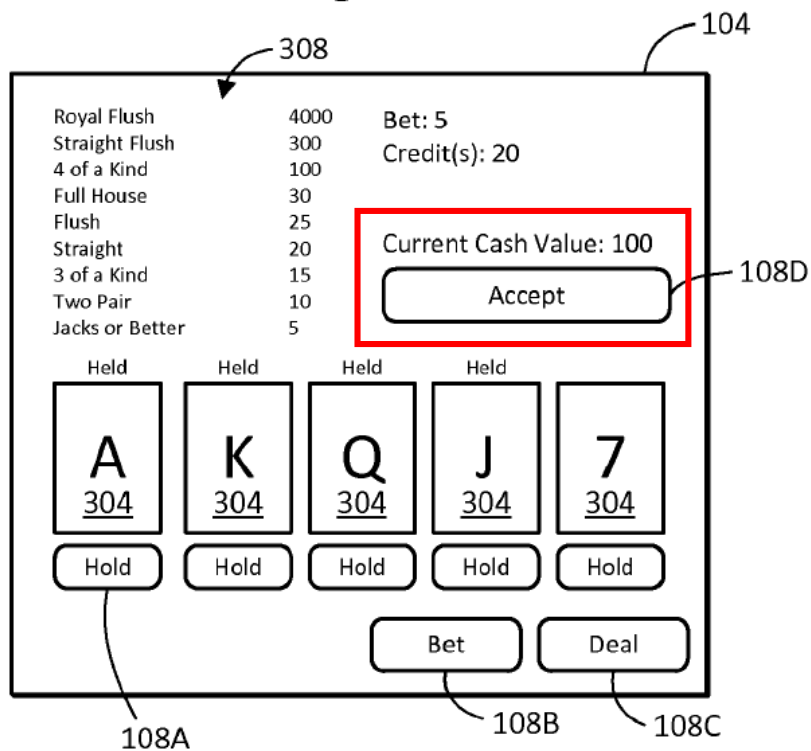
Scott FIG. 8.

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

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

71. Scott discloses that a player’s live wager can be bought by and sold to the system operator or other players of the gaming system. For example, with respect to a transaction with the system operator, the system operator may cause the current cash value to be displayed on the display device of a gaming machine, and “a player input device 108 in the form of an ‘accept’ button may be provided to allow a player to accept a current cash value presented on a display 104 by the value engine.” *Id.* ¶¶ [0048], [0060]. The player may “accept” or “decline” the current cash

value offer by pressing the appropriate buttons on the gaming machine. *Id.* ¶¶ [0077]-[0078]. “If the player accepts the current cash value for his or her game symbols at decision step 432, the current cash value may be paid to the player at step 424. The game may then end.” *Id.* ¶ [0079]. This is illustrated, for example, in FIG. 3A below.

Fig. 3A

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

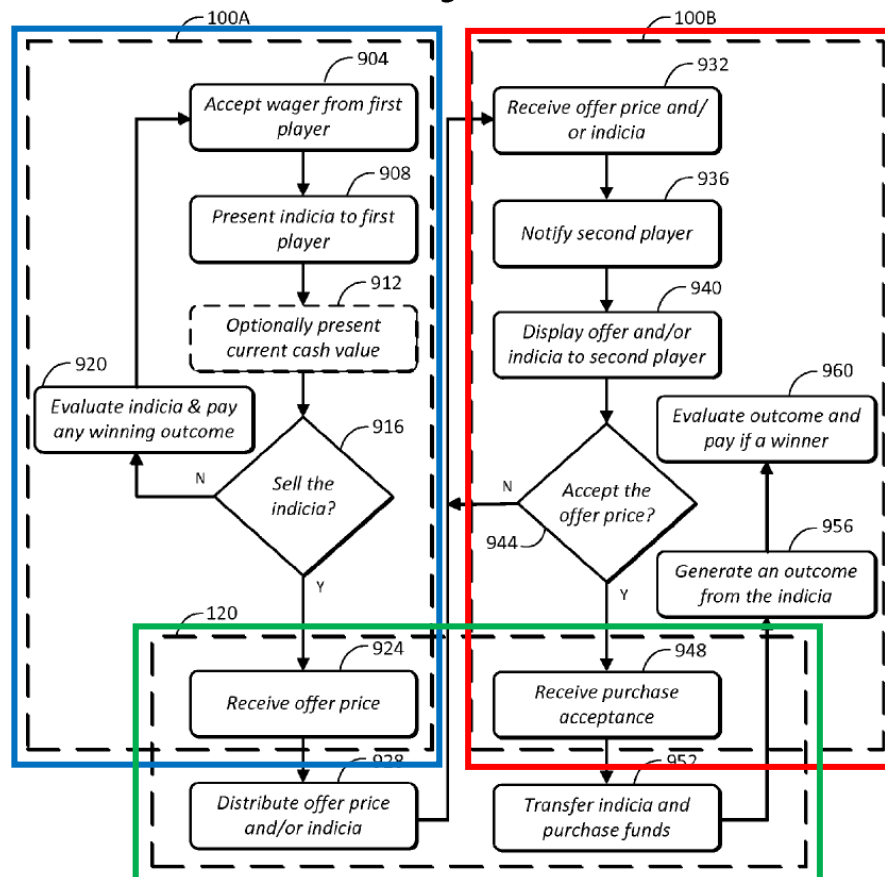
value, and the game may subsequently end. If the player declines, the underlying wagering game will typically continue according to its rules.”).

72. With respect to buying and selling by other players of the system via an “electronic marketplace,” as Scott describes it, a player “may decide that he or she is better off selling the hand to another player than to take the current cash value or attempt to achieve a winning outcome from the symbols.” *Id.* ¶ [0099]. For example, engaging a “sell” button or the like may cause the player’s wager to enter an “electronic marketplace for sets of symbols” and “solicit wagers or credits from other players who may purchase the symbols from the player.” *Id.* In this scenario, the selling player may utilize the current cash value displayed on their screen to set or designate an initial selling price for their wager, but the player may also “independently set a value or price for their indicia.” *Id.* ¶¶ [0125], [0127]. A second player, e.g., a “buying player,” on the marketplace may accept the initial offer price and purchase the ticket, or they may “propose his or her own different price or counter offer.” *Id.* ¶ [0139]. In typical fashion for a marketplace, “counter offers may continue to be made between the players until a counter offer is accepted or declined.” *Id.* If an offer or counter offer is accepted, “[t]he server may then transfer the non-final set of indicia from the first player to the second player” and “the tokens, credits, funds or other consideration used to purchase the non-final set of indicia may be transferred from the second player to the first player.” *Id.* ¶ [0140]. The first

player “will no longer be able to play the non-final set of indicia,” but they “may be played to a conclusion or final set of indicia on the second gaming machine” after they are transferred to the second player. *Id.*

73. The general process for buying and selling indicia between players on the marketplace is illustrated in FIG. 9 below, where blue box represents the first player’s device, the red box represents the second player’s device, and the green box represents the server device. “The server 120 may be configured to facilitate transmission of counter offers as well as the acceptance or rejection of the counter offers.” *Id.* at [0139].

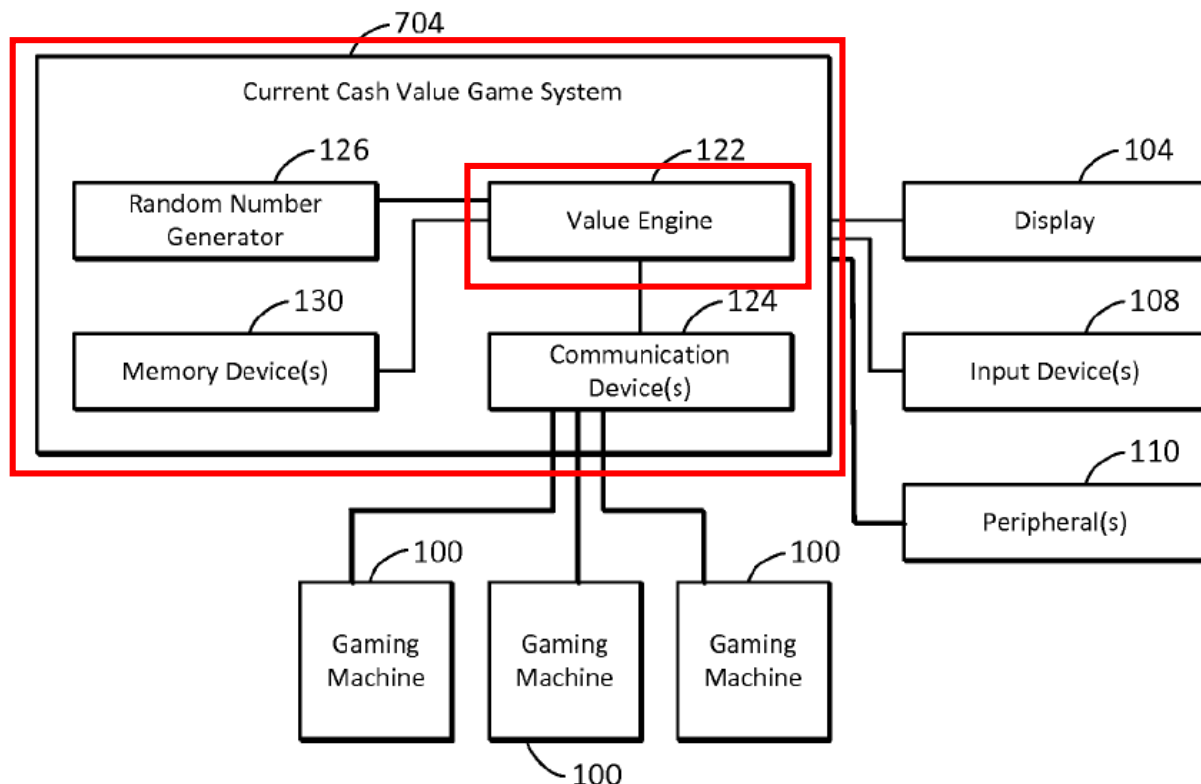
Fig. 9



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

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

Fig. 7



Id. FIG. 7.

75. That is, “[i]n general, the value engine ... is configured to evaluate game outcomes at various stages of a game,” which involves “reevaluat[ing]” the wagering information as the event progresses. *Id.* ¶¶ [0039], [0041]; *see also id.* ¶¶ [0062] (“In operation, the value engine 122 may evaluate game information to determine a current cash value. For example, in one embodiment, the value engine 122 may receive game information identifying the game symbols or indicia the player currently has, the odds the player will win (or lose), the amount the player has wagered, or various combinations thereof.”), [0063]. As the evaluation occurs at various stages, “the current cash value is dynamic and may be based on the current situation of the game being played.” *Id.* ¶ [0069]. For example, “current cash value may be determined and presented after each card or other symbol is dealt to a player. This may occur in real time or in substantially real time. For example, as each individual playing card or slot symbol is revealed, a new current cash value may be calculated. This provides an animated presentation which may be engaging to players.” *Id.* ¶ [0070]. Notably, the current cash value offer may be presented to the user continuously, although dynamically changing, until the game ends by completing the game or accepting the offer. *See id.* ¶ [0084] (“It is noted that the process of presenting current cash value for a player’s game symbols may continue with newly presented game symbols until the game is over at decision step 412 or

until the player accepts a current cash value for his or her set of symbols at decision step 432.”).

76. In my opinion, a POSITA would agree with Scott’s assessment that “[t]he value engine is advantageous in that it adds a new element to wagering games that is compatible with a wide variety of wagering games.” *Id.* ¶ [0041]; *see also id.* ¶¶ [0043]-[0044] (“Since the value engine may be used with a variety of wagering games, it is also advantageous in that it can be used to enhance traditional games, such as to encourage new players to play or entice existing players to continue playing. In addition, the value engine provides feedback in the form of a current cash value for the player’s current set of game symbols or indica. This allows players to make a connection between their actions and the cash value presented by the value engine. Thus, players are able to actively play and participate in a game having the value engine. This gives players a sense of control which makes the game challenging and more entertaining. The value engine may also attract new players who are attracted to games where they can easily see the results of their actions.”).

B. Overview of DeWaal (Ex.1004)

77. U.S. Patent Application Publication No. 2008/0113765 A1 to Daniel DeWaal (hereinafter, “DeWaal”), entitled “Gaming System and Method Providing Venue Wide Simultaneous Player Participation Based Bonus Game,” was published on May 15, 2008. The application leading to DeWaal, U.S. Patent Application No.

11/558,683, was filed on November 10, 2006, and issued as U.S. Patent No. 8,105,149 on January 31, 2012. Based on my review and comparison, the specification of DeWaal and the specification of issued U.S. Patent 8,105,149 are identical. U.S. Patent No. 8,105,149, i.e., the U.S. Patent that issued from the DeWaal reference relied upon herein, is incorporated by reference in the '822 Patent. '822 Patent 25:64-67.

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

79. Among such choices or inputs that provide increased excitement and enjoyment for players is DeWaal’s “offer and acceptance feature.” *See, e.g.*, DeWaal ¶¶ [0141], [0147], FIG. 7. For example, in DeWaal’s “multi-round” bonus game that has a “plurality of outcomes in each round,” and “players must pick a designated selection (i.e., a winning outcome) in each round to win all or a share of the award,” and players that pick the winning outcome in a round advance to a

subsequent round and players that fail to pick the winning outcome in a given round are eliminated from the bonus event, the system “offers each advancing player an award to quit the bonus event” between each round. DeWaal ¶¶ [0119], [0128] (“The multi-round bonus event includes a plurality of outcomes in each round the bonus even includes a selection game and the plurality of outcomes include player selectable elements or selections”), [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event.”), [0131] (“if a player does not make an input associated with the designated selection (i.e., a winning outcome) in an initial round, that player may be deemed ineligible for advancement to a subsequent round.”), [0141] (“four hundred players qualified to advance from the first round to a second round (i.e., by making an input associated with the winning outcome in the first round). Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event.”), [0147] (“This offer and acceptance process continues for a designated number of rounds.”).

80. Any player that accepts the “offer to quit” in exchange for the “additional award” between rounds is paid the award and is eliminated from the bonus event. DeWaal ¶ [0142] (“In this embodiment, one hundred players chose to

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

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

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

C. Overview of Schugar (Ex.1005)

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

84. Thus, Schugar describes "equity concepts" for "any" multi-stage or multi-round game that has "variable states and is not over without an interval between states," such as "a sporting event, a gambling game (e.g., card game etc.), any event that bettors have placed wagers on in the prior art." Schugar ¶¶ [0075], [0122]; *see also* Schugar ¶ [0104] ("A machine game can be any wagering game, such as a slot machine, video poker machine, or machine game which plays any

game that can have multiple states (e.g. games which a player can wager on a progression).”). For example, Schugar discloses that “[w]hen the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to cash in on the winning state before completing the game.” Schugar ¶ [0075]. In this regard, Schugar recognizes that “[a] player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption” so that “even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.” Schugar ¶ [0077]. “In this way,” as Schugar explains, “the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079].

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

the player to choose whether he wishes to bank some or all of his recent gains in expectation for later redemption.” Schugar ¶ [0092].

86. As Schugar states, “[i]f the player chooses in operation 304 to bank his or her positive expectation, then the method can proceed to operation 306, which stores the value the player has banked for later use.” Schugar ¶ [0093]. Schugar provides flexibility in that “[e]ither the player can select how much positive expectation to bank, or the machine can automatically calculate an amount of positive expectation to bank.” Schugar ¶ [0094]. Or, providing even greater flexibility, “when a player achieves a positive change in his or her expectation, a portion of the player’s increased expectation can be automatically banked for later redemption.” Schugar ¶ [0101].

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

IX. Grounds of Unpatentability

88. In this section I will explain why claims 1, 7, 15, and 21 are anticipated by either Scott alone or DeWaal alone, and why claims 15 and 21 are rendered obvious by either Scott or DeWaal in view of Schugar if Patent Owner contends that those claims require both a “buy-out offer” **and** a “partial buy-out offer.” I also explain why claims 7 and 21 are rendered obvious by either Scott or DeWaal in view of Schugar if Patent Owner contends that either Scott or DeWaal does not disclose “adjusting the designated amount for the value of the wager on the wagering event after the initial designated amount is received,” as recited in claims 7 and 21.

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

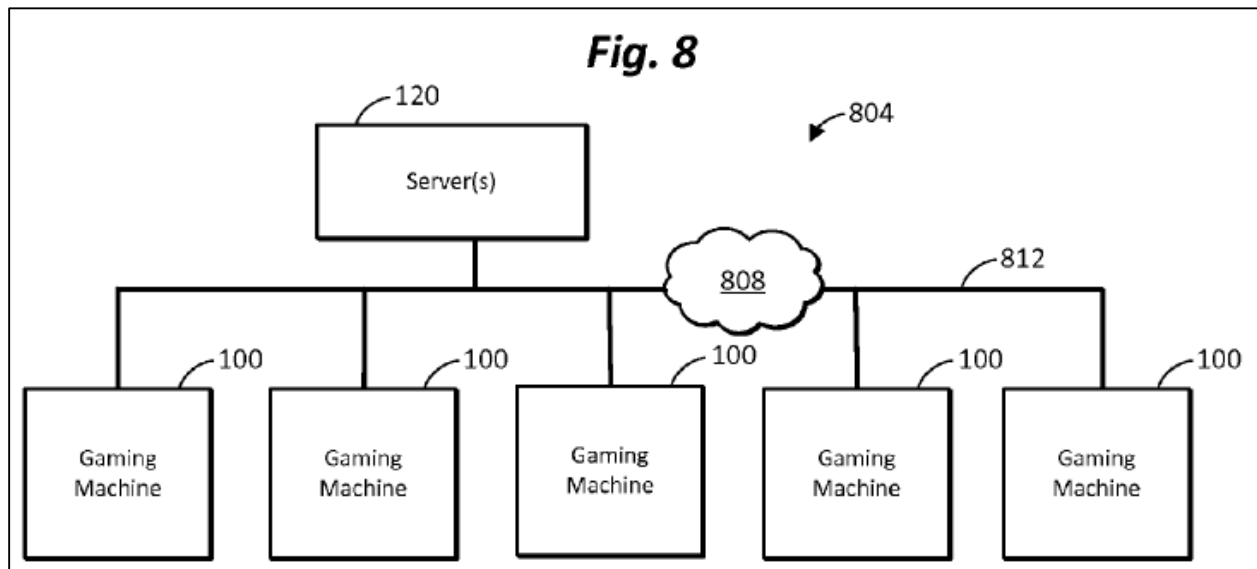
A. Claims 1, 7, 15, and 21 are anticipated by or obvious in view of Scott, and Claims 15 and 21 are Obvious in view of Scott and Schugar

1. Claim 1

a. 1[a] – “A system for processing a payment for a wager in connection with a wagering event, the system comprising:”

90. Limitation 1[a] is the preamble of claim 1 of the '822 Patent. In my opinion, and to the extent the preamble is limiting, Scott discloses limitation 1[a] of the '822 Patent.

91. In my opinion, a POSITA would have understood that Scott discloses “a system for processing a payment for a wager in connection with a wagering event” because Scott discloses a multiplayer system that facilitates payments between players via a marketplace or exchange for non-final sets of wagering game indicia of a wagering event. Scott’s system is illustrated, for example, in FIG. 8:



Scott FIG. 8; *see also id.* ¶ [0036] (“FIG. 8 is a block diagram illustrating an exemplary multiplayer system.”). Because Scott’s multiplayer system is expressly described as a “system,” and because it appears to be a system including at least one server in communication with several gaming machines, as illustrated in FIG. 8, a POSITA would have understood that Scott discloses a “system.”

92. Further, a POSITA would have understood that Scott’s multiplayer system is for, among other things, “processing a payment for a wager in connection with a wagering event.” Specifically, a POSITA would have understood that Scott’s

system is for processing a payment made by a second player for a first player's wager in an event such as "video poker games, keno, slot-type games, and blackjack or other card, dice or various other games now known or later developed," as well as "video lottery, bingo and bingo-based games." *Id.* ¶ [0049]; *see also id.* ¶ [0116] ("FIG. 8 illustrates a multiplayer system 804 where non-final sets of indicia may be sold by players to buyers (other players)."). As Scott explains, a first player may "wager monetary credits" and play such games, thereby making them "wagering event[s]." *Id.*; *see also id.* ¶¶ [0074] ("At step 404, a wager may be received or accepted to begin a wagering game. The wager may be in the form of credits or currency and maybe physically or electronically received by a payment acceptor of the gaming machine."), [0117] ("For example, a player playing a poker game at a gaming machine 100 may sell his or her partial hand through the multiplayer system 804.").

93. As Scott discloses, a player of such a wagering event can sell their wager (including their non-final set of game indicia) to another player in exchange for payment. *See id.* ¶¶ [0099] ("In a similar vein, it is contemplated that a player may sell his or her symbols in one or more embodiments."), [0116] ("In general, non-final sets of indicia may be formed at the gaming machines 100 and then offered for sale at the player's discretion."). When a player elects to sell their wager, and thereby "solicit wagers or credits from other players who may purchase the symbols

from the player,” the selling player’s wager enters an “electronic marketplace.” *Id.* ¶ [0099]. Other players can submit offers to the selling player for the wager being sold via the electronic marketplace. *Id.* ¶ [0139]. If the offer is accepted by the selling player, the server of the multiplayer system transfers, i.e., “processes,” the payment from the buying player to the selling player. *Id.* ¶¶ [0014], [0140]. Specifically, when a first player gaming machine sells a wager to a second player gaming machine, the “***tokens, credits, funds or other consideration used to purchase the non-final set of indicia may be transferred*** from the second player to the first player” by the “server” of the multiplayer system. *Id.* ¶ [0140]; *see also id.* ¶ [0014] (“The server may be further ***configured to transfer payment*** from the second player’s gaming machine to the first player after receipt of the offer acceptance.”), claim 3. A POSITA would have understood that transferring “payment,” i.e., “tokens, credits, funds or other consideration used to purchase the non-final set of indica,” corresponds to “processing payment for a wager in connection with a wagering event.”

b. 1[b] – “a communications interface;”

94. In my opinion, a POSITA would have understood that Scott discloses limitation 1[b]. Specifically, a POSITA would have understood that the multiplayer system of Scott comprises a “communications interface” because Scott discloses that

the server and gaming device clients are in communication with one another over various communication mediums via their communications devices.

95. For example, Scott discloses that “[t]he server may have one or more ... communication devices” and “may utilize various communication mediums in operation” in order to “communicat[e] with one or more gaming machines.” Scott ¶¶ [0011], [0116], [0118]. Scott discloses that these communication devices interface the server of the multiplayer system with communication networks such as “wireless or wired communications,” local area networks, wide area networks, or both, and/or the “Internet.” *Id.* ¶ [0118]. Therefore, a POSITA would understand Scott’s system to have a communication interface, such as a communication device capable of interfacing with such communication networks/mediums.

c. 1[c] – “a processor operatively coupled to the communications interface; and”

96. In my opinion, a POSITA would have understood that Scott discloses limitation 1[c]. Specifically, a POSITA would have understood that Scott’s server in the multiplayer system comprises a “processor operative coupled to the communication interface” because Scott expressly states, as was known in the art, that a server has a processor and communication interface and that the server’s functions, which are executed by the processor, include utilizing the communications interface at least to communicate with the clients it serves to fulfill its basic purpose as a “server.”

97. For example, Scott discloses a “multiplayer wagering game system comprising ... a server having one or more processors ... and communication devices” through which the server is “configured to” “receive” information from players’ gaming machines “through the one or more communication devices” and “transmit” information to players’ gaming machines. *Id.* claim 1. Because Scott discloses that the server has a processor, and the server is able to execute functions involving the use of the communication devices and mediums, a POSITA would understand that the server’s “processor” is “operatively coupled to the communications interface.”

d. 1[d] – “a memory having programming instructions stored thereon, which, when executed by the processor, performs one or more operations, comprising:”

98. In my opinion, a POSITA would have understood that Scott discloses limitation 1[d]. Specifically, a POSITA would have understood that Scott’s server has a memory because Scott expressly states so and that the memory stores programming instructions that are executed by the processor because Scott states that the server performs various functions in the gaming system.

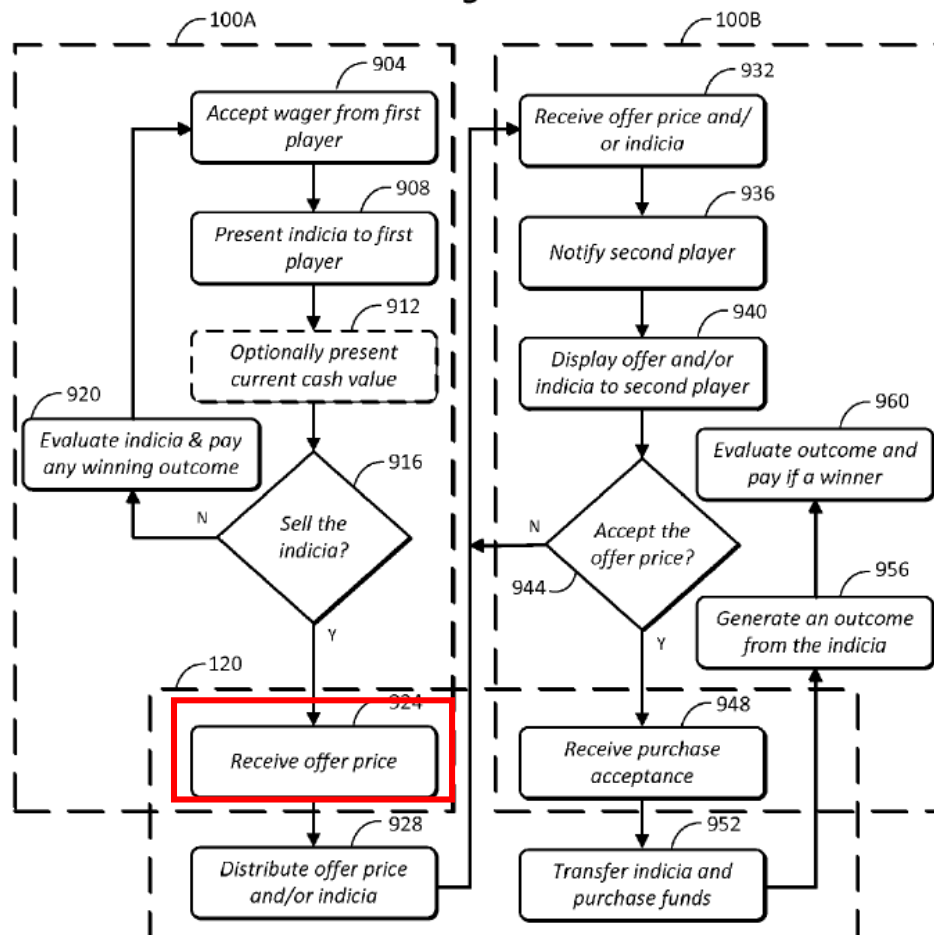
99. For example, corresponding to the “memory,” Scott states that the “server may have one or more ... **memory devices.**” Scott ¶ [0011]. Regarding the memory storing “programming instructions ... which, when executed by the processor, performs one or more operations,” a POSITA would have understood that

Scott describes these programming instructions and their execution by the processor in terms of the functions that the server performs. For example, Scott discloses that the “processors, memory devices, and communication devices” of the server are “configured to” “receive” information from the gaming machines, “transmit” information to the gaming machines, and “transfer” information from one gaming machine to another, which are all functions that a POSITA would understand are implemented via programming or computer readable instructions stored in the memory and executed by the processor. *Id.* claim 1. In addition, consistent with this understanding, and with respect to the same type of “memory device” that the gaming devices have, Scott’s memory devices “may be configured to store the machine readable code to implement and/or operate” the various functionalities disclosed and discussed in Scott. *See, e.g., id.* ¶ [0055]. Further, similar to how Scott discloses that the “processor” of the gaming device “may retrieve and execute machine readable code to provide” the various features of the gaming devices from the memory device, a POSITA would have understood that the same was also true of the server, which Scott discloses as also having a “processor” and “memory devices,” as discussed herein.

- e. 1[e] – “receiving, over the communications interface, a designated amount for a value of the wager on the wagering event from a first input device,”*

100. In my opinion, a POSITA would have understood that Scott discloses limitation 1[e] because Scott disclose that, when a player elects to sell their wager on a wagering event, the server receives an initial offer price for the selling player's wager on the wagering game ("a designated amount for a value of the wager on the wagering event") through the communication device ("over the communications interface") from the selling player's gaming device ("first input device"). This is shown, for example, in Scott's FIG. 9 below.

Fig. 9



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

101. For example, Scott discloses, with respect to FIG. 9, that “a wager may be received at a first gaming machine 100A to initiate play of a wagering game where a non-final set of indicia may be generated.” Scott ¶ [0123]. The “current cash value of the indicia may be optionally determined and provided, such as by a value engine of the first gaming machine 100A,” which “may be used to aid the player in valuing his or her indicia if the first player decides to sell the indica.” *Id.* ¶ [0125]. “If the player decides to sell, then an offer price (i.e., purchase price) may be requested from the first player,” such as, for example, by “prompt[ing] the user to input an offer price for his or her non-final set of indicia.” *Id.* ¶ [0127]. Subsequently, the “offer price may then be transmitted by the first gaming machine 100A to the server 120,” and, corresponding to the claimed “receiving ... a designated amount for a value of the wager on the wagering event,” “[t]his receipt by the server 120 is also shown by step 924 in FIG. 9.” *Id.*; *see also id.* claim 1 (reciting that the gaming device of the first player “transmit[s] the offer price from the gaming machine,” and the server “**receive[s] the offer price** through the one or more communication device.”).

102. The offer price is a “designated amount” because it is set by the selling player, or in other words, designated by the player. *Id.* ¶ [0128] (“Typically, the offer price will be set to the player’s desire.”). And, the amount is “for a value of the wager on the wagering event” because it is the amount at which the first player is offering to sell their wager (including the non-final set of indicia) on the wagering game. For example, “[t]he current cash value provided by the multiplayer system may be used to aid the player in **valuing** his or her indicia.” *Id.* ¶ [0125]. Further demonstrating that the offer price is for a “value of the” selling player’s “wager on the wagering event,” Scott discloses that “players will set their offer price based on the amount of a possible winning award that is attainable from the non-final set of indicia” in the wagering game. *Id.* ¶ [0129]. In other words, Scott discloses that players set the offer price based on the potential winnings, i.e., “a value of the wager on the wagering event,” in the wagering game. In addition, the ’822 Patent confirms that an offer price is a “designated amount for a value of the wager on the wagering event. See ’822 Patent 15:38-43 (“the player may have the option to provide a counter offer for consideration by the entity that initiated the buy-out offer (e.g., something different than the original buy-out offer, such as ... a different **designated amount for the value**, etc.”).

103. The receiving is “over the communications interface ... from a first input device” because Scott discloses that that “[i]n operation the server may receive

the offer price *from the gaming machines through the one or more communication devices*,” where the gaming machine of the seller corresponds to the claimed “first input device” and the communication device corresponds to the claimed “communications interface.” Scott ¶ [0011].

f. 1[f] – “receiving, over the communications interface, a cash out offer from a second input device,”

104. A POSITA would have understood that Scott discloses limitation 1[f] because it discloses a second player at a second gaming device, which corresponds to a “second input device,” transmitting a cash offer, which corresponds to “a cash out offer” for the first player’s wager, to the server and the server receiving the cash offer from the second gaming device. *See, e.g.*, Scott ¶¶ [0132], [0139], [0140].

105. More specifically, continuing with the discussion above regarding the selling player’s wager entering the electronic marketplace at the election of the selling player and at the value designated by the selling player, Scott discloses that “the server 120 may distribute the offer price to a pool of potential buyers by transmitting the offer price to one or more second gaming machines 100B of the one or more second players,” and the “offer price may be received at the one or more second gaming machines 100B of the one or more second players (i.e., buying players).” *Id.* ¶¶ [0132], [0134]. From this point, the buying player at the second gaming device can accept the offer price, reject the offer price, or “may counter the offer price” by “proposing his or her own different price or counter offer.” *Id.* ¶¶

[0135]-[0139]. Where such a counter offer is made by the second player, and corresponding to the claimed “receiving ... a cash out offer from a second input device,” Scott discloses that the “server is further configured to ... **receive a counter offer** price from” the second gaming device that transmitted it to the server and “facilitate transmission of [the] counter offer[]” to the first gaming device. *Id.* claim 8, ¶ [0139]. At such point, the first player is “provided an option to accept or decline the counter offer.” *Id.* ¶ [0139].

106. A POSITA would have understood that the received counter-offer corresponds to a “cash out offer” because it is an offer to take a designated value, i.e., the counter offer amount, in exchange for the first player “no longer be[ing] able to play the non-final set of indicia” because the server will “transfer the non-final set of indicia from the first player to the second player.” *Id.* ¶ [0140]. For example, on the first player’s gaming device, after accepting a counter offer from a second buying player, “the non-final set of indica [sold] may be marked as disabled or removed from view on the first gaming machine 100A, and then shown on the second gaming machine 100B” such that the “non-final set of indicia ... may be played to a conclusion or final set of indicia on the second gaming machine 100B” by the second player (buying player). *Id.* ¶¶ [0140], [0141]. Therefore, at least because acceptance of the counter-offer eliminates the first player’s entire interest in the wager sold, it accomplishes the same objectives as a “buy-out” or “cash out” offer

as described in the '822 Patent. *See, e.g.*, '822 Patent 31:57-64 (“For example, buy-out/cash-in offers and acceptances may cover a broad range of items that may be provided from (1) party to another or others, or exchanged between two (2) or more parties that are involved in a transaction. As an illustration and without limitation, a buy-out/cash-in offer/acceptance may involve any monetary or nonmonetary value or item, etc. transferred from Party A to Party B in return for Party B’s ‘ticket.’”); *see also id.* 16:32-33 (“the buy-out offer may be for buying all or a portion of a ticket from a player.”). In fact, as the '822 Patent recognizes, consistent with what a POSITA would have understood, whether the offer is an initial offer or a counter-offer is merely a “matter of logistics” because “both approaches will accomplish the same objectives and may be utilized where desired.” '822 Patent 15:51-55.

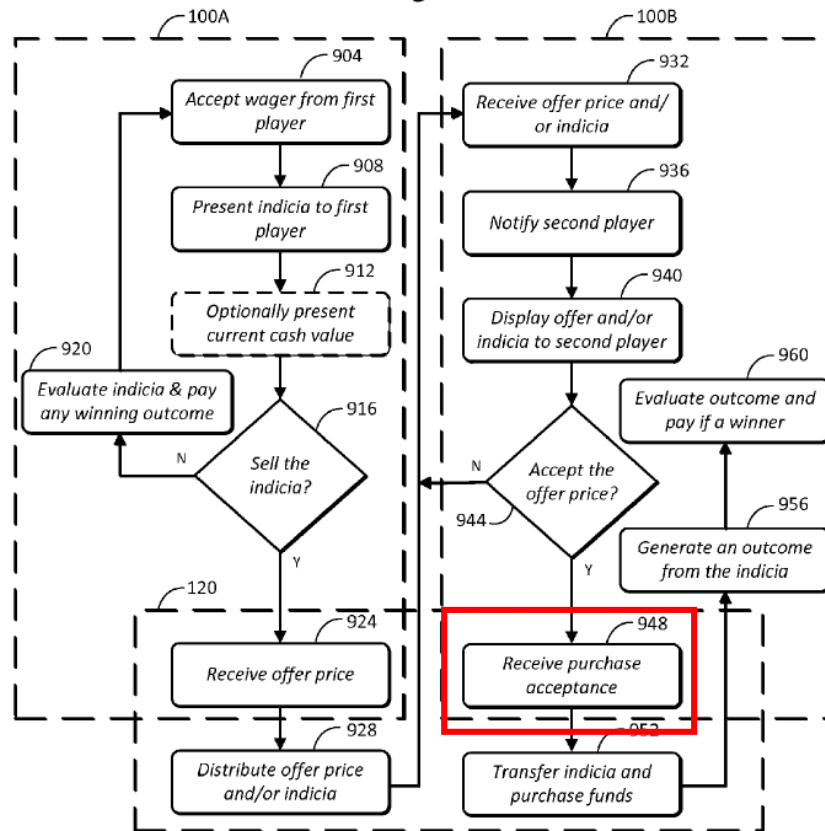
107. A POSITA would have understood that the receiving of the counter-offer by the server is “over the communications interface” because the Scott discloses that the server and client of the multiplayer system communicate over various communication mediums, such as the Internet, as discussed above. *See, e.g.*, Scott ¶ [0118]. Furthermore, as Scott discloses that the “communication devices” of the server are utilized for communicating over the various “communication mediums” with the player gaming devices, a POSITA would understand the counter offer to be received over the communication device/medium because the transmittal of the counter offer to the server is a communication from the gaming device.

g. 1[g] – “identifying an acceptance of the cash out offer from the first input device prior to the end of the wagering event,”

108. In my opinion, a POSITA would have understood that Scott discloses limitation 1[g] because Scott discloses that the server determines if it has received an acceptance indicator (“identifying an acceptance of the cash out offer”) transmitted from the accepting (selling) player’s gaming device (“the first input device”) while the purchased wager is still non-final (“prior to the end of the wagering event”).

109. For example, continuing with the discussion above regarding the first player receiving the cash offer from the second player’s gaming device, Scott discloses that the “server 120 may be configured to facilitate transmission of ... the acceptance ... of the counter offers” and that the server process for handling an accepted counter offer is the same as handling the acceptance of an initial offer. Scott ¶ [0139]; *see also id.* (“Once a counter offer is accepted, the process may continue as described in the following.”). Specifically, the “acceptance may then be transmitted to the server 120” and, corresponding to “identifying an acceptance of the cash out offer from the from the first input device,” Scott discloses that the server in step 948 of FIG. 9 receives “the acceptance indicator” indicating that the first (selling) player accepted the offer. *Id.* ¶ [0140].

Fig. 9



Scott FIG. 9. Moreover, the acceptance is “from the first input device” that is selling the wager because the selling player’s gaming device determines whether the selling player has input the acceptance indicator into the gaming device, i.e., whether the gaming device has “received” the “player’s acceptance of an offer price.” *Id.* ¶ [0140]. Further, as described below with respect to limitations 1[h] and 1[i], that the server identified the acceptance of the cash offer from the first input device is further confirmed by the server’s taking of specific actions in response to receiving the acceptance.

110. A POSITA would have understood that Scott discloses the server identifying the acceptance of the cash offer from the first input device “prior to the end of the wagering event” because the cash offer was made for a non-final wager, indicating that the wagering event, i.e., the underlying game in which the non-final set of indicia was generated, has not concluded, and because the purchasing player at the second gaming device subsequently plays the indicia to conclusion indicates that the acceptance was identified prior to the end of the underlying wagering event or game. For instance, as discussed further below, after the server identifies that the cash offer has been accepted, it “transfer[s] the ***non-final set of indicia from the first player*** to the second player” and “the non-final set of indicia ... ***may be played to a conclusion or final set of indicia on the second gaming machine*** 100B at step 956.” *Id.* ¶ [0140]-[0141]. Moreover, Scott further indicates that a player that elects to “sell” their non-final wager will “suspend the current game” such that it would remain in its non-final state. *Id.* ¶ [0099].

h. 1[h] – “processing the cash out offer, and”

111. In my opinion, a POSITA would have understood that Scott discloses limitation 1[h]. For example, among other actions, the server processes and finalizes the cash out offer by notifying the first player that his or her non-final set of indicia has been purchased/sold, transferring the non-final set of indicia from the first player to the second player upon acceptance of the offer by the first player, transferring

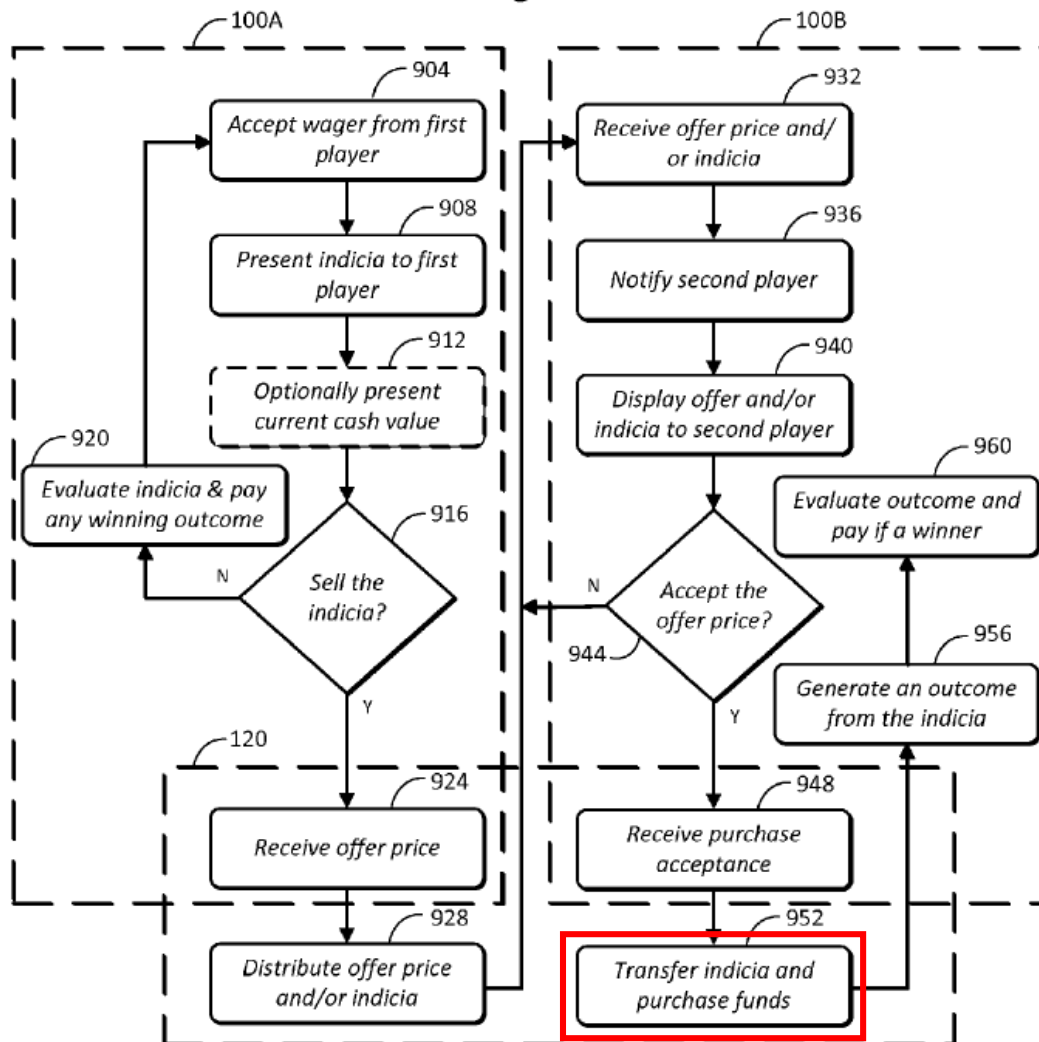
payment for the non-final set of indicia to the first user, and by collecting a processing fee for facilitating the sale.

112. For example, continuing with the example above, after the server identifies the acceptance of the offer by the first player, the server may transmit a “message or notification ... to the first gaming machine 100A to notify the first player that his or her non-final set of indicia has been purchased.” Scott ¶ [0140]. A POSITA would have understood that such a notification constitutes “processing” of the cash out offer after it has been accepted because such a step is part of finalizing the cash out offer. Further, “[t]he server may then transfer the non-final set of indicia from the first player to the second player at a step 952,” which a POSITA would have understood as part of “processing” the cash out offer because it is a step or operation towards finalizing the offer and sale. *Id.* In addition, a POSITA would have understood that the server’s collection of “transaction fee” for the gaming establishment that provides the multiplayer system to be part of “processing” the cash offer because it is reflective of the establishment receiving consideration for its facilitation and processing of the electronic marketplace enabling such offers to be made. *Id.* And, finally, a POSITA would have understood that transferring “the tokens, credits, funds or other consideration used to purchase the non-final set of indicia ... from the second player to the first player” to be “processing” the cash out offer because it is an operation to give effect to the terms of the offer. *Id.*

- i. 1[i] – “transmitting, over the communications interface, a value of the cash out offer to the first input device.”

113. In my opinion, a POSITA would have understood that Scott discloses limitation 1[i] because Scott discloses the server transmitting the purchase amount of funds to the first input device, as described above with respect to processing the cash out offer for limitation 1[h]. For example, as indicated in step 952 of FIG. 9, shown below, the server “transfer[s]” the “purchase funds” to the selling player.

Fig. 9



Scott FIG. 9; *see also id.* ¶¶ [0014] (“The server may be further configured to transfer payment from the second player’s gaming machine to the first player after receipt of the offer acceptance.”), [0140] (“In addition, the tokens, credits, funds or other consideration used to purchase the non-final set of indicia may be transferred from the second player to the first player.”).

114. Further, a POSITA would have understood that the “purchase funds” or payment is “a value of the cash out offer” because it is the counter offer price, which is the designated value or amount of the cash out offer that the selling player has accepted for their wager. And, Scott discloses that the purchase funds or payment for the first player’s wager is transmitted “to the first input device” because Scott discloses that the funds used to purchase the wager are transmitted to the selling player’s device. *See id.* ¶ [0014] (“The server may be further configured to transfer payment from the second player’s gaming machine **to the first player** after receipt of the offer acceptance.”). Finally, a POSITA would have understood that the transfer occurs over a network such as the internet utilizing the communication devices, and thus is “over the communication interface” because Scott discloses that the server transmits and receives information to and from the gaming devices over one or more various communication mediums or networks 808, such as the Internet via one or more communication links 812, as shown in FIG. 8, utilizing the server’s communication devices. *See id.* ¶ [0118].

2. Claim 7: “The system of claim 1, wherein the one or more operations further comprise: adjusting the designated amount for the value of the wager on the wagering event after the initial designated amount is received.”

115. As an initial matter, in my opinion, Scott discloses “the system of claim 1” for the reasons explained above, which are herein incorporated by reference. Further, a POSITA would have understood that Scott discloses claim 7 of the ’822 Patent because Scott discloses that the initial offer price for the wager (“the designated amount for the value of the wager on the wagering event”), which is the amount or value that the selling player will receive if an offer is accepted, is adjusted in various ways after that initial offer amount is received from the first player device.

116. For example, with reference the discussion of the system and its operations above concerning my analysis of claim 1 of the ’822 Patent, Scott discloses, in the context of the second player making a counter offer, that the “second player may propose his or her own *different price or counter offer*.” Scott ¶ [0139]. A POSITA would understand that, as described above, a second player’s counter offer for a different price, and thus a different amount of value that the selling player will receive if the counter offer is accepted, involves adjusting and changing the value of the wager to confirm to the “different” price provided in the counter offer, and such a counter offer can only be made after the selling player provided to the server and the server received the initial selling price designated by the selling player.

117. In addition, the server may further adjust the designated amount for the value of the wager (e.g., further adjust the different counter offer price), and thus the amount the selling player will receive, by collecting a transaction fee. *Id.* ¶ [0140] (“A transaction fee may be collected by the gaming establishment providing the multiplayer system as well.”). A POSITA would understand that the gaming establishment collecting a transaction fee is equivalent to subtracting the transaction fee from the value amount that the selling player ultimately receives for the wager. *See, e.g., id.* ¶ [1041] (“[T]he offer price is retained by the first player **minus** the transaction fee collected by the gaming establishment...It is noted that the transaction fee may be a predefined percentage of the offer price, a fixed fee, or other amount.”). A POSITA would also understand such a subtraction involves changing and adjusting the offer price of the value of the wager, and thus the amount that the selling player will receive once the wager is sold, after the initial selling price was received by the server when the selling player initially elected to sell their wager. Alternatively, if Patent Owner contends that Scott does not disclose the limitations of claim 7, it would be obvious to combine Scott with Schugar, which also discloses the limitations of claim 7, as I explain *infra* at § IX.B.2. A POSITA would be motivated to combine the teachings of Scott with those of Schugar for the reasons I explain *infra* at § IX.A.3.c.

3. Claim 15

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

118. In my opinion, a POSITA would have understood that Scott discloses limitation 15[a] for the same reasons explained above regarding limitation 1[d], which are herein incorporated by reference. Specifically, limitation 15[a] is substantially similar to limitation 1[d] in that it only renames the “memory” from limitation 1[d] to be a “non-transitory computer readable medium.” A POSITA would have understood that a memory device, as is disclosed in Scott, is a “non-transitory computer readable medium.” Regarding the “memory devices,” Scott discloses that the “processor” may “retrieve,” i.e., read, and execute “machine readable code” to provide the described features of the server. *See, e.g.*, Scott ¶ [0056]. Although Scott’s exemplary description of the operation of the memory, processor, and code previously described is with respect to a gaming device, a POSITA would have understood that, by using the same well-understood terms to describe the computing components, the memories, processors, and code of the server and the gaming device operate in the same well-known way, albeit to implement different features/functionalities.

- b. 15[b] – “causing a central server system to receive a designated amount for a value of the wager on the wagering event from a first input device;”*

119. In my opinion, a POSITA would have understood that Scott discloses limitation 15[b] for the same reasons explained above regarding limitation 1[e], which are herein incorporated by reference. The only difference between these limitations is that limitation 15[b] recites that “a central server system” performs the “receiving” operation (i.e., the same receiving operation as recited in limitation 1[e]). As described above with respect to limitation 1[e], however, Scott’s “server” of the multiplayer gaming system is what performs the “receiving” operation as recited in these limitations. *See, e.g.*, Scott claim 1 (reciting that the gaming device of the first player “transmit[s] the offer price from the gaming machine,” and the server “***receive[s] the offer price*** through the one or more communication device.”).

120. Moreover, regarding Scott’s server as being a “central” server, a POSITA would understand at least from Scott’s FIG. 8 that the server is a “central” server because it lies at the center of the communications between the multiple gaming machines of the system, particularly in the context of the electronic marketplace, as has been described herein. *See, e.g., id.* ¶ [0139] (“The server 120 may be configured to facilitate transmission of counter offers as well as the acceptances or rejection of counter offers” between the first selling player and the second buying player gaming devices).

- c. 15[c] – “causing the central server system to receive one or more of a buy-out offer comprising the value of the wager or a partial buy-out offer comprising a portion the value of the wager from a second input device;”

121. In my opinion, a POSITA would have understood that Scott discloses limitation 15[c] for many of the same reasons explained above regarding limitation 1[f], which are herein incorporated by reference, because these limitations are substantially similar. For example, regarding any purported difference between the “*buy-out offer*” recited in limitation 15[c] and the “*cash out offer*” recited in limitation 1[f], the ’822 Patent states that “the terms buy-out and cash-in as used herein have the same intended meaning,” and thereby confirms that the use of the terms “buy” and “cash” have the same meaning in this context and the terms “in” and “out” have the same meaning in this context. ’822 Patent 31:6-8. In other words, these disclosures confirm that a POSITA would understand both a “cash out offer” and a “buy-out offer” to refer to the same concept of offering a player some consideration in exchange for quitting the event. As such, a POSITA would have understood that Scott’s counter-offer, which as explained above is “receive[d]” by Scott’s server, corresponds to the claimed “buy-out offer,” such that my analysis of limitation 1[f] therefore demonstrates how Scott’s server “receive[s] ... a buy-out offer ... from a second input device.”

122. Further, a POSITA would have understood that Scott’s counter-offer “compris[es] the value of the wager” because it comprises a counter offer price that, although may be a different designated amount than the initial offer price, is the value of the wager. *See id.* ¶ [0139] (“It is contemplated that the second player may

counter the offer price in some embodiments. In one embodiment for example, rather than accepting the offer price, the second player may propose his or her own different price or counter offer.”). That is, a POSITA would have understood from Scott’s disclosure that the offer price and/or counter offer price are specified amounts that both reflect the “value of the wager,” albeit from different perspectives (i.e., the perspective of the seller and that of a prospective buyer). Specifically, as Scott teaches, the process of setting offer amounts is an endeavor “in **valuing**” the wager. *Id.* ¶ [0125].

123. In my opinion, this is sufficient to satisfy limitation 15[c] although this limitation also recites a “partial buy-out offer.” Specifically, in my opinion, a POSITA would understand that this limitation recites to alternatives, as indicated by the use of the disjunctive “**or**,” where option 1 is “receiv[ing] ... a buy-out offer comprising the value of the wager,” and option 2 is “receiv[ing] ... a partial buy-out offer comprising a portion the value of the wager.” A POSITA would understand that the use of the word “or” between these options indicates that either one of the options is sufficient to satisfy the claim. In other words, the claim can be satisfied by either the “buy-out offer” “or” the “partial buy-out offer”—both are not expressly required.

124. To the extent the Patent Owner attempts to argue that the counter-offer price does not “compris[e] the value of the wager” because it differs in amount from

the initial offer price, which a POSITA would expect to be a lesser value, I would note that the claim does not require the “value of the wager” in limitation 15[c] to be set at the same designated amount that is recited in limitation 15[b]. Nonetheless, even if Patent Owner did make that argument and were correct, Scott may still disclose limitation 15[c] because the counter-offer may correspond to the alternatively recited “partial buy-out offer comprising a portion the value of the wager.” Specifically, to the extent Patent Owner construes a “partial buy-out offer” as simply being an offer to buy-out the wager for “a portion [of] the value of the wager,” or the like, Scott discloses the “partial buy-out offer” because the designated value of the wager, or counter offer price, can be any different price or designated value, and a POSITA would expect that the different price would be less than, i.e., a “portion” of, the initial designated amount given that it is a counter offer. That is, a POSITA would understand that it would not make sense for a buying player to counter with a higher value and thus pay more, such that the counter offer would be for a portion of the initial price, as is consistent with the well-understood concept of a counter offer.

125. Further, to the extent that a “partial buy-out offer” is required by claim 15, and to the extent Patent Owner takes the position that a “partial buy-out offer” means that the offeror (buyer) is only offering to purchase a portion of a wager such that upon acceptance of the partial offer, both the seller and the buyer hold some

interest in the wager, such a partial buy-out offer is disclosed in Schugar. And, in my opinion, it would have been obvious to combine Scott and Schugar to add Schugar's ability to provide such a partial buy-out offer to Scott's electronic marketplace for several reasons, as explained below.

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

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

127. Schugar's disclosure of "cashing in" a "portion" of a player's wager is further demonstrated with reference to an embodiment involving "series" of games or a multi-stage sport wagering event. As Schugar discloses, "[t]he embodiments herein can also be used to bet on sporting events, either at intervals on individual games or series of games." Schugar ¶ [0072]. As an initial matter, considering the prior art as a whole, a POSITA would have understood that Schugar's sports betting concept and wagering on the games in a series, such as a seven-game series like the baseball World Series or a four-quarter football game like the Patriots versus the Giants, is analogous to and compatible with the structure and operation of Scott's use of the value engine in "any wagering game where game symbols and indicia," such as events (e.g., scores) of a sporting event, "are revealed in subsequent stages or steps of a game." See Schugar ¶¶ [0072], [0120], [0126]; Scott ¶ [0041].

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

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

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

Schugar ¶ [0126]; *see also* Schugar ¶ [0120]. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100 wager such that the original wager remains active, with a lower expected payout, and the player has already banked nearly all of their original wager to be put to use however the player desires, such as by placing a counter bet to put the player in a no-lose situation. Further, while this example relates to cashing in during a wager on a single game, Schugar also discloses that the “embodiments described herein can also be used to bet on sporting events, either at intervals on individual games or series of games.” Schugar ¶ [0072]. For example, “[a]fter each game in the series ... payout odds for each team winning the series can change to reflect the current

conditions (as described herein and/or known in the art) and players can make wagers during the series.” Schugar ¶ [0072]. Thus, much like how the odds changed and the player was able to partially cash out during halftime of the single game in the football game example above, a POSITA would understand Schugar to teach that, as the odds change after each game/round in a series of games, the player would be able to partially cash out after each game/round in a wager on the series of games.

129. A POSITA would have been motivated to add the ability to buy and sell only a portion of a wager on the electronic marketplace disclosed in Scott for several reasons.

130. For example, there is an express motivation to combine these references and the particular functionalities in the prior art. Specifically, a POSITA would have been motivated to combine these references in this way because Scott teaches that the ability to cash out a player’s wager before the completion of a wagering event was “highly advantageous” because it “provides another avenue for players to be rewarded for playing a wagering game.” Scott ¶ [0009]. Scott also teaches that it is “advantageous” to “add[] a new element to wagering games that is compatible with a wide variety of wagering games.” *Id.* ¶ [0041]. Similarly, Schugar teaches that the ability to cash out a portion of a player’s wager and continue playing was a desirable compliment to the ability to cash out the entirety of a player’s wager and cease playing. That is, in addition to Schugar’s disclosed feature allowing a player

to “surrender” their wager in its entirety for an award, it also discloses that the player “also” has the choice of “bank[ing] a portion of the expected profit the player has earned for later use.” Schugar ¶ [0078]; *see also* Schugar ¶ [0127] (“the player can still utilize the method described herein of cashing out a portion of a current bet in progress in order to pay for an additional wager”). Schugar expressly describes why a POSITA would have been motivated to add its ability to “cash[] out a portion of a current bet in progress” to any suitable wagering system, and in particular wagering systems like Scott’s that are directed toward providing new and different ways for players to win awards. *See, e.g.* Scott ¶ [0003] (“The invention relates to electronic wagering games and systems, particularly to a gaming machine configured to provide value for partial or incomplete game outcomes.”); *see also id.* ¶¶ [0043]-[0044] (“Since the value engine may be used with a variety of wagering games, it is also advantageous in that it can be used to enhance traditional games, such as to encourage new players to play or entice existing players to continue playing. In addition, the value engine provides feedback in the form of a current cash value for the player’s current set of game symbols or indica. This allows players to make a connection between their actions and the cash value presented by the value engine. Thus, players are able to actively play and participate in a game having the value engine. This gives players a sense of control which makes the game challenging and more entertaining. The value engine may also attract new players who are attracted

to games where they can easily see the results of their actions.”). For example, Schugar recognizes that “[a] player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption” because “even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.” Schugar ¶ [0077]. It also keeps players more engaged by being able to “continue to wager, but limit his [or her] losses by ensuring that some amount is still saved for later.” Schugar ¶ [0079]. For example, the ability to cash out a portion of a current bet, as Schugar explains, allows players to place additional bets that can put them “in a no-lose situation” so that they “can relax and enjoy the game without worry.” Not only is such a feature beneficial for the player, but it also benefits the house—“[t]he house makes money ... and the player gets the peace of mind of a sure win.” Schugar ¶ [0078].

131. Considering the prior art as a whole, a POSITA would have understood that Scott’s disclosure of playing “one or more rounds of a game ... where one or more indicia may be added, removed, and/or replaced,” such as in a poker game that involves “dealing playing cards in stages according to the rules of the poker game,” in a networked betting system is analogous to and compatible with the structure and operation Schugar’s sports betting concept and wagering system, which involves betting on a four-quarter football game. See Scott ¶ [0124]; Schugar ¶¶ [0072], [0120], [0126]. For example, wagering on each deal after the initial turn in a four-

card deal in poker as described in Scott naturally aligns with wagering on each quarter in a four-quarter sporting event as described in Schugar, where each deal of an additional card corresponds to each quarter in the sporting event and each deal or quarter has at least two outcomes. *See* Scott ¶¶ [0058], [0080]; Schugar ¶¶ [0120], [0126]. In this regard, a POSITA also would have been motivated to provide Schugar’s partial cash-out feature as an option in Scott’s multiplayer system, and in particular the electronic marketplace, to increase revenue to the casino operator through increasing commissions (i.e., transaction fees) while providing the player “peace of mind” of at least some “banked” profit. *See, e.g.*, Schugar at ¶¶ [0078]-[0079] (“For example, the house can let the surrender [sic] the wager for \$125. The house makes money on this proposition, and the player gets the peace of mind of the sure win. The player can also bank a portion of the expected profit the player has earned for later use.... In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.”).

132. Specifically, a POSITA would have understood that one of the primary methods for driving casino revenue was to increase the number of individual wagering transactions on which the casino can charge a commission. While providing full cash-out as taught by Scott (and Schugar) provides one such opportunity for the operator to earn a transaction-based commission, many players may not wish to completely exit the wagering game of Scott. Those same players,

however, may have at least some desire to “bank” at least some portion of a wager while it is profitable (during what Schugar refers to as a “positive expectation” state). Thus, a POSITA would have sought to capitalize on the desire of some players to only partially hedge their risk while still retaining some stake in Scott’s wagering game by offering the ability of a partial cash-out option, where a buying player can purchase a portion of the wager and thus create an additional type of transaction that the operator or house can charge a commission on and thereby increase revenue while also meeting player expectations and desires. In the combined system, Scott’s “marketplace” could thus be used to transact in bargained-for *partial* stakes in live wager games while allowing the selling player to retain control of the game while “limit[ting] his [or her] losses” as taught by Schugar, without transferring full ownership and control of game play to the acquiror of a *full* stake in the wager as taught by Scott. EX[1005] ¶[0079]. In the event of a win in the underlying game, a POSITA would understand payout of the partial stakes transacted in the combined system to proceed according to Schugar’s teachings for reduced paytables. For example, Schugar teaches acceptance of a “10% buy-out offer on their original \$100 wager such that the original wager remains active, with a lower expected payout,” while the acquirer of the 10% interest in Scott’s marketplace is entitled to 10% of the payout for a win. EX[1005] ¶[0072].

d. 15[d] – “causing the central server system to identify an acceptance of the one or more of the buy-out offer or the

partial buy-out offer from the first input device prior to the end of the wagering event;”

133. In my opinion, a POSITA would have understood that Scott discloses limitation 15[d] for the same reasons explained above regarding similar limitation 1[g], which are herein incorporated by reference.

e. 15[e] – “causing the central server system to process the one or more of the buy-out offer or the partial buy-out offer; and”

134. In my opinion, a POSITA would have understood that Scott discloses limitation 15[e] for the same reasons explained above regarding similar limitation 1[h], which are herein incorporated by reference.

f. 15[f] – “causing the central server system to transmit at least a portion of the one or more of the value and the portion of the value to the first input device.”

135. In my opinion, a POSITA would have understood that Scott discloses limitation 15[f] for the same reasons explained above regarding similar limitation 1[i], which are herein incorporated by reference.

4. Claim 21: “The non-transitory computer readable medium of claim 15, causing the central server system to adjust the designated amount for the value of the wager on the wagering event after the initial designated amount is received.”

136. In my opinion, a POSITA would have understood that Scott discloses claim 21 for the same reasons explained above regarding similar claim 7, which are herein incorporated by reference.

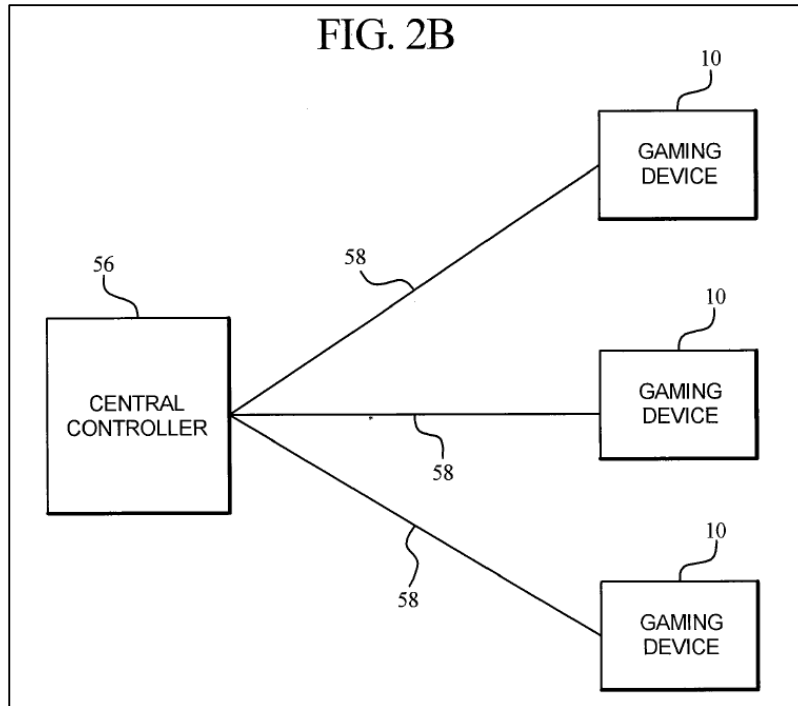
B. Claims 1, and 15 are anticipated by or obvious in view of DeWaal, and/or claims 7, 15 and 21 are obvious in view of DeWaal and Schugar

1. Claim 1

a. 1[a] – “A system for processing a payment for a wager in connection with a wagering event, the system comprising:”

137. Limitation 1[a] is the preamble of claim 1 of the '822 Patent. In my opinion, and to the extent the preamble is limiting, DeWaal discloses limitation 1[a] because DeWaal discloses a gaming system that processes payments by players for wagers to participate in a wagering game and payments by the system operator for purchasing the player's wager in the wagering game in exchange for quitting the game early.

138. For example, corresponding to the claimed “system,” DeWaal discloses “a gaming **system**,” such as the system illustrated in FIG. 2B below.



DeWaal FIG. 2B; *see also id.* FIGS. 11A-F, ¶ [0041] (“FIGS. 11A, 11B, 11C, 11D, 11E and 11F are front views of a display device of a plurality of gaming machines in the ***gaming system disclosed herein*** illustrating one embodiment of a multi-round bonus event, wherein the display devices substantially simultaneously display the bonus event to a plurality of players who compete for an award.”). This “***gaming system***” in DeWaal “simultaneously provides a multi-round bonus event to a plurality of players wherein each of the players’ input(s) determine, at least in part, an award, if any, provided to that player for the bonus event.” *Id.* ¶ [0009].

139. DeWaal’s “gaming system” includes, as shown in FIG. 2B, a “central controller” and a plurality of “gaming device[s].” *Id.* ¶ [0084]. In the system, “one or more of the gaming devices 10 are in communication with each other and/or at

least one central server, central controller or remote host 56 through a data network or remote communication link 58.” *Id.* A POSITA would understand that DeWaal’s central controller and plurality of gaming devices operate as a “system” because they work together to provide a wagering game over a “network or remote communication link 58.” *Id.* For example, “the processor of each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server,” and “the processor of the central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.” *Id.* As such, DeWaal discloses that the “gaming device is utilized to display games ... and receive one or more inputs or commands from a player” via “input devices 30 in communication with the processor” of the gaming device that “enables the player to produce an input signal which is received by the processor” of the gaming device. *Id.* ¶¶ [0042], [0058].

140. In addition, DeWaal’s system may include “at least one display device,” which “may be a mobile device, such as a PDA or tablet PC, that enables play of at least a portion of the ... secondary game at a location remote from the gaming device.” *Id.* ¶ [0053]. This display device “includes a touch-screen with an associated touch screen controller” and a “player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate

places.” *Id.* ¶¶ [0054], [0064]. Consistent with remote device’s touch-screen’s ability to input signals into the gaming device from a remote location, DeWaal discloses that the remote touchscreen device is an “input device.” *Id.* ¶ [0064].

141. Further, demonstrating that DeWaal’s gaming system is for, among other purposes or functions, “processing a payment for a wager in connection with a wagering event,” DeWaal discloses “that the gaming network includes ***a real-time or on-line accounting and gaming information system*** operably coupled to the central server or controller,” which “includes a player database for storing player profiles, a player tracking module for tracking players and a credit system for providing automated casino transactions.” DeWaal ¶ [0094]. A POSITA would understand that this accounting and tracking system within DeWaal’s gaming system assists in “processing a payment for a wager in connection with a wagering event” in at least three ways.

142. First, a player of DeWaal’s system may submit a separate payment in order to participate and wager in a bonus event, and the accounting and tracking system “processes” that payment by tracking the “amounts wagered,” i.e., the payment amount, and/or “the time these wagers are placed,” i.e., the time/date the payment was made. *Id.* ¶¶ [0095], [0096], [0118]. A POSITA would understand that such functions involve “processing a payment” because they involve taking one or more steps, such as storing the data associated with the payment, in order to

preserve the player's wager in the system. Further, a POSITA would understand that such payment is made "for a wager in connection with a wagering event" because "[t]he separate wager comprises a side-wager or entry fee that ***enables a player to participate in the bonus event.***" *Id.* ¶ [0118]. That is, a POSITA would understand that because the payment enables the player to submit a wager payment and make wager selections in the bonus event, the payment was "for a wager in connection with a wagering event."

143. Second, DeWaal's gaming system processes a payment for a wager in connection with a wagering event by "determine[ing] which players are eligible for the bonus event in association with [the] separate wager." *Id.* ¶ [0118]. A POSITA would have understood that determining eligibility to participate in the bonus event based on the payment to participate in the bonus event constitutes "processing," and that such processing was "of a wager in connection with a wagering event" because it is "in association" with the bonus event.

144. Third, the gaming system processes a payment made by the gaming operator or system implementer to a player in exchange for the player surrendering their wager or quitting the game before the game is over by sending such a payment to the player. For example, DeWaal discloses that "[i]f any of the players quit the bonus event, the central controller provides these players with the accumulated awards." *Id.* ¶ [0118]. A POSITA would understand that providing a player with a

payment of an award is “processing” at least because it involves issuing or making the payment to the player and finalizing it. A POSITA would further understand that this payment is “for a wager in connection with a wagering event” because if the player accepts the offer to quit, the player is eliminated and their wager, and any potential earnings based thereon, are extinguished. *See id.* ¶ [0146] (“If a player accepts the offered portion of the award pool, the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event.”).

145. Even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is reserved to fund the progressive/bonus jackpots. *See, e.g.,* DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and as disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus

event because a wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game.

b. 1[b] – “a communications interface;”

146. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[b] because DeWaal’s gaming system comprises a network such as the internet that connects and therefore provides an interface for communications between the central controller and the plurality of gaming devices and/or remote display devices in the system. For example, as shown in FIG. 2B above, “one or more of the gaming devices 10 are in **communication with each other** and/or at least one central server, central controller or remote host 56 **through a data network or remote communication link 58.**” *Id.* ¶ [0084]. In greater detail regarding the communications, DeWaal discloses that each of the gaming devices and the central server are “designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.” *Id.* As was known in the prior art, remote display devices of the gaming system may also communicate over the data network or remote communication link with the gaming devices.

147. Further, “the data network is an internet or intranet,” and “operation of the gaming device and accumulation of credits may only be accomplished with a connection to the central server or controller (the internet/intranet server) through a

conventional phone or other data transmission line, digital subscriber line (DSL), T-1 line, coaxial cable, fiber optic cable, or other suitable connection.” *Id.* ¶ [0098]. A POSITA would understand that each of these numerous examples are each a “communication interface” because they provide a connection between the central server and the gaming devices over which those devices may communicate.

c. 1[c] – “a processor operatively coupled to the communications interface; and”

148. In my opinion, a POSITA would have understood that DeWaal’s gaming system satisfies limitation 1[c] because the central controller/server includes a processor that can communicate to and from the gaming devices over the Internet or other communication network. For example, corresponding to the “processor,” DeWaal plainly states that “the central server, central controller or remote host is any suitable server or computing device which ***includes at least one processor.***” DeWaal ¶ [0084]. Further, as was known in the art and was commonplace, a “server” may refer to a collection of computing devices that operate together. In the context of DeWaal’s disclosure, where the bonus game may be provided over the Internet, for example, a POSITA would have understood that the general “central controller” or “server” was actually comprised of a web server processor that handles communications over the communications interface and one or more back-end processors that handle providing the game functionality of DeWaal’s system. In any event, a POSITA would understand that each of the plurality of computing devices

that make up the “server” may include “at least one processor.” Regarding the processor being “operatively coupled to the communication interface,” such as the communication networks discussed above, DeWaal discloses that “***the processor of the central server is designed to transmit and receive events***, messages, commands or any other suitable data or signal ***between the central server and each of the individual gaming devices***” over the network that interfaces between the server and the gaming devices. *Id.*

d. 1[d] – “a memory having programming instructions stored thereon, which, when executed by the processor, performs one or more operations, comprising:”

149. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[d] because DeWaal discloses that the central controller/server includes at least one memory or storage device and that the central controller stores program code or other similar data in the memory device that performs certain functions when executed by the processor. For example, corresponding to the “memory,” DeWaal discloses that the central server/controller “***includes at least one memory or storage device.***” DeWaal ¶ [0084]. Further, corresponding to the memory “having programming instructions stored thereon,” DeWaal discloses that “the central server or controller is capable of storing ... program code or other similar data.” *Id.* ¶ [0086]. And, corresponding to the program code, “when executed by the processor, performs one or more operations,” DeWaal disclose that

“the central controller is capable of ... ***utilizing program code*** or other data similar to the processor and memory device of the gaming device,” which means that “***[t]he memory devices stores program code and instructions, executable by the processor, to control the***” central server/controller in performing its functions, which are described in detail with respect to the limitations that follow. *Id.* ¶¶ [0086], [0046].

- e. 1[e] – “receiving, over the communications interface, a designated amount for a value of the wager on the wagering event from a first input device,”*

150. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[e] because DeWaal disclose that a processor of the central server/controller, and in particular a processor associated with the accounting system associated therewith as part of the collection of computing devices/processors that make up the server, receives a signal over the communication network (“receiving, over the communications interface”) that specifies the amount wagered (“a designated amount for a value of the wager”) on the bonus event (“on the wagering event”) from the gaming device of the player that submitted the wager amount (“from a first input device”).

151. For example, DeWaal discloses “that the gaming network includes a real-time or on-line accounting and gaming information system operably coupled to the central server or controller,” which “includes a player database for storing player

profiles, a player tracking module for tracking players and a credit system for providing automated casino transactions.” DeWaal ¶ [0094]. The tracking system operably coupled to the central server or controller processor “***tracks any players gaming activity at the gaming device,***” including “any suitable information, such as ***any amounts wagered, average wager amounts*** and/or the time these wagers are placed.” DeWaal ¶¶ [0095], [0096]. In this context, where DeWaal discloses that the amount wagered is determined by “activity at the gaming device” and is subsequently tracked and stored by the accounting system of the central controller/server, a POSITA would understand that such information was “receiv[ed], over the communication interface.”

152. Further, DeWaal states that the processor of the “central controller determines which players are eligible for the bonus event in association with a separate wager” submitted for the bonus event, which is a “side wager or entry fee that enables a player to participate in the bonus event,” and that “by this tracking,” referring to the tracking of the wager discussed above, “the central controller is operable to determine which players of the gaming machines in the gaming system are eligible for the bonus event.” DeWaal ¶¶ [0117], [0118]. Thus, as DeWaal discloses, the amount wagered is entered at the gaming device and sent to and received by the accounting and tracking module of the central controller so that a processor of the central controller can perform its functions, including but not

limited to, its tracking and bonus game eligibility functions. In other words, as a POSITA would understand, the actions taken by the central controller based on the wager confirm that the central controller receives the wager. Even if a separate wager amount was not submitted to participate in the bonus event, a POSITA would have known that in linked progressive games and bonus games, like those disclosed in DeWaal, a percentage of every base/primary game wager is reserved to fund the progressive/bonus jackpots. See, e.g., DeWaal ¶ [0002] (“Gaming machines generally require the player to place or make a wager to activate the primary or base game.”). That is, as was known by a POSITA and was disclosed in DeWaal, a base game has win/loss outcomes and a continuation outcome for the bonus game such that the bonus game would have been considered as a next leg for those that “qualified” in the base game. Therefore, a POSITA would have known that a player places a wager, and the wager is received, for the bonus event regardless of whether a separate wager is placed to participate in the bonus event because a wager was still submitted and received for the underlying base game through which a player may qualify for the bonus game.

153. DeWaal discloses that the wager amount is received by the central controller from a gaming device, which corresponds to the claimed “first input device,” and thus the wager amount is received “from a first input device.” For example, DeWaal discloses that “the gaming device includes at least one payment

acceptor” input, with options among the various well-known types, thereby indicating that the payment is accepted by the gaming device and subsequently transmitted to and received by the controller from the gaming device. *Id.* ¶ [0057]. For example, “money may be transferred to a gaming device through electronic funds transfer,” the player may then set the wager amount by pressing the “bet one button” or the “bet max button,” and as discussed above, the server receives and records “any amounts wagered” from the gaming device that were input to the gaming device via the funding of the machine and the setting of the wagering amount. *Id.* ¶¶ [0057], [0059], [0095], [0096].

154. In addition, a POSITA would have understood that at least the amount wagered that is received corresponds to “a designated amount for a value of the wager on the wagering event” because it is a specific amount that is designated or chosen by the player for the bonus game. *See, e.g., id.* ¶¶ [0187] (explaining that a “designated award, such as a top-level award or an award of relatively high value” may be available based on “coin-in or the amount wagered on a game”), [0059] (“The player can increase the bet by one credit each time the player pushes the bet one button ... in another embodiment, one input device is a bet max button ... which enables the player to bet the maximum wager permitted for a game of the gaming device.”).

f. 1[f] – “receiving, over the communications interface, a cash out offer from a second input device,”

155. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[f] for a first reason, or alternatively, that limitation 1[f] is rendered obvious by DeWaal's disclosure for a second reason.

156. Under the first and second reason, a POSITA would have understood that DeWaal's bonus event includes "an offer and acceptance feature" that corresponds to "a cash out offer." *See, e.g.*, DeWaal ¶ [0141], FIG. 7, FIG. 10. As DeWaal explains, "if the player picks the designated," or winning, "selection in one of the rounds, the ***central controller offers that player to either quit the bonus event and keep the total award accumulated in the bonus event or continue the bonus event and play a subsequent round.*** If the player chooses to quit, the central controller provides (or causes that player to be provided) with the accumulated award ... In this embodiment, ***the total accumulated award is offered to each advancing player along with the option to quit.***" DeWaal ¶ [0018]. Similarly, in a different example, DeWaal discloses that the "central controller offers a portion of the award pool (or causes a portion of the award pool to be offered) to each player who picked the designated selection in one of the rounds. If a player accepts the offered portion of the award pool, the player is eliminated from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event)." *Id.* ¶ [0146].

157. Because accepting the offer effectively ends the player's participation in the bonus event, *i.e.*, the player "quits" the bonus event by accepting, the offer is for 100% of the player's interests held in the bonus event and their interest in potentially winning the bonus jackpot award in the final round. In other words, DeWaal's offer and acceptance feature provides players the option of surrendering their entire interest in the bonus event, including their interest in winning the bonus jackpot, in exchange for value, such as the equity stake the player has in the bonus round given their current position at the time the offer is made. Thus, a POSITA would have understood that DeWaal's reference to a player "quitting" the bonus event before termination or completion of all rounds refers to a "cash out offer."

158. Now, with respect to the first reason I mentioned above, DeWaal discloses that option of ability to quit the event early in exchange for an award is displayed on the remote "display device" with an appropriate message, such as "YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!" *Id.* ¶ [0146]. The user may then submit their offer to take the option to quit via input to a user interface of the remote display device by, for example, touching an appropriate area on the touchscreen of the remote device and generating a corresponding signal that input into the gaming device and transmitted to the server, as discussed above. *See, e.g., id.* ¶¶ [0061] ("A player can make decisions and input signals into the

gaming device by touching the touch-screen at the appropriate places.”), [0084] (“the processor of each gaming device is designed to transmit ... events, messages, commands or other suitable data or signal between the individual gaming device and the central server”). Therefore, a POSITA would have understood that DeWaal’s cash out offer is received by the server “from a second input device,” where the second input device corresponds to the remote display device that a player uses to offer to quit. For clarity, under this first reason, the “first input device” corresponds to the gaming device and the “second input device” corresponds to the remote display device, both of which may be used by the player to play the bonus event. *See, e.g., id.* ¶¶ [0053] (“at least one display device may be a mobile display device ... that enables play of at least a portion of the primary or secondary game at a location remote from the gaming device.”).

159. As to the second alternative reason I mentioned above, a POSITA would understand that this limitation can also be satisfied where the “second input device” is a back-end server/processor of the “central controller” that generates the option or offer to quit that is displayed on the player’s remote display device. In this regard, while it is clear from DeWaal’s disclosure (discussed above) that the general “central controller” generates the option to offer to quit and provides it to the display devices, and also receives the player’s offer to quit, DeWaal does not expressly describe which processor device of the central controller/server performs each of

these functions. It would have been obvious to a POSITA implementing DeWaal's disclosure, however, to implement DeWaal's central controller/server as having at least one back-end processor/server and at least one front-end web server. In this well-known configuration, the back-end processor/server generates the option to quit, which is then transmitted to and received by the front-end web server for transmission to the player's display device. Such a configuration, namely of a front-facing web server and one or more back-end servers performing the core functionality that are networked together via the Internet and/or an intranet, was common-place at the time the claimed invention was made (around the September 2012 timeframe) and would have been an obvious choice for a POSITA.

160. For example, particularly in the context of wagering, a POSITA implementing DeWaal's system would have been concerned with preventing manipulation of the core gaming functionality, collusion amongst players, and other forms of cheating. *See, e.g.*, DeWaal ¶¶ [0164] (discussing "prevent[ing] collusion"), [0166] ("reduce collusion"). A POSITA would have appreciated that implementing the core functionality of generating the option for a player to quit on a web server would have been risky because such a server is readily accessible to the public, thereby making it easier for a player or other person or entity to access the core gaming functionality and manipulate it. To that end, a POSITA would have been motivated to implement DeWaal's core server functionality behind one or more

web servers such that the core game functionality, such as that which generates the option to quit, is on a private server that is not accessible to the public.

161. Implementing DeWaal's system in this way also would help distribute load. For example, a single server or controller processor device could easily become overloaded with receiving and sending communications to and from each of the gaming devices in the system while at the same time competing with processing resources to implement the core game functionality, particularly in DeWaal's bonus event where players are making multiple selections on multiple rounds of the bonus game. Thus, the well-known and understood principle of load balancing would have motivated a POSITA to implement DeWaal's controller/server utilizing at least one front-facing web server that handles the traffic and communication to and from the gaming devices and one or more back-end servers that handle discrete tasks to support the core operation of the game, such as generating the option to quit.

162. If this obvious configuration were used to implement DeWaal's central controller/server, then the web-server processor would "receiv[e], over the communication interface, a cash out offer from a second input device" because the web server would receive as input the offer generated by the backend server(s), *i.e.*, "a second input device" over the network, (e.g., Internet and/or intranet, that connects the web server and the backend server(s)) prior to distributing the offer to a player over the Internet. Therefore, because it would have been obvious to

implement DeWaal's central controller/server as at least a back-end processor that generates the offer and transmits it as input to a front-end web server processor, limitation 1[f] would have been obvious to a POSITA.

g. 1[g] – “identifying an acceptance of the cash out offer from the first input device prior to the end of the wagering event,”

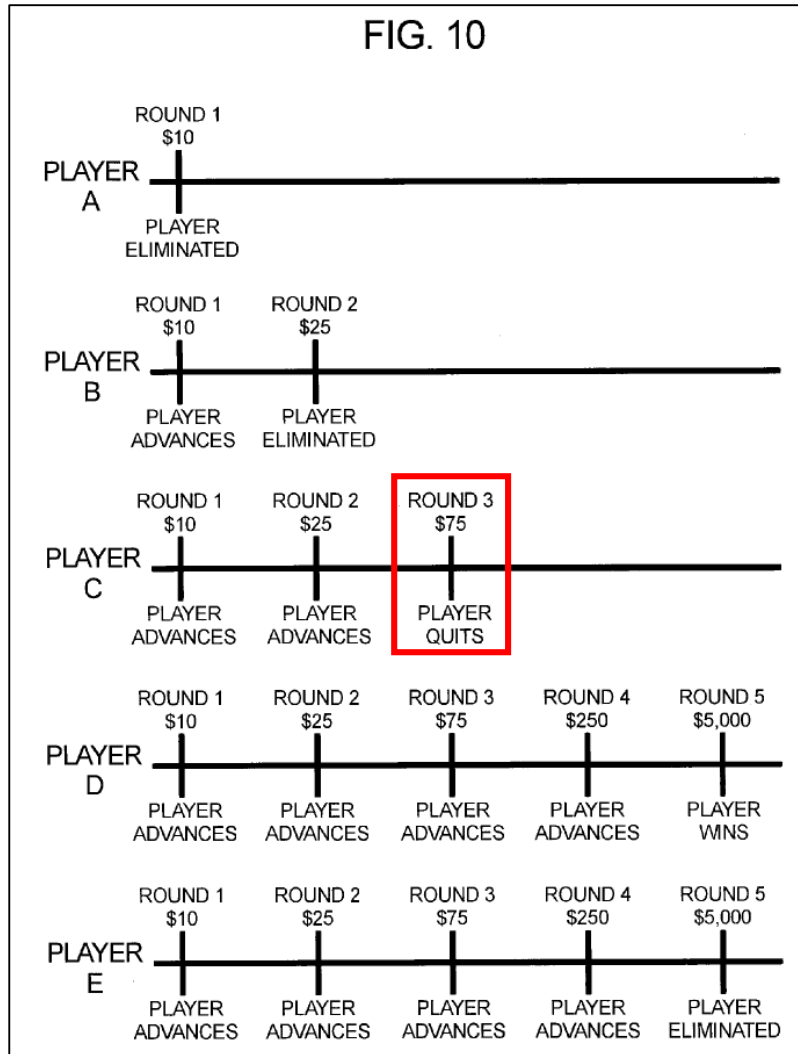
163. In my opinion, DeWaal discloses limitation 1[g] because DeWaal discloses the central controller taking action in direct response to a player accepting the offer of the additional award to quit the bonus event and discloses the server receiving and identifying various signals of user inputs from the gaming devices.

164. For example, DeWaal discloses that “the processor of each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server The processor of the central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.” DeWaal ¶ [0084]; *see also* DeWaal ¶¶ [0129] (“The central controller receives a signal from gaming machines in the gaming system corresponding to an input from each player in each round.”); [0061] (“A player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate places.”).

165. And, regarding the specific actions taken by the controller when a player accepts the offer to quit, DeWaal explains that “[i]f any of the players quit the

bonus event, the central controller provides these players with the accumulated awards associated with the first and second rounds.” DeWaal ¶ [0159]; *see also* DeWaal ¶ [0146] (“If fifty players accept the offer and quit the bonus event, the central controller provides these fifty players with an award portion of \$10.”). A POSITA would therefore understand that DeWaal teaches that the central controller receives and identifies, i.e., associates it with a particular player, an acceptance of the buy-out offer at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event and the central controller takes specific and direct actions in response to a specific player accepting the offer to quit.

166. In this regard, for example, DeWaal discloses that “***if a player accepts the offered portion of the award pool, the player is eliminated*** from the bonus event (i.e., the player accepts the offered portion of the award pool in exchange for quitting the bonus event).” DeWaal ¶ [0146]; *see also* DeWaal ¶ [0141] (“As illustrated, one hundred players who qualified to advance to the second round, accepted the offered additional award and quit the bonus event.”). This is illustrated, for example, in FIG. 10, for example, which shows Player C accepting the offer in the third round and the controller/server ceasing only the accepting player’s participation in the bonus event.



DeWaal at FIG. 10 (annotated).

167. Further, corresponding to identifying the acceptance “prior to the end of the wagering event,” and as shown above, DeWaal’s controller identified Player C as quitting (i.e., accepting the offer) in the third round of five rounds. In this regard, given that the game has not ended in the third round, but rather is in the middle of the game, this acceptance was identified “prior to the end of the wagering event.”

h. 1[h] – “processing the cash out offer, and”

168. In my opinion, a POSITA would understand that DeWaal discloses limitation 1[h] because DeWaal discloses the central controller performing various actions or tasks that correspond to “processing” the offer to quit. For example, such processing includes causing the gaming device to display the offer to quit to a particular eligible player on the display device of the gaming machine. DeWaal discloses that the “central controller may cause the display device to display an offer of \$10 to the advancing players. The display may include appropriate messages, such as ‘YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!’” DeWaal ¶ [0146]. Thus, a POSITA would understand that by causing the display device to display the offer to a player, DeWaal’s controller/server “process[es] the cash out offer.”

i. 1[i] – “transmitting, over the communications interface, a value of the cash out offer to the first input device.”

169. In my opinion, a POSITA would have understood that DeWaal discloses limitation 1[i] because DeWaal discloses issuing credits, tokens, currency, or an award to any player that accepts the cash out offer and that the value, i.e., amount, of the cash out offer is redeemable by the user at the first input device, i.e., the device that placed the wager. Specifically, for example, DeWaal discloses that “[i]f any of the players quit the bonus event, the central controller provides these

players with the accumulated awards associated with the first and second rounds.”

DeWaal ¶ [0159]. Similarly, in other examples, DeWaal discloses that “[t]he **central controller provides those players with the second additional award.**” DeWaal ¶ [0142]. And, more specifically, in another example “[i]f fifty players **accept the offer and quit the bonus event, the central controller provides these fifty players with an award portion of \$10.**” DeWaal ¶ [0146]. Given that the central controller provides the award value to the player that accepts, and the central controller is connected to and in communication with the player’s device via the Internet communication network, a POSITA would have understood that DeWaal discloses “transmitting, over the communications interface, a value of the cash out offer to the first input device.” Indeed, once the award value is transmitted to the player’s device, the “player may push the cash out button and cash out to receive a cash payment or other suitable form of payment corresponding to the number of remaining credits.” *Id.* ¶ [0060]. That the player is able to redeem the offered award at the gaming device after accepting the offer confirms that the value of the offered award was in fact transmitted, over the communications network, to the player’s device.

2. Claim 7: “The system of claim 1, wherein the one or more operations further comprise: adjusting the designated amount for the value of the wager on the wagering event after the initial designated amount is received.”

170. As explained above, DeWaal discloses or renders obvious “the system of claim 1,” and I incorporate by reference that analysis in this section. In my

opinion, DeWaal also discloses the remaining limitations of claim 7 because DeWaal discloses that the option to quit that is offered to a player is in exchange for an “award” and that awards may be randomly generated based on probability data after each round of a multi-round bonus event. For example, “the central controller offers each **advancing** player an additional award to quit the bonus event,” and DeWaal further explains that the system may “**randomly generate awards** ... based on probability data.” DeWaal ¶¶ [0141], [0049]; *see also* DeWaal ¶ [0049] (“**each award ... is associated with a probability** and the gaming device generates the award ... to be provided to the player based on the associated probabilities.”). Such randomness in generating the award is performed using a “random number generator (RNG), such as a true random number generator, a pseudo random number generator or other suitable randomization process.” DeWaal ¶ [0049]. Therefore, a POSITA would understand that the amount or price of DeWaal’s award offer is adjusted each time a player advances from one round of a wagering event to the next (*i.e.*, “after the initial designated amount is received”).

171. To the extent it is determined that DeWaal does not disclose “adjusting the designated amount for the value of the wager on the wagering event after the initial designated amount is received,” it is my opinion that a POSITA would have understood that claim 7 was obvious over the disclosures of DeWaal and Schugar because Schugar discloses a technique for cashing out a portion of a player’s wager

where, upon accepting the option to cash out a portion of the wager, the initially wagered amount is reduced by a designated amount to reflect that the player has cashed out a portion of the wager such that the player can continue the wagering event but with a lower wagered amount and therefore lower potential payout.

172. In my opinion, a POSITA would have understood that Schugar discloses “wherein the one or more operations further comprise: adjusting the designated amount for the value of the wager on the wagering event after the initial designated amount is received” based on Schugar’s teachings.

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

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

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

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

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

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

wager is now $0.90 \times 900 = \$810$. ***The bettor can now surrender \$10 of his original wager which is effectively worth \$81.*** This \$81 can now be wagered on the Giants which would result in a \$810 win if the Giants win. ***The player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win.*** Thus, the player is in a no-lose situation and can relax and enjoy the game without worry.

Schugar ¶ [0126]; *see also* Schugar ¶ [0120]. This example in Schugar corresponds to the player being offered and accepting a 10% buy-out offer on their original \$100 wager such that the original wager remains active, with a lower wagered amount and expected payout, and the player has already banked nearly all of their original wager to be put to use however the player desires, such as by placing a counter bet to put the player in a no-lose situation. Further, while this example relates to cashing in during a wager on a single game, Schugar also discloses that the “embodiments described herein can also be used to bet on sporting events, either at intervals on individual games ***or series of games.***” Schugar ¶ [0072]. For example, “[a]fter each game in the series ... payout odds for each team winning the series can change to reflect the current conditions (as described herein and/or known in the art) and players can make wagers during the series.” Schugar ¶ [0072]. Thus, much like how the odds changed and the player was able to partially cash out during halftime of the single game in the football game example above, a POSITA would understand Schugar to teach that, as the odds change after each game/round in a series of games,

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

176. As shown in the above-described examples from Schugar, when a player accepts the offer to cash in a portion of their bet, which is after the player has submitted or laid their initial wager amount, the system adjusts, e.g., reduces, the amount wagered on the event to account for the portion of their wager that they have cashed out. Specifically, as shown in the first example above, the system reduced/adjusted the player's initial wager amount of \$100 by 10% (\$10) so that the player has \$90 remaining on the wagering event. Schugar also discloses an example in which the player "may use \$1 of that amount and make a second wager," which will result in \$1.52 (*i.e.*, the adjusted value of that dollar based on the new odds) being "subtracted from the original \$100 wager to result in a \$98.48 wager remaining on the Yankees."³ *Id.* ¶[0120]. A POSITA would understand that such a reduction is "adjusting the designated amount for the value of the wager on the wagering event" because a reduction of the initial wager amount is an adjustment of the initial wager amount. A POSITA would also have understood that such a reduction occurs "after the initial designated amount is received" at least because the player can only

³ Here and after, emphasis added to quoted text unless otherwise noted.

accept the offer to cash in a portion of the bet after the player has placed the initial bet.

177. It is worth noting at the outset that there is an express motivation to combine these references in the prior art. For example, DeWaal states that there was “***a continuing need to provide*** new and different gaming machines and gaming systems as well as ***new and different ways to provide awards to players including bonus awards.***” DeWaal ¶ [0008]. Schugar expressly provides such a way. Specifically, the “present inventive concept” of Schugar “relates to a wagering game that allows a player to ***alter payouts,***” i.e., awards, “***based on an equity position the player has in the wagering game.***” Schugar ¶[0003]. Therefore, a POSITA would have understood, based on the express statements in these references, that DeWaal and Schugar are directed toward solving the same problem.

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

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

179. Therefore, a POSITA would have been motivated to make this combination of prior art techniques for providing additional or unique awards to players, and a POSITA would have understood, particularly in view of the teachings

of Schugar, that DeWaal's system was ready for improvement by complimenting its ability to offer a full cash out of a wager via its "offer and acceptance feature" with Schugar's ability to offer "cashing out a portion of a current bet in progress."

180. Further, a POSITA would have understood that one of the primary methods for driving casino revenue was to increase the number of individual wagering transactions on which the casino can charge a commission. While providing full cash-out as taught by DeWaal (and Schugar) provides one such opportunity for the operator to earn a transaction-based commission, many players may not wish to completely exit the bonus game of DeWaal. Those same players, however, may have at least some desire to "bank" at least some portion of a wager while it is profitable (during what Schugar refers to as a "positive expectation" state). Thus, a POSITA would have sought to capitalize on the desire of some players to only partially hedge their risk while still retaining some stake in DeWaal's bonus game by offering a partial cash-out option, thus increasing transactions with the casino where a commission can be charged while also meeting player expectations and desires.

181. The combination of these references would have been obvious because it is only a combination of prior art elements according to known methods to yield predictable results. For example, as explained above, corresponding to the claimed "cash out offer," DeWaal discloses a bonus event including an offer and acceptance

feature that offers the player the ability to fully surrender or cash in their full wager for some indicated value before the bonus event is complete. In addition, as explained above, Schugar discloses a wagering event including an offer for the player to cash in a portion of their wager for some indicated value before the bonus event is complete and to continue playing in the wagering event. Therefore, in my opinion, the prior art included the ability to offer a player both a full cash out offer and partial cash out offer, although not in a single prior art reference, with all of the other limitations of the claim. The lack of combination in a single prior art reference is the only difference between claim 7 and the prior art. In fact, during prosecution of a related patent in the same family as the '822 Patent, the Applicant admitted that the prior art disclosed a full buy-out (cash out) offer, as previously described herein.

182. A POSITA could have combined DeWaal's offer to fully surrender or cash in a player's wager and Schugar's offer to cash in on a portion of a players wager by simply adding standard machine readable and executable instructions to DeWaal's controller and adding the ability to partially cash in to the graphical user interface of the gaming device, such as by including the "appropriate message" as described in DeWaal and as would be known by a POSITA. DeWaal ¶ [0146]. For example, a POSITA would have understood that the modified message/offer to the user could state: "YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY

ANOTHER ROUND! [OR YOU MAY KEEP \$5 AND CONTINUING PLAYING THE BONUS EVENT WITH A DIFFERENT PAYTABLE!]" *See id.* The computer instructions to handle providing the partial cash in offer on the display of the gaming device, receive a user input in response to the offer, send a signal to the central controller from the gaming device indicating the player's choice in response to the offer would have paralleled those, and likely could be easily bundled with, the existing signals and methods in DeWaal for handling the offer to quit. No specialized or advanced computer programming skills would be required. The only new feature that would have to be added to DeWaal's controller would be a method to reduce the wager/pay table proportionate to the amount of the partial cash in offer, but as described in Schugar, such a function involves only basic math that is well within the level of skill of a POSITA in this case.

183. In combination, DeWaal's full cash out (buy-out) feature and Schugar's partial cash out (buy-out) feature would not interfere or obstruct one another in any way and would perform the identical functions as they do individually. Adding Schugar's ability for partially cashing in simply adds another choice or selection for the user to make and DeWaal's system for providing the bonus event having the offer and acceptance feature would be compatible with Schugar's partial cash in functionality. Further, the results of the combination are entirely predictable and expected—the system would provide the option to fully cash in the players wager

and end the player's participation in the bonus event, as described in DeWaal and Schugar, as well provide the option to partially cash in the players wager and continue participating in the bonus event, as described in Schugar. In other words, the two options, while both related to the ability to cash in on a player's equity position in the bonus event, largely operate independent of one another as separate/alternative options and choices for the user to make.

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

185. As described above, DeWaal describes a system and method for providing a bonus game with an offer and acceptance feature that enables a player to fully end their participation in a wagering event in exchange for some indicated value. DeWaal's offer and acceptance feature, however, does not expressly disclose an ability to offer a way for the player to partially cash in or reduce their participation in a wagering event in exchange for some indicted value. A POSITA would have recognized DeWaal's limited ability to surrender the player's wager and end the game fully and would have been motivated to add additional ways to provide awards to players to increase excitement and enjoyment for players by providing players

with the ability to make additional inputs or choices in the bonus game that affect the outcome of the bonus game. DeWaal ¶ [0012] (“Accordingly, the bonus even enables players to make inputs or choices that affect the award, if any, that will be provide to those players in the bonus event. Such a configuration provides increased excitement and enjoyment for players because the players are provided with the ability to make inputs or choices in the bonus game that affect the outcome of the bonus game.”). For example, a player could be discouraged from using or hesitant to use DeWaal’s full surrender or cash in feature because accepting the offer would remove the player from the bonus event and leave them worrying if they could have won more had they rejected the offer and remained in the bonus event. Adding Schugar’s ability to cash in only a portion of the players wager in the bonus event and continue playing in the bonus event, even if for a lesser top prize or jackpot, would give the player greater peace of mind, allow them to enjoy the game without worry, and make money for the house or system operator. Schugar ¶¶ [0078] (“The house makes money on this proposition, and the player gets the peace of mind of the sure win.”), [0126] (“Thus, the player is in a no-lose situation and can relax and enjoy the game without worry.”). Moreover, providing the player with both options, to fully or partially cash in, provides the user with the greatest flexibility and peace of mind.

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

187. Furthermore, a POSITA would have a reasonable expectation of success in adding Schugar's ability and offer to cash in on a portion of the player's wager to DeWaal's offer and acceptance feature of the bonus event because both references teach that these techniques are useful and practicable in the same types of multi-round or multi-stage games. See DeWaal ¶ [0127] ("In different embodiments, the multi-round bonus event includes, but is not limited to, reel/slot games, card games, (e.g., poker, blackjack), lottery games, selection games, offer and acceptance games, wheel games, dice games, free spin games, competition games, skill games, perceived skill games or games that include one or more rounds of game play."); Schugar ¶ [0075] ("In addition to applying the equity concepts

described herein to the above-described games, the methods described herein of using equity funds can also be used for any game that has variable states and is not over without an interval between states.”), ¶ [0104] (“A machine game 400 can be any wagering machine game, such as a slot machine, video poker machine, or machine game which plays any game which can have multiple states (e.g. games which a player can wager on a progression).”). Further, just as each round of the bonus event in DeWaal is associated with a progressing potential award, each game state in Schugar “may have a different expected return for the player based on the player’s wagers and the current game state.” Schugar ¶ [0054].

188. Finally, the combination described herein would have been obvious to a POSITA because there are express teachings, suggestions, and motivations in the prior art that would have encouraged a POSITA to combine DeWaal’s bonus game and offer and acceptance feature with Schugar’s ability to cash in a portion of the player’s wager, as briefly discussed above. For example, Schugar teaches that the ability to cash in a portion of the player’s wager may be “attractive” to a player, and thus attract a player to a system operator’s wagering events, because it allows a player to limit losses but continue wagering, and even allows a player to put themselves into a “no-lose situation.” Schugar ¶¶ [0077] (“A player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption. In this manner, even if the player ultimately loses his

or her wager, the player has not lost everything because the banking has been performed.”), [0079] (“In this way, the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.”), [0126] (“Thus, the player is in a no-lose situation and can relax and enjoy the game without worry.”).

3. Claim 15

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

189. In my opinion, a POSITA would have understood that DeWaal discloses limitation 15[a] for the same reasons explained above regarding limitation 1[d], which are herein incorporated by reference. Specifically, limitation 15[a] is substantially similar to limitation 1[d] in that it only renames the “memory” from limitation 1[d] to be a “non-transitory computer readable medium.” A POSITA would have understood that a memory device, as is disclosed in DeWaal, is a “non-transitory computer readable medium.”

- b. 15[b] – “causing a central server system to receive a designated amount for a value of the wager on the wagering event from a first input device;”

190. In my opinion, a POSITA would have understood that DeWaal discloses limitation 15[b] for the same reasons explained above regarding limitation 1[e], which are herein incorporated by reference. The only difference between these limitations is that limitation 15[b] recites that “a central server system” performs the “receiving” operation (i.e., the same receiving operation as recited in limitation

1[e])). As described above with respect to limitation 1[e], however, DeWaal's central controller/server is what performs the "receiving" operation recited in this limitation.

c. 15[c] – *"causing the central server system to receive one or more of a buy-out offer comprising the value of the wager or a partial buy-out offer comprising a portion the value of the wager from a second input device;"*

191. In my opinion, a POSITA would have understood that DeWaal discloses limitation 15[c] for many of the same reasons explained above regarding limitation 1[f], which are herein incorporated by reference, because these limitations are substantially similar. For example, regarding any purported difference between the "**buy-out offer**" recited in limitation 15[c] and the "**cash out offer**" recited in limitation 1[f], the '822 Patent states that "the terms buy-out and cash-in as used herein have the same intended meaning," and thereby confirms that the use of the terms "buy" and "cash" have the same meaning in this context and the terms "in" and "out" have the same meaning in this context. '822 Patent 31:6-8. In other words, these disclosures confirm that a POSITA would understand both a "cash out offer" and a "buy-out offer" to refer to the same concept of offering a player some consideration in exchange for quitting the event. As such, a POSITA would have understood that DeWaal's offer/option to quit, which is explained above as being "receive[d]" by DeWaal's central controller/server from the player's display device, corresponds to the claimed "buy-out offer" for the same reasons that it corresponds to the claimed "cash out offer" recited in claim 1. Therefore, my analysis of

limitation 1[f] above demonstrates how DeWaal's central controller/server system "receive[s] ... a buy-out offer ... from a second input device."

192. Further, corresponding to the buy-out offer "comprising the value of the wager," as explained above regarding the first reason limitation 1[f] is disclosed in DeWaal, the player submits the cash out offer for a particular value, i.e., that which is displayed in the message on the display device as discussed above reflecting the current payout or value for the player's wager. In the example above, the buy-out offer submitted by the user to the server via the display device comprises the current payout value of the offer, which is \$10. *See, e.g., id.* ¶ [0146] ("The display may include appropriate messages, such as "YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!"); *see also id.* ¶ [0170] ("In one embodiment, a potential award associated with each eligible player is \$2,000, which may be indicated by a potential award display (not shown) is also displayed.").

193. Under the second reason limitation 1[f] is disclosed in DeWaal, and corresponding to the buy-out offer "comprising the value of the wager," a POSITA would have understood that DeWaal discloses that the offer generated by the back-end processor/server includes the current payout amount or value of the wager because the central controller/server in DeWaal's system is the component that "designates ... an award amount." *Id.* ¶ [0007]. Further, as DeWaal states, "the

award values associated with each round may be set to any suitable values by the implementer of the gaming system,” and in one example, may include “bonus awards or progressive awards” or “a different level of a multi-level progressive configuration (MLP).” *Id.* ¶ [0144]. That is, the back-end server, as part of the offer, includes the “offered portion of the award” in the buy-out offer, which a POSITA would have understood means that the buy-out offer comprises the value of the wager.

194. In my opinion, this is sufficient to satisfy limitation 15[c] although this limitation also recites a “partial buy-out offer comprising a portion the value of the wager.” Specifically, in my opinion, a POSITA would understand that this limitation recites to alternatives, as indicated by the use of the disjunctive “*or*,” where option 1 is “receiv[ing] ... a buy-out offer comprising the value of the wager,” and option 2 is “receiv[ing] ... a partial buy-out offer comprising a portion the value of the wager.” A POSITA would understand that the use of the word “or” between these options indicates that either one of the options is sufficient to satisfy the claim. In other words, the claim can be satisfied by either the “buy-out offer” “or” the “partial buy-out offer”—both are not expressly required.

195. To the extent that Patent Owner takes the position that a “partial buy-out offer comprising a portion of the value of the wager” is required by claim 15, and to the extent Patent Owner takes the position that a “partial buy-out offer” means

that the offeror (buyer) is only offering to purchase a portion of a wager such that upon acceptance of the partial offer both the seller and the buyer hold some interest in the wager, such a partial buy-out offer is disclosed in Schugar, as described above with respect to claim 7. Accordingly, I incorporate by reference my analysis of Schugar and DeWaal under claim 7 as if it were set forth in this paragraph. And, in my opinion, it would have been obvious to combine DeWaal and Schugar to add Schugar's ability to provide such a partial buy-out offer to DeWaal's bonus game for the reasons I explained above regarding claim 7, which are also incorporated by reference in this paragraph.

d. 15[d] – “causing the central server system to identify an acceptance of the one or more of the buy-out offer or the partial buy-out offer from the first input device prior to the end of the wagering event;”

196. In my opinion, a POSITA would have understood that DeWaal discloses limitation 15[d] for the same reasons explained above regarding similar limitation 1[g], which are herein incorporated by reference. Further, to the extent Patent Owner argues the “partial buy-out offer” portion of this limitation must also be met in order to satisfy the limitation, the obvious combination of DeWaal and Schugar discloses this portion of the claim for the reasons explained above.

e. 15[e] – “causing the central server system to process the one or more of the buy-out offer or the partial buy-out offer; and”

197. In my opinion, a POSITA would have understood that DeWaal discloses limitation 15[e] for the same reasons explained above regarding similar limitation 1[h], which are herein incorporated by reference. Further, to the extent Patent Owner argues the “partial buy-out offer” portion of this limitation must also be met in order to satisfy the limitation, the obvious combination of DeWaal and Schugar discloses this portion of the claim for the reasons explained above.

f. 15[f] – “causing the central server system to transmit at least a portion of the one or more of the value and the portion of the value to the first input device.”

198. In my opinion, a POSITA would have understood that DeWaal discloses limitation 15[f] for the same reasons explained above regarding similar limitation 1[i], which are herein incorporated by reference. Further, to the extent Patent Owner argues the “partial buy-out offer” portion of this limitation must also be met in order to satisfy the limitation, the obvious combination of DeWaal and Schugar discloses this portion of the claim for the reasons explained above.

4. Claim 21: “The non-transitory computer readable medium of claim 15, causing the central server system to adjust the designated amount for the value of the wager on the wagering event after the initial designated amount is received.”

199. In my opinion, a POSITA would have understood that DeWaal discloses claim 21, either alone or in combination with Schugar, for the same reasons explained above regarding similar claim 7, which are herein incorporated by reference.

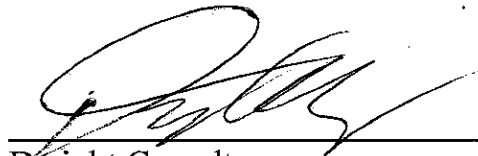
X. Conclusion

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

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

Executed this 2nd day of December, 2022, in WALTON GLADE RD

Respectfully submitted,



Dwight Crevelt