1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 _____

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 _____

5 DraftKings Inc., a Delaware Corporation,
Petitioner,

6 v.

7 Diogenes Limited,
8 Patent Owner.

9 _____

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

11 _____

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

13 _____

14

15 ZOOM DEPOSITION OF OLAF VANCURA, Ph.D.,

16 (Reported Remotely via Web videoconference)

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

18 Monday, November 13, 2023

19 Volume 1

20

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

24 JOB NO. 8251

25 PAGES 1 - 203

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12 U.S. Patent No. 10,997,822 B2

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17 DEPOSITION OF OLAF VANCURA, Ph.D, taken
18 on behalf of the Petitioner, with the deponent
19 located in Las Vegas, Nevada, commencing at
20 9:00 a.m., Monday, November 13, 2023, remotely
21 reported via Web videoconference before
22 REBECCA L. ROMANO, a Certified Shorthand Reporter,
23 Certified Court Reporter, Registered Professional
24 Reporter.

25

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2 (All parties appearing via Web videoconference)

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1 I N D E X

2 OLAF VANCURA, Ph.D. PAGE
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3
4 By Mr. Wilson 9

5
6
7
8 E X H I B I T S
9 (Exhibits Premarked)

10 NUMBER PAGE
11 Ex. 1001 US 9,117,341 B2;
12
13 Ex. 1001 US 10,997,822 B2;
14
15 Ex. 1001 US 11,200,779 B2;
16
17 Ex. 2001 Declaration of Olaf Vancura,
18 Ph.D., in Support of
19 Patent Owner's Preliminary
20 Response, IPR2023-00266;
21
22 Ex. 2001 Declaration of Olaf Vancura,
23 Ph.D., in Support of
24 Patent Owner's Preliminary
25 Response, IPR2023-00268;

1 E X H I B I T S

2 (Exhibits Premarked)

3 NUMBER PAGE

4 Ex. 2003 Declaration of Olaf Vancura,

5 Ph.D., in Support of

6 Patent Owner's Motion

7 to Amend, IPR2023-00262;

8

9 Ex. 2003 Declaration of Olaf Vancura,

10 Ph.D., in Support of

11 Patent Owner's Motion

12 to Amend, IPR2023-00267;

13

14 Ex. 2004 Olaf Vancura, Ph.D., CV;

15

16 Ex. 2016 Declaration of Olaf Vancura,

17 Ph.D., in Support of

18 Patent Owner's Response,

19 IPR2023-00266;

20

21 Paper 9 Decision Denying Institution

22 of Inter Partes Review,

23 IPR2023-00268;

24

25 /////

1 E X H I B I T S

2 (Exhibits Premarked)

3 NUMBER PAGE

4 Paper 15 Patent Owner's Motion to Amend

5 and Request for Preliminary

6 Guidance, IPR2023-00267;

7

8 Paper 17 Patent Owner's Motion to Amend

9 and Request for Preliminary

10 Guidance, IPR2023-00262.

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1 Las Vegas, Nevada; Monday, November 13, 2023
2 9:00 a.m.
3 ---o0o---
4
5 OLAF VANCURA, Ph.D.,
6 having been administered an oath, was examined and
7 testified as follows:
8
9 EXAMINATION
10 BY MR. WILSON:
11 Q. Good morning, Dr. Vancura.
12 A. Good morning.
13 Q. Could you please state your name for the
14 record here?
15 A. Olaf Vancura.
16 Q. And what is your current occupation?
17 A. Well, I do a number of things. I would
18 say I am -- at the moment, I'm a principle with
19 Action Sports; and I'm also -- I do a fair amount
20 of consulting.
21 Q. Are you taking any medications or
22 otherwise under the influence of anything today
23 that might affect your ability to testify
24 truthfully?
25 A. No.

DraftKings, Ex. 1057, p. 9
DK Crown v. Diogenes, IPR2023-00267

1 Q. And you understand that you're here today
2 to provide testimony in a series of inter partes
3 review proceedings; is that correct?
4 A. Yes.
5 Q. And you understand that those proceedings
6 are referred to as Case Nos. IPR2023-00262,
7 IPR2023-00266 and IPR2023-00267.
8 Do you understand that?
9 A. I will accept that. I don't know them by
10 those numbers. I tend to know them by the patents
11 involved.
12 Q. Understood, and let's go through those
13 now.
14 You understand that the proceedings
15 relate to U.S. Patent Nos. 9,117,341; 10,970,969;
16 and 10,997,822, correct?
17 A. Yes.
18 Q. And you submitted a declaration in each
19 of these proceedings, did you not?
20 A. Yes.
21 Q. And in IPR2023-00262, your declaration is
22 labeled Exhibit 2003.
23 Are you aware of that?
24 A. I have -- I have a list of the exhibits
25 and everything. If you want me to look at that and

1 verify that, I can.
2 I don't -- I don't know the exhibit
3 numbers just offhand like that.
4 Q. Okay. So why don't I -- and just for the
5 benefit of the court reporter, I'll go ahead and
6 drop these into the chat.
7 But in the -- and I'll just refer to it
8 as the 00262 case, and that's referring to the --
9 the '341 patent case, and I might use those terms
10 interchangeably.
11 And you'll understand that I'm
12 referring -- when I refer to the '341 patent case
13 that I'm referring to the IPR2023-00262, right?
14 A. I will, but I may need you to repeat
15 that.
16 MR. MINUTOLI: You'll need to remind him
17 every once in a while.
18 MR. WILSON: Understandable.
19 So I'm going to drop into the chat what's
20 labeled as Exhibit 2003 in the '341 patent case
21 which is the 262 proceeding.
22 Q. (By Mr. Wilson) Dr. Vancura, if you can
23 just open that up on your end, you know, whether
24 it's through the chat or you have a clean copy that
25 you can reference, go ahead and pull up the

1 Exhibit 2003 to the '341 patent case.
2 A. Okay.
3 Q. Does that look familiar?
4 A. Yeah, I have just pulled up my copy from
5 my files, but, yes, it looks familiar.
6 Q. Okay. And that appears to be the
7 declaration that you submitted in the '341 patent
8 case?
9 A. Yes.
10 Q. And then, again, in IPR2023-00267 -- if
11 you have Exhibit 2003 handy, could you go ahead and
12 pull that up?
13 A. What is the patent number for that one?
14 Q. That's the '822 patent case.
15 A. Okay. I have that one.
16 Q. And that document looks familiar to you;
17 is that right?
18 A. Yes.
19 Q. And that appears to be the declaration
20 that you submitted in the '822 patent case?
21 A. Yes.
22 Q. And then in -- in the 266 proceeding, you
23 submitted two declarations.
24 Do you recall that?
25 A. Yes.

1 Q. Do you have Exhibit 2001 in the 266
2 proceeding, which refers to the '969 patent case?
3 Do you have that before you?
4 A. I'm sorry, what was the name you were
5 asking for, the document or the exhibit?
6 Q. Yeah, Exhibit 2001 in the '969 --
7 A. Yes, I'll pull it up.
8 Q. And just let me know when you have that.
9 A. Yup, I have it.
10 Q. That also appears to be your declaration;
11 is that right?
12 A. Yes.
13 Q. And then again, with Exhibit 2016, in the
14 '969 patent case, which is the 266 proceeding?
15 A. Yup.
16 Q. Do you have a copy of that, and can you
17 please pull that up?
18 And let me know when you have it up.
19 A. Yup, I have it.
20 Q. And that appears to be the declaration
21 that you submitted --
22 A. Yes.
23 Q. -- and the second declaration that you
24 submitted in the '969 patent case?
25 A. Yes.

DraftKings, Ex. 1057, p. 13
DK Crown v. Diogenes, IPR2023-00267

1 Q. And you submitted the Exhibit 2001, which
2 I'll refer to as your first declaration in the
3 '969 patent case, along with the patent owner's
4 preliminary response in the '969 patent case; is
5 that correct?
6 A. That sounds correct.
7 Q. And then you submitted the second -- what
8 I'll refer to as your second declaration in the
9 '969 case, along with the patent owner response in
10 the '969 proceeding.
11 Do you understand that to be correct?
12 A. Yes.
13 Q. Do you stand by the testimony that you
14 submitted in the first -- in your first declaration
15 in the '969 patent?
16 A. Yes.
17 Q. You don't wish to waive any of that
18 testimony in the first declaration that you
19 submitted in the '969 patent case?
20 A. No.
21 Q. Do you understand that the patent owner
22 in these proceedings is an entity named Diogenes
23 Limited, or Colossus?
24 A. Yes.
25 Q. Is that correct?

1 A. Yes, that's my understanding.
2 Q. Do you understand that Diogenes, or
3 Colossus, have asserted the same patents that are
4 being contested in these IPR proceedings against
5 DraftKings in a District Court matter?
6 A. I believe that I was made aware of that,
7 yes.
8 Q. Do you have any financial interest in
9 Diogenes Limited?
10 A. No.
11 Q. What about in Colossus?
12 A. No.
13 Q. Do you have any financial interest in
14 them?
15 A. No.
16 Q. Do you know anyone that does have a
17 financial interest in either of those entities?
18 A. No.
19 Q. Do you have a financial interest in the
20 outcome of this litigation?
21 A. No.
22 Q. In addition to the 266 -- I'm sorry --
23 the 262, 266 and 267 IPR proceedings, which, again,
24 relate to the '341, '969 and '822 patents, you're
25 aware that there are additional inter partes review

1 proceedings, or there were at least petitions,
2 filed against other related patents owned by
3 Colossus.
4 Do you understand that?
5 A. Yes.
6 In the same family, you mean?
7 Q. Yes.
8 A. Yes.
9 Q. And you submitted declarations in some of
10 those cases; is that correct?
11 A. Yes.
12 Q. And you've reviewed at least some of the
13 materials in those other related cases; is that
14 right?
15 A. With respect to the -- the patents in
16 the -- the IPRs and my declarations, yes.
17 Q. Yes.
18 And some institution decisions; is that
19 right?
20 A. In terms of the -- the -- the board, the
21 review board?
22 Is that what you mean?
23 Q. Yes.
24 A. Yes.
25 Q. Have you ever submitted an expert report,

1 declaration or testimony in any other legal
2 proceeding outside of the dispute between
3 DraftKings and Colossus or Diogenes?
4 A. Yes.
5 Q. About how many expert reports have you
6 submitted?
7 A. Oh, I would say maybe half a dozen.
8 Q. And are those in the context of an
9 inter partes review proceeding, a District Court
10 matter?
11 A. They were not in the context of an
12 inter partes review. They were related to
13 litigation.
14 Q. Were you asked to provide any live
15 testimony in connection with your reports or
16 declarations in those matters?
17 A. Yes.
18 Q. And specifically, deposition testimony,
19 were you deposed in connection with those matters?
20 A. At least one, yes.
21 Q. If we can turn to -- do you have a copy
22 of Exhibit 2004 to the '341 -- excuse me.
23 Yeah, 2004 to the '341 patent case. It's
24 the 262 proceeding.
25 Do you have a copy of that?

1 A. Yes, let me just pull it up.
2 Okay.
3 Q. And is that -- those cases where you
4 served as -- where you provided witness testimony,
5 are those reflected on the last page of your CV,
6 which is Exhibit 2004 here?
7 A. Yes.
8 Q. And so for each of these entities, at
9 least one District Court litigation report or
10 testifying venture; is that right?
11 A. I will not pretend to tell you whether it
12 was a District Court or some other court. I have
13 testified in court, multiple.
14 Q. And for each of the entities listed here;
15 is that right?
16 A. Not necessarily each of them, no.
17 For some of these, yes; but for others,
18 it was -- I was -- you know, just served as an
19 expert, but it did not go to trial or I did not
20 need to prepare a report.
21 Q. Understood.
22 So I'm just going to lay out some ground
23 rules just so we have a mutual understanding of the
24 questioning today.
25 So I'll just briefly note that I'll do my

1 best to speak clearly and slowly for the
2 court reporter so that you can hear me, and I'll
3 ask you to do the same.
4 I'll ask that we do our best not to speak
5 over each other.
6 There may be some pauses in between my
7 questions and at the conclusion of your answer, and
8 I'm not doing that to try to draw out additional
9 responses. I'm just trying to keep a clear record
10 to make sure I don't speak over with the next
11 question before you're done -- before you're
12 finished answering.
13 I might ask you if you're finished
14 answering a question. Again, I'm not doing that to
15 rush you, just to, again, try to make sure I'm not
16 speaking over you or cutting you off from a
17 complete answer.
18 You are aware that the counsel for patent
19 owner might make certain objections during your
20 questioning.
21 Are you aware of that?
22 A. Yes.
23 Q. If counsel does make an objection, please
24 go ahead and answer the question after your counsel
25 has finished making the objection.

DraftKings, Ex. 1057, p. 19
DK Crown v. Diogenes, IPR2023-00267

1 Does that sound right?
2 A. Yes.
3 Q. And I'll do my best not to ask about
4 privileged -- any privileged information, but if I
5 do get into those matters that are protected by
6 privilege, counsel for patent owner may instruct
7 you not to answer or to answer only to the extent
8 that you don't reveal privileged information.
9 Does that sound fair?
10 A. Yes.
11 Q. If we could just take a brief break from
12 the record.
13 (Recess taken.)
14 MR. WILSON: Back on the record.
15 Q. (By Mr. Wilson) So we just finished
16 discussing that you have not submitted any
17 testimony in an IPR proceeding outside of the
18 context of the DraftKings/Colossus matters.
19 Do you recall that?
20 A. Okay.
21 Q. And you are aware of the procedure in
22 inter partes review proceedings where a patent
23 owner to the proceeding can file something called a
24 motion to amend, are you not?
25 A. I believe so, yup.

1 Q. And the motion to amend can include
2 proposed substitute claims that patent owner
3 contends should replace the original claims of a
4 challenged patent.
5 Do you understand that?
6 A. Yes.
7 Q. So it's fair to say that this is your
8 first experience with a motion to amend?
9 A. I think the answer is yes. I don't know.
10 I mean, it -- in some of the patents that
11 I'm an inventor on, it -- that may have occurred.
12 I don't believe, though.
13 Q. So you may have some experience with
14 amendment practice at the -- the patent office
15 then; is that right?
16 A. I don't, no.
17 Q. You're not aware of any -- well, strike
18 that.
19 You mentioned that you -- you filed some
20 patent applications in the past; is that right?
21 A. Hello?
22 Yes.
23 Q. I'm sorry, I might have had a glitch on
24 my side. I didn't catch the answer.
25 A. Sorry about that.

DraftKings, Ex. 1057, p. 21
DK Crown v. Diogenes, IPR2023-00267

1 Q. You mentioned that you -- you filed some
2 patent applications in the past, right?
3 A. Yes.
4 Q. And you are a named inventor on several
5 patents?
6 A. Yes.
7 Q. About how many patent applications did
8 you say you filed or you're named on?
9 A. Yeah, I would -- I would say named on.
10 Maybe, I don't know, 160.
11 Q. And are those -- about how many patents
12 do you think issued from those filings?
13 A. I believe in the high 80s.
14 Q. And you're not aware of whether of any of
15 those patents have been subject to an IPR
16 proceeding?
17 A. I am not.
18 Q. What about a re-examination proceeding?
19 Are you aware of any of your patents that
20 have been subject to that?
21 A. I am not.
22 Q. What about re-issue?
23 Are any of your patents issued -- entered
24 re-issue?
25 A. They may or may not.

1 I am not aware.
2 Q. In general, what were those patents?
3 What were those patent applications that
4 bear your name -- in general, what are those
5 directed to?
6 A. They are directed to gaming inventions in
7 the gaming space. Some are directed more towards
8 apparatus claims or system embodiments. Others are
9 directed more towards methods of play.
10 But they generally encompass new ways of
11 playing games, new games, new features or bonuses
12 in slot machines, new ways of doing progressives.
13 That spans the gamut.
14 Q. Any of them directed to sports-wagering
15 systems?
16 A. No, not to my knowledge.
17 Q. Any of them directed to online gaming
18 systems?
19 A. I don't know the answer to that.
20 Q. How about parlays?
21 Any of your patent applications directed
22 to parlays?
23 A. I mean, whether that is discussed in any
24 of them, it's possible. I mean, obviously, I'm
25 very familiar with sport wagering in light of what

1 I'm doing currently, so...
2 But with respect to the patents, I -- I
3 don't know. I mean, it's -- I did not review all
4 of my patents prior to this deposition.
5 Q. Do you recall if any were -- any involved
6 hedging?
7 A. I mean, it's possible that that was
8 discussed or disclosed, because that's a wagering
9 technique.
10 I don't recall offhand.
11 Q. And same question for allowing a
12 better-to-exit opposition before an event is over.
13 Do you recall if any of your patent
14 applications are directed to that concept?
15 MR. MINUTOLI: Objection.
16 THE DEPONENT: I don't. It's possible.
17 Q. (By Mr. Wilson) What about bonus games?
18 Have you ever submitted a patent
19 application that's directed to a bonus game?
20 A. Yes.
21 Q. And about how many, if you had to guess,
22 patent applications have you submitted that
23 involved bonus games?
24 A. I would guess 50.
25 I really don't know.

DraftKings, Ex. 1057, p. 24
DK Crown v. Diogenes, IPR2023-00267

1 Q. And with that number -- 180 total
2 applications -- in a rough sense, if you could
3 describe, what was your involvement in the
4 preparation of those applications?
5 A. I would -- this is going to be a general
6 answer.
7 I would say, generally, at the beginning,
8 at the initial submission process, I was very
9 active in the, you know, specification, detailed
10 embodiments, those -- those kinds of things. I
11 worked very actively with attorneys. I would say
12 up through and including allowance in terms of the
13 prosecution.
14 At some point when I leave a company,
15 you know, I'm no longer involved in the
16 prosecution. So -- or if the -- if my patents are
17 acquired by other companies, which has happened
18 commonly for my inventions, I'm no longer involved
19 in the prosecution.
20 That would be my general answer.
21 Q. You mentioned a few areas you were
22 involved in.
23 How about the claims, drafting the
24 claims?
25 Were you involved in or are you aware

DraftKings, Ex. 1057, p. 25
DK Crown v. Diogenes, IPR2023-00267

1 of -- of the claims of the patent?
2 A. Again, I would say that in terms of the
3 initial submission to the USPTO, I would say I
4 would be active in the claims. I would -- there
5 might be instances where I drafted, you know, a
6 potential claim to help guide the -- the attorney.
7 Q. And what about the amendment process of
8 the claims during prosecution?
9 Were you ever involved in that, to your
10 recollection?
11 A. Yes.
12 Q. And you certainly probably reviewed
13 claims before -- prior to issuance --
14 A. Yes.
15 Q. -- of an issued patent, right?
16 A. Yes.
17 Q. So you're probably aware that in the
18 patent prosecution process of a filed patent
19 application, a patent examiner may issue certain
20 rejections during the prosecution process.
21 Are you aware of that?
22 A. I am aware of that.
23 Q. And the applicant, in response to the
24 prosecutor's issuing a rejection, must establish
25 that he or she is entitled to a patent on the

1 claims in response to those rejections.
2 Do you understand that?
3 A. Yes.
4 Q. Do you know the different bases or a few
5 example bases on which an examiner can reject
6 claims during prosecution?
7 A. I would say so, yes.
8 Q. And those are things like -- you've heard
9 of Section 101, subject matter eligibility.
10 Have you heard of that?
11 A. Yes.
12 Q. Anticipation grounds, obviousness
13 grounds, you are aware of those?
14 A. Yes.
15 Q. What about Section 112, written
16 description?
17 Have you heard of that?
18 A. I believe I have.
19 Q. And you're aware that's a basis that can
20 serve to reject claims during prosecution?
21 A. Yes.
22 Q. What about 112, indefiniteness?
23 Have you heard of that concept?
24 A. I probably have.
25 Q. And you're aware that an examiner can

DraftKings, Ex. 1057, p. 27
DK Crown v. Diogenes, IPR2023-00267

1 issue a rejection based on Section 112 under
2 indefiniteness grounds?
3 A. I will -- I will accept that.
4 Q. You mentioned before, you're not aware of
5 any of your patents that have gone through re-issue
6 or re-examination.
7 But are you familiar in general with a
8 concept of broadening and narrowing amendments in
9 the context of re-issue -- re-examination or, in
10 this case, a motion to amend?
11 A. You mean broadening or narrowing the
12 claims?
13 Q. Yes.
14 A. Yes, I'm familiar with that general
15 concept.
16 Q. Have you ever heard of the concept of a
17 party bearing the burden on a particular issue in a
18 legal context?
19 A. It's generally -- I would be as a
20 nonattorney.
21 Q. And what does that term "burden" mean, in
22 your understanding?
23 A. I guess it means, to me, who has to show
24 or prove something versus who does not have to.
25 Q. And you understand that in a typical IPR

1 proceeding that the petitioner's required to show
2 unpatentability of challenged claims by a
3 preponderance of the evidence.
4 Do you understand that?
5 A. I think so, yes.
6 Q. Do you have an understanding as to
7 whether or how that standard changes in the context
8 of a motion to amend in an inter partes review
9 proceeding?
10 A. Right now, I don't.
11 Q. So you're not sure if it's -- if patent
12 owner bears the burden on any particular issues
13 in -- in an amendment -- in a motion to amend in an
14 IPR proceeding; is that right?
15 A. I mean, if -- if it's in my report, I
16 would say that I knew that at one time, because it
17 was -- you know, I was made aware of that.
18 But as I sit here right now, I cannot
19 think of it.
20 Q. And let me reference the -- the 262
21 proceeding, that's the '341 patent case, your
22 declaration which is marked Exhibit 2003.
23 If you turn to paragraph 31.
24 Just let me know when you have that up.
25 A. This is for the '341 patent?

1 Q. '341 patent, your declaration.
2 A. I'm sorry, which paragraph did you want
3 me to go to?
4 Q. Paragraph 31, please.
5 A. Okay.
6 Q. You see there, you say -- you acknowledge
7 the standard to prove unpatentability?
8 A. Yup.
9 Q. And you don't identify any other -- any
10 burdens placed on patent owner in the context of a
11 motion to amend, there at least, do you?
12 A. I -- I don't seem to, no.
13 Q. Do you attempt to satisfy any particular
14 burdens of proof in your declaration with regard to
15 any topics?
16 And this is a question in regard to the
17 '341 patent and the '822 patent declarations.
18 A. Could you -- could you -- could you
19 repeat that, please?
20 Q. Yeah.
21 In your declarations that you submitted
22 in the '341 patent and '822 patent cases, do you
23 attempt to satisfy or meet any evidentiary
24 standard, any burdens of proof, placed on patent
25 owner in those declarations?

DraftKings, Ex. 1057, p. 30
DK Crown v. Diogenes, IPR2023-00267

1 A. I'm not sure how to answer that.
2 I'm -- I mean, I'm not an attorney, so I
3 don't know if I'm meeting the burden of proof or
4 not. I'm rendering my opinions.
5 Q. But you do address certain topics,
6 certainly, in your declaration, right?
7 A. Yes.
8 Q. And, specifically, do you recall if you
9 address broadening or narrowing claim scope in your
10 declaration?
11 A. I believe I -- I -- I would have to look
12 specifically at -- at the '341, but I believe that
13 that topic, I do address it, yes.
14 You want me to look through it?
15 Q. No, just your general recollection.
16 Do you recall addressing claim scope?
17 A. In terms of whether they -- whether the
18 amended claims are narrowed or broadened?
19 Q. That's right.
20 A. My general recollection is I do address
21 it.
22 Q. And at any time, you're welcome to review
23 your declaration and refresh your recollection, but
24 I just don't think it's worth it for this line of
25 questioning.

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1 A. Okay.
2 Q. Written description support, do you
3 recall addressing that?
4 A. Yes.
5 Q. Validity with regard to asserted prior
6 art, do you recall addressing that?
7 A. Yes.
8 Q. What about subject matter eligibility
9 under Section 101?
10 And for this one, it may be worth taking
11 a look at your declaration.
12 Do you recall rendering an opinion as to
13 subject matter eligibility of any claims in the
14 '341 and '822 patent case declarations that you
15 submitted?
16 A. I mean, I'll stand by what's in my
17 report. As I sit here right now, I don't recall
18 addressing that specifically.
19 Q. And you have access to the -- to the case
20 filings in each of the proceedings; is that right?
21 A. I think I do, yes.
22 Q. Do you have access to a Paper 17 in the
23 '341 patent case, which is titled "Patent Owner's
24 Motion to Amend"?
25 A. In the '341 case?

1 Q. Yes.
2 A. I don't think I have that.
3 MR. MINUTOLI: Andrew, he should only
4 have the exhibits that he listed.
5 MR. WILSON: Okay. Okay. I'm going to
6 drop in the chat Paper 17, which is "Patent Owner's
7 Motion to Amend" in the '341 case.
8 THE DEPONENT: I'm sorry, forgive me.
9 I -- let me just try to figure out how to
10 get that.
11 MR. WILSON: There should be -- maybe
12 under "More," there should be a "Show Chat" or
13 "Chat."
14 THE DEPONENT: I see a chat at the
15 bottom.
16 Is that it?
17 MR. WILSON: Yeah.
18 Does that bring up a chat window that
19 then --
20 THE DEPONENT: It seems to bring up a
21 chat window where I can type a message, but I don't
22 see any messages from anybody.
23 Oh, wait. Maybe I need to scroll down.
24 MR. WILSON: Andrew, did you only send it
25 to him? I mean, I don't need it. I just -- I

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1 can't see it, though.
2 (Discussion off the stenographic record.)
3 THE DEPONENT: Oh, there. Something just
4 popped up.
5 Q. (By Mr. Wilson) Sorry about that.
6 A. No, you're good.
7 Q. And just let me know when you have that
8 downloaded and up to view.
9 A. Sorry, just give me a moment.
10 I have it.
11 Q. Okay. And you see on the front cover, it
12 says "Patent Owner's Motion to Amend and Request
13 for Preliminary Guidance" in the '341 patent case?
14 A. Yes.
15 Q. Did you review this document in preparing
16 your declaration in the '341 patent case?
17 A. No.
18 Q. Do you see on -- on page 1 -- it's not
19 actually the first page of the document, but it's
20 what's labeled page 1 -- that it says, "Patent
21 Owner submits this Motion to Amend contingent upon
22 a finding of unpatentability of the original
23 challenged claims."
24 Do you see that?
25 A. Yes.

1 Q. And just quickly, I'd like to turn to the
2 motion to amend in the '822 patent case that I'll
3 drop in the chat now, and I'll send to everyone.
4 This is Paper 15 in the '822 patent case,
5 which is IPR2023-00267.
6 And just let me know when you have that
7 up.
8 A. Okay.
9 Q. And just confirm that that is, in fact,
10 the "Patent Owner's Motion to Amend" in the
11 '822 patent case?
12 A. Yes.
13 Q. And that on page 1, a similar statement
14 stating that "Patent Owner submits this Motion to
15 Amend contingent upon a finding of unpatentability
16 of the original challenged claims."
17 Do you see that?
18 A. Yes.
19 Q. And you have an understanding as to what
20 the "original challenged claims" refer to, right?
21 A. Yes.
22 Q. And they're just the original claims of
23 the '341 and '822 patents that are -- that were
24 challenged by petitioner in these IPRs, right?
25 A. Yes.

1 Q. Do you offer any opinion as to the
2 patentability of the original challenged claims in
3 the '341 or '822 patent cases?
4 A. No, I don't think I was involved in the
5 declaration for those in that capacity.
6 Q. Circling back to the discussion of
7 burdens that we had talked about, you're not aware
8 of whether patent owner bears any burdens on any
9 particular issues in the context of a motion to
10 amend in an IPR, right?
11 A. I -- I -- could you repeat that?
12 Sorry.
13 Q. Yeah.
14 You don't understand patent owner to bear
15 the burden on any particular issues in a motion to
16 amend?
17 A. You mean like -- like in this situation,
18 a motion to amend after the -- the IPR award is
19 rendered as a decision?
20 I -- I -- I don't understand who has
21 which burden.
22 Q. I'm going to direct you to paragraph 55
23 of your '341 patent declaration.
24 A. Sorry, let me -- paragraph 55?
25 Q. 55.

1 A. Okay.
2 Q. Do you see there, you say that "The
3 amendments shown above... add further limitations
4 to original claim 1 and in my opinion only narrow
5 the scope of original claim 1."
6 Do you see that?
7 A. I do.
8 Q. And you have at least some understanding
9 as to what the term "claim scope" refers to?
10 A. Yes.
11 Q. But you don't know whether patent owner
12 bears the burden on showing whether substitute
13 claims do not enlarge the scope of any original
14 claims; is that right?
15 A. I do not know the answer to that.
16 Q. How did you go about determining whether
17 an amendment made the original claims narrower or
18 broader in your analysis?
19 A. I -- so I think, generally, the answer is
20 you look at the original language and the amended
21 language and make a determination as to whether
22 it's narrower or broader. So I would say I
23 compared the original language to the amended
24 language.
25 Q. Is it sort of on an element or

1 limitation-by-limitation basis?
2 MR. MINUTOLI: Objection. Form.
3 THE DEPONENT: I'm sorry, could you
4 repeat that?
5 You mean element -- you mean steps in a
6 claim? What do you mean?
7 Could you just ask the question again?
8 Q. (By Mr. Wilson) Yeah.
9 I'm just trying to get a little more
10 information about the process.
11 So is it -- I guess, reviewing the
12 totality of the claim and the amendments thereto,
13 you made your determination by analyzing the
14 totality of the -- the claim language; is that
15 right?
16 A. I would say it's at least that, yes.
17 Q. What about, did you analyze whether any
18 limitations had been removed in conducting your
19 analysis of whether there was a narrowing or
20 broadening amendment?
21 A. Are we -- are we referring to
22 paragraph 55?
23 Q. Yes.
24 A. So let me just go to that.
25 So 55 is speaking about claim 41 versus

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1 the original claim 1. So let me go to that.
2 And can you -- so can you ask that
3 question again?
4 Q. Did you -- in rendering your opinion
5 about whether an amendment -- or the amendment
6 would render the claim scope broader or narrower,
7 did you consider the effect of removing claim
8 limitations on claim scope?
9 A. I mean, I think -- if I understand your
10 question correctly, you're asking -- are you asking
11 a theoretical question, like if a claim has five
12 steps, and I remove one of those steps, have you
13 broadened the claim?
14 I mean, if that's -- if that's the only
15 difference between two claims, then I would have to
16 say, presumably, you have broadened the claim.
17 I would have to see the claim to -- to
18 really give you a solid answer.
19 Q. But in your -- in your opinion, you could
20 remove a claim limitation and then replace it with
21 a narrower claim limitation, and that would make
22 the claim narrower overall; is that right?
23 MR. MINUTOLI: Objection. Form.
24 THE DEPONENT: I don't -- I'm not sure
25 what you're asking, to be honest.

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1 If the -- if I take an existing claim
2 step or limitation, and I remove it, and then I add
3 another limitation, I mean, it would depend if that
4 other limitation is related to the first one. I
5 mean, am I limiting what was in the first one?
6 If you can give me an explicit example, I
7 can answer. I'd say, generally, the answer is, I
8 don't think I agree.
9 Q. (By Mr. Wilson) Turning to paragraph 56
10 of your '341 patent declaration, you begin
11 identifying certain existing limitations in
12 original claim 1 that have been narrowed.
13 A. I see that.
14 Q. Do you see where you do that in
15 paragraph 56?
16 A. Yes.
17 Q. And first, you address, in paragraph 56,
18 what you refer to as "wager limitations."
19 Do you see that?
20 A. Yes.
21 Q. And those wager limitations that you're
22 referring to there, what limitations exactly -- in
23 the claim chart that you provided above, what do
24 the wager limitations correspond to?
25 A. I'm just reading through 56. Just give

1 me a moment.
2 Yeah, I think that's addressed in
3 paragraph 56.
4 Q. So then just mapping what you've
5 discussed in paragraph 56 to the claim, to the
6 language of the claim in substitute claim 41, is
7 that 41[pre], 41[c] and 41[d] that recite wager
8 limitations; is that right?
9 A. Give me just a moment. I'm going to need
10 to go back and see what the steps are.
11 It looks to me like it's the preamble,
12 step 41[c], step 41[d].
13 I think that's it.
14 Q. Thank you.
15 So continuing on into paragraph 57, you
16 identify additional amendments that add what you
17 refer to as "'real time and continuous'
18 limitations."
19 Do you see that?
20 A. Yes.
21 Q. And that's referring to 41[c-1] to
22 41[c-3], right?
23 A. Yes.
24 Q. Any limitations removed from original
25 claim 1 and substitute claim 41, in your opinion?

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1 A. Any limitations in the original claim
2 that were removed in claim 41; is that the
3 question?
4 Q. Yes.
5 A. I mean, I only see one thing that was
6 removed in step 41[e]. And the -- the phrase
7 "players that are eligible to win" was replaced
8 with "winners based on said evaluating."
9 So in my view, the "winners based on said
10 evaluating" is -- it's not -- that set is not
11 bigger than players that are eligible to win.
12 So I don't think it broadened it.
13 Q. And so in your opinion, the net effect of
14 the amendment proposed in substitute claim 41 have
15 a narrowing effect on the scope of original
16 claim 1, right?
17 A. Yes, yes.
18 Q. If we can turn now to your declaration in
19 the '822 patent case.
20 And I'll direct to the corresponding
21 paragraph 55.
22 A. Okay.
23 Q. And you see there, again, you're offering
24 an opinion about the substitute claims narrowing
25 the scope of the original claims.

1 Do you see that?
2 A. Yes.
3 Q. And then, in paragraph 56, you identify
4 three real time and continuous limitations that
5 have been added to the substitute claims that are
6 not present in the original claim; is that right?
7 A. Yes.
8 Q. And those correspond to limitations
9 30[d-1] to 30[d-3], right?
10 A. Yes.
11 Q. Do you provide any other opinion
12 regarding the scope of substitute claim 30 with
13 regard to original -- the original claim other than
14 what's laid out here in -- in paragraph 56?
15 A. The report doesn't seem to have anything
16 other than 56.
17 Q. I'd like to draw your attention to
18 limitation 30[e], and this is in the claim chart in
19 your declaration, on page 21 of your declaration.
20 A. Okay.
21 Q. And this limitation 30[e] is not
22 addressed in paragraph 56 of your declaration,
23 right?
24 A. As far as I can tell, it is not.
25 Q. And so you don't offer an opinion as to

1 whether this particular amended limitation is
2 broadening or narrowing in your declaration, right?
3 A. Yes, that's right.
4 Q. Using the markup language here, are you
5 able to decipher or determine the original language
6 of claim 1 based on what's provided here?
7 A. For what's called step 30[e]?
8 Q. Yes.
9 A. Yes.
10 Q. And that limitation, the original claim 1
11 limitation, corresponding to substitute claim
12 30[e], says "receiving, over the communications
13 interface, a designated amount for a value of the
14 wager on the wagering event from a first input
15 device."
16 Would you agree with that?
17 A. Yes.
18 Q. Now, is that limitation, "receiving... a
19 designated amount for a value of the wager from a
20 first input device," is that limitation recited
21 anywhere in substitute claim 30, in your opinion?
22 A. You're asking if the original language
23 for that step is recited elsewhere in the amended
24 claim?
25 Q. That's right.

1 A. That precise original language?
2 Q. Yes.
3 A. I believe is not.
4 Q. Would it be fair to say that the -- that
5 that limitation we were just addressing from the
6 original claim has been removed from the substitute
7 claim?
8 A. Can you give me a moment to reread the
9 entire claim?
10 Q. Take your time.
11 A. Okay.
12 Okay. Go ahead and ask the question.
13 Q. Is it fair to say that that limitation,
14 the limitation of "receiving... a designated amount
15 for a value of the wager from a first input
16 device" -- is it fair to say that that limitation
17 has been removed in substitute claim 30?
18 A. I would say that that explicit language
19 has been removed.
20 MR. WILSON: Dr. Vancura, we've been
21 going about an hour. I wanted to just offer the
22 opportunity to take a break, five, ten minutes.
23 THE DEPONENT: Sure, that would be great.
24 MR. WILSON: Okay. Off the record.
25 (Recess taken.)

1 MR. WILSON: Back on the record.
2 Q. (By Mr. Wilson) Dr. Vancura, did you
3 consult -- did you speak with counsel for patent
4 owner over the break?
5 A. No.
6 Q. I'd like to turn now to substitute
7 claim 31.
8 Do you render any opinion regarding
9 whether claim 31 includes any broadening amendment
10 in your declaration for the --
11 A. Can you -- can you tell me which
12 declaration we're in right now?
13 Q. Yeah, sorry.
14 So back to the -- still in the
15 '822 patent declaration. And this is the section
16 around paragraph 55 to 57.
17 And the question is whether you offer an
18 opinion about whether substitute claim 31
19 specifically includes any broadening amendment in
20 your declaration.
21 A. I'm sorry, I'm still trying to scroll
22 down to that section.
23 30 -- okay. I see claim 31.
24 Go ahead, please, ask your question.
25 Q. In your declaration, do you render an

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1 opinion about whether claim 31 includes any
2 broadening amendment?
3 A. Are you asking if my declaration has --
4 has anything -- states anything related to that?
5 Q. Yes.
6 A. No.
7 Q. Regarding substitute claim 32 in
8 paragraph 57 of your declaration, you identify
9 three real time and continuous limitations that you
10 contend are not present in original claim 15.
11 Do you see that?
12 A. In paragraph 57?
13 Q. Yes.
14 A. Yes, I see it.
15 Q. And those -- what you refer to as "real
16 time and continuous limitations" are recited in
17 limitations 32[a-1] to [a-3]; is that right?
18 A. Yes.
19 Q. And you don't provide any other opinion
20 outside of paragraph 57 regarding the claim scope
21 of substitute claim 32; is that right?
22 A. That appears correct, yes.
23 Q. And turning to substitute claim 33, you
24 don't offer an opinion about whether substitute
25 claim 33 recites a broadening amendment in your

1 declaration; is that right?
2 A. That's right.
3 Q. I'm going to change gears a little bit
4 here.
5 Do you understand what a
6 continuation-in-part patent application is?
7 A. Yes.
8 Q. And what's your understanding of a
9 continuation-in-part patent application?
10 A. Well, I think a continuation-in-part is
11 just generally -- I mean, I don't -- I'm not going
12 to pretend to know all the nuances.
13 But generally, my understanding is it's a
14 continuation of an original application, so it
15 would claim priority to -- to the -- you know, the
16 original date, let's say, but it adds some
17 additional matter.
18 Q. And is that -- in your understanding, is
19 that additional matter recited in the specification
20 or the claims, or where is that additional matter
21 recited?
22 A. I would --
23 MR. MINUTOLI: Objection. Form.
24 THE DEPONENT: I mean, I would say that's
25 up to the patent owner and how they want to

1 prosecute things. But I would say it can be cited
2 in the specification, and it can become, you know,
3 additional claims.
4 Q. (By Mr. Wilson) And what is the effect
5 of a claim -- in your understanding, a claim of a
6 continuation-in-part application that recites some
7 of that new matter that was introduced in the
8 continuation-in-part application?
9 A. I'm not sure I understand the question.
10 Sorry.
11 Q. Well, you mentioned that a
12 continuation-in-part application can introduce a
13 new matter --
14 A. Right.
15 Q. -- in either the written description or
16 the claims; is that right?
17 A. That's my understanding, yes.
18 Q. Do you have an understanding as to what
19 the impact is, if any, if the claims of the
20 continuation-in-part application recite subject
21 matter that was only introduced in the
22 continuation-in-part application, as opposed to
23 subject matter disclosed in the original patent
24 application?
25 A. I want to make sure I understand the

1 question.
2 So you're -- you're asking, in a
3 continuation-in-part, if the specification
4 introduces new matter that was not there before,
5 and that new matter is claimed, then the question
6 is, what's my understanding of what happens to
7 those claims?
8 Q. Yes.
9 A. Or -- well, I mean, they're just --
10 they're just claimed as anything else would be.
11 I'm not sure I understand what your --
12 what the question is.
13 Q. Are you familiar with the concept of a
14 priority date?
15 A. Yes.
16 Q. And so for a patent application that's
17 not a continuation or a continuation-in-part, just
18 an ordinary patent application, it's your
19 understanding that the claims, so long as they are
20 supported by the written description of that patent
21 application, are entitled to the benefit of the
22 original patent application filing date?
23 A. Just -- just on a normal patent
24 application, yes.
25 Q. And then we talked about, briefly, that a

1 continuation-in-part application might be filed
2 after the original patent application filing date,
3 but then may introduce additional subject matter
4 that was not disclosed in the original application;
5 is that right?
6 A. Yes.
7 Q. And now we're drilling down on, if the
8 claims of the continuation-in-part application are
9 drawn to subject matter that was only disclosed in
10 the continuation-in-part application, whether
11 there's any impact on, for example, the priority
12 date that those claims might be entitled to.
13 A. Oh.
14 Q. Do you have an understanding of that?
15 A. Yeah, I would say my -- my general
16 understanding is if it's -- if it's new matter,
17 then -- and the claims are drawn only to the new
18 matter, then the priority date would presumably be
19 the date at which the new matter was introduced in
20 the -- in the continuation-in-part.
21 Q. But if the claims cover some subject
22 matter that was originally disclosed in the
23 original, earliest filed patent application, and
24 then some matter that was disclosed in the -- only
25 disclosed in the continuation-in-part application,

1 in your opinion, what -- what priority date would
2 those claims be?
3 A. I don't -- I don't know how to answer
4 that. I'm not an attorney. I don't know what the
5 rule is for that.
6 Q. What about a continuation application?
7 Do you have any understanding of what a
8 continuation application is?
9 A. Just a continuation, yes.
10 Q. And what's a continuation application?
11 A. Well, I mean, I'm not sure of all of the
12 strategic ways it can be used.
13 But I think it's generally used as a way
14 to keep the original application live after,
15 you know, the patent is going to issue, and you
16 believe that you have additional, you know, claims
17 that -- that you would want, you would file a
18 continuation if -- if you're not, for example,
19 changing the specification at all.
20 Q. Do you know if the '341 patent, for
21 example, is a continuation-in-part application?
22 A. As I sit here right now, I cannot tell
23 you the answer. I mean, obviously, if you look at
24 the patent, it will -- it will tell you the answer.
25 Q. All right. I'd like to direct you to, if

1 you have it available, Exhibit 1001 in the
2 '341 patent case.
3 A. 1001.
4 Q. 1001 in the '341 patent case, which is
5 the 262 proceeding.
6 And just for the benefit of the
7 court reporter, I've dropped it in the chat.
8 A. I'm sorry, my Exhibit 1001 in the '341 is
9 the '341 patent.
10 Q. Yes.
11 A. Okay. All right. Sorry.
12 Q. Are you familiar with reading a patent --
13 or an issued patent, excuse me, to determine the
14 priority claim for the patent?
15 A. I think so, yes.
16 Yup.
17 Q. And do you see in what's labeled No. 63
18 on -- on the face, on the front page of the patent,
19 do you see there it says "Related U.S. Application
20 Data"?
21 A. I do.
22 Q. And does that help refresh your
23 recollection as to whether the '341 patent is a
24 continuation-in-part or an original application?
25 A. Yeah, it looks like it's a continuation

1 of an application, which, in turn, is a
2 continuation-in-part of a different application.
3 Q. And did you -- we had previously
4 discussed that a continuation-in-part application
5 might introduce new subject matter that was not
6 disclosed in the original application.
7 Did you perform any analysis into the
8 '341 -- the application that issued as the
9 '341 patent or its parent applications with regard
10 to the originally filed application in the priority
11 chain to determine whether any new matter was
12 disclosed?
13 A. I -- I think the answer is no in terms
14 of, if you're asking did I do like a -- a
15 difference file or some kind of -- some kind of
16 comparison between, you know, the disclosures of
17 these various applications, except insofar as --
18 as, you know, what's -- what's in this declaration
19 in terms of support for the amended claims.
20 Q. So you're not aware of whether the
21 application that led to the '341 patent discloses
22 any new subject matter that's not -- I'm sorry,
23 strike that.
24 You're not aware of whether the
25 application that led to the '341 patent discloses

1 any new subject matter that is required to support
2 the substitute claims of the '341 patent; is that
3 right?
4 A. Except insofar as it would be in the
5 table that I created, you know, for this
6 declaration, that would -- the answer would be,
7 except for what's in there, I have not done any
8 analysis of the type you are asking.
9 Q. So is it fair to say that it's your
10 opinion that, at least for the '341 patent case,
11 that the substitute claims are -- strike that.
12 Is it fair to say that, in your opinion,
13 for the '341 patent case that the substitute claims
14 are fully supported by the original disclosure?
15 A. I would need to consult the report, my
16 declaration, the report itself, but I -- I believe
17 the answer is that they are -- they are supported
18 in the original disclosure.
19 I would need -- I would need to confirm
20 that.
21 Q. What about the '822 patent?
22 Do you know offhand whether that's a
23 continuation-in-part application?
24 A. I'm not going to click on it. Offhand,
25 I -- I'm not sure, as I sit here.

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1 Q. Let me go ahead and direct you to
2 Exhibit 1001 in the '822 patent case -- excuse
3 me -- 267 proceeding.
4 And if you --
5 A. The '822 patent itself?
6 Q. Yes.
7 MR. MINUTOLI: That's also Exhibit 1001.
8 MR. WILSON: Exhibit 1001 in the
9 '822 patent case.
10 THE DEPONENT: Okay.
11 Q. (By Mr. Wilson) And, again, does that --
12 Section 63 on the front page, which is continued
13 onto the next page, does that refresh your
14 recollection as to whether --
15 A. Yes.
16 Q. -- the '822 patent case is a
17 continuation-in-part?
18 A. Yes.
19 Q. So the '822 patent's a
20 continuation-in-part, right?
21 A. Yes.
22 Q. But you didn't perform any type of
23 analysis between the specifications of the
24 application that led to the '822 patent versus the
25 original application that the '822 patent claims

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1 priority to, did you?
2 A. I think my answer is going to be the
3 same.
4 It's only insofar as what appears in the
5 table of the report, where, you know, there needs
6 to be support for the original claim and the
7 amended claim. So I believe I did go back to what
8 was asked of me in terms of the applications I
9 would look at.
10 But, in general, did I do a -- some kind
11 of a difference between these two specifications or
12 these multiple specifications, I did not.
13 Q. We discussed briefly the concept of a
14 priority date just now.
15 Do you recall that?
16 A. I'm sorry, the conflict of a priority
17 date?
18 Q. The concept of a priority date.
19 A. Oh, the concept, yes, yes.
20 Q. And that priority date concept is
21 sometimes called "the date of invention."
22 Have you heard that?
23 A. I probably have heard that.
24 Q. If we turn back to your declaration,
25 paragraph 22, in the '341 patent case.

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1 A. Paragraph 22?
2 Q. Yes.
3 A. Okay.
4 Q. And do you see there --
5 A. Yup, I do.
6 Q. So you've been asked to use the date of
7 the filing of the earliest application to which
8 priority is claimed, i.e., September 6th, 2012, as
9 the date of the invention for purposes of your
10 analysis.
11 Do you see that?
12 A. I do.
13 Q. And, again, you understand that -- that a
14 claim of a continuation-in-part patent is entitled
15 to an earlier priority date only if the claim is
16 supported by the earlier filed disclosure, right?
17 A. That's my understanding.
18 Q. And if support for the subject matter
19 that's recited by the claim only appears in a later
20 filed continuation-in-part application, then the
21 filing date of that later filed
22 continuation-in-part application that supports the
23 claim is what the claim is entitled to, right?
24 A. I will accept that that's -- that's the
25 legal standard.

1 Q. And so you understand that there's a
2 distinction between the continuation-in-part patent
3 application itself providing support for claims, as
4 opposed to an earlier filed disclosure providing
5 support for the claims, right?
6 A. I'm not sure I understand the question.
7 Sorry.
8 Q. You're aware that there's a distinction
9 between the scenario where the continuation-in-part
10 patent application itself provides support for its
11 claims, as opposed to when an earlier filed
12 disclosure that the continuation-in-part
13 application claims priority to provides support for
14 claims, right?
15 A. If I understand the question right, is it
16 a new-matter question, that if new matter is
17 introduced that was not in the previous
18 application, then that -- that has bearing on the
19 priority date?
20 Q. Yeah, the question has to do with new
21 matter, yes.
22 A. So I think yes.
23 Q. So in paragraph 22 of your '341 patent
24 declaration, you're saying that you applied the
25 September 6th, 2012, priority date for purposes of

1 your analysis; is that right?
2 A. Yes.
3 Q. Do you see it says you were asked to use
4 that date?
5 A. Yes.
6 Q. Who asked you to use that date?
7 A. I don't know if -- I could not give you
8 the explicit name of who it might have been, but it
9 was -- it was one of the attorneys I worked with.
10 Q. And they asked you to just assume that
11 date of invention for purposes of your analysis,
12 right?
13 A. Yes.
14 Q. And you didn't independently analyze or
15 set forth an opinion in your declaration about what
16 the appropriate date to consider as the date of
17 invention for purposes of rendering your opinion,
18 right?
19 A. I did not.
20 Q. Same thing for the '822 patent: Did
21 you -- did you independently determine -- well,
22 strike that.
23 But let's turn quickly to the '822 patent
24 application, Exhibit 2003, also paragraph 22.
25 A. Yes.

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1 Q. And do you see a similar section there --
2 A. Yes.
3 Q. -- at paragraph 22?
4 A. Yes.
5 Q. And, again, you were asked to use that
6 earliest application date as the date of invention
7 in the '822 patent case.
8 Did you do any independent analysis to
9 determine whether that's the appropriate date to
10 consider as the date of invention --
11 A. No.
12 Q. -- for purposes of rendering your
13 opinion?
14 A. No.
15 Q. Turning back to the '341 declaration --
16 and I apologize for all the back and forth.
17 A. No worries.
18 Q. I think it's just more efficient to try
19 to tackle the parallel sections together.
20 Turn to paragraph 58 of that '341 patent
21 declaration.
22 Do you see there --
23 A. Yeah.
24 Q. -- paragraph 58, just under the heading
25 titled "Claim Construction."

1 Do you see that?
2 A. Yes, I do.
3 Q. And do you generally have an idea as to
4 what "claim construction" refers to?
5 A. Yeah.
6 Q. And what does that term mean?
7 A. Well, I mean, it's how the claims are
8 constructed, what -- the language that's used.
9 Q. And you start here and -- sorry, just to
10 drill down on that.
11 Is it the -- it's the terms of the claim,
12 right, the meaning of those terms?
13 A. Okay, yeah, language, yeah.
14 Q. And you start off here, in paragraph 58,
15 recognizing that a PTAB panel had previously
16 construed the term "continuously" in a different
17 case.
18 Do you see that?
19 A. Yes.
20 Q. And that was in the case you have here,
21 IPR2023-00268, right?
22 A. Yes.
23 Q. And you refer to that as the "'779
24 Institution Decision"; is that right?
25 A. Yes.

1 Q. Paragraphs 58 and 59, you cite to that
2 "'779 Institution Decision" at pages 10 and 12.
3 Do you see that?
4 A. Yes.
5 Q. And specifically, in paragraph 58, you
6 recognize that the PTAB's construction of this
7 "continuously" term excluded performing that task
8 at discrete time points.
9 Would you agree with that?
10 A. Yes.
11 Q. And then, in paragraph 60 of your
12 declaration, you state, "I agree with this
13 construction for at least the reasons set out in
14 the '779 Institution Decision."
15 Do you see that?
16 A. Yes.
17 Q. You don't render the opinion that the
18 '341 patent provides a definition of the term
19 "continuously," do you?
20 MR. MINUTOLI: Objection.
21 THE DEPONENT: I mean -- sorry.
22 MR. MINUTOLI: I'm sorry.
23 THE DEPONENT: You mean renders a
24 definition as in it defines it uniquely per that
25 inventor, or renders a definition as in uses the

1 term?
2 Q. (By Mr. Wilson) Well, specifically, you
3 don't provide an opinion in this section as to
4 either, right?
5 A. Well, I mean, I wrote a declaration for
6 the '779 patent that went before the PTAB, and I
7 do -- in that report, I believe that I -- I talk
8 about what "continuously" means, and I think I just
9 generally say that it means what you would expect
10 it to mean, like without interruption.
11 The PTAB chose to say it's -- they
12 chose -- they chose to say it excludes performing
13 something at discrete time points.
14 So they're quite similar.
15 Q. And here, you are, in fact, adopting that
16 construction from the PTAB, right?
17 A. Yes.
18 Q. And you don't provide any additional
19 analysis outside of what the PTAB said about the
20 term "continuously."
21 You don't provide any additional analysis
22 for purposes of claim construction of that term in
23 your declaration here, do you?
24 A. Here, in this particular report, I don't.
25 But like I said, in the '779 declaration,

1 I do.
2 Q. Do you happen to recall whether you
3 propose a similar construction in the '822 patent
4 declaration?
5 A. I probably -- I probably did. I mean,
6 it's -- I can look at it.
7 Q. All right. Let's quickly turn to
8 paragraph 58 of that '822 patent declaration.
9 And I'll just ask you to confirm that
10 you, in fact, also adopt the PTAB's construction of
11 "continuously" in that declaration.
12 A. Can you point me to a paragraph? Or I
13 can just search through it.
14 Q. Yes, it should be paragraph 58, I
15 believe, of the '822 patent declaration.
16 A. Yes.
17 Q. I'd like to turn now to that institution
18 decision in the '779 patent case.
19 You don't happen to have that handy, do
20 you?
21 A. I probably do.
22 MR. WILSON: I'll drop it in the chat for
23 the benefit of the court reporter.
24 MR. MINUTOLI: You should, Olaf --
25 THE DEPONENT: I have -- I have it, thank

1 you.
2 Let me just bring it up.
3 I have it.
4 Q. (By Mr. Wilson) Okay. And you see on
5 the front cover, you would agree this is the
6 '779 institution decision?
7 A. Yes.
8 Q. If you turn to page 9, you see there the
9 board begins addressing claim construction?
10 A. Yes.
11 Q. It looks like they cite to some claim
12 construction law on -- on page 9.
13 Do you see that?
14 A. Yes.
15 Q. And then turning to page 10, there's a
16 section that says "Usually the specification is
17 dispositive, and it is the single best guide to the
18 meaning of a disputed term."
19 Do you see that there?
20 I might have missed the response, but
21 it's right at the top of page 10.
22 Do you see that? "Usually the
23 specification is dispositive."
24 A. Yes.
25 Q. And then, in the middle of the page

1 there, the PTAB says "As explained in more detail
2 below, we interpret continuously performing a task
3 to exclude performing that task at discrete time
4 points."
5 Do you see that?
6 A. I'm sorry, what page are you on?
7 Q. This is page 10, and this is right above
8 subsection D.
9 A. Oh yes, I see it, sorry.
10 Right above D, yup.
11 Q. And that portion of the board's decision
12 in the '779 patent case is what you cite in your
13 declarations in the '341 and '822 patent cases,
14 right?
15 A. Yes.
16 Q. If you could flip to page 14 of that same
17 institution decision in the '779 patent case.
18 A. Okay.
19 Q. Do you see in the middle of the page
20 there, it says "As explained in more detail below,
21 we interpret continuously performing a task to
22 exclude performing that task at discrete time
23 points."
24 Do you see that?
25 A. I'm sorry, I haven't gotten there yet.

1 You're talking about at the bottom of
2 page 14 and the top of 15; is that correct?
3 Q. Yes.
4 A. Yes, I see it.
5 Q. And then also in the middle of page 14,
6 you see the beginning of a new paragraph that says
7 "The '779 patent distinguishes between continuously
8 performing a task and doing so at discrete time
9 points."
10 Do you see that part?
11 A. Yes.
12 Q. Followed by a block quote there?
13 A. Yes.
14 Q. And that block quote is from what's
15 labeled Exhibit 1001 in that '779 patent case.
16 Do you see that?
17 A. Yes.
18 Q. Do you know what Exhibit 1001 in the
19 '779 patent case is referring to?
20 A. It's probably the patent itself.
21 Q. Do you happen to have a copy of that
22 '779 patent referenced by the PTAB here?
23 A. I don't think so, in terms -- in terms of
24 the directories that, you know, are available to me
25 for this deposition.

1 Q. No problem. I just dropped Exhibit 1001
2 from that '779 patent case into the chat.
3 And just let me know when you are able to
4 download it and bring it up on your screen.
5 A. Sure.
6 Okay. I have it.
7 Q. And you'd agree that this Exhibit 1001 is
8 the '779 patent?
9 A. Yes.
10 Q. And do you see, in addition to the patent
11 number, there's also an application number
12 referenced at Item No. 21 on the cover of the
13 patent.
14 Do you see that?
15 A. Yes.
16 Q. And that's the '313 application.
17 Do you see that?
18 A. Yes.
19 Q. And so when the PTAB panel, in the '779
20 institution decision, is providing that block quote
21 supporting its instruction distinguishing between
22 continuously performing a task and doing so at
23 discrete time points that they are citing to column
24 17, lines 52 to 57, of this '779 patent.
25 Do you see that?

1 A. Are you back on the PTAB report, or do
2 you -- I'm not sure what you're asking me.
3 Do you want me to look at the '779
4 patent, or do you want me to -- what should I be
5 looking at?
6 Q. Yeah, just it -- it may require access to
7 both the institution decision in the '779 patent
8 case as well as the '779 patent.
9 But if you could just confirm that the
10 PTAB is citing to column 17, lines 52 to 57, of
11 this '779 patent in their -- in their institution
12 decision of that '779 patent case.
13 A. Yes.
14 Q. I think we can focus now on the -- back
15 to the '779 institution decision.
16 But in the paragraph that follows on
17 page 14 of that institution decision -- the
18 paragraph that follows that block quote, do you see
19 the board identifies patent owner's witness,
20 Dr. Vancura; and that's you, right?
21 A. Yes.
22 Q. And they cite to your declaration in the
23 '779 patent case.
24 Do you see that?
25 A. Yes.

1 Q. And, particularly, they cite to
2 paragraph 48 of your declaration as, again, calling
3 out this distinction between continuously
4 performing a task and doing so at discreet time
5 points, e.g., halftime or other stoppage of play.
6 Do you see that?
7 A. I don't have my report up right now.
8 Do you want me to bring it up?
9 Q. Not just yet.
10 A. Oh, I see, you're -- you're talking still
11 in this paragraph. Okay.
12 Yes, they quote me, yes.
13 Q. And then at the bottom of the page 14 on
14 to page 15, they say -- the board states "We agree
15 with this testimony and interpret continuously
16 performing a task to exclude performing a task at
17 discrete time points."
18 Do you see that?
19 A. Yes.
20 Q. So in addition to the '779 patent itself,
21 they are also relying on your testimony on this
22 point.
23 Is that fair to say?
24 A. I mean, I think they agree with what I
25 said. Their definition is slightly different than

1 what was in my report. But I -- I mean, it sounds
2 like the -- this sounds like they agree with it.
3 I don't know that they have adopted it or
4 I convinced them, if that's what you're asking.
5 I mean, they mention in here that
6 Mr. Crevelt, who is the expert on, you know -- on
7 the other side agrees as well, at least in their
8 view.
9 Q. And they're talking about that
10 distinction between continuous and discrete, right?
11 A. (Deponent nods head.)
12 Q. I don't suppose you have your declaration
13 from the '779 case handy, do you?
14 A. I don't believe I do.
15 Q. I can share that with you.
16 And, again, just let me know when you
17 have that up.
18 A. Thank you.
19 I have it.
20 Q. And you recognize this -- this document,
21 right?
22 A. Yes.
23 Q. And this is, in fact, the declaration you
24 submitted in that '779 patent case?
25 A. Yes.

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1 Q. And it's the same one that the board is
2 citing to in that institution decision in the '779
3 patent case, right?
4 A. Yes.
5 Q. If you turn to paragraph 48 of your
6 opinion in the '779 patent case.
7 A. Okay.
8 Q. Do you see there you are talking about
9 the '779 patent's distinction between discrete and
10 continuous activity?
11 A. Yes.
12 Q. And you cite to and quote from
13 column 1752 to -57 of the '779 patent, right?
14 A. Yes.
15 Q. And that's the same portion of the '779
16 that the board cited to, right?
17 A. I believe so.
18 Q. And you conclude "Thus, the '779 patent
19 discloses that the determination of cash-out value
20 may be at discrete points or it may continuously
21 evaluate the wagering event and make multiple
22 determinations in real time."
23 Do you see that?
24 A. Yes.
25 Q. And then, finally, "In other words, the

1 '779 patent draws a distinct contrast between
2 discrete points, e.g., halftime or other stoppage
3 of play) and continuously, e.g., real time during
4 live play and, thereby, extremely time sensitive."
5 Do you see that?
6 A. Yes.
7 Q. And paragraph 48 of your '779 patent
8 declaration, do you cite to any other part of the
9 '779 patent in supporting your opinion there?
10 A. In paragraph 48?
11 Q. Yes.
12 A. No.
13 MR. WILSON: I want to recognize we are
14 back at the top of another hour. I want to offer a
15 break. I would like to take one. This may be a
16 good stopping point.
17 THE DEPONENT: If that's okay, yeah, I
18 would appreciate it.
19 MR. WILSON: That's good with me. Off
20 the record.
21 (Recess taken.)
22 MR. WILSON: Back on the record.
23 Q. (By Mr. Wilson) All right. Dr. Vancura,
24 I have to ask you again, did you speak with counsel
25 for patent owner over the course of the break?

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1 A. No.
2 Q. Let's turn back to your declaration in
3 the '341 patent case. That's Exhibit 2003 in the
4 262 proceeding. And I'll ask you to turn to
5 paragraph 69.
6 A. My '341 declaration, right?
7 Q. Yes.
8 A. Okay.
9 Q. Do you see there that you say you have
10 "been asked to opine on whether the application
11 that issued as the '341 patent... and the earlier
12 priority application... support the substitute
13 claims."
14 Do you see that?
15 A. Yes.
16 Q. And then, in paragraph 70, you list a
17 series of applications, right?
18 A. Yes.
19 Q. And what are those applications with
20 regard to the '341 patent?
21 How do they relate to the '341 patent?
22 A. Well, I mean, I'll just read what it says
23 there. It issued from the '136 application, which
24 is a continuation of the next application, which is
25 a continuation of part of the '813 application.

1 Q. So this chain of applications that you've
2 listed here, is it fair to say that they establish
3 a priority claim to the -- what you referred to as
4 the '813 application?
5 A. Yes.
6 Q. And the filing date of that '813
7 application is the September 6th, 2012, date; is
8 that right?
9 A. Yes.
10 Q. Do you know if the '341 patent claims
11 priority to any other patent applications that are
12 not listed in your paragraph 70?
13 A. Off the top of my head, I don't know.
14 Q. If you have Exhibit 1001 handy, and this
15 is Exhibit 1001 to the '341 patent case, go ahead
16 and pull that up.
17 And just verify, if you could, using the
18 cover of the '341 that, indeed, you listed all of
19 the applications that the '341 patent claims
20 priority to in paragraph 70.
21 A. Yes.
22 Q. Do you recall that we were discussing the
23 '779 patent previously?
24 A. Yes.
25 Q. And do you happen to recall that -- the

1 application number for that '779 patent?
2 A. No.
3 Q. I wouldn't assume that you would, but if
4 I mentioned the 313 application, does that name
5 sound familiar?
6 A. The 313? The 813?
7 Q. There's a lot of different application
8 numbers.
9 A. I -- it does not ring a bell. I do
10 not -- I do not have these memorized by application
11 numbers.
12 Q. I'll just represent to you that the '779
13 patent issued from an application that we'll refer
14 to as the 313 application.
15 A. Okay.
16 Q. Does the '341 patent claim priority to
17 the '779 patent or the 313 application?
18 A. To my knowledge, no.
19 Q. And '779 patent, 313 application, they
20 are not listed in that list of patent applications
21 that you provide in paragraph 70; is that right?
22 A. I believe that's correct.
23 Q. In paragraph 71, you say it's your
24 opinion that each of the applications listed in
25 paragraph 70 provide "written description support

1 for substitute claims 41 and 42."
2 Do you see that?
3 A. Yes.
4 Q. And by that, you mean each of the '341
5 patent, the '439 patent and the 813 application
6 specifications would each independently provide
7 written description support for the substitute
8 claims.
9 Is that what you mean there?
10 A. Yes.
11 Q. And it's, therefore, your opinion that
12 the substitute claims are entitled to the benefit
13 to the earliest filed application in that priority
14 chain; is that right?
15 A. Could you repeat the question?
16 Q. It's your opinion that the substitute
17 claims for 41 and 42 are entitled to the benefit of
18 the earliest filed application in that priority
19 chain, which is the 813 application; is that right?
20 A. I would think so, but I don't know if
21 that's a legal question.
22 Q. You've attached the 813 application as an
23 exhibit to your declaration; is that right?
24 A. I would need to go back and check.
25 We're talking about '341 declaration?

1 Q. '341 declaration, and this is the -- the
2 813 application that's referenced --
3 A. Yes.
4 Q. -- in paragraph 70.
5 A. It looks like it's Exhibit 2001.
6 Q. Do you render an opinion in your
7 declaration in the '341 patent case regarding any
8 similarities between the '779 patent specification
9 and the 813 application specification?
10 A. I don't remember doing a comparison of
11 those.
12 Q. In paragraph 70, you see something called
13 the 136 application.
14 Do you see that referenced in
15 paragraph 70 of your declaration?
16 A. 136 application, yes.
17 Q. Yes.
18 And that's Exhibit 2002 to your
19 declaration?
20 A. Yes.
21 Q. Did you do any analysis of similarities
22 between the '779 patent specification and this 136
23 application specification?
24 A. Is that the same question as before, like
25 did I do a cross comparison, like a difference?

1 Q. Yes.
2 A. No.
3 Q. So fair to say, for all the applications
4 listed in this paragraph 70, that you didn't
5 perform any analysis of differences or similarities
6 between the '779 specification and the relevant
7 application listed in paragraph 70, right?
8 A. Well, I mean, the last sentence of
9 paragraph 70 is -- is basically what I did.
10 I did review the applications. In
11 reading them, to me, they seem substantially the
12 same in terms of this paragraph, 70.
13 But if you're asking me did I compare
14 these applications that are -- that led to '341
15 versus what issued as '779, I did not.
16 Q. You recall we were previously talking
17 about that '779 institution decision and its
18 reliance on the '779 specification.
19 Do you recall that?
20 A. Yes.
21 Q. And there's a block quote in that
22 institution decision.
23 Do you remember that?
24 A. Yes.
25 Q. And then a similar portion of the '779

1 patent was cited in your declaration in that '779
2 case.
3 Do you recall that?
4 A. Yes.
5 Q. Does it sound familiar that that was
6 referring to column 17 of that '779 patent?
7 A. Yes.
8 Q. You don't provide an opinion in your '341
9 patent declaration as to whether the description at
10 column 17 of the '779 patent specification is
11 disclosed in the '341 patent or any of its priority
12 applications, do you?
13 A. Are you asking whether I state that it's
14 in there or it's not in there?
15 Q. Yes.
16 A. I don't -- I don't state that.
17 Q. Flipping now to your '822 patent
18 declaration. And I believe the '822 patent
19 declaration begins at paragraph 68.
20 A. Okay.
21 Q. And, I guess, just before we start here,
22 you recall that you offer the same construction of
23 "continuously," that term, in this '822 patent case
24 as you do in the '341 patent case; is that right?
25 A. Yeah, I would hope so, yes.

1 Q. And you rely on the same portions of the
2 '779 institution decision that we previously
3 discussed; is that right?
4 A. I'm not sure how to answer that question.
5 I mean, I -- I -- I mean, the -- my '779
6 declaration, I believe in terms of the discussion
7 of "continuously," cites to more than just that one
8 called-out paragraph that the PTAB chose to also
9 cite.
10 So, in other words, that's not the
11 only -- not the only reference to the word
12 "continuous" that comes up.
13 Q. Fair enough.
14 But this is really just directed to the
15 '822 -- your '822 patent declaration and just your
16 construction of the term "continuously," just
17 whether or not you recall that you cite to and rely
18 on the same portion of the '779 institution
19 decision that you also cited to in the '341 patent
20 declaration in support of your construction of the
21 term "continuously" in this '822 patent
22 declaration.
23 A. Yes.
24 Q. And do you see at paragraph 68 now
25 that -- similar to the '341 patent declaration,

1 that now for the '822 patent you are describing the
2 priority claim of that '822 patent?
3 Do you see that?
4 A. Yes.
5 Q. And, again, you reference the 813
6 application as the earlier priority application in
7 paragraph 68.
8 Do you see that?
9 A. Yes.
10 Q. And in this '822 patent declaration, you
11 didn't render an opinion regarding whether the
12 particular disclosures of the '779 patent at
13 column 17 are recited in any of these applications
14 listed in paragraph 68 or 69?
15 A. Could you repeat that?
16 Q. In your declaration here for the '822
17 patent case, you don't render an opinion that the
18 same disclosures that are recited in '779 patent,
19 column 17, are recited in any of the applications
20 listed in paragraph 68 or 69 of your '822 patent
21 declaration; is that right?
22 A. Is it right that I don't state whether
23 that column 17 is or is not in the applications
24 that led to '822?
25 Is that the question?

1 Q. Yes.
2 A. Yes, I don't believe I state whether or
3 not it is.
4 Q. We've talked about the 813 application in
5 both the '341 and '822 patent cases.
6 Do you recall that?
7 A. Yes.
8 Q. And you attach that 813 patent -- I'm
9 sorry -- the 813 application specification as
10 Exhibit 2001 in both proceedings; is that right?
11 A. I think so, yes.
12 Q. Can you please pull that up?
13 A. Okay. I'm ready.
14 Q. Yeah, I appreciate that.
15 I'm just regaining my train of thought
16 here.
17 I think we can actually go ahead and
18 close that, and let me take a little bit different
19 direction.
20 So back to the -- your declaration in the
21 '341 patent case.
22 A. Okay.
23 Q. And back to paragraph 58 of that
24 declaration.
25 And you see there, it's the "Claim

1 Construction" section again?
2 A. Yes.
3 Q. And, again, this is the part of the
4 "Claim Construction" section in your declaration
5 where you are addressing, at least in paragraphs 58
6 to 60, the construction of the term "continuously";
7 is that right?
8 A. Yes.
9 Q. And, again, you reference the '779
10 institution decision.
11 Do you see that?
12 A. Yes.
13 Q. And if we turn again to the '779
14 institution decision, this time to page 15 of that
15 '779 institution decision.
16 A. Okay. Just give me a moment to find it.
17 Page 15, you said?
18 Q. Yes.
19 A. Okay.
20 Q. Do you see, sort of in the middle of that
21 first full paragraph, you'll see a sentence that
22 says "A person of ordinary skill in the art,
23 understanding that computers work using a clock and
24 by following computer programs, would understand
25 that continuous data retrieval is limited to the

1 speed at which the computer can operate."
2 Do you see that?
3 A. Yes.
4 Q. And the board there uses the term
5 "clock."
6 Do you see that?
7 A. Yes.
8 Q. What is -- what is that clock?
9 What is that referring to?
10 A. I believe that's referring to the --
11 basically, the -- the rate at which a processor can
12 manipulate data, essentially a clock speed that's
13 associated with the microprocessor.
14 Q. And would the microprocessor of every
15 computer generally include a clock?
16 A. I mean, if you're referring to the
17 processor, yes.
18 Q. Does the clock speed, in your opinion,
19 govern the speed at which a computer can operate?
20 A. I would say -- I mean, it can. It
21 doesn't necessarily. It depends on what the
22 computer is doing.
23 Q. Hm, how so?
24 A. Well, I mean, if -- if it's attempting to
25 do something that is significantly, you know,

1 slower than the clock speed that -- that it runs
2 at, then it may not be -- it may be completely
3 inconsequential in terms of -- in terms of
4 completing a task, like it might -- there would be
5 no noticeable difference.
6 I'm not sure I understood your question
7 correctly. Maybe you could rephrase that.
8 Q. Yeah.
9 I'm just trying to draw out tasks that a
10 computer might perform where execution speed
11 wouldn't be necessarily be governed by the clock.
12 A. Well, I mean, you know, I think -- I
13 think an example might be ease, you know, something
14 where the calculation is simple. Clock speed is
15 not going to -- is not going to appreciably affect
16 anything in terms of how long it takes for
17 something to occur.
18 Is that what you mean?
19 Q. I think so.
20 I think that's helpful.
21 Am I thinking about a clock right in
22 terms of -- I'm thinking about a chain or pipeline
23 of instructions being executed on a processor.
24 Does the clock run the speed at which
25 each task in that series of tasks is performed?

1 A. I think the short answer is it -- it can.
2 I mean, if you wanted to run -- like, for
3 example, you know, I run a lot of -- I write a lot
4 of code that has to do with simulations.
5 So if I'm trying to run a simulation of,
6 looking it up, 100 million slot machine outcomes,
7 you know, if my microprocessor is faster, then that
8 simulator will end sooner than a different computer
9 that has a different microprocessor.
10 But it also might be related to how much
11 memory you have available and other issues in terms
12 of whether it also needs to do other things.
13 So it's kind of a question -- I would
14 say, generally, the short answer is, a faster
15 microprocessor will complete a task quicker than a
16 slower microprocessor in terms of -- in terms of an
17 instruction set, yes, if that's your question.
18 But it may be so fast -- each may be so
19 fast as to be negligible. It may appear
20 instantaneous.
21 Q. And does that statement you made, in
22 general, regarding a faster microprocessor
23 performing a task quicker than a slower
24 microprocessor, that's dependent on other factors,
25 right, rather than just the clock speed; is that

1 right?
2 MR. MINUTOLI: Objection. Form.
3 THE DEPONENT: I mean, I think it depends
4 on the nature of the task.
5 Q. (By Mr. Wilson) Are you familiar with
6 the concept of threads in computer operating
7 systems?
8 A. I would say generally, yes.
9 Q. What about processes?
10 Are you familiar with processes?
11 A. Yes.
12 Q. And how about the concept of resource
13 scheduling in -- in the specific context of
14 computer operating systems?
15 A. Yeah, I -- I mean, I would say, I -- I'm
16 familiar with the term, but I am not a -- an IT
17 guy, so -- so there.
18 Q. Understood.
19 Do you have -- do you have any
20 understanding of how resource scheduling --
21 understanding that you have, you know, sort of a
22 limited understanding of that term in itself -- do
23 you have an understanding of how resource
24 scheduling might impact the speed that a given
25 processor can perform a task?

1 A. I mean, by "resource scheduling," do you
2 mean the relative priority given to various tasks
3 that the processor needs to perform?
4 Q. Yes, I mean, that concept in general,
5 you know, maybe without regard to priority. But
6 the concept that there are multiple tasks that may
7 be scheduled for execution on a processor.
8 Are you aware that that might -- that
9 might also impact the speed at which a given
10 process is performed?
11 A. Yes.
12 Q. And so the speed with which a given
13 thread, task, process might be performed might be
14 dependent on other factors other than just the
15 clock speed; is that right?
16 A. Yes.
17 I think I said that earlier, yes.
18 Q. I think you mentioned memory was one of
19 those additional constraints; is that right?
20 A. Yes.
21 Q. How could memory impact the speed with
22 which a process is performed?
23 A. Well, if the process requires, you know,
24 for example, more memory than it has access to,
25 then it will need to spend time moving stuff in and

1 out of, you know, let's say, RAM. And so that will
2 length -- that will lengthen how long something
3 takes.
4 It's the same reason why, you know, if
5 you have an extraordinarily large Excel file or an
6 extraordinarily large something file, and you try
7 to open it with an application, sometimes there's a
8 noticeable lag before it comes up, and there may be
9 a noticeable lag when you try to work within it.
10 Q. Are you familiar with the types of
11 microprocessors and computers in general that might
12 have been used to facilitate online gaming in the
13 manner described in the '341 and '822 patents at
14 the relevant time?
15 A. The actual specific hardware?
16 Q. Yes, but maybe not the specific devices
17 that were used, but, rather, the general category,
18 or maybe some general rules about the, you know,
19 type of computers that may have been used at that
20 time.
21 MR. MINUTOLI: Objection.
22 THE DEPONENT: I would say with regard to
23 specific hardware, no. I mean, I've been using
24 computers for 40 years, so I guess general
25 computers, yes.

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1 I mean, I'm not sure exactly what you're
2 asking.
3 Q. (By Mr. Wilson) Were you involved in
4 development of gaming applications at the relevant
5 time of the '341 and '822 patents?
6 A. In terms of games? Slot machines, table
7 games, platforms to provide those games, yes.
8 Q. And did those games use any type of
9 central controller, central server computer,
10 anything like that?
11 A. I would say yes.
12 They can. Not all of them.
13 Q. And are you familiar, at least from your
14 personal experience, with regard to the computing
15 devices used in that context?
16 A. Yes.
17 Q. And do you have any general idea about
18 what the clock speed would have been with regard to
19 the microprocessors in those devices?
20 A. I don't.
21 Q. Are you aware of whether those devices
22 would have supported things like multithreading or
23 executing multiple processes?
24 MR. MINUTOLI: Objection.
25 THE DEPONENT: Well, I would say yes. I

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1 mean, you know, computers, as long as I have more
2 than one application open, it's supporting all of
3 them. Those are separate -- that's separate
4 software that's running.
5 So yes.
6 Q. (By Mr. Wilson) And turning back to that
7 concept of multiple processors running --
8 A. I'm sorry, multiple processes running.
9 It may have multiple processors as well, but what I
10 meant to say was processes.
11 Sorry to interrupt.
12 Q. Thank you for that.
13 With regard to a system in which multiple
14 processes might be running, it's your understanding
15 that there's some scheduler that would then
16 schedule each of those processes for some amount of
17 execution time on a CPU or microprocessor; is that
18 right?
19 A. I mean, you know, in my experience, when
20 I run simulations on my laptop, I can go in and set
21 the relative priority for each of those in terms of
22 how much use cycles are devoted to each one, if I
23 want one to finish sooner than another, for
24 example.
25 So I don't know that I would call that a

1 scheduler. I mean, I -- probably it could be
2 scheduled out in some fashion, but, you know, it
3 can -- it can definitely be prioritized.
4 Q. So in your simulations, let's say you
5 have a highest priority task and a lower priority
6 task.
7 Does the highest priority task complete,
8 finish; and then the lower priority task begins?
9 Or is there some intermixing of
10 scheduling on the processor?
11 MR. MINUTOLI: Objection.
12 THE DEPONENT: I mean, I'm not sure the
13 question is posed well.
14 If it was the exact same simulation that
15 nominally would take the exact same time, and you
16 start them at the exact same time, and you
17 prioritize one of the simulations to be high
18 priority and the other to be lower, then the higher
19 priority one will finish first.
20 I'm done.
21 Q. (By Mr. Wilson) But, certainly, other
22 tasks are executed simultaneously with that high
23 priority simulation, right?
24 A. They -- they can be. I believe -- I'm
25 not 100 percent, but I believe you can set the

1 priority to essentially be zero so it doesn't work
2 at all on it.
3 Q. Well, you're at least able to move your
4 mouse, right?
5 Is the screen responsive while you are
6 running a task?
7 A. Yes.
8 Q. So does that indicate that maybe there's
9 some processing in addition to the high priority
10 task that's occurring?
11 A. Yes.
12 Q. And you mentioned the -- we were talking
13 about the example of a high-priority simulation
14 versus a lower priority simulation.
15 What is that lower priority simulation,
16 or any other process, doing while a higher priority
17 task is being performed?
18 A. Again, I'm not sure if I can set it to
19 zero so that it does no work on it, so to speak.
20 But, generally, it's just a lower priority. So...
21 Does that make sense?
22 I mean, if I -- I don't want to get too
23 personal with my examples, but if I just run a
24 simulation, that might take a few minutes. I can
25 often just run that and continue doing whatever

1 else I want to do on my computer. The simulation
2 is absorbed, if you will, in terms of the overhead
3 of processor capability.
4 But at some point -- if I instantiate
5 multiple simulations at the same time, at some
6 point, it will prioritize them, or I can, or it
7 will, the OS will. And it will devote more CPU
8 resources to whatever its prioritization scheme is.
9 I'm not sure if it's the last one I instantiated or
10 the first one. I don't -- I can't recall right
11 now.
12 But at some point, it will know that it
13 no longer has the overhead.
14 Q. Okay. So let's assume two tasks are
15 scheduled for execution on a single processor.
16 While one task is being performed, is it
17 fair to say that the other task is waiting?
18 A. No, I don't think so.
19 I mean, I'll give you an example.
20 The -- the Yahtzee -- the optimal
21 solution to the Yahtzee home game that I wrote
22 about in a book, that -- that code on my laptop at
23 the time -- and this would have been around -- I'm
24 guessing around 1998 -- took two weeks nonstop to
25 run.

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1 So it was running in the background. I
2 was still, you know, using that laptop for other
3 things.
4 So in -- in that case, you know, the code
5 was just continuously running. Sometimes, if I
6 wasn't doing anything else on the computer, it
7 would obviously elevate in priority. But if I was
8 doing other things that were computationally
9 intensive, it might be running slowly.
10 But I don't think it ever stopped. That
11 wouldn't be fair to say.
12 Unless -- I believe -- again, I'm sorry,
13 this is like the third time I'm going to say this,
14 because I am not sure of the answer.
15 I believe there's probably a way to set
16 the priority to literally be zero, so it does stop
17 that process in terms of process speed. But it's
18 not like stop as if it doesn't exist, because,
19 you know, if you have an executable that's running,
20 it's occupying memory even if you're not working on
21 it.
22 So -- so that's the best way I can answer
23 that.
24 Q. If we sort of zoom in at the microscopic
25 level to the level of a clock cycle.

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1 A. Uh-huh.
2 Q. In that example where we have two tasks
3 that are being scheduled on a single processor, if
4 one task is executing with a given clock cycle, is
5 it fair to say that that other task that's not
6 executing -- is it fair to say that that task is
7 waiting for at least that clock cycle?
8 A. Hm, you're asking me for like one
9 instantiation of the cycle?
10 So there might be, you know -- I don't
11 know; I'm going to make this up -- 100 million per
12 second or 500 million per second. You're asking me
13 if one of those -- whether the processor can work
14 on more than one executable?
15 Is that the question?
16 Q. Yes.
17 A. I think the answer is no for a single
18 process, if I understand the question right.
19 Q. Okay. I think you mentioned some
20 specific speeds of a clock?
21 A. I -- I would not pretend to know what the
22 clock speeds were in 2012 as I sit here right now.
23 So...
24 Q. Fair enough. You saw the question
25 coming.

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1 Okay. Back to something a little less
2 theoretical.
3 A. Okay.
4 Q. The '341 patent declaration, substitute
5 claim 41 -- and I think this is around paragraph 54
6 of your declaration.
7 A. Okay. Sorry, let me -- looking at
8 something else here. Let me go back to that.
9 Okay. What paragraph?
10 Q. Just below paragraph 54, there's a table
11 that lists the substitute claim.
12 A. Yes, yes.
13 Q. You'll recall that the reason that we got
14 into this discussion about clock cycles and
15 theoretical processing capacity of computers was
16 tied to a statement made in the -- in the board's
17 analysis in the '779 patent institution decision,
18 which read "A person of ordinary skill in the art,
19 understanding that computers work using a clock and
20 by following computer programs, would understand
21 that continuous data retrieval is limited to the
22 speed at which the computer can operate."
23 Do you recall that discussion?
24 A. I don't have that up right now. I think
25 we touched on that, yes, prior to the -- kind of

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1 the theoretical part, if you will.
2 Q. And, I mean, you would agree with -- with
3 that statement from the board's analysis that's
4 adopted in your claim construction; is that right?
5 A. Where -- can you show me where that is in
6 that decision?
7 Q. Yes.
8 So this is the '779 institution decision.
9 We were on page 15 of that.
10 A. Where are you on page 15?
11 Q. So first full paragraph, about midway
12 through, there's a sentence that starts --
13 A. I see it. I see it.
14 So you're asking about that one sentence,
15 "A person of ordinary skill in the art,
16 understanding that computers work using a clock and
17 by following computer programs, would understand
18 that continuous data retrieval is limited to the
19 speed at which the computer can operate."
20 Q. Right.
21 A. I'm just trying to think if there are any
22 instances where that's not necessarily true.
23 I would say that's generally true.
24 Q. So is it fair to say -- do you agree with
25 that statement from the board?

1 A. I would say generally, I agree, yes.
2 Q. And now turning back to the claims listed
3 in your '341 patent declaration.
4 A. Okay. Okay.
5 Sorry, yes.
6 Q. And particularly, limitation 41[c-1].
7 You see the term "continuously" recited
8 there, right?
9 A. I'm on page 21; is that correct?
10 Q. Yes.
11 A. Yes.
12 Q. "Continuously receiving data in real time
13 related to the wagering event," right?
14 A. Yes.
15 Q. And so here, under the board's
16 interpretation, the "continuously" here means
17 continuous data retrieval limited to the speed at
18 which the computer can operate; is that right?
19 MR. MINUTOLI: Objection. Form.
20 THE DEPONENT: Hang on. My son just came
21 home.
22 (Brief interruption.)
23 THE DEPONENT: Sorry, I'm back.
24 Q. (By Mr. Wilson) No problem.
25 A. Could you repeat the question?

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1 Q. So here, in the limitation 41[c-1],
2 "continuously receiving data in real time related
3 to the wagering event," would you agree that under
4 the board's interpretation of the term "continuous"
5 that, in this limitation in 41[c-1], that
6 "continuously receiving data" means that continuous
7 data retrieval is limited to the speed at which the
8 computer can operate?
9 MR. MINUTOLI: Objection.
10 THE DEPONENT: I think, generally, if
11 you're asking is this use of "continuously"
12 consistent with what the PTAB said, I would say
13 yes.
14 Q. (By Mr. Wilson) So if there's any break
15 in the reception of data, then that's not
16 continuous, right?
17 A. Well, if you're asking me if I'm looking
18 at a time slice that has a break in it, if that
19 entire time slice was continuous, I'd probably say
20 no. But it had a continuous period, and then a
21 break, and then it may have another continuous
22 period.
23 So that's the way I look at "continuous."
24 Q. So in that interpretation, if we again
25 zoom in to the level of the clock cycle.

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1 A. Okay.
2 Q. Is it your interpretation of the term
3 "continuous" that, for example, any two clock
4 cycles would be continuous?
5 A. I'm -- I'm not following what the
6 question is.
7 I'm sorry.
8 Q. Well, we were discussing that a break in
9 reception of data under limitation 41[c-1] might
10 just separate two periods of continuous --
11 continuously receiving data, right?
12 A. I think -- I think so, yes.
13 Q. And so I'm -- I'm just attempting to use
14 the language that the board used in that
15 '779 institution decision as adopted through the
16 construction that you've applied here --
17 A. Yeah.
18 Q. -- regarding the clock cycle and --
19 A. In my -- go ahead.
20 I'm sorry, you didn't ask --
21 MR. MINUTOLI: Wait for the question,
22 Olaf.
23 Q. (By Mr. Wilson) -- and what might
24 constitute continuously receiving data versus not
25 continuously receiving data at that clock cycle

1 level of abstraction.
2 A. I don't know how to answer that.
3 I guess -- I guess I'm not sure how to
4 answer that.
5 I think that the data that's received
6 continuously, in -- in all likelihood -- generally,
7 there would be a multitude of clock cycles that you
8 would go through and still be able to, you know,
9 continuously receive data, if -- if that
10 addresses -- I'm sorry.
11 I guess I don't understand the question.
12 Q. You mentioned there would be a multitude
13 of clock cycles that you could go through and still
14 be continuous.
15 Do you have any idea of how many clock
16 cycles would be required to --
17 A. Depends --
18 Q. -- dedicate to receiving data for it to
19 be considered continuous?
20 A. It depends on the data that you are
21 receiving.
22 Q. Can you give me an example?
23 A. Well, yeah.
24 I mean, if I'm -- I mean, if I'm
25 receiving a movie, so -- you know, and that's being

1 delivered, let's say, at 20 frames per second, and
2 each frame has a certain number of pixels, and each
3 pixel has a certain number of bytes, there's some
4 throughput I need to receive, I guess, is -- not to
5 negate your question, but, I mean, you know, we're
6 kind of just talking about a processor, like the
7 main processor doing this.
8 But there might be dedicated other
9 processors or -- you know, dedicated to receiving
10 streaming data, and so you're not burdening your
11 main processor with this.
12 But, essentially, you could do -- kind of
13 do a calculation of how many bytes you need to
14 receive per second or whatever and compare that to
15 the clock speed.
16 Q. And that would allow you, in the context
17 of streaming a video, to determine whether you were
18 continuously receiving data?
19 A. Well, I -- I hesitate to -- I mean, I
20 hesitate to utilize the main processor for
21 streaming video.
22 But I'm just saying, I guess -- I think
23 what I'm saying is that, theoretically, you could
24 do a calculation like that, probably, to get,
25 you know, an estimate of how much overhead you had.

1 Q. What about in the context of the '341
2 patent, and particularly claim 41?
3 A. Okay.
4 Q. How --
5 A. Well, you mean what -- go ahead, sorry.
6 Q. We were talking about that multitude of
7 clock cycles.
8 How do you -- are you able to make a
9 determination as to, for example, how many clock
10 cycles would need to be dedicated to continuously
11 receiving data in order to meet that limitation
12 41[c-1]?
13 MR. MINUTOLI: Objection. Form.
14 THE DEPONENT: As I sit here right now,
15 no.
16 That would be the short answer.
17 MR. WILSON: Fair enough.
18 It looks like it's almost 3:10. Do you
19 want to take a little bit of extended break here
20 for lunch or --
21 THE DEPONENT: Yeah, if that would be
22 okay with you guys, that would be wonderful.
23 MR. WILSON: Yeah, that's just fine with
24 us.
25 (Recess taken.)

1 MR. WILSON: Back on the record.
2 Q. (By Mr. Wilson) Dr. Vancura, any
3 communications with counsel for patent owner over
4 the break?
5 A. No.
6 Q. All right. As you recall, we were,
7 before we took a lunch break, discussing
8 construction of the term "continuously."
9 Do you recall that?
10 A. Yes.
11 Q. We were going through some example cases,
12 particularly involving clock cycles and what might
13 constitute "continuously receiving data" in the
14 context of 41[c-1] limitation of the '341 patent.
15 Do you recall that?
16 A. Yes.
17 Q. And we were addressing part of the
18 board's support for its construction in the
19 '779 patent institution decision that you have
20 adopted for purposes of this '341 patent
21 proceeding; is that right?
22 A. Yes.
23 Q. And the board said that that continuous
24 data retrieval is limited to the speed at which the
25 computer can operate.

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1 Do you recall that?
2 A. Yes.
3 MR. MINUTOLI: Objection. Form.
4 Sorry.
5 Q. (By Mr. Wilson) So, in your opinion,
6 given a time, there could be breaks within that
7 time series, but still be portions within that time
8 series where continuous reception of data was still
9 occurring; is that right?
10 A. Yes.
11 Q. And now I'd like to try to drill down on
12 the distinction between what would constitute
13 "continuous" within those continuous blocks of --
14 of data reception time in that example.
15 So, for example, if there's a one-second
16 pause in data retrieval, would that be still
17 considered continuously receiving data?
18 A. I mean, I -- I -- forgive me, but I think
19 I'm going to need a more explicit example than
20 that.
21 I mean, you know, the -- the -- the
22 example I cited earlier of like streaming video, in
23 my view, it doesn't have to be that in this
24 particular claim. It's just receiving data
25 continuously.

1 So if, for example -- I mean, let's --
2 let's go back to the movie example. If -- or let's
3 go to, I don't know, I'm watching a football game
4 on TV or something.
5 I think, like, if there's a -- if what
6 you're asking is if there's some kind of a delay,
7 like I still can receive the data continuously, but
8 there's like a one-second delay between what I'm
9 receiving and when it happened; is that the
10 question?
11 I'm not sure I understand the question.
12 I'm sorry, could you be more explicit?
13 Q. Is your confusion stemming from the
14 concept of latency?
15 Is that what you mean by "delay"?
16 A. Yes, that's, I guess, what I'm asking.
17 Is that what you mean, or what do you mean?
18 Because it's not -- it wasn't really
19 explicit how you asked it.
20 Q. So my question is, in the context -- and
21 maybe I'll step back a bit to first ask, in the
22 context of the '341 patent and substitute claim 41,
23 is it your opinion that continuously receiving data
24 would include video data?
25 A. Just "continuously receiving data," those

1 three words, I think it could include video.
2 Q. So the term "data" there in the '341
3 patent, claim 41, in your opinion, would include
4 data.
5 And, you know, I'd like to broaden your
6 focus just a bit to that limitation in general.
7 So "continuously receiving data in real
8 time related to the wagering event," in your
9 opinion, is video data included in that?
10 MR. MINUTOLI: Objection. Form.
11 THE DEPONENT: Yes.
12 It could be, not -- it's not required to
13 be; it could be.
14 It's just data related to the wagering
15 event.
16 Q. (By Mr. Wilson) And what other types of
17 data, in your opinion, would be included in that?
18 A. Well, I mean, I -- I'm not sure if it's
19 in this declaration or one of the other ones.
20 But, you know, I think I give the example
21 of, you know, how this could be implemented through
22 an API in to somebody else that has real time
23 wagering data during in -- in-game, if you will,
24 wagering data, or just real time wagering data, so
25 that can be received and utilized.

1 I mean, to me, it's -- the type of data
2 you choose here is somewhat of a, you know, design
3 choice in terms of what makes sense or what is
4 available or how you want to use it.
5 But that would be my answer.
6 Q. And the specific type of data isn't --
7 isn't specified here in this limitation; is that
8 right?
9 A. Well, I mean, it's a certain type of
10 data. It's data related to the wagering event, if
11 that's what you mean.
12 Q. So you mentioned that video data could be
13 included.
14 In what capacity would video data be
15 included in data related to the wagering event?
16 A. How could it be used?
17 Q. (Deponent nods head.)
18 A. It could be -- I mean, it's -- I'm not
19 saying this would be the best way to do it. But I
20 can imagine that, you know, you have a video feed
21 coming in; and then you have, you know, some kind
22 of a -- you know, some kind of a function that --
23 that basically does screen grabs and determines if
24 the score is posted and -- and utilizes it that
25 way.

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1 I don't -- I'm not saying that would be
2 the most efficient way to do it, but I just think
3 it's possible.
4 Q. Understood.
5 And in that context of video streaming,
6 are you familiar with the concept of a buffer?
7 A. Yes.
8 Q. And so if the buffer of the streamed
9 video were to become full, would you understand
10 that -- that the video may not be received at that
11 point?
12 A. If you're asking theoretically if a
13 buffer of limited size is filled, then it would
14 stop -- it would stop receiving additional data, I
15 think that's true.
16 Q. And that --
17 A. If -- if you chose to design it that way.
18 Q. And so in that example, when the buffer
19 is full and video is no longer being received for
20 that stream, would that still be considered
21 continuously receiving data?
22 A. Probably not. I mean, I -- I haven't
23 thought of that before, but it doesn't -- it seems
24 like if you're not receiving it, then you're not
25 continuously receiving it.

1 Q. And in that context, I think that that
2 example just gives the original question that I was
3 driving at a little bit more context. But let's
4 say that, you know, you have a delay in receiving,
5 for example, video data. You have a one-second
6 pause in receiving any video data.
7 So it's not -- not regarding latency of
8 the time it takes for the video data to arrive.
9 There is just a one-second break in receiving video
10 data because the buffer's full, and then additional
11 video data is received after that.
12 Would that time period, including the
13 one-second pause, would that be considered
14 continuous?
15 MR. MINUTOLI: Objection. Form.
16 THE DEPONENT: I'm not sure the answer to
17 that. I mean, to me, that's like a -- somewhat of
18 a contrived design choice example, theoretical
19 example. I mean, it's -- it's -- so you're saying
20 that -- it's not a latency issue, correct? That's
21 not what we're discussing?
22 Q. (By Mr. Wilson) Correct.
23 A. So I'm -- I'm receiving, and then my
24 buffer gets full, so I stop filling -- well, I
25 mean, I guess my first question is, are you still

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1 receiving and just not filling the buffer, would
2 have to be answered.
3 You could be saving it off. You could
4 just be throwing it away. You could be,
5 you know -- but you might be still receiving it in
6 anticipation of the buffer, you know, being
7 emptied, or at least a portion of that memory.
8 It just seems a little contrived.
9 I'm sorry.
10 I think if the question is, you receive
11 data for a while, and then there's like a
12 one-second gap where you don't receive anything at
13 all, and then -- and then it restarts again, in my
14 view, the -- the period of time where you're
15 continuously receiving is -- you are continuously
16 receiving; and -- and the period of time, that gap
17 where you're not receiving anything, I would have
18 to say probably you're not continuously receiving
19 if you're not receiving anything.
20 So the buffer is -- well, anyway, yeah,
21 that's my answer.
22 Q. What about a -- like a quarter of a
23 second pause or break in receiving data?
24 Is that closer to continuous?
25 A. I would say -- I don't know how to answer

1 that, is it closer to continuous.
2 I mean, to a person, I suppose it is
3 closer to continuous.
4 Q. In the context of the '341 patent?
5 A. Again, I think -- the way I look at it,
6 the -- that -- again, I don't know how to answer
7 that.
8 I would say that while it's continuous,
9 it's continuous. While it does not receive any
10 data -- if that's the situation.
11 In other words, the device can receive
12 data and just not save it off into a buffer or
13 something, in which case that would be another
14 hypothetical.
15 But the -- assuming that -- that this
16 system continuously receives for a while, and then
17 for a quarter-second or a second receives nothing,
18 and then for -- and then goes back to continuously
19 receiving, I would say that, whether it's a
20 quarter-second or a second doesn't matter in terms
21 of the -- of the time periods where it's
22 continuously receiving, right?
23 Q. So then talking about the -- I guess sort
24 of reversing the discussion, how long of a duration
25 must data be received for it to be continuously

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1 received?
2 A. I would have to look to, I think, how,
3 you know, the patent utilizes the continuously
4 received data in terms of what it says.
5 You know, it speaks of being time
6 sensitive, I think, and it speaks of things like
7 that. So I'm not sure I know the answer to that
8 question.
9 Q. So to take the example to the extreme,
10 you know, let's say a system is receiving data for
11 a period of three seconds, and then there's a
12 five-minute break where it's receiving no data, and
13 then it receives data for another three seconds.
14 In the context of the '341 patent and, in
15 particular, this limitation, would those three
16 seconds still be considered continuously receiving
17 data?
18 A. I would say yes.
19 Q. And what about if -- you know, narrowing
20 the time to one second.
21 Would one second of continuous reception
22 of data satisfy this limitation?
23 A. Me, personally, I would say yes. A
24 second is long enough relative to clock speeds
25 we've been talking about --

1 (Technical difficulty; reporter asks for
2 clarification.)
3 THE DEPONENT: I think I said something
4 like it's certainly long enough to receive data.
5 Q. (By Mr. Wilson) So what is the shortest
6 amount of time -- amount of consecutive time over
7 which data would have to be received to meet this
8 limitation, in your opinion?
9 A. I don't know how to answer that question,
10 as I sit here right now. I mean, it would need to
11 conform to, you know, what the specification
12 teaches about how to use that data and what's done
13 with it, so...
14 You know, I think that would be my
15 answer.
16 Q. Taken in the sports context, let's
17 imagine a football game. And I think we've talked
18 about a one-second continuous collection of data,
19 so collecting -- or I'm sorry -- receiving data for
20 one second within that, you know, three-hour long
21 football game.
22 In your opinion -- and excluding all
23 other time, not -- not receiving any data in all
24 other time except that one second of that football
25 game.

1 In your opinion, that would constitute
2 continuously receiving data; is that right?
3 A. I mean, if you continuously receive the
4 data for a second, and if you do all of the steps
5 that are in this claim, then, yeah, for that
6 second, you've done this.
7 I mean, you might want to reconsider your
8 setup if that's how efficient you are, but yeah.
9 Q. Point taken.
10 You mentioned some APIs previously.
11 Do you recall that?
12 A. Yes.
13 Q. Particularly from Bet Angel.
14 Do you recall that?
15 A. I -- I don't recall mentioning Bet Angel,
16 but I think that's the one, yes.
17 Q. Are you aware of how data is received
18 from that API or from any API that you were
19 referring to?
20 A. No, I haven't implemented --
21 (Technical difficulty; reporter asks for
22 clarification.)
23 THE DEPONENT: I apologize, guys. My
24 connection says I'm good.
25 (Discussion off the stenographic record.)

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1 MR. MINUTOLI: So, Andrew, do you want to
2 clarify if what's written in LiveNote is what he
3 said, or if he said more?
4 MR. WILSON: Yeah. Yes.
5 Q. (By Mr. Wilson) So, Dr. Vancura, I had
6 asked a question, are you aware of how data is
7 received from that API, referring to the Bet Angel,
8 that FAIR API that's referenced, I believe, in your
9 declaration, or from any API that you were
10 referring to in your testimony.
11 Are you aware of how data is received
12 from -- from those?
13 A. No.
14 Q. Are you aware of the concept and
15 computing of listening for event notifications?
16 A. Yes.
17 Q. And event notifications can happen or be
18 triggered locally on a computer.
19 Do you understand that?
20 A. Okay. Yes.
21 Q. And can potentially involve listening for
22 events that -- that may happen on other computers.
23 A. Okay.
24 Q. Does that make sense?
25 A. Yup.

1 Q. And if I refer to the concept of
2 listening for an event, do you understand what I
3 mean by that in that context?
4 A. Yeah, I -- well, I think so.
5 Q. Do you draw any distinction between the
6 concept of listening for events and the concept of
7 continuously receiving data?
8 A. If listening to an event is that you
9 have, for example, you know, the code on one end of
10 an API is just waiting for a change of state as a
11 trigger, for example, then the lack of a change of
12 state, you can still be continually receiving data.
13 It's just the same data.
14 On the other hand, I suppose you could
15 structure your code to not be continually receiving
16 your data and use the -- you know, use the
17 listening, if you will, for the trigger, for the
18 change of state as what triggers the reception of
19 the data.
20 Q. So just to make sure I understand your
21 answer, the first example you gave was where you --
22 where a system is listening for a change of state,
23 and that by that act of listening but receiving no
24 change-of-state trigger, that, you would consider
25 to be receiving data.

1 Do I have that right?
2 A. I think it just depends how it is set up.
3 If the -- well, is it -- are you listening through
4 an API?
5 Q. I'm -- I'm asking about your answer, your
6 example.
7 A. Yeah.
8 Well, I mean, maybe "listening" is not
9 the right word I want to use, then.
10 I can imagine a situation where you have
11 an API with a data source, and the data source is
12 being updated from time to time. And so, you know,
13 you can go out -- you go out and retrieve it
14 continuously and receive back the same data
15 continuously. It's not changing, but you're still
16 receiving it. It's still continuous data. It's
17 just the same data.
18 And then when it changes at the source
19 that you are utilizing, it will then change on your
20 side as well. But you're choosing to continuously
21 do that as opposed to once a second or once every
22 five minutes, just check on it.
23 That's what I was referring to. So I
24 don't know that I answered your question now.
25 Q. I think that's helpful.

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1 So is that concept that you are referring
2 to, could I call that polling for information?
3 A. Yeah. You could -- exactly, that would
4 be -- it could be polling. I mean, it's -- it
5 depends on the nature of the API.
6 But it could be polling. It could be
7 polling continuously, just pulling back whatever
8 the data happens to be, whether it's changed from
9 the last time you checked. And it's just
10 continuously sending and continuously receiving
11 that way, whether or not the data has changed.
12 Q. And then in contrast with that
13 continuously polling or continuously checking, did
14 you draw a contrast with -- with listening for an
15 update?
16 A. Yeah, and I may have misspoke earlier.
17 Yeah, listening is more passive in the sense that
18 you're awaiting a trigger, and the trigger may just
19 be a change of state.
20 On the other hand -- or it may be --
21 you know, it may be listening for a trigger that
22 says a change of state, and here's the new
23 change -- here's -- here's the data corresponding
24 to the change.
25 Anyway, that would be my answer there.

1 Q. So is it, in the case that you're
2 listening, that you're not continuously receiving
3 data?
4 A. I mean, the fact that you are listening,
5 you know, again, I guess it would depend on the
6 protocol and what's -- you know, what's being
7 communicated back and forth.
8 I mean, if you're -- if you're listening
9 and receiving the same data and there's no change
10 of state, but you're receiving data, then you're
11 receiving -- you're receiving data.
12 If you're listening, waiting for a
13 trigger, let's say, in the -- or waiting for a
14 signal, and the signal would be data, and the data
15 might be saying, hey, there's a change of data, or
16 the data might be the change of the data, then I --
17 you know, I haven't thought about this before.
18 So I'm -- but it seems like -- it seems
19 to me like, in this situation, it would probably
20 not be continuous.
21 But, you know, on the other hand, it's
22 not like you would just have a connection that --
23 you know, there's always some communication back
24 and forth to make sure the connection is live.
25 So -- so that data would -- anyway, I guess that

1 would be my answer.
2 In other words, what I'm struggling with
3 is, if you've got this connection, and you're
4 receiving data saying your connection is good; and
5 then, you know, once in a while, you receive -- you
6 listen, and you get this -- ignore this data that
7 something has changed, you're still continuously
8 listening.
9 So I don't know. As I sit here right
10 now, that's the best I can do.
11 It seems to me that you would have to --
12 it would be -- you would have to see exactly how
13 the connection is set up and what kinds of data are
14 being, you know, transmitted back and forth in
15 terms of establishing the connection, and certainly
16 in terms of establishing that the connection is
17 still valid, and just what's being transmitted or
18 received.
19 Q. That data that you mentioned regarding
20 the stability of the connection or whether the
21 connection is still good, in your opinion, that
22 falls under data related to the wagering event; is
23 that right?
24 A. I don't know how to answer that.
25 I mean, it's data related to data related

1 to the wagering event, so is that data related to
2 the wagering event? I mean, it's -- I guess the
3 answer is yes and no. I mean, it's required to get
4 the other data. If it is required to get the other
5 data then -- then it's somehow related indirectly.
6 But it's not -- in and of itself, it's
7 not the data that corresponds to the wagering
8 event.
9 Q. Understood.
10 So it's a close call, in your opinion,
11 but you're not really able to say whether that data
12 would be included in data --
13 A. As I sit here --
14 Q. -- of the wagering event?
15 A. As -- as I sit here now, I -- I don't
16 know. I haven't thought it before this
17 conversation, so...
18 Q. Just to put a final point on this, you
19 mentioned that there may be scenarios where you're
20 not receiving any data, including related to the
21 wagering event or data related to the stability of
22 the connection.
23 And in those cases where you are just
24 passively receiving data but no data is coming
25 through, in your opinion, is that continuously

1 receiving data?
2 A. I'm sorry, is -- is this similar to the
3 question you asked earlier, if there's just a
4 complete gap where I'm not receiving data?
5 Q. It's similar, but here you're listening
6 but not receiving anything.
7 A. Oh, okay. Sorry.
8 So I'm sorry. Can you give me the
9 example again?
10 So I'm listening, and I have no other
11 communications at all except waiting for a trigger?
12 Q. Right.
13 A. These are interesting questions. I mean,
14 is receiving the absence of data receiving data
15 related to the event, because nothing's changed, so
16 there's information there even though -- right? I
17 mean, if you're waiting for a trigger, and the
18 trigger hasn't happened, then you know that
19 nothing's changed.
20 It seems like the answer is that that
21 would be a gap, as I sit here now, that that would
22 be not receiving data.
23 But on the other hand, you do receive
24 information. If nothing has changed, then you know
25 that nothing has changed.

1 Q. So, in your opinion, if you receive a
2 single event notification, and then continue
3 listening for a change to that data or some
4 subsequent event notification, and then you receive
5 another event notification, in your opinion, the
6 reception of those instances of event
7 notifications, those are continuous reception,
8 followed by passive listening periods where data is
9 not continuously being received; is that right?
10 MR. MINUTOLI: Objection. Form.
11 THE DEPONENT: No, I don't think I agree
12 with that.
13 Q. (By Mr. Wilson) And so that type of
14 system, where the system is passively listening for
15 event notifications -- that type of system wouldn't
16 meet the claims that were cited by continuously
17 limitations; is that right?
18 A. Let me look at the claims again. Are we
19 talking about '341?
20 Q. Yes, and substitute claim 41.
21 A. I don't know if I would go that far.
22 You know, the issue is -- the issue is
23 one of how you set up the -- how you set up the
24 system.
25 So -- so, for example, I -- I could

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1 have -- I could have an interface that's waiting
2 for a trigger, and then that -- whatever that value
3 is just saved into a variable or, you know, just a
4 location. And then I could continuously just
5 access that location to continuously receive data.
6 So it depends how -- how it's
7 architected.
8 Q. Okay. What about in a system that's not
9 architected in that manner?
10 A. I think if it's not architected in that
11 manner, so -- let me think. So you would -- so you
12 would trigger -- hm.
13 It seems to me, in that situation, it
14 probably would not be continuously receiving.
15 But, again, it's -- the issue is,
16 you know, I haven't thought before today about
17 whether or not -- not -- not receiving a change, is
18 that considered receiving data that there's no
19 change. You know, they're equivalent.
20 So, anyway, that would be my answer.
21 Q. And what about a system that receives
22 notifications of discrete events, followed by
23 listening without receiving notification of a
24 discrete event?
25 Would that --

1 A. I'm sorry.
2 Q. -- system be considered to continuously
3 receive data?
4 A. So can you describe the system again?
5 Q. The system listens, passively listens,
6 for a discrete event and then receives a
7 notification of that event.
8 Would that be considered continuously
9 receiving data?
10 A. So the only data it receives is discrete
11 events?
12 Q. Yes, in this example, let's say that.
13 A. I think if the only data it receives is
14 data related to discrete events, then that's
15 probably not continuously receiving data.
16 Q. So you see limitation -- and I'll direct
17 you again to your declaration here.
18 You understand there's a limitation,
19 41[c-1], that we've been discussing that recites
20 continuously receiving data in real time related to
21 the wagering event.
22 And then there's also another limitation
23 that recites the term "continuously," and that's
24 41[c-3].
25 Do you see that?

1 A. Yes.
2 Q. And that's -- that recites "continuously
3 evaluating the recalculated wager information,"
4 right?
5 A. Yes.
6 Q. And so, I guess, what's your
7 understanding of that term, "continuously
8 evaluating," and what's required to meet that
9 limitation?
10 MR. MINUTOLI: Objection.
11 THE DEPONENT: That it's continuously
12 running to evaluate the recalculated wager
13 information.
14 Q. (By Mr. Wilson) And so in that scenario,
15 it sounds like, based on your prior answer, that
16 continuously reevaluating -- even in the case where
17 there's no change to the underlying data, you would
18 consider that to be continuously evaluating, right?
19 A. If it's continuously evaluating, yes.
20 There might be no change that it's evaluating, but
21 it's still continuously evaluating that, yes.
22 On the other hand, here -- here it says
23 "recalculated wager information." So -- but -- so
24 it's -- but my understanding is it's continuously
25 running and evaluating the recalculated wager

1 information. The recalculated wager information --
2 the results of the recalculations may be the same.
3 Q. Can you give me an example of what
4 recal- -- what the -- I'm sorry.
5 Can you give me an example of what
6 "continuously evaluating" might be here?
7 A. Yeah, so -- I mean, the recalculated
8 wager information might be -- I mean, I think I
9 give an example in this report.
10 But the -- I think the recalculated wager
11 information might be like, you know, the
12 probability of Team A winning a game versus Team B,
13 you know, the relative probability of each of
14 Team A and Team B of winning.
15 And then the evaluation would be based
16 on, for example, existing wagers that already exist
17 that may have various odds on each of these teams,
18 what the -- what those -- what those tickets would
19 be -- would be worth in terms of, you know, an
20 expected value or an attributed value.
21 Q. So to meet this limitation, if -- if the
22 system were to only evaluate recalculated wager
23 information, when there was new recalculated wager
24 information to evaluate, would that type of system
25 meet this limitation?

1 A. I mean, you asked me, I think, for an
2 example on evaluating, and I gave you one. But, to
3 me, evaluating is -- is just generally, you know,
4 the root where there is value, so you are trying to
5 calculate a value. And so -- let me answer that
6 question.
7 To me, it's a continuous evaluation. So
8 if part of the evaluation is to check if anything
9 has changed, and it hasn't, and so it just --
10 because it's the same as before, that would still
11 be continuously evaluating.
12 On the other hand, if something has
13 changed, it would -- it would go more like I
14 described earlier, where you would calculate the
15 attributed value and receive from there.
16 I mean, I'm just telling you the way I
17 see it, that it could be done that way. That seems
18 to be saying what it's saying here.
19 Q. So what about something that evaluated --
20 a system that evaluated based on a trigger
21 condition being met?
22 A. Yeah, so you mean like there's a trigger
23 that says you need to evaluate?
24 Q. Right.
25 A. Otherwise -- otherwise, you're not

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1 evaluating?
2 Q. Right.
3 A. Yeah, that would not be continuous.
4 Q. And what about listening, passively
5 listening, for recalculated wager information that
6 would trigger the evaluation?
7 Would that be continuously evaluating?
8 A. Again, it's -- you know, it gets to if
9 you are listening, and nothing has changed, and so,
10 because you know nothing has changed, it's the same
11 price, then arguably, you've evaluated.
12 Q. So in the context of, for example, a card
13 game, the time period between when cards have been
14 dealt, the system might assume that there's no
15 change in the probabilities; is that fair to say?
16 MR. MINUTOLI: Objection.
17 THE DEPONENT: Sorry, so this is a video
18 poker game?
19 Q. (By Mr. Wilson) Yeah, let's use that as
20 an example.
21 A. Okay.
22 Q. So let's say you have a reveal of a card.
23 I'm blanking on the name of it right now, but three
24 cards are displayed in a Texas Hold'em poker game.
25 That triggers an evaluation in the system.

1 A. Okay.
2 Q. But then you were discussing that -- that
3 sort of the absence of any update indicates that
4 there's been no change to the -- to the revealed
5 cards.
6 And, in your opinion, that would
7 constitute continuously evaluating; is that right?
8 A. Well, I think I may have misspoke. What
9 I think -- what I was trying to say, or what I
10 should be trying to say, is that continuously
11 evaluating is something that runs continuously and
12 values.
13 So -- so it's continuously running to --
14 to value something, right, is what the root word
15 there is.
16 So -- so if you're -- I'm sorry, going
17 back to the question again.
18 My -- my point was just, in absence of a
19 change, if you chose to -- if you chose to keep
20 something running continuously, you could view the
21 absence of a change as that your prior evaluation
22 is still valid, right? So you're running -- this
23 thing is just running continuously, and it's not
24 seeing a change, so it's just outputting the same
25 value as it had before.

1 You could code it that way, and that's
2 what I think this -- what this "continuously" means
3 here. It's continuous.
4 I don't know that that answers your
5 question.
6 Q. Yeah, I think that is helpful.
7 So, in your opinion, there has to be some
8 ongoing check in order to confirm that nothing has
9 changed in order for the system to be continuously
10 evaluating?
11 A. No, I wouldn't go that far.
12 I mean, I can -- I can continuously be
13 evaluating, you know, this variable that we talked
14 about. So, you know, there's a variable that pops
15 into here that's, let's say, the recalculated wager
16 information, or set of variables, so -- that --
17 that correspond to the recalculated wager
18 information.
19 And I think step 41[c-3], what it says is
20 it continuously is evaluating that. Whether the
21 recalculated information changes or not, it's still
22 recalculating that for this step.
23 Sorry, not recalculating. Continuously
24 evaluating. I used the word there, sorry.
25 So it's continuously evaluating the

1 recalculated wager information from step 41[c-2],
2 whether or not the recalculated wager information
3 has changed anything. That's the way -- that's the
4 way I understand step 41[c-3].
5 So I don't know that I answered correctly
6 your question about if something triggered
7 something. Ask it again if you wish, but it's --
8 in my view, it's -- this is continuously
9 evaluating, yeah, you know, basically the output of
10 step 41[c-2].
11 Q. So the recalculation, in your opinion,
12 from 41[c-2] is not a prerequisite to continuously
13 evaluating; is that your opinion?
14 A. You mean that the output of that step
15 must change before step 41[c-3] takes place?
16 Q. Must change, or there must be some new
17 recalculation.
18 A. Well, I mean, the -- the step 41[c-2] is
19 in there, so it has to recalculate. I don't think
20 the output has to change, though, from that step.
21 Q. So I think we're both computer science
22 guys, and so it may be helpful to frame it like
23 this.
24 If you have a function -- we'll call the
25 evaluating function -- and the evaluating function

1 is only called when an event occurs, that's not
2 considered continuously evaluating, right?
3 A. Yes, that would be right.
4 Q. Instead, that continuous -- that
5 evaluating function, it would have to run in a
6 loop; is that accurate?
7 A. I would -- yes, I would say it's -- it's
8 probably necessary to run in a loop. It's not
9 necessarily sufficient that it run in a loop.
10 But yes.
11 Q. And if it didn't run in a loop, then it
12 would not be continuously evaluating, right?
13 A. I'm trying to think if there's other
14 examples, because it's difficult, when you say it
15 has to be this way, for me to answer that on the
16 seat of the fly.
17 And that's the only example I can think
18 of right now for -- for doing it. I mean, it
19 doesn't have to be a loop proper. It mean, it can
20 just be like a go-to or some other situation where
21 it's -- it's always running.
22 Q. I don't think I'm familiar with that.
23 Did you say a go-to?
24 A. Yeah, just like a go-to statement, which
25 is a -- you know, you just jump back, and you're

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1 essentially looping without a -- without a loop
2 function.
3 Q. Looking at the -- at the surrounding
4 limitations of -- of -- well, let me stop there and
5 quickly turn to the '822 patent declaration.
6 And let me show you the -- the substitute
7 claims there. So if you turn to paragraph -- I
8 believe it's, again, 54 of your '822 patent
9 declaration.
10 A. Okay.
11 Q. You see there's a chart that follows with
12 the substitute claim limitations.
13 Do you see that?
14 A. Yes, I do.
15 Q. And you see limitation 30[d-1] to 30[d-3]
16 recite roughly identical limitations to the
17 limitations that we've just been discussing in the
18 context of the '341 patent?
19 A. Yes.
20 Q. And so the discussion that we've been
21 having about continuously receiving and
22 continuously evaluating, would you say that those
23 discussions are applicable to this '822 patent case
24 as well?
25 A. Yes.

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1 Q. And same question for limitations 32[a-1]
2 to [a-3]. Similar limitations were cited here.
3 Would you also agree that that discussion
4 applies to -- to the substitute claim 32?
5 A. I'm sorry, give me just a moment. I seem
6 to have a power issue.
7 (Discussion off the stenographic record.)
8 THE DEPONENT: Okay. Sorry.
9 Okay. 32.
10 You're asking about claim 32, the same
11 question?
12 Q (By Mr. Wilson) Yeah, same question,
13 just whether the discussion we've been having about
14 the --
15 (Simultaneously speaking.)
16 A. Yes.
17 Q. If that would apply here.
18 A. Yes.
19 MR. WILSON: So I think this would be a
20 good break point if -- Dr. Vancura, if you'd like
21 to take a break?
22 THE DEPONENT: Sure.
23 MR. WILSON: Five or ten minutes?
24 THE DEPONENT: That's fine.
25 (Recess taken.)

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1 MR. WILSON: Back on the record.
2 Q. (By Mr. Wilson) Dr. Vancura, any
3 discussions with counsel over the break?
4 A. No.
5 Q. Just quickly, we were discussing a
6 limitation in the '341 patent regarding
7 continuously evaluating.
8 Do you recall that discussion?
9 A. Yes.
10 Q. And I wanted to dig into what in
11 particular was being evaluated, or what is the
12 output of that evaluation.
13 THE DEPONENT: I didn't hear a question.
14 Was there a question?
15 MR. WILSON: Maybe not artfully posed.
16 Q. (By Mr. Wilson) We were discussing --
17 and just taking the '341 patent limitation 41[c-3]
18 as an example, it recites "continuously evaluating
19 recalculated wager information."
20 My question is in regard to, what is the
21 product or output of the evaluating that's being
22 performed in that step?
23 A. 41[c-3] of the -- the '341?
24 Q. Yes.
25 A. Let me go back to that. Sorry.

1 Well, I think I discuss, you know,
2 examples of that, what that could be or is in
3 this -- in this declaration. So I would -- I would
4 just point to that paragraph. I think it comes
5 later on, what it is.
6 I think earlier I discussed that it
7 was -- can be an -- an expected value or an
8 attributed value.
9 Q. Is that portion of your declaration that
10 you're referring to, is that in paragraph 82 of
11 your declaration in the '341 patent case?
12 A. I have not scrolled down to check. Let
13 me do that.
14 Yes.
15 Q. And so here, in the first sentence of
16 that paragraph 82, you state "on that basis make a
17 determination as to the attributed value of the
18 ticket based on its respective probability of
19 winning the Jackpot Pool.
20 Do you see that?
21 A. Yes.
22 Q. And so here, in this example, it's your
23 opinion that the attributed value of the ticket in
24 this case is the output of the recited evaluation;
25 is that right?

1 A. I'm sorry.
2 The attributed value is the output of the
3 evaluation?
4 Q. Well, what is the -- what is the output
5 of the evaluation that's claimed in -- in that
6 limitation?
7 A. Let me go back up, then, to the claim.
8 Sorry.
9 Well -- well, it's tied to step 41[e],
10 which initiates at least one of the buyout offer
11 and a partial buyout offer to anyone to the -- to
12 any number of the one or more winners based on said
13 evaluating.
14 So to me, the evaluation can give you the
15 expected value, attributed value, the buyout offer
16 value. Might be all of them; it might be just some
17 subset of that, because step 41[e] is based on the
18 evaluating. It doesn't say it's the same as the
19 evaluating.
20 So that -- that would be my answer.
21 Q. So the buyout offer or the partial buyout
22 offer could be the same as the output of the
23 evaluating step; is that right?
24 A. It could be, I suppose, yeah. It doesn't
25 have to be.

1 Q. And so what -- what is an example of some
2 information that might be evaluated that's not a
3 buyout offer?
4 A. Well, I think I go -- I give an example
5 of what the recalculating step could be or would be
6 in the same declaration, just -- probably the
7 paragraph just prior to the one we just looked at,
8 which was discussing the evaluating step.
9 So I don't know if that's what you mean,
10 but, I mean, to me, it's -- you know, the
11 recalculating step could be, for example, you know,
12 you've received current odds for a team winning, I
13 don't know, the Super Bowl. I think that's the
14 example I gave.
15 And the recalculating converts those odds
16 to, you know, a probability of winning. And then
17 the evaluating converts that probability of winning
18 to an expected value based on the ticket that's
19 under consideration.
20 So, you know, I mean, it's -- the
21 evaluation step is going to have to take into
22 account the amount of the wager. It's going to
23 have to take into account the odds that you
24 received on the wager or the nature of the wager,
25 whether it was, you know, a point spread or just a

1 money line or whatever.
2 And -- but, you know, bets for $100,
3 if -- if one has the Patriots at 5-to-1 to win the
4 Super Bowl, and the other one has it at 50-to-1,
5 they're going to have very different evaluating
6 stuff, even though they have the same probability
7 of winning because they're both on the Patriots.
8 Q. I'm sorry, you were referring to
9 different odds for the same bet in that answer; is
10 that right?
11 A. Yes.
12 Q. So does that assume receiving data from
13 different data sources, then?
14 A. Not necessarily.
15 I mean, to me, the -- and, again, I'm not
16 saying it has to be done this way. But in the
17 example I gave, this is, you know, the way I -- I
18 chose to do this.
19 So to me, the receiving data can be
20 current odds, you know, like in-game odds or
21 in-season odds on a particular -- excuse me -- on a
22 particular team winning.
23 The recalculating, then, can be a
24 conversion of those -- of those odds that are,
25 you know, real time and received into a

1 probability -- an implied probability of that team
2 winning the event, whether it's a Super Bowl,
3 you know, futures bet, or whatever it is.
4 And -- and then the evaluating piece then
5 takes the output of the recalculating, so now it
6 knows what the -- if you will, the updated chances
7 or probability, implied probability, of the
8 Patriots winning; and from that, and from the wager
9 amount that you have on a ticket, and with the odds
10 that you originally got on that ticket, can
11 evaluate for you an expected value, attributed
12 value, offered value, whatever.
13 It can do all those or any one of those.
14 Q. And then each of those values generated
15 in this example in the evaluating step is different
16 from the -- the buyout offer; is that right?
17 A. No, it could be the buyout offer. Again,
18 I say -- it's a design choice exactly how -- I
19 think I mention this in this report or this
20 declaration that it's somewhat a design choice,
21 what's done in each of these steps, you know, how
22 much is done or not done.
23 So, for example, in step 41[e], it says
24 initiating a buyout offer based on said evaluating.
25 So the buyout offer, you know, in my view could be

1 the output of the evaluating piece, or it could be
2 evaluating piece gives us, let's say, the expected
3 value.
4 And then, you know, as -- as taught in
5 the patent, you know, there -- there might be a
6 20 percent commission, and so the actual buyout
7 value would be 80 percent of the expected value
8 that you have calculated.
9 To me, it's somewhat of a design choice
10 how much is done and in which step.
11 Q. And so those particular implementation
12 details, of course, are not recited in the claims?
13 A. I'm not following you.
14 Q. Well, you mentioned that the specific
15 implementation of what is calculated, evaluated --
16 A. Well --
17 Q. -- is -- is a design choice.
18 And so my question is just to confirm
19 that the particular implementation is not set forth
20 in the claim limitations.
21 A. I'm not sure -- I am not sure how to
22 answer that.
23 I think in my report, there -- I give
24 citations or references within this application for
25 each of these steps for -- you know, there's a

1 paragraph, I think, with respect to receiving the
2 data. There's a paragraph with respect to
3 recalculating. There's a paragraph with respect to
4 evaluating.
5 And I think I note in there that,
6 you know, the exact way it's done and -- that it's
7 kind of a design choice. I don't -- I'm not
8 looking at it right now in that section, but it's
9 just my recall.
10 And all I'm saying is there are,
11 you know, citations for each of those going back to
12 the specification for the patent that, in my view,
13 describes and teaches what's -- what's -- what's
14 done in these steps or what can be done.
15 All I'm saying is the -- in particular,
16 with respect to 41[c-3] versus 41[e], because 41[e]
17 has the language of "based on said evaluating,"
18 that there might some additional work done in
19 41[e], but it could be just that the answer is
20 already done in 41[c-3].
21 To me, it's six of one, half a dozen of
22 the other.
23 Q. All right. Turning back to the claim
24 limitations of substitute claim 41.
25 Do you see limitation 41[c] says

1 "receiving a wager via the one or more wagering
2 input devices in response to a player desiring to
3 participate in the wagering event."
4 Do you see that?
5 A. Yes, I do.
6 Q. And next we go to, in 41[c-1] through
7 [-3], to are continuously receiving, and then
8 recalculating, and then continuously evaluating
9 limitations we have been discussing.
10 Do you see that?
11 A. Yes.
12 Q. And then, finally, in -- in 41[f],
13 skipping to 41[f], we have "identifying any
14 acceptances of said at least one of a buyout offer
15 and partial buyout offer that have been initiated."
16 Do you see that?
17 A. Yes.
18 Q. And then "completing the wagering event"
19 in 41[g]?
20 A. Yes.
21 Q. In your opinion, does the continuously
22 receiving limitation of 41[c-1], does that have to
23 be satisfied throughout the duration of the point
24 in time in which the -- the wager is received in
25 step 41[c] until the 41[f] or 41[g] step, where you

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1 have an acceptance of a buyout offer or completion
2 of the wagering event?
3 A. I would say, in my opinion, it does not
4 have to.
5 Q. So any period within that time frame,
6 that time span, between when a wager is received in
7 41[c] until about offers accepted or the wagering
8 event is completed, any shorter period of time in
9 which data is continuously received and
10 continuously evaluated, that would satisfy the
11 claim 41; is that your opinion?
12 A. I think so, related to our discussion
13 that we had a while back.
14 Q. So if limitations 41[c-1] to 41[c-3]
15 aren't tied to -- strike that.
16 Limitations 41[c-1] to 41[c-3] need not
17 be satisfied throughout the duration of the
18 wagering event, right?
19 MR. MINUTOLI: Objection. Form.
20 THE DEPONENT: I -- that would -- I
21 believe that's correct, yes.
22 Q. (By Mr. Wilson) And how do you define
23 the beginning and end of the wagering event that's
24 claimed here?
25 A. How do I define it?

1 Is that the question?
2 I'm sorry.
3 Q. Yes.
4 A. Well, I mean, I would refer to what the
5 specification says, but my general understanding
6 is -- it's -- it's an event -- an event associated
7 with a wager.
8 Q. So could the wagering event be a sporting
9 event?
10 A. In terms of claim 41?
11 Q. Yes.
12 A. I would -- I would have to say yes.
13 Q. Could the wagering event be a parlay?
14 A. Parlay of -- of two of more sporting --
15 individual sporting events or contests, yes.
16 Q. You see limitation 41[b]?
17 A. Yes.
18 Q. What does it mean to initiate the
19 wagering event in that context?
20 A. In my view, it's -- it's, at the system
21 level, the -- when you initiate the wagering event,
22 you've defined it, and you've begun, if you will,
23 to accept wagers.
24 Q. So it's the act of accepting -- beginning
25 to accept wagers is the initiating; is that your

1 opinion?
2 A. Well, I mean, I think the initiating has
3 to occur prior to accepting wagers. But it's --
4 it -- the wagering event needs to be defined,
5 what -- what is it that you can wager upon,
6 whether, like you said, it's a parlay or whether
7 it's a -- I don't know, some -- whatever --
8 whatever it's going to be.
9 And so you would need to initiate the
10 event before you can begin accepting wagers on the
11 event.
12 I wouldn't say it initiates at the time
13 of first wager, because there are some definitions,
14 and, you know, you have to define what people can
15 wager upon prior to that.
16 Q. When you say that completing the wagering
17 event, 41[g], is that tied to the -- to the end of
18 the actual event?
19 A. Yes, I would say that's -- the event has
20 concluded. The event --
21 Q. So --
22 A. The event you're wagering upon has
23 concluded.
24 Q. So the end of, for example, a baseball
25 game, that would be --

1 A. Yeah, again, I would defer to whatever
2 the specification says on that.
3 But in my view, with my understanding of
4 what's happening here, that that's -- that's --
5 that would be consistent with this that, yeah, the
6 baseball game has ended.
7 Q. You see in limitation 41[a], it says
8 "providing one or more wagering input devices in
9 communication with a system controller through
10 which the one or more players may participate in a
11 wagering event, said system controller being
12 adapted for"?
13 A. Yes.
14 Q. And the system controller was adapted for
15 performing the series of steps at limitation 41[b]
16 to 41[h].
17 Do you see that?
18 A. Yes.
19 Q. So in the example where the wagering
20 event is a sporting event, how does the system
21 controller complete the wagering event?
22 A. I think it's -- it's in the sense of the
23 controller recognizes the event has ended, and,
24 therefore, wagering has concluded upon this
25 wagering event.

1 Q. Dr. Vancura, we discussed at the
2 beginning of the deposition today the concept of
3 subject matter eligibility under Section 101.
4 Do you recall that?
5 A. Yes.
6 Q. I think you mentioned that you did not
7 render an opinion in your declaration regarding the
8 subject matter eligibility under Section 101 of any
9 substitute claims in the '341 patent or '822 patent
10 case.
11 Do you recall that?
12 A. That's right.
13 Q. Have you ever submitted a declaration or
14 rendered an opinion regarding the patentability of
15 any claims under Section 101?
16 A. In -- ever?
17 Q. Yes.
18 A. Not to my recall, no.
19 Q. I will direct you to paragraph 37 of your
20 declaration in the '341 patent case.
21 Do you see that paragraph?
22 A. Yes.
23 Q. And in the section starting at
24 paragraph 37 to paragraph 53, you provide an
25 overview of the '341 patent, do you not?

1 A. Yes.
2 Q. You may recall, we previously discussed a
3 pending District Court litigation matter between
4 DraftKings and Diogenes/Colossus involving patents
5 that are currently disputed in these IPR
6 proceedings.
7 Do you recall that?
8 A. I -- I recall a reference being made to
9 that, yes.
10 Q. Are you aware that DraftKings has taken a
11 position in that District Court litigation matter
12 that the claims in this family of patents are
13 invalid under Section 101?
14 A. I would have to say I don't know. I
15 really don't know. In all the -- you know, I don't
16 know the answer to that.
17 Q. Do you recall ever reviewing any motions
18 filed by DraftKings regarding subject matter
19 eligibility?
20 A. I -- I don't recall reviewing anything
21 like that.
22 Q. Have you been asked by Diogenes/Colossus
23 to render any opinions about patent eligibility
24 under Section 101?
25 A. No, not to my knowledge.

1 Q. Could you turn to paragraph 41 of your
2 declaration in the '341 patent case?
3 A. Yes.
4 Q. Here, you say that "Accurate, timely and
5 consistent buyout offers" have certain benefits,
6 like instilling "bettor confidence."
7 Do you see that?
8 A. Yes.
9 Q. And so in this paragraph, you're saying
10 it's desirable for an online wagering system to
11 provide consistent operation across similarly
12 situated tickets and across geographies.
13 Would you agree with that?
14 A. Yes.
15 Q. And it's your opinion that to do this
16 that the claimed inventions issue a partial or full
17 buyout offer reflecting a value that's derived from
18 real time information; is that right?
19 A. I'm sorry, can you re- -- can you restate
20 the question?
21 I didn't hear the beginning of the
22 question.
23 Q. Yeah.
24 To achieve this effect of providing
25 consistent operation, you know, which you've

1 discussed is desirable for instilling bettor
2 confidence, to do this, you state here that the --
3 that the '341 patent issues a partial or full
4 buyout offer that reflects the value that's derived
5 from real time information.
6 Would you agree with that?
7 MR. MINUTOLI: Objection. Form.
8 THE DEPONENT: Yes.
9 Q. (By Mr. Wilson) And in particular -- and
10 this is at the top of page 16 in your
11 paragraph 41 -- that information -- well, that
12 partial or full buyout offer reflects a value
13 that's derived from real team information that's
14 from a "multitude of sources."
15 Do you see that?
16 MR. MINUTOLI: Objection. Form.
17 THE DEPONENT: I mean, I see it says
18 "from potentially a multitude of sources," yes.
19 Q. (By Mr. Wilson) So is it fair to say
20 here that -- that you're describing the invention
21 as, you know, in rough terms, collecting and
22 processing data in order to generate this buyout
23 offer?
24 MR. MINUTOLI: Objection.
25 THE DEPONENT: I don't think that that

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1 characterizes the invention sufficiently.
2 Q. (By Mr. Wilson) In general terms, is
3 that one way to classify what's -- describe what's
4 happening in the claims of the '341 patent?
5 MR. MINUTOLI: Same objection.
6 THE DEPONENT: I think if -- if -- if the
7 description is -- is merely one of gathering real
8 time information in order to make an offer, I don't
9 think that that's officially described -- describes
10 what is happening here in this patent.
11 I mean, I'm not sure if that was your
12 question.
13 Q. (By Mr. Wilson) Well, isn't that how you
14 describe it here, that it's -- that the invention
15 of the '341 patent collects information?
16 A. Well, this -- this paragraph is not meant
17 to summarize all of the -- all of what's in the
18 patent. I mean, the patent has a lot of pages.
19 I think it succinctly kind of summarizes,
20 you know, one of the key aspects of '341, you know,
21 that there's a partial or a full buyout offer,
22 the -- you know, the rights to the ticket holder
23 can be sold in a whole or a partial way to someone
24 else that acquires those rights.
25 But to be able to do that, like I say

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1 here, accurately, in a timely fashion, consistent
2 across people that might be half a country apart
3 from each other, is -- is part of, I think, what's
4 taught in this patent.
5 I hope I'm answering your question.
6 Q. So what specific limitations allow or
7 provide for that operation that you just described:
8 Accurately, in a timely fashion, providing a buyout
9 to people in diverse geographic regions?
10 A. I'm not sure I understand the question.
11 Q. Well, in this paragraph, and I believe in
12 your testimony, you've described one of the
13 benefits of the -- the novel system claimed by the
14 '341 patent --
15 A. Uh-huh.
16 Q. -- is that it provides a consistent
17 buyout offer against similarly situated tickets
18 independent of bettor's -- of the bettor's
19 geography.
20 And my question is, what particular
21 limitations recited by the '341 patent of the
22 substitute claims that we've been discussing
23 provide for that functionality?
24 MR. MINUTOLI: Objection.
25 THE DEPONENT: I'm -- unless I'm missing

1 something, I would say it's each of the claims.
2 I'm not -- maybe I'm not understanding your
3 question.
4 Q. (By Mr. Wilson) Well, which limitation
5 addresses, for example, offering a consistent
6 buyout offer across similarly situated tickets?
7 A. Well, I think that it's, you know -- I
8 mean, if you have two people that have the same
9 wager, they're similarly situated that way, then
10 they're going to receive the same offer, I mean,
11 based on discussion we've been having today, I
12 mean, and the discussion we just had of --
13 you know, in terms of receiving data and
14 recalculating and evaluating.
15 Q. And is there any particular
16 implementation detail in the substitute claims of
17 the '341 patent that are directed to that -- to
18 achieve that particular outcome?
19 A. I'm not sure I understand the question.
20 It just seems to me that the -- you know, the steps
21 that I just recited you get to that outcome.
22 If you're asking is there some underlying
23 algorithm or methodology that should explicitly be
24 in the claims to get you to that outcome, I
25 don't -- I mean, that's not in the claims. But in

1 my view, the teaching of the patent in conjunction
2 with the claims gets you to this.
3 Q. So it's possible to do this, to provide a
4 consistent buyout offer across similarly situated
5 tickets, but it's not required by the claims?
6 A. Well, I mean, I think the claims need to
7 be read in light of what's taught. And, I mean, I
8 would have -- I haven't pondered that question. I
9 would have to go through the examples that are in
10 '341 and -- and see explicitly if there's any
11 counterexample to this.
12 But from my recall, you know, the -- the
13 examples cited all have to do with, you know, you
14 calculate the probability of winning and -- and
15 give people the cash-out offer that's, you know,
16 consistent with that.
17 So I don't know if I answered your
18 question or not.
19 Q. So is it the -- the continuous aspect of
20 the limitations that provide for this benefit, that
21 facilitate this benefit?
22 A. This specific benefit of consistent
23 pricing, if you will, across similarly situated
24 tickets?
25 Q. Yes.

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1 A. I would say -- I would say the
2 continuously helps. I mean, if you're not -- if
3 you're not continuously evaluating and -- receiving
4 and evaluating -- if you're not doing those steps,
5 you know, in a real time way, you may -- you may
6 misprice tickets.
7 So you will either be inconsistent in
8 terms of the temporal pricing or, you know, if you
9 don't have -- that would be -- I guess that would
10 be my answer.
11 Q. So if there's some inconsistency between
12 buyout offers that are generated in a system, is it
13 your opinion that that system would not satisfy the
14 limitations of substitute claim 41?
15 A. No.
16 That would not be my opinion, no.
17 Q. So the specifics of generating a
18 consistent buyout offer are not, then, explicitly
19 required by the claims.
20 Is that fair to say?
21 A. You mean the proposed substitute claims
22 for '341?
23 Q. Yes.
24 A. In my view, this paragraph 41, you know,
25 what -- what I have written here is that it

1 provides the capability to do this.
2 So, you know, there will be situations
3 where, I don't know, some -- there's a turnover or
4 something, and, you know, I can imagine a situation
5 where somebody's offer is different than the guy,
6 you know, three seconds later just because
7 something in the game has changed.
8 I would say that that's not inconsistent.
9 It's just -- you know, it's -- the game has
10 changed.
11 So -- but to me, it's -- you know, '341
12 has this capability of doing this consistently, but
13 whether -- and it's -- and it's -- I believe it's a
14 value in terms of what -- what players would like,
15 like I said here, for bettor confidence. But I
16 don't know that the claims claim this
17 "consistently" language.
18 On the other hand, like I said, I would
19 have to -- I would have to revisit the
20 specification to see if this, you know, pricing
21 consistency is basically a required attribute.
22 Q. So you're not able to say whether a
23 system that generates inconsistent buyout offers
24 would meet the limitations of substitute claim 41?
25 A. I think substitute claim 41 would just

1 stand on -- by itself. I don't think the word
2 "inconsistent" or "consistent" is in there, so...
3 Q. What about this potentially "multitude of
4 sources," the last phrase of your paragraph 41?
5 A. Yes.
6 Q. Is there any claim limitation in
7 substitute claim 41 that accommodates or requires a
8 multitude of sources?
9 A. Not to my knowledge.
10 I think we discussed it earlier. I think
11 it's just data-related. I mean, I'd have to look
12 at the language again, but I think it's data
13 related to the event, the wagering event.
14 Q. So receiving data from a single source,
15 would that satisfy the limitations of claim 41?
16 A. Well, I'm going to go ahead and look at
17 the claim just to make sure.
18 "Receiving data related..."
19 I would say yes.
20 Q. As a bit of an aside, it looks like the
21 terms "buyout" and "cash-out" are used pretty
22 interchangeably in your declarations and in the --
23 in the patents at issue.
24 Do you understand there to be a
25 difference between the terms "buyout" and

1 "cash-out"?
2 A. No.
3 Q. Turning to paragraph 42 in your
4 declaration, you start there saying "These
5 technological advancements potentially foster
6 additional bettor engagement and platform profits."
7 Do you see that?
8 A. Yes.
9 Q. And the technological advancements that
10 you're referring to there, what does that refer to?
11 A. Generally, the ability to, you know, have
12 a system that can receive data and basically --
13 you know, during an event, during an end leg,
14 in-game, real time, and generate offers to,
15 you know, players who have active tickets.
16 So in that offer, maybe, for all or
17 part -- a part of the ticket, and, you know, you
18 may -- you may iterate with the player in that
19 regard.
20 I mean, there's also teaching of,
21 you know, other people that want to possibly make
22 an offer for your ticket.
23 So that whole entire system, that
24 ecosystem, in terms of allowing those -- that
25 capability I think fosters engagement and profits.

1 Q. There, you mentioned, and I think
2 previously you mentioned, the concept of allowing a
3 third party to purchase an interest in -- in a
4 wager.
5 Do I have that correct?
6 A. Yeah, I believe that's -- I believe
7 that's part of the disclosure for this patent.
8 So if I misspoke, I apologize.
9 Q. And is that particular concept -- is that
10 claimed in the substitute claim 41 of the '341
11 patent, do you know?
12 A. As I read it, I believe that it's the
13 system controller that's adapted for steps 41[b]
14 and onward. So the system controller would be the
15 one in step 41[e], initiating at least one of a
16 buyout offer and a partial buyout offer.
17 Q. Okay. So in that type of configuration,
18 is it fair to say that -- that a third party
19 purchasing an interest in a wager would not be
20 covered by that configuration?
21 A. I'm just thinking out loud.
22 If the third party possibly could
23 initiate the offer through the system controller,
24 then the system controller would still do these
25 steps. Let me just think.

1 Well, the offer -- the offer is based on
2 the evaluating, and the evaluating is done by the
3 system controller. So I suppose it's possible a
4 third party could somehow tell the system
5 controller, hey, I'd like to buy this guy's ticket.
6 The system controller would do these
7 steps and -- and, you know -- in other words, it
8 would be -- everything here would be initiated and
9 conducted at the system-controller level, as
10 opposed to some third party, you know, directly
11 contacting somebody here that -- that has this
12 wager.
13 But I don't -- I guess the short answer
14 is I don't think it's excluded, provided the system
15 controller does steps 41[b] through 41[h].
16 Q. So in describing the technological
17 advancements referred to in paragraph 42 of your
18 declaration, I think you mentioned that -- that
19 that was referring to the ability in-game and in
20 real time to generate offers, buyout offers, to
21 players who have active tickets. So that was one
22 concept.
23 And then the second was -- was this
24 concept of a third party being able to make such an
25 offer for a wager.

1 Do I have that right?
2 A. Well, I think that's part of it. I think
3 it's also the -- the partial -- you know, the
4 partial cash-in or partial cash-out is another
5 aspect.
6 And I think that, again, the notion is
7 that, you know, that -- that there's a transference
8 of this ticket. So I have -- you know, my ticket
9 entitles me to certain rights, if you will, to this
10 wager, and I can sell either back to the system or
11 to a third party either all or a portion of that.
12 So it gives the player a considerable
13 control.
14 Q. And are you aware of any systems before,
15 say, the 2012 priority date that enabled or that
16 provided a buyout offer in-game to -- to a bettor?
17 MR. MINUTOLI: Objection. Form.
18 THE DEPONENT: I'm not -- of the type
19 that's -- of the type that's discussed in this
20 patent.
21 Q. (By Mr. Wilson) Are you aware of any
22 system that would have offered any type of buyout
23 offer prior to the completion of a wagering event
24 before the priority date of the '341 patent?
25 A. I mean, as -- as I sit here now, I cannot

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1 remember some of the dates of some of the
2 references. It's been a long day for me.
3 But the -- you know, in my view, the --
4 and, again, the dates would have to be checked.
5 But the short answer is, of a wagering system as
6 disclosed in this patent, the answer is no.
7 At some point, obviously, Betfair had a
8 different type of system, where it's -- it's not a
9 house bank wagering system. It's a -- an exchange.
10 And so whether or not there was a potential way to
11 cash out in that system by, you know -- I don't
12 know.
13 But -- but an exchange to me is a
14 different system than -- than what's taught in this
15 patent.
16 Q. And why is that?
17 Why is an exchange different from what's
18 being disclosed here?
19 A. Well, an exchange couples, you know --
20 like a stock exchange, you know, it couples a --
21 someone that wants to buy a share of something with
22 someone that wants to sell -- sell the same.
23 So -- and, you know, so you're -- you're
24 essentially -- two people come together. There's
25 no risk to the system.

1 And so these two people come together and
2 agree on a price, and the system operator charges a
3 commission on the transaction, either on the front
4 end or the back end or both ends.
5 Whereas what's taught here is -- and,
6 you know, the -- the examples that are in the
7 specification is that there's -- the system
8 operator, if you will, is the -- is the -- is the
9 banker. It's a house bank situation. So the -- in
10 my view.
11 So the -- so if I -- if I have made a
12 wager on a game, then there is -- there is, if you
13 will -- you know, I have risk -- there's a wager
14 involved -- and the house has some risk.
15 It's not like the situation with an
16 exchange where the system operator has -- has no
17 risk at all. He's -- he's just connecting a buyer
18 and a seller and collecting a commission.
19 Q. So that type of configuration, where a
20 third-party buyer and a different party seller of
21 an interest in an ongoing wager, it's your opinion
22 that that's not covered by the -- by the claims of
23 the '341 or '822 patent; is that right?
24 A. I would have to re- -- relook at that one
25 more time. Give me just a moment.

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1 So, for example, if -- if I'm in a
2 betting exchange, and I want to -- you know, if --
3 if I've bought -- let's say I bought that the
4 Giants are going to win against the Dodgers. And
5 then at some point down the road, I want to sell
6 that, I just go back to exchange, and now I'm on
7 the other side that.
8 So it's just like if I bought X shares of
9 some stock. You know, when I went to get out, I
10 just sell -- I sell my interest, I sell my shares,
11 to some other buyer.
12 And on both of those transactions,
13 there's no risk to, if you will, the system
14 provider or the system -- system provider.
15 Yeah, in my view, with -- with respect to
16 the -- these examples cited here, I can't think of
17 one offhand right now in terms of the
18 specifications.
19 So, in my view, this is different. This
20 is, you know -- you -- you make a wager, and you
21 receive a ticket. That's your interest in the --
22 in the -- in the -- in the wagering event. And
23 this here has to do with the system controller
24 deciding, if you will, evaluating, how much that
25 should be worth.

1 So it's not a betting exchange where
2 there's bids and asks and, you know, it's kind
3 of -- it's like a marketplace. This is a system
4 controller that -- that does the evaluation and --
5 and offers the -- the -- the buyout or the partial
6 buyout. And -- and then the transference of that
7 interest would then go to the system controller or
8 the system provider or the system operator, if he's
9 the one that made the offer.
10 It's a different business model.
11 Q. And what about in the context of the '822
12 patent substitute claims?
13 And if you just go to paragraph 54 in the
14 table that follows of your declaration in that
15 case.
16 Is it your opinion that -- that, for
17 example, substitute claim 31 does not cover that
18 exchange configuration that you've been referring
19 to?
20 A. I'm looking at claim 30.
21 You want claim 31?
22 Q. I'm sorry, I misspoke.
23 Claim 30.
24 A. Claim 30.
25 Okay. I don't think it does.

1 Q. So limitation 30[f], "soliciting, over
2 the communications interface, a solicited cash-out
3 offer from a second input device" --
4 A. Uh-huh.
5 Q. -- is that talking about a cash-out offer
6 generated by the system or by the second input
7 device?
8 A. It's soliciting a cash-out offer from a
9 second input device.
10 MR. WILSON: Okay. I think we've been
11 going over an hour. You care for a brief break?
12 THE DEPONENT: If you guys want.
13 MR. WILSON: Five to ten minutes.
14 (Recess taken.)
15 MR. WILSON: Back on the record.
16 Q. (By Mr. Wilson) Turning back to
17 paragraph 44 -- well, Dr. Vancura, same question
18 after every break.
19 Did you have any conversation with
20 counsel?
21 A. No.
22 Q. Turning back to paragraph 44 of your '341
23 patent declaration, do you have that handy?
24 A. Yeah, just give me a moment.
25 '341, 44.

1 Got it.
2 Yeah, I'm ready.
3 Q. Sorry, I think I need a moment to find
4 it.
5 Okay. And in paragraph 44, you state
6 that "The calculations and processing required...
7 to generate buyout offers continuously and in real
8 time during play based on time sensitive internal
9 game changes that affect odds... with instant
10 updates are very complex."
11 Do you see that?
12 A. Yes.
13 Q. And, in your opinion here, the complexity
14 that's required to generate that information is
15 greater than, for example, a single-bet outcome,
16 right?
17 A. Yes.
18 Q. And so in paragraph 45, you state that
19 "The buyout functionality is technical and
20 time-sensitive in nature," right?
21 A. Yes.
22 Q. And you discuss "a large volume of
23 information from various sources" that must "be
24 collected and analyzed."
25 Do you see that?

1 A. I mean, it "may be collected and
2 analyzed," but, yes, I see that.
3 Q. Okay. So is it correct to say that --
4 that no limitation of the substitute claims in the
5 '341 patent require large volume of information
6 from various sources?
7 Is that fair to say?
8 A. Yes.
9 Q. Okay. But you see here you're saying
10 that the data is collected and analyzed, right?
11 A. Yes.
12 Q. And that collection and analysis is
13 claimed in the '341 substitute claim 41, right?
14 A. I mean, the reason I'm hesitating is,
15 you know, this is my language, and it's not from
16 the spec, and it's not from the claim.
17 So I'm -- I'm having trouble kind of
18 pushing this onto the claim.
19 Q. Understood.
20 But here, you've described the claims as
21 being directed to collecting and analyzing the
22 data, right?
23 MR. MINUTOLI: Objection. Form.
24 THE DEPONENT: Where do you see that?
25 Q. (By Mr. Wilson) The first sentence --

1 or, I'm sorry, the second sentence of paragraph 45.
2 MR. MINUTOLI: Objection. Form.
3 THE DEPONENT: Yeah, "Systemwide"?
4 That one, "Systemwide"?
5 Q. (By Mr. Wilson) Yes.
6 A. Yeah.
7 "Systemwide, potentially a large volume
8 of information from various sources may be
9 collected and analyzed, 'instantly,' for a real
10 time valuation."
11 Q. So you're saying here that it's the
12 combination of the number of data sources,
13 complexity of the calculations, and the
14 time-sensitive nature of the calculations that
15 really comprise the -- the technological
16 advancement claimed by the patents; is that right?
17 MR. MINUTOLI: Objection. Form.
18 THE DEPONENT: I mean, this is, you know,
19 kind of a paragraph that just generally describes
20 the system.
21 But deeper into the paragraph here,
22 this -- I'm still at paragraph 45. You know, I
23 talk about "The probability calculation can take
24 into account many types of... information."
25 So here's some examples: Odds changes,

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1 in-game, before game, between games, maximum
2 payout, probability of a successful outcome on a
3 leg or legs, in pari-mutuel betting how many
4 tickets have been sold holding the same ticketed
5 outcome.
6 So, you know, the calculation is going to
7 be -- for a pari-mutuel, it's going to be different
8 than it is going to be for a fixed odds. It's
9 going to be different for a pari-mutuel where you
10 have, I don't know, six legs, and every -- you
11 know, everybody's got -- everybody got the first
12 five right because they were easy, that's going to
13 be different than, you know, there's only two guys
14 left.
15 It's -- it's just different, and the
16 systems needs to accommodate various types of
17 betting, various types of wagering events, various
18 times at which this can be done -- you know,
19 in-game, before the game, between games. So
20 it's -- it's complex in terms of all that --
21 that -- all that you're asking this system to do.
22 And then that needs to be combined with
23 this probability calculation that we've been
24 talking about in this recalculation step, where,
25 you know, you can get -- you can get that from a

1 third party, you can get that from trying to model
2 the game if you wanted to, or like, you know --
3 like it's discussed in the patent, you know, how
4 these two tickets have different scores, and so you
5 can model that one score is more likely than the
6 other.
7 So I don't know that I answered your
8 question, but to me, that's -- that's -- I'm trying
9 to explain why this paragraph says what it says.
10 Q. (By Mr. Wilson) Do you recall that we
11 talked about your use of the term "technological
12 advancement" in paragraph 42 of your declaration?
13 A. Yes.
14 Q. Would it be also be fair to say that what
15 you've just described about the system being able
16 to handle the -- the complex nature of these
17 various configurations for a betting system, that
18 that is part of the technological advancement that
19 you're discussing in paragraph 42?
20 A. Part of it, yes.
21 Q. And what is it specifically in the claim
22 limitations that enables the system to perform such
23 complex operations?
24 A. Let me go back to the claims.
25 I would say it is -- you mean in the --

1 well, I think it's the -- the crux of it is the
2 steps that we discussed earlier, 41[c], [c-1],
3 [c-2], [c-3], [d], [e].
4 Q. And it's that structure that's recited
5 there that enables the processing that you
6 described in paragraph 45 of your declaration,
7 right?
8 A. I would say yes.
9 I didn't -- let me go back to 45 again,
10 I'm sorry.
11 You're talking about the first sentence,
12 technical and time sensitive?
13 I would say yes.
14 Q. And then following -- you know, the
15 remainder of paragraph 45?
16 A. Well, again, there's -- yeah, there's a
17 lot of -- I think you used the word
18 "configurations." There's a lot of different
19 configurations possible in terms of types of
20 wagers, is it a single event, is it multileg, is it
21 a parlay, it is a pari-mutuel. You know, there's
22 just a wide variety that needs to be accommodated.
23 And then you've got to then understand,
24 if you're going to offer a cash-out for full or
25 partial of the ticket, that needs to be priced

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1 appropriately in terms of the operator being able
2 to -- to do that.
3 And so you either need to, you know, have
4 your own way of evaluating tickets, like some of
5 what's discussed in the disclosure, you know, with
6 respect to -- like I think they give the example of
7 there's like two or three tickets going into a
8 final leg of soccer, I think. And one has a score
9 of like 2-to-1, and the other one's like 10-to-zero
10 or something.
11 And so they demonstrate how the one
12 ticket is going to be worth more than the other
13 because it has a more likely score.
14 Or you can use third-party data to --
15 you know, to -- to get at -- to get at those
16 values.
17 But the point is, it's -- it can be,
18 especially if you're in-game, quite time-sensitive,
19 as pointed out in the -- in the disclosure.
20 Q. So the claim -- substitute claim 41
21 recites the ability to do that, what you've just
22 described at a high level.
23 Would you agree with that?
24 A. I'm not sure what you mean by "high
25 level."

1 I think that I, you know, in -- in this
2 report, in this declaration that we're looking
3 at -- I'm on the '341. I hope I'm on the right one
4 that we're talking about right now.
5 Q. Yes.
6 A. You know, I go into detail about like
7 step 41[c-1], you know, the receiving; and the
8 recalculating in step 41[c-2]; and the evaluating
9 in step 41[c-3]. I go into detail about the
10 specification and what it has to say about each of
11 those steps.
12 So I don't know that I would say it's
13 high-level.
14 Q. Well, that's your description.
15 A. Right.
16 Q. Right?
17 And I'm asking you here about the claims
18 themselves, are the claims recited at -- at a high
19 level.
20 But then --
21 A. I would say -- I would say, to the extent
22 they don't discuss the specific algorithm,
23 you know, perhaps you might consider them
24 high-level.
25 But -- but there are -- you know, there

1 are formulae, and there are, you know, specific
2 examples in the specification, so...
3 Q. We've talked about the complexity enabled
4 by the -- the '341 patent and the '822 patent.
5 What about less complex versions of
6 similar systems?
7 Are you aware of any less complex gaming
8 systems that provided the ability to cash-out a
9 wager before the end of an event?
10 A. You mean cash-out as -- as used in -- in
11 these patents?
12 Q. Yeah.
13 A. So -- so I would say that -- I would say
14 that if -- if "cash-out" is used as it's used here,
15 which to me is, you know, as taught, I have -- I
16 have a ticket, or an electronic ticket; and if I
17 want to cash-out, then I may sell all or a portion
18 of that ticket to someone else, maybe the system
19 operator, maybe someone else.
20 But, in any event, the original wager on
21 that ticket, whether I sell all of it or part of
22 it, the entire original wager will be, at some
23 point, resolved at the end of the event. The event
24 will be concluded. It will -- you know, it will
25 finish.

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1 And, if I sell, that I get a -- you know,
2 like if it's -- if it's a cash-out, that I get
3 cash, which is unrestricted. And, you know, in
4 gaming we have what we call restricted and
5 unrestricted. So this is unrestricted. There's
6 no -- there's no restrictions on what I can do with
7 the cash.
8 I'm not aware of a teaching that does
9 that, that system or that type of cash-out, that I
10 believe is taught in these patents.
11 Q. So you mentioned one of the unique
12 aspects is that -- that, at some point, the wager
13 will be resolved at the end of the event.
14 A. Yes.
15 Q. Isn't that true -- or -- or how is that
16 not true of every wager?
17 A. I'm not sure that I understand the
18 question.
19 I mean, what I mean is that there's -- if
20 I make a wager in this -- if I make a wager in this
21 particular teaching here, there's -- let's say
22 there's a ticket or an electronic ticket associated
23 with that wager. If I choose to sell that ticket
24 or sell a portion of that ticket, whoever that goes
25 to, that -- the underlying event will still be

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1 completed, and all of that ticket -- all of the
2 original amount of that ticket will be resolved.
3 I cannot exit -- I cannot exit a wager
4 early, if you will, for, let's say, its surrender
5 value.
6 I mean, I -- let -- let me restate it a
7 little bit.
8 I'm sorry.
9 I, as a player, might say "I'm out. I
10 want to sell my ticket. I'm out." So I'm done.
11 But the -- but the wager continues with
12 respect to whoever acquired the rights, and will
13 continue until the event is complete.
14 Q. I see.
15 So -- so part of the novelty of a system
16 here, what you're saying, is that the wager is
17 extinguished by virtue of the -- of accepting the
18 buyout offer; is that right?
19 A. No, that's not what I'm saying.
20 I might be saying the opposite of that,
21 that there is no way to extinguish the original
22 wager. It will continue and be resolved at the end
23 of the event.
24 I may sell my interest to it. I may be
25 out, you know. Bettor A may be out because he sold

1 his interest to Bettor B, but Bettor B now has the
2 interest in that. And it will be resolved at the
3 end of the event. Once the event concludes, that
4 wager will be resolved.
5 Does that make sense? Based --
6 Q. Yes.
7 A. Based on the original terms of the wager.
8 Q. Yeah.
9 And so these are novel aspects of the
10 '341 and '822 patents that you're describing; is
11 that right?
12 A. Well, I think the ability to -- to
13 generate -- to generate an offer that it made --
14 that the offer generated -- to generate and make an
15 offer, right, which -- which can be made to -- I
16 think the -- it says any desired number of players
17 that are still active, or still active ticket
18 holders.
19 So that ability is to do that so that a
20 player can cash out for unrestricted or
21 discretionary, whatever you want to call it --
22 discretionary funds.
23 But that's different, in my view, than,
24 for example, you know, in blackjack. I can
25 surrender, but that bet's done. Nobody acquires

1 ownership of that bet. I just surrender. The hand
2 is not finished. There's no completion of that
3 event. I just say, "I'm out."
4 That's different than what's taught here.
5 Q. I see.
6 I see.
7 And you're not aware of a prior system
8 before the 2012 time frame that provided such an
9 ability where the -- where the wager is not
10 terminated, is not extinguished, and instead
11 continues after a player accepts a cash-out?
12 A. I would say that -- that, in conjunction
13 with the fact that the funding needs to be
14 unrestricted, right.
15 I mean, we haven't talked about Sugar,
16 but, you know, Sugar, in one of his embodiments, he
17 discusses, you know -- I don't know what he calls
18 it, but essentially, you get money out of a bet in
19 order to make another bet. So these funds are not
20 unrestricted. If you're doing something in order
21 to make -- you must make another bet, in gaming, we
22 call those restricted funds.
23 So I'm not aware of the combination of
24 being able to cash-out early, where the system
25 evaluates, generates an offer, makes the offer to

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1 you, and you can go ahead and -- and sell part or
2 all of the interest that you have for actual cash,
3 and you're selling the interest, and that whoever
4 acquires that interest -- and it might be the
5 system operator, but it might be someone else --
6 that that bet will be ultimately resolved. It does
7 not just go away as if you had surrendered
8 something.
9 So I'm not aware of that combination,
10 which is, I believe, what is taught in this -- in
11 these patents.
12 Q. Who takes ownership of the bet once a
13 buyout offer is accepted in the context of '341
14 patent, substitute claim 41?
15 A. Well, I think -- like I said, I don't
16 think it excludes a third party coming in through
17 the system controller. But if it's the system
18 controller that's being run by the system operator,
19 then it would be the system operator.
20 Q. Does the '341 patent, substitute
21 claim 41, in your opinion recite limitations that
22 improve how a computer functions?
23 MR. MINUTOLI: Objection. Form.
24 THE DEPONENT: I mean, I don't think a
25 computer has a wagering input device.

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1 I mean, I think the configuration of the
2 system controller combined with the wagering input
3 device that's in communication with the same would
4 not be a -- probably not a normal computer ability.
5 Q. (By Mr. Wilson) So a wagering input
6 device communicating with the system controller, in
7 your opinion, would be an extraordinary
8 functionality of a computer?
9 A. Well, I don't think computers normally
10 have wagering input devices as like a peripheral
11 device, is what I'm trying to say.
12 So, you know, arguably, the -- I mean, I
13 would have to go through each step and take a look
14 at it. If you want, I'll do it right now.
15 Q. Well, let me ask this: You state in your
16 declaration about the time-sensitive nature of the
17 calculations.
18 You agree with that?
19 A. Yes.
20 Q. And that the speed of the calculations is
21 important.
22 Would you agree with that?
23 A. Yes.
24 Q. Is there anything specific in the claim
25 limitations that enable the central system -- or

1 I'm sorry -- the system controller to perform those
2 calculations faster?
3 MR. MINUTOLI: Object. Outside the
4 scope. Speculation.
5 THE DEPONENT: I don't see anything where
6 that -- where that gives them the ability to
7 compute it faster, if that's the question.
8 Q. (By Mr. Wilson) Yeah.
9 I think we touched on this a little bit
10 previously, but with regard to limitations 41[c-1]
11 to -- well, I guess we'll start with 41[c-1].
12 The data that's being described there,
13 other than data related to the wager event -- well,
14 strike that.
15 Drawing your attention to
16 limitation 41[c-3], again, continuously evaluating
17 the recalculated wager information, what -- what
18 sort of limitations are placed on the recalculating
19 of the wager information?
20 A. In step 41[c-2]?
21 Q. Yeah.
22 A. Are you asking me what limitations are
23 placed on that?
24 I would just let the step speak for
25 itself.

1 It's "recalculating, in real time and
2 based on the continuously received data, wager
3 information for one or more wagers associated with
4 players participating in the wagering event."
5 Q. Fair enough.
6 And, again, I think we previously covered
7 it, but I direct your attention to the -- to the
8 buyout limitation, 41[e], "initiating at least one
9 of a buyout offer and partial buyout offer."
10 Does the claim recite any particular
11 implementation for determining that buyout offer?
12 A. Determining the amount of the buyout
13 offer, or determining who it goes to, or
14 determining the time, or -- I'm not sure I
15 understand the question.
16 Q. Yeah, let's start with determining the
17 amount of the buyout offer.
18 A. Well, I believe it's based on said
19 evaluating. So it needs to be based on
20 step 41[c-3].
21 Q. So as long as it's based on an evaluation
22 of recalculated wager information, then any manner
23 of determining the amount of a buyout offer would
24 be covered by limitation 41[e]; is that right?
25 A. That's based on said evaluating, so said

1 evaluating would be continuously evaluating.
2 But, other than that, I would say it
3 complies. It's based on that.
4 Q. Would it be possible for a human to
5 determine the value of a buyout offer?
6 MR. MINUTOLI: Objection. Outside the
7 scope.
8 THE DEPONENT: Well, I think in limited
9 circumstances, it would be possible.
10 For example -- I don't know -- if you
11 have a stoppage in play that's considerable, like
12 halftime of a football game or something like that,
13 then I think, you know, a human could just look at
14 the TV screen and say, hey, the score is tied; the
15 game was a toss-up at the beginning -- you know,
16 simplistic example I'm giving, but that would be
17 one example where a human could do it.
18 So if it was a pick'em, and then at
19 halftime it was tied, then, you know, pretty much a
20 human can walk up and probably be able to figure
21 out that the -- the outcome of the game is still a
22 pick'em, since the game is tied and it was a
23 pick'em at the beginning.
24 But I think, you know, just generally,
25 the system that's described here in these

1 participating Marantelli patent, patent family,
2 is -- you know, it doesn't just contemplate one
3 simple game with a long gap in time. It
4 contemplates, like we've discussed, a number of
5 different games, a number of different wager types,
6 the pregame, in-game wagering, getting out of the
7 wager during a game.
8 You know, so if you've got -- I'm just
9 going to make this up. I mean, if you've got a
10 couple dozen games that are ongoing at any given
11 time, and you want to, in the middle of the third
12 quarter, decide what a particular ticket is worth,
13 I don't think you're going to be able to do that in
14 real time. I don't think a person can do that in
15 real time, just in the general case.
16 There will be some specific cases where,
17 yes, I think a person can do it that are suited.
18 Q. (By Mr. Wilson) Well, operating as fast
19 as a person could do it, would it be possible for a
20 person to continuously evaluate wager information
21 and then determine the value of a buyout offer?
22 Even if it may take the person more time
23 than it would take the computer, would it be
24 possible for, at least, a person to determine that
25 value?

1 A. I mean, it would be possible, but by the
2 time you figured it out, in general, the game state
3 will have changed so that that calculation is of no
4 value. Because -- I don't know -- a turnover
5 occurred or, you know, the Jazz got another bucket,
6 and so whatever the guy was working on calculating
7 has now changed.
8 So I think by the time you would figure
9 it out with pencil and paper for, you know, one
10 guy's ticket during a game -- and, you know, in the
11 NBA, the average possession time is -- I want to
12 say it's maybe something -- something around maybe
13 five to ten seconds.
14 So, I mean, you might be able to figure
15 out one guy's ticket with whatever odds he was
16 given, and now he wants to cash out. You might be
17 able to do that in five or ten seconds with pencil
18 and paper. But by the time you figure it out, it
19 will have changed. And what about everybody else
20 that wants to cash in?
21 So I don't think it's realistic.
22 Q. So, in other words, it wouldn't be real
23 time under the claim language.
24 Is that what you're saying?
25 A. Well, I don't -- I'm not sure how a

1 person deals with, you know, continuously receiving
2 data.
3 I mean, how does a person deal with that?
4 Am I just watching a TV screen continuously? I
5 guess I'm continuously receiving data. But am I
6 not allowed to look down and do my calculation
7 then?
8 I mean, it's -- I don't -- I'm not sure
9 how it would work with a person doing it, first of
10 all, with the "continuously" language.
11 But, second of all, I agree with you, I
12 guess, also in real time, you would fail in that
13 regard, because you wouldn't be able to do this in
14 real time, or timely enough, you know, in most
15 instances in sporting events, unless you were --
16 like I said, kind of a simplified, contrived
17 example, like during halftime with a -- kind of a
18 simple bet, maybe you could do that for one person
19 or for a handful of people.
20 But it wouldn't be systemwide, yeah.
21 Q. Yeah.
22 So I was envisioning something like the
23 situation, I think, we had mentioned before, where
24 a video stream, and you're looking at the box
25 score, whatever you're looking at there, and

1 comparing that in the context of a computer system.
2 But then the analogy to -- to a user
3 continuously watching -- you know, a human
4 continually watching that same video, and
5 continuously ingesting, receiving, that -- that
6 updated box score information as it comes through,
7 and then performing that calculation of the buyout
8 offer as fast as the human can perform.
9 So other than the logistical issue of,
10 you know, the user having to look down -- the human
11 having to look down to perform the calculation with
12 pen and paper; and -- and -- and then not being
13 able to also continuously watch the video; and I
14 think you mentioned one other distinction, that the
15 human couldn't service concurrent -- concurrent
16 players at the same time.
17 But other than those distinctions, a
18 human could determine the value of a buyout offer
19 as recited in limitation 41[e], right?
20 MR. MINUTOLI: Objection. Form and
21 scope.
22 THE DEPONENT: My opinion, I don't think
23 the human can do the continuously receiving data
24 other than maybe observing it, but -- you know,
25 without -- you'd have to pause the continuously

1 receiving to recalculate.
2 And the continuously evaluating, I don't
3 know how a human does that.
4 I also don't know how they do it in real
5 time so that it's fast enough with game changes.
6 I mean, I -- I mean, to your point, I
7 think if you could pause the game, if you could
8 just pause the game and say "Okay. Here's 100
9 guys. Guys, go. Do all these calculations. Do
10 all the evaluations for all these various tickets."
11 And you just pause the game long enough -- might
12 take hours -- for these guys to settle up and
13 decide what all is going to happen.
14 But that's not the way -- you know,
15 that's not the way sports work, so -- which I think
16 points -- points to the need for a system.
17 Q. (By Mr. Wilson) Do you recall that we
18 discussed that the "continuously" limitations in
19 your opinion only had to be satisfied for a
20 fraction of a second?
21 Do you recall that discussion?
22 A. I recall, and I think we went -- we --
23 yeah, I don't remember exactly how much time, but I
24 do recall the discussion, yes.
25 Q. So in -- in that scenario, wouldn't that

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1 be amenable to a human determining the value of --
2 of the buyout offer based on continuously receiving
3 data for that brief time period?
4 MR. MINUTOLI: Same objections.
5 THE DEPONENT: I mean, I don't know how
6 much a human is going to do in one-quarter of a
7 second. It's not going to be much.
8 In my, you know -- I'll stop there.
9 Q. (By Mr. Wilson) In paragraph 85 of your
10 declaration, if we can turn there.
11 And this is in the '341 patent case.
12 Do you see there, you're discussing that
13 a POSITA might utilize these in-game data -- "a
14 POSITA might utilize the use of in-game... wagering
15 in order to help determine the odds, and pricing,
16 of cash-in offers"?
17 A. Yes.
18 Q. And so here, are you providing an
19 example -- of calculating a cash-out offer?
20 A. Yes, it's an example of how one might do
21 it, yeah.
22 Q. And this is with wagering information
23 that was available from certain APIs prior to the
24 priority date of the '341 and '822 patents; is that
25 right?

1 A. That's my understanding.
2 Q. And you mention that this data was
3 available in the 1990s.
4 Do you see that?
5 A. No -- yes.
6 Let me see.
7 Well, it doesn't say data has existed
8 since the 1990s. It says in-play wagering has
9 existed since the 1990s.
10 Q. Yeah.
11 I'm just trying to square the first two
12 sentences.
13 So as "an example of the use of
14 additional data... a POSITA might utilize the use
15 of in-game... wagering in order to help determine
16 the odds, and pricing, of cash-in offers."
17 So here, aren't you describing the use of
18 in-game wagering as a mechanism to determine data,
19 to help determine odds, pricing odds, and pricing
20 of cash-in offers?
21 A. I think the in-game wagering is the data.
22 It's the data related to the event. What's the
23 current pricing on wagers related to the event --
24 that's related to the event.
25 Q. And that data has been available since

1 the 1990s, right?
2 A. Well --
3 MR. MINUTOLI: Objection. Form.
4 THE DEPONENT: That's not what I'm saying
5 here. I think -- I don't say when that was
6 available since.
7 Q. (By Mr. Wilson) Don't you say that this
8 Exhibit 1018 notes that in-play wagering has
9 existed since the 1990s?
10 A. Yes, but -- but you had asked about
11 the -- you know, whether -- whether the -- the
12 odds -- well, I understand your question to be
13 whether the odds associated with that wagering has
14 existed or was available since the 1990s.
15 I don't know that.
16 Q. Got it, okay.
17 And you're not aware of how the -- the
18 Betfair API that you reference, how that works?
19 A. I am not.
20 MR. WILSON: I've got another module or
21 two here to go through, but I think we'd be
22 comfortable going through this material on Friday
23 if we want to conclude here for the day.
24 MR. MINUTOLI: Yeah, that's great. And
25 you can get the '969 done Friday, too, then, I

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1 think?
2 MR. WILSON: Yeah, that would be the --
3 yup, that would be the idea.
4 MR. MINUTOLI: Works for me. Olaf, are
5 you okay ending?
6 THE DEPONENT: Okay. And I just have a
7 question, because I know you keep asking me if I
8 have had any discussions with the attorneys.
9 Am I not supposed to have any discussions
10 with the attorneys prior to Friday?
11 MR. MINUTOLI: Yes.
12 THE DEPONENT: Okay.
13 MR. WILSON: Yeah, and it's good that you
14 brought that up, and I think it's good to discuss
15 that. But I think that's our -- that's our
16 interpretation of the rules.
17 THE DEPONENT: Okay.
18 THE COURT REPORTER: Off the record?
19 MR. WILSON: Yes, thank you.
20 (Deposition adjourned at 4:24 p.m.)
21 MR. MINUTOLI: I would like a rough, no
22 expedite.
23 THE COURT REPORTER: Okay. Thank you.
24
25 ---o0o---

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1 I, OLAF VANCURA, Ph.D., do hereby declare
2 under penalty of perjury that I have read the
3 foregoing transcript; that I have made any
4 corrections as appear notes; that my testimony as
5 contained herein, as corrected, is true and
6 correct.
7 Executed this ____ day of _____,
8 2023, at _____, _____.
9
10
11
12 _____
OLAF VANCURA, Ph.D.
13
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25

1 STATE OF CALIFORNIA) ss:
)
2 COUNTY OF CONTRA COSTA)

3

4 I, Rebecca L. Romano, CSR. 12546, do hereby
5 certify:
6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was
9 administered the oath;
10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.
18 I further certify that I am neither counsel
19 for any party to said action, nor am I related to
20 any party to said action, nor am I in any way
21 interested in the outcome thereof.
22 IN WITNESS WHEREOF, I have subscribed my name
23 this 16th day of November, 2023.
24 _____
Rebecca L. Romano, RPR, CCR
25 CSR. No 12546

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1 DEPOSITION ERRATA SHEET

2 Case Name: DraftKings vs. Colossus
Name of Deponent: Olaf Vancura, Ph.D.
3 Date of Deposition: November 13, 2023
Job No.: #8251
4 Reason Codes: 1. To clarify the record.
2. To conform to the facts.
5 3. To correct transcript errors.

6 Page _____ Line _____ Reason _____

7 From _____ to _____

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10 Page _____ Line _____ Reason _____

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12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

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19 From _____ to _____

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1 DEPOSITION ERRATA SHEET

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10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

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

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

24

25 _____
OLAF VANCURA, Ph.D.

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