

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

DIOGENES LIMITED, COLOSSUS (IOM) LIMITED,
Patent Owner

Case IPR2023-00267
Patent 10,997,822

SECOND DECLARATION OF DWIGHT CREVELT

CONTENTS

I.	Introduction.....	1
II.	Materials Considered	2
III.	Overview of Additional Prior Art.....	2
	A. Overview of Asher (EX[1067]).....	3
IV.	Substitute Claims 30, 31, 32 and 33 Are Unpatentable.....	5
	A. Asher Anticipates Substitute Claims 30, 31, 32 and 33.....	6
	1. Substitute Claim 30.....	6
	2. Substitute Claim 31.....	27
	3. Substitute Claims 32 and 33	28
V.	Conclusion	29

EXHIBIT LIST

EX[No.]	Description
1001	U.S. Patent No. 10,997,822 (“the ’822 Patent”)
1002	Prosecution File History for the ’822 Patent
1003	File History for U.S. Patent No. 9,117,341
1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
1006	U.S. Patent Application Publication No. 2012/0309503 A1 (“Scott”)
1007	Declaration of Dwight Crevelt
1008	<i>Curriculum Vitae</i> of Dwight Crevelt
1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
1010	Christiani Hugonii, The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated (printed 1741)
1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
1012	Jui-Pin Cheng, <i>The Origin of Probability and The Problem of Points</i> (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)

1014	Prakash Gorroochurn, <i>Thirteen Correct Solutions to the ‘‘Problem of Points’’ and Their Histories</i> , THE MATHEMATICAL INTELLIGENCER (Springer 2014)
1015	Keith Devlin, <i>The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern</i> (Basic Books 2008)
1016	Anders Hald, <i>A History of Probability and Statistics and Their Applications before 1750</i> (John Wiley & Sons 2003)
1017	Adam Prügel-Bennett, <i>The Probability Companion for Engineering and Computer Science</i> (Cambridge University Press 2019)
1018	Elizabeth A. Killick & Mark D. Griffiths, <i>In-Play Sports Betting: a Scoping Study</i> , 17 INT J MENT HEALTH ADDICTION 1456 (Apr. 16, 2018)
1019	<i>What is In-Play Betting: Live Betting Explained by William Hill</i> , WILLIAMHILL.COM (Apr. 20, 2021), https://news.williamhill.com/betting-guides/in-play-betting/
1020	Mark O’Haire, <i>The History of Betting</i> , TheSetPieces (2021), https://thesetpieces.com/latest-posts/the-history-of-betting/
1021	U.S. Patent No. 9,117,341 (“the ’341 Patent”)
1022	Chris Summers, <i>How Does a Betting Exchange Work?</i> , BBC News (Dec. 7, 2007)
1023	Landi, Gianluca, <i>Betting Exchange: The Sports Trading Revolution</i> (StreetLib 2017)
1024	Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 (Jun. 18, 2016)
1025	Vaughan Williams & Donald S. Siegal, <i>The Oxford Handbook of the Economics of Gambling</i> (Oxford University Press 2013)

1026	Mark Davies <i>et al.</i> , <i>Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering</i> , 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005)
1027	U.S. Patent No. 7,909,694 (“Schugar ’694”)
1028	Betfair Trading Software, <i>About Bet Angel Software</i> (via The Wayback Machine dated Dec. 26, 2007)
1029	Green All Over Blog (Dec. 7, 2008)
1030	Dan Thomas, <i>Betfair’s ‘Cash Out’ Trading Tool Used for the Millionth Time</i> , BETTFAIR (Sept. 13, 2011)
1031	Betfair Financial Statement (Jun. 29, 2011)
1032	Dan Thomas, <i>Cash Out Comes to Betfair Mobile</i> , Betfair (Dec. 19, 2011)
1033	Michael Taylor, <i>Cash In My Bet with William Hill</i> , WILLIAMHILL.COM (Dec. 18, 2012)
1034	Tal Grant <i>et al.</i> , <i>UK Gaming</i> , Credit Suisse (Aug. 14, 2017)
1035	James Conrey McMath, <i>Speculation and Gambling in Options, Futures and Stocks in Illinois</i> (Hawkins & Loomis 1921)
1036	LeRoy Gross, <i>The Conservative Investor’s Guide to Trading Options</i> (Wiley 1999)
1037	Stuart Banner, <i>Speculation: A History of the Fine Line Between Gambling and Investing</i> (Oxford University Press 2017)
1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)
1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov’t Printing Office 1952)

1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)
1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)
1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
1043	Betfair Community, <i>Football Forum</i> (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader
1044	Betfair Community, <i>Golf Forum</i> at 1 (Apr. 9, 2010), https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53
1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
1047	U.S. Patent Application Publication No. 2001/0136566 A1 (“Acres”)
1048	Exhibit 338.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1049	Exhibit 341.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1050	Exhibit 439.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1051	Exhibit 516.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1052	Exhibit 716.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1053	Exhibit 779.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

1054	Exhibit 822.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1055	Exhibit 969.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1056	Reserved
1057	Deposition Transcript of Dr. Olaf Vancura, Vol. I (Nov. 13, 2023)
1058	Deposition Transcript of Dr. Olaf Vancura, Vol. II (Nov. 17, 2023)
1059	U.S. Patent No. 8,721,439 (“’439 Patent”)
1060	Report and Recommendation, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1061	Order, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1062	Reserved
1063	First Amended Complaint, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
1064	U.S. Patent No. 11,200,779 (“’779 Patent”)
1065	Decision Denying Institution of IPR2023-00268, paper 9 (Aug. 11, 2023)
1066	Reserved
1067	U.S. Patent No. 7,233,922 (“Asher”)
1068	Reserved

I, Dwight Crevelt, declare as follows:

I. Introduction

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

2. I previously prepared a declaration in this case in which I was asked to provide my technical review, analysis, insights, and opinions regarding the ’822 Patent and the prior art references that form the basis for the grounds of unpatentability set forth in the Petition for *Inter Partes* Review of the ’822 Patent. See Declaration of Dwight Crevelt (December 2, 2022) (Ex. 1007) (“Initial Declaration”).

3. I understand that Patent Owner has filed a Motion to Amend (“MTA”) the ’822 Patent and proposes to replace Claims 1, 7, 15 and 21 of the ’822 Patent with proposed Substitute Claims 30, 31, 32 and 33. This declaration is a statement of my opinions on issues related to the unpatentability of proposed Substitute Claims

30, 31, 32 and 33. While I understand DraftKings is challenging Patent Owner's MTA under numerous statutory and regulatory bases, my opinions here are limited to considering invalidity under 35 U.S.C. §102.

4. I provided my credentials and background in my earlier declaration with respect to the '822 Patent. That information has not materially changed, and I incorporate it by reference herein.

II. Materials Considered

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

6. In preparing this Declaration, I have also reviewed and am familiar with each of the documents including Asher (Ex. 1067) identified in the exhibit list above and/or discussed in my declaration below.

III. Overview of Additional Prior Art

7. In my initial declaration regarding the '822 Patent (Ex. 1007), I considered the following references: Scott (Ex. 1006), DeWaal (Ex. 1004) and

Schugar (Ex. 1005). I have been asked to further consider Asher (Ex. 1067), which I describe below.

A. Overview of Asher (EX[1067])

8. U.S. Patent No. 7,233,922 B2 to Joseph M. Asher (hereinafter, “Asher”), entitled “System and Method for Wagering-based Transferable Financial Instruments,” was issued on June 19, 2007. The application leading to Asher, U.S. Patent Application No. 10/654,280, was filed on September 3, 2003.

9. Asher discloses a system and method for “facilitating a wager on a position with respect to the outcomes of a plurality of events” using a “point” value (*i.e.*, a “price guideline” for the present value of an ongoing wager), wherein “the point may run continuously 24-hours a day for unlimited duration.” Asher 3:52-60, 15:6-10. “[S]ince the point will be changing in real time ... the display of the point may be updated in real time[.]” *Id.* 14:25-28.

10. Asher discloses “various types of monitoring interfaces 62 that allow central controller 50 to capture information associated with the occurrence of events forming the basis for financial instruments 76.” *Id.* 7:56-60. For example, the gaming machines may be “recorded via live video and the data extrapolated from the video feed through a variety of manual or automated techniques.” *Id.* 8:5-8.

FIG. 1 of Asher, as depicted below, illustrates a wager system 5 that includes the central controller 50 and the monitoring interfaces 62.

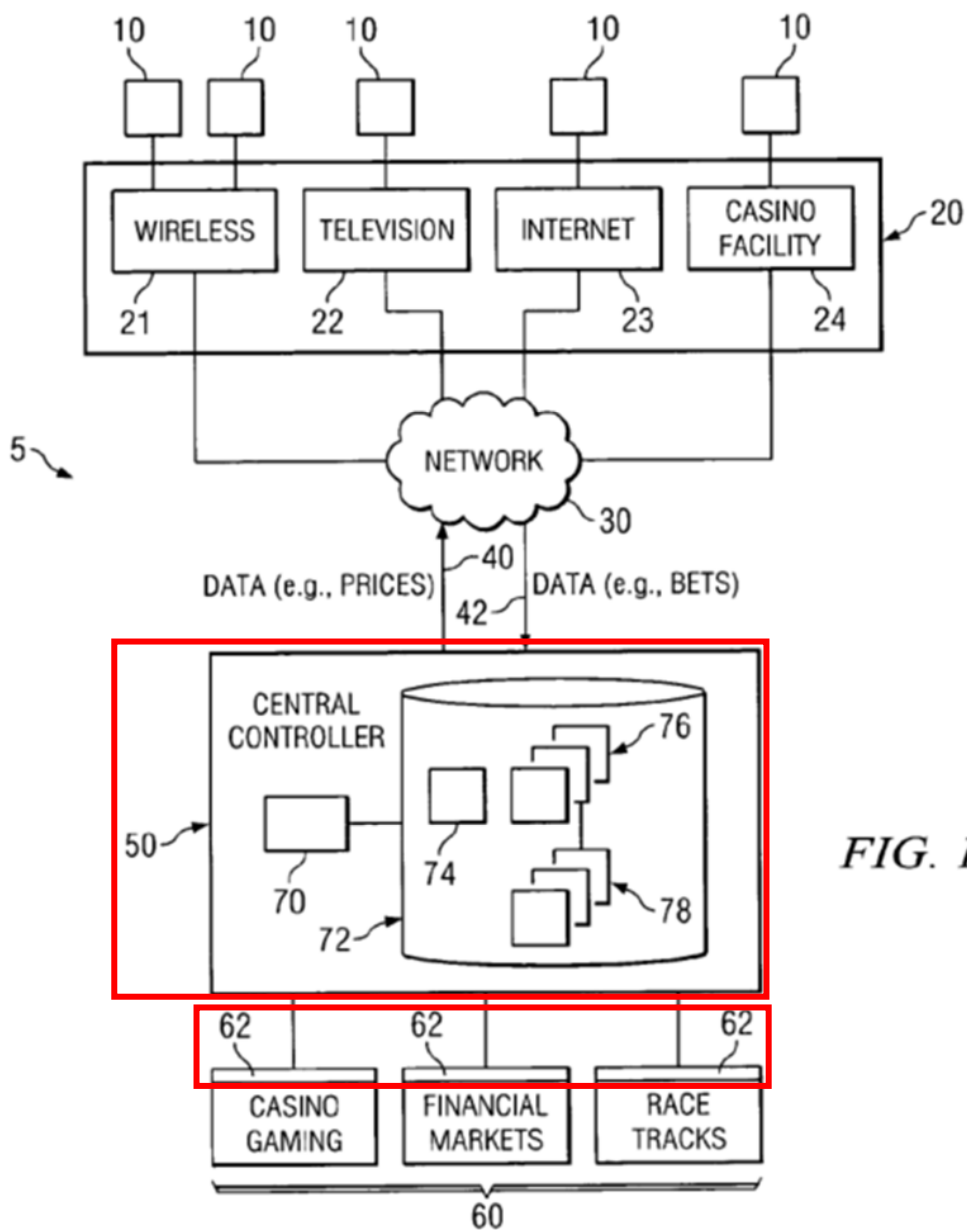


FIG. 1

Asher FIG. 1.

11. Asher discloses that “the house monitors the events underlying financial instrument 76 in order to update regularly the house point based on the outcomes of those events.” *Id.* 9:3-9. Such updated information “may be broadcast to clients 10 of system 5 so that they may be apprised of the changing value of their financial instruments 76, and further to facilitate trading of the instruments 76 between clients 10 based on their changing valuations.” *Id.* 9:9-13.

IV. Substitute Claims 30, 31, 32 and 33 Are Unpatentable

12. In this section, I will explain why Asher anticipates Substitute Claims 30, 31, 32 and 33 of the '822 Patent.

13. I note that in this discussion, I may focus on the particular language in Substitute Claims 30 and 31, but it should be understood that my analysis applies to the corresponding limitations of Substitute Claims 30, 31, 32 and 33 containing identical or substantially identical language.

14. Solely for purposes of rendering my opinion here and to the extent they are not indefinite, I have applied the claim constructions PO sets forth on pages 21-23 of the Motion to Amend in my analysis here.

A. Asher Anticipates Substitute Claims 30, 31, 32 and 33

15. I incorporate by reference my discussion of the overview of the Asher reference above. As discussed below, in my opinion, Asher anticipates Substitute Claims 30-33. *See infra* §§IV.A.1-4.

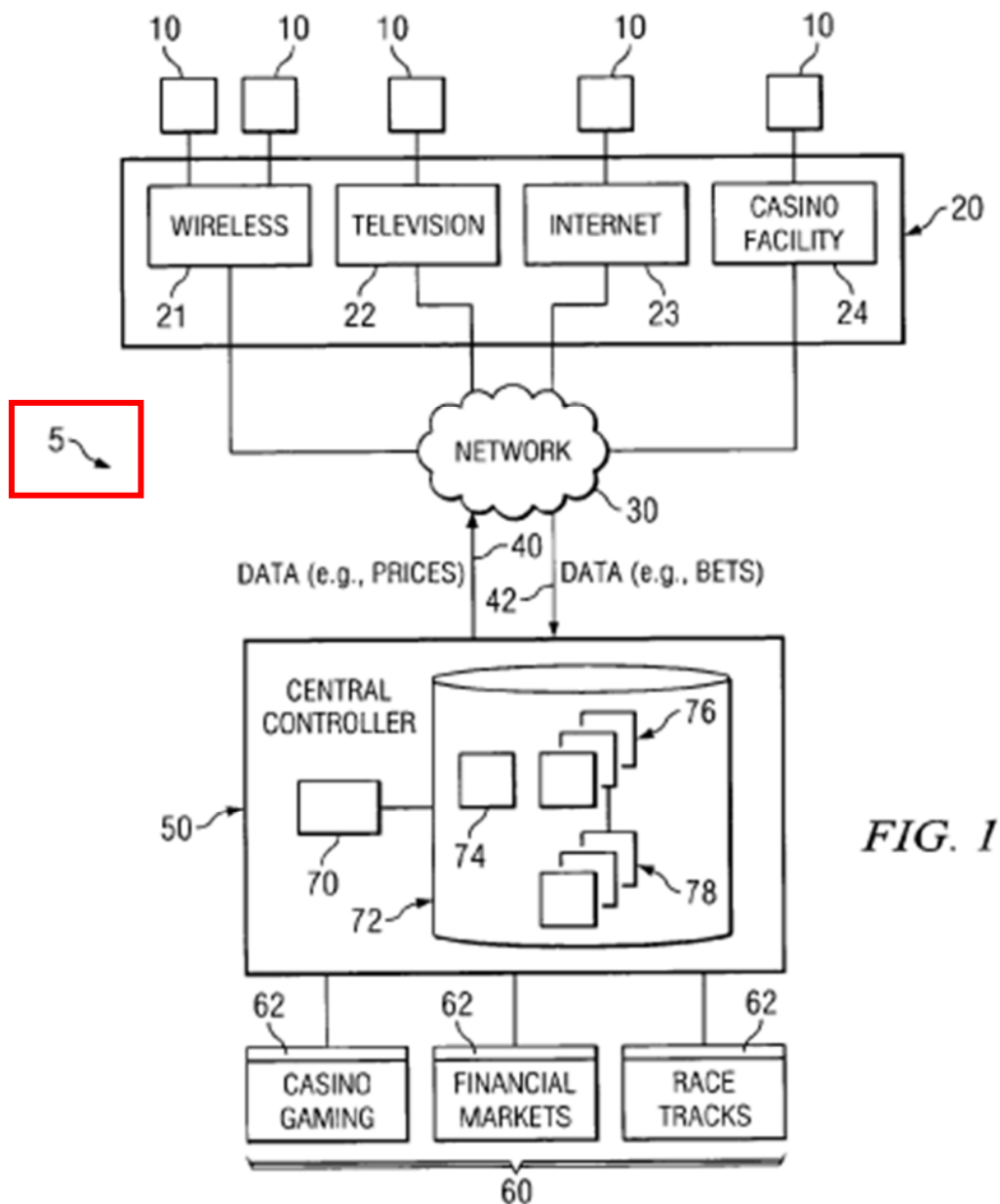
1. Substitute Claim 30

a. 30[a] – “A system for processing a payment for a wager in connection with a wagering event, the system comprising:”

16. Limitation 30[a] is the preamble of Substitute Claim 30. In my opinion, and to the extent the preamble is limiting, Asher discloses limitation 30[a].

17. In my opinion, a POSITA would understand that Asher discloses “[a] system for processing a payment for a wager in connection with a wagering event” because it discloses that a “**system 5** provides for the creation, trading, and settling of **wagering-based financial instruments 76**” where the “**system 5** [] includes clients 10 coupled to a central controller 50 using one or more interfaces 20 and a communication network 30,” and “[a]ny balance due to the client 10 may be **paid** by the house, or conversely, any balance due to the house by the client 10 may be **paid** to the house” via the system 5. Asher 4:47-53, 9:37-39. “Wagering-based financial instruments” depend on outcomes of one or more “**probabilistic events**” including “one-off” and “combination” events like “sports parlay[s]” (*id.* 4:54-5:3) and “may be **bought, sold, exchanged, or otherwise transferred using system 5**” (*id.* 6:50-51).

“Therefore, **system 5** and methods associated therewith may not only be used to establish wagers, but may also be used to **facilitate transactions involving the financial instruments 76 that embody such wagers**, essentially creating a market in those wagers.” *Id.* 6:58-63; *see also id.* 21:11-15 (claim 17) (“the processor further settles the financial instrument by **determining a relation** between a final point count and the price, and by **facilitating transfer of payment from or to a client** based at least in part upon the determined relation”). An exemplary system 5 for “facilitating the exchange of wagering-based transferable financial instruments” in Asher is disclosed, for example, in FIG. 1, depicted below. *Id.* Abstract, 2:25-28.



Asher FIG. 1.

b. 30[b] – “a communications interface;”

18. In my opinion, Asher discloses limitation 30[b]. A POSITA would understand that Asher discloses “a communications interface” because it discloses

“a communication network 30” via which the central controller 50 is configured to communicate with clients 10. Asher 4:47-49, 7:23-40, FIG. 1. **“Communication network 30** may comprise any suitable number and combination of local area networks, wide area networks (e.g., the Internet), wireless networks, or any other type of network that **transfers data between central controller 50 and the various clients 10 of system 5,**” as depicted in FIG. 1 below. *Id.* 7:23-27. The interface between the central controller 50 and the network 30 is a communication interface. *Id.*

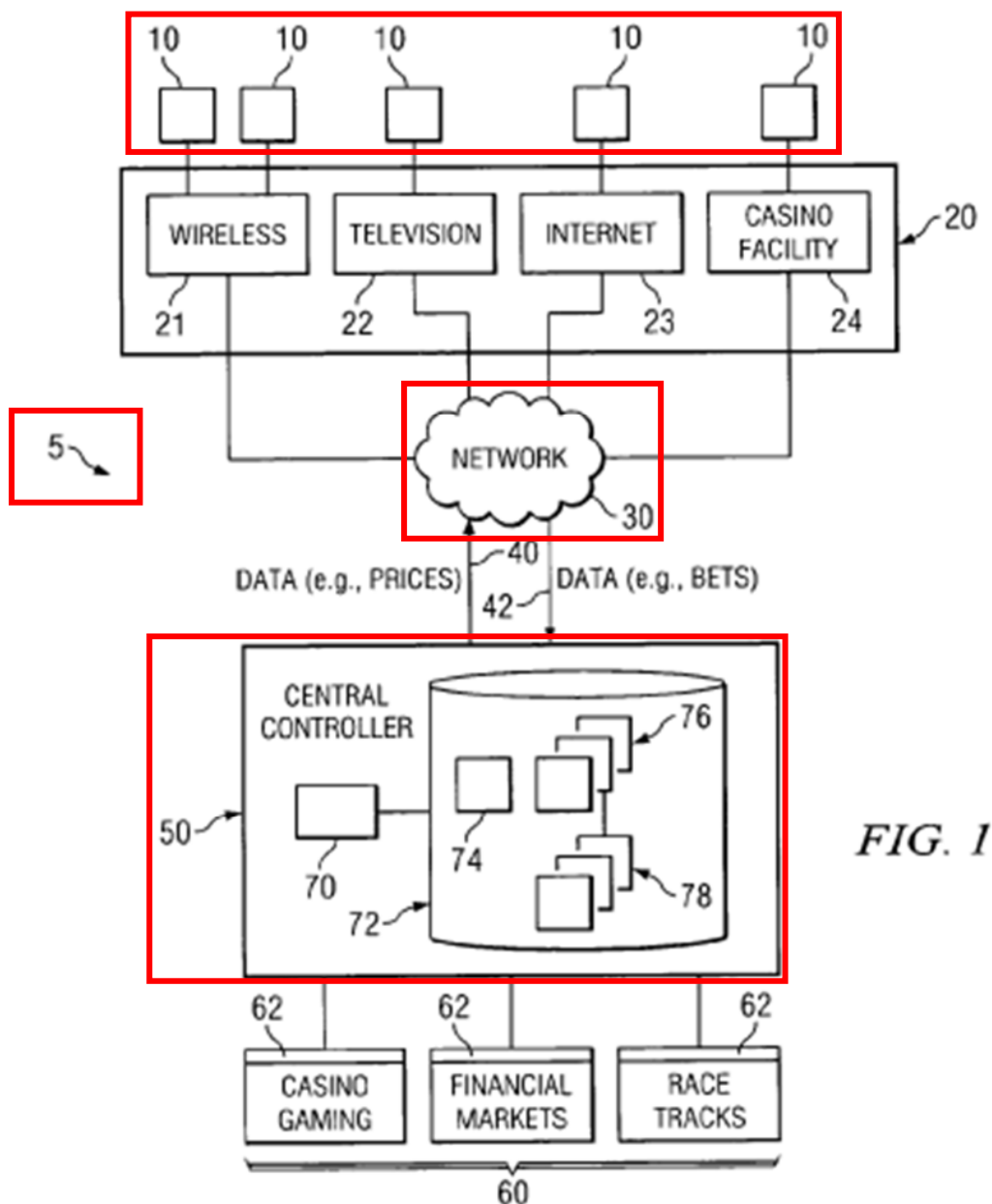


FIG. 1

Asher FIG. 1.

c. 30[c] – “a processor operatively coupled to the communications interface; and”

19. In my opinion, Asher discloses limitation 30[c]. A POSITA would understand that Asher discloses “a processor operatively coupled to the

communications interface” because it discloses that the “[c]entral controller 50 comprises **a processor 70**” where “[t]he **processor** is operable to receive order data from a client regarding a wager ... transmit data regarding the value of the position” via the “**communication network 30.**” Asher 4:3-9, 7:23-44, FIG. 1. For example, Asher’s system 5 includes a processor 70 that is operably coupled to the communication network 30, as depicted in FIG. 1 below. *Id.* 7:23-47.

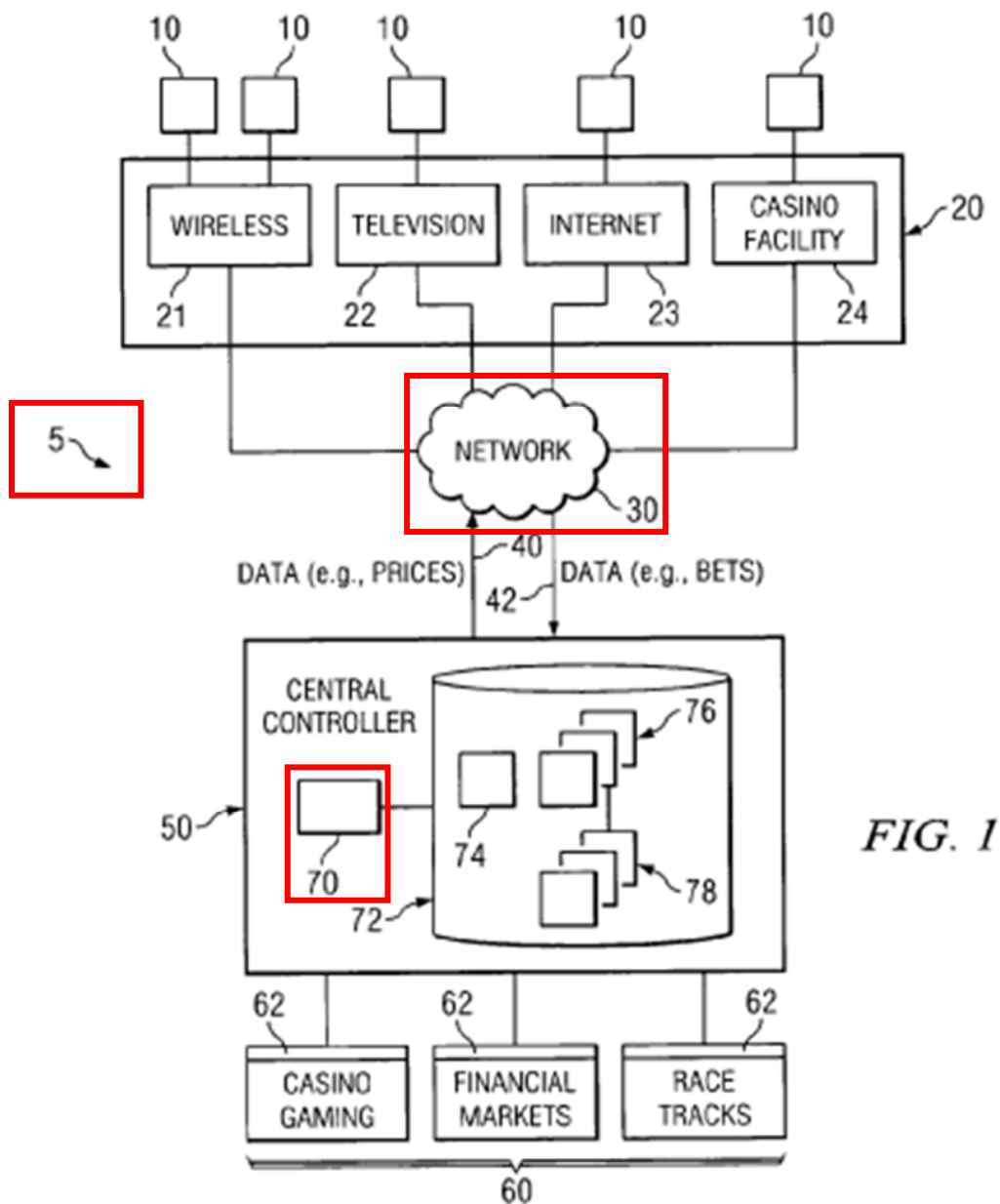
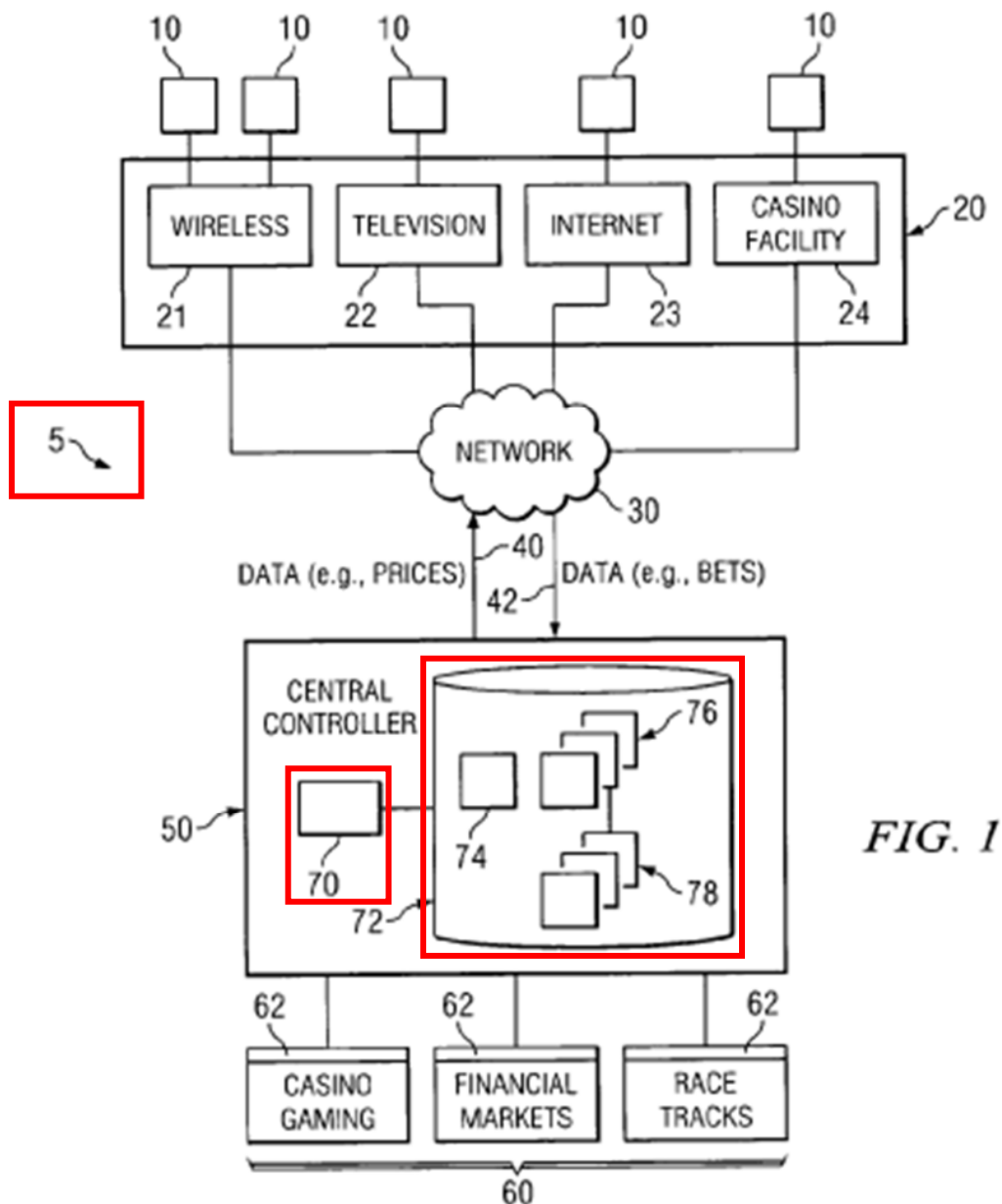


FIG. 1

Asher FIG. 1.

d. 30[d] – “a memory having programming instructions stored thereon, which, when executed by the processor, performs one or more operations, comprising:”

20. In my opinion, Asher discloses limitation 30[d]. A POSITA would understand that Asher discloses “a memory having programming instructions stored thereon, which, when executed by the processor, performs one or more operations” because it discloses that the “[c]entral controller 50 comprises **a processor 70 coupled to a memory 72**” where the “[m]emory 72 stores **software application 74**, various incarnations of financial instruments 76, and information 78 associated with financial instruments 76” and the “[p]rocessor 70 **executes software application 74 to perform various features and functions** for creating, trading, and settling financial instruments 76 described herein.” Asher 7:41-50, FIG. 1. For example, the “**processor 70** of central controller 50 operat[es] **software application 74**” to perform “[s]ome or all of the steps illustrated in flowchart 90” shown in FIG. 3 of Asher. *Id.* 9:46-49. As depicted in FIG. 1 below, Asher’s system 5 includes a memory 72 that is operably coupled to the processor 70. *Id.* 7:41-44.



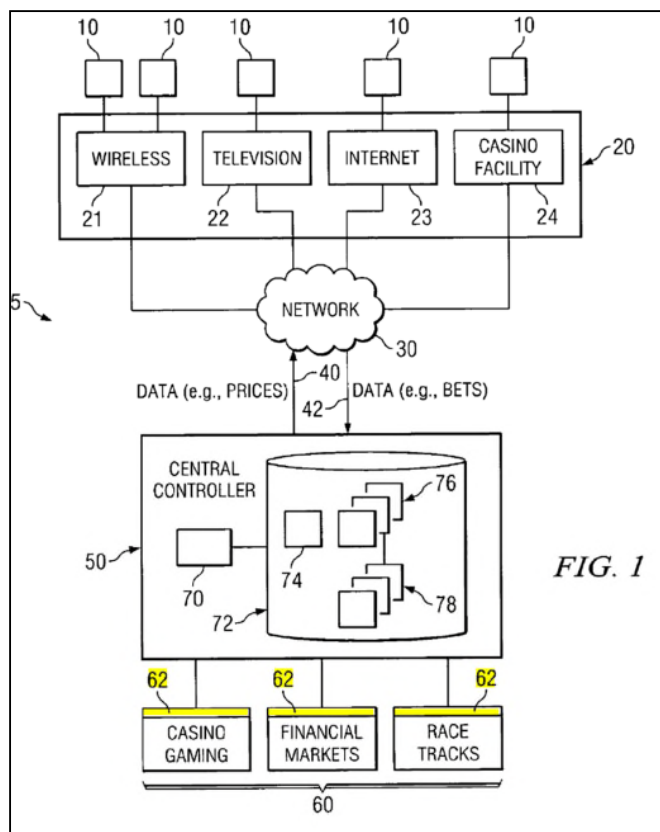
Asher FIG. 1.

e. 30[d-1] – “continuously receiving data in real time related to the wagering event;”

21. In my opinion, Asher discloses limitation 30[d-1]. A POSITA would understand that Asher discloses “**continuously** receiving data **in real time** related to

the wagering event” because it discloses “facilitating a wager on a position with respect to the outcomes of a plurality of events” using a “point” value, wherein “the point may run ***continuously 24-hours a day for unlimited duration***” (Asher 3:52-60, 15:6-10); and “since the point will be changing ***in real time*** ... the display of the point may be ***updated in real time***” (*id.* 14:25-28). Updating the display of the point in real time would require ***continuously receiving*** data in real time related to the underlying wagering event, including casino games, horse races, or sporting events disclosed by Asher. *Id.* 9:50-63. For example, a POSITA would understand that wagers on sporting events were a type of wager that would require continuous reception of data in order to appropriately value. I note that Dr. Vancura has already testified at length about the various considerations in a sporting event that would “affect odds” and thus need to be continuously received as data account for in valuing a sports bet. *See, e.g.*, Ex. 2003 (Vancura Dec.), ¶¶44, 45, 50, 72, 73, 79, 80. A POSITA would understand Asher to also disclose this level of granularity in receiving data and updating the point.

22. Asher discloses “***monitoring interfaces 62***” that facilitate this monitoring and thus “allow central controller 50 to capture information associated with the occurrence of events forming the basis for financial instruments 76,” as depicted in FIG. 1 below. *Id.* 7:56-60.



Asher at FIG. 1. One example “monitoring interface” that Asher discloses is “video surveillance.” *Id.* 8:17-24. Specifically, Asher discloses that gaming machines may be “**recorded via live video** and **the data extrapolated from the video feed** through a variety of manual or automated techniques.” *Id.*, 8:5-8; *see also id.* 8:20-24 (“The prevalence of **video monitoring** in casinos for security purposes, together with **known optical character and shape recognition software**, provides numerous opportunities for the automation of outcome-gathering steps in the present invention.”); *id.* 9:3-6 (“the house **monitors the events** underlying financial instrument 76 in order to **update regularly the house point based on the outcomes**

of those events”). Asher also discloses that gaming machines “may be mated to monitoring equipment, which transmits the outcomes of each pull event to the central controller 50 electronically.” *Id.* 8:8-11. In view of these teachings of Asher, a POSITA would have understood Asher’s monitoring interfaces 62 to continuously receive data related to wagering events. Similarly, Asher’s central controller 50 would also continuously receive data related to the wagering event from Asher’s monitoring interfaces 62. *Id.* 7:56-60.

f. 30[d-2] – “*recalculating, in real time and based on the continuously received data, wager information for the wager,*”

23. In my opinion, Asher discloses limitation 30[d-2]. A POSITA would understand that Asher discloses “*recalculating, in real time and based on the continuously received data, wager information* for the wager” because it discloses that the slot machines may be “*recorded via live video and the data extrapolated from the video feed* through a variety of manual or automated techniques” (Asher 8:5-8); and “the house *monitors the events* under lying financial instrument 76 in order to *update,*” or recalculate, “*regularly the house point based on the outcomes of those events*” (*id.* 9:3-9). “Since *the point* will be *changing in real time* as the slot machines are used by patrons at the one or more locations, *the display of the point* may be *updated in real time*[.]” *Id.* 14:25-28. That is, Asher discloses that

the house monitors the wagering events *e.g.*, by recording live video, and extrapolating data from the video feed, and recalculates the point (*i.e.*, “wager information”).

24. Asher also discloses that “[s]uch [updated] information may be broadcast to clients 10 of system 5 so that they may be apprised of ***the changing value of their financial instruments*** 76, and further to facilitate trading of the instruments 76 between clients 10 based on ***their changing valuations.***” *Id.* 9:9-13

g. 30[d-3] – “continuously evaluating the recalculated wager information to determine an amount of a system cash out offer”

25. In my opinion, Asher discloses limitation 30[d-3]. Asher discloses facilitating the transfer and sale of wager-based “financial instruments” based on a “market” price established with reference to the continuously recalculated “point” value by which ***an offer price*** and a bid price for a particular instrument are matched, and a sale is transacted.” Asher 9:14-19. Asher also discloses that “the house” (*i.e.*, operator of central controller 50) may “tak[e] a full or partial position as the ‘counter-party’ or bank to a player or players” wishing to transfer a “financial instrument.” *Id.* 10:4-7. Asher therefore discloses determining “a system cash out offer” because Asher’s central controller 50 generates both a “house point” that values a financial instrument held by a client and an “offer” price for purchasing the

financial instrument from a client. EX1067, 9:14-19, Claim 1 (“determining a price based [] upon the point count.”). A POSITA would understand that the house’s “offer” price is a “cash out offer” because, *e.g.*, for a financial instrument based on outcomes of multiple events like Asher’s “sports parlay[s],” acceptance of the house offer closes the client’s position in the financial instrument or wager such that the client’s risk of losing a subsequent leg of the parlay is eliminated.

26. “Prices” for financial instruments are determined based on continuous evaluation of recalculated wager information (*i.e.*, the “point”) because Asher discloses that the “value of the financial instrument may be tied directly to the point itself and move in unison, up or down, **with the point**,” which runs “**continuously** 24-hours a day” and is updated in “real time.” Asher 14:33-35, 15:6-8, 17:7-12.

27. For example, Asher discloses that “**the point** may run **continuously 24-hours a day for unlimited duration**” (Asher 3:52-60, 15:6-10); “[t]he house **point** may **increase or decrease** according to the outcome of various underlying events thereby affecting the value of financial instrument 76” (*id.* 9:6-9); “the house monitors the events underlying financial instrument 76 in order to **update regularly the house point** based on the outcomes of those events” (*id.* 9:3-6); such updated information “may be broadcast to clients 10 of system 5 so that they may be apprised of the changing value of their financial instruments 76, and further **to facilitate**

trading of the instruments 76 between clients 10 based on their changing valuations” (*id.* 9:9-13); and “[p]ositions’ may be defined in ... *dollar-value units*” (*id.* 15:38-43). “*The financial instrument* may be *traded, purchased, or sold* during the lifetime of the underlying wager(s)” (*id.* 2:28-29); “*the value [] of an instrument 76* ... is defined, generally, as including principally *the amount* that an interested buyer would pay a willing seller in order to assume control of or an interest in an instrument 76” (*id.* 6:22-30); and “[*d*]etermination of ... *the amount of the payment* may be made according to a relation between the final value of the house point ... and the initial point position, or initial value, established in the financial instrument 76” (*id.* 9:40-45). A POSITA would understand Asher’s disclosure of continuously evaluating an updated point to determine the house’s offer price discloses limitation 30[d-3].

h. 30[e] – “*transmitting, over the communications interface, the amount of the system cash out offer to a first input device,*”

28. In my opinion, Asher discloses limitation 30[e]. A POSITA would understand that Asher discloses communicating, over the “communication network 30,” data such as “*updated values for financial instruments 76*” to the client’s device (*e.g.*, interface 20), as depicted in FIG. 1 below. Asher 7:15-37

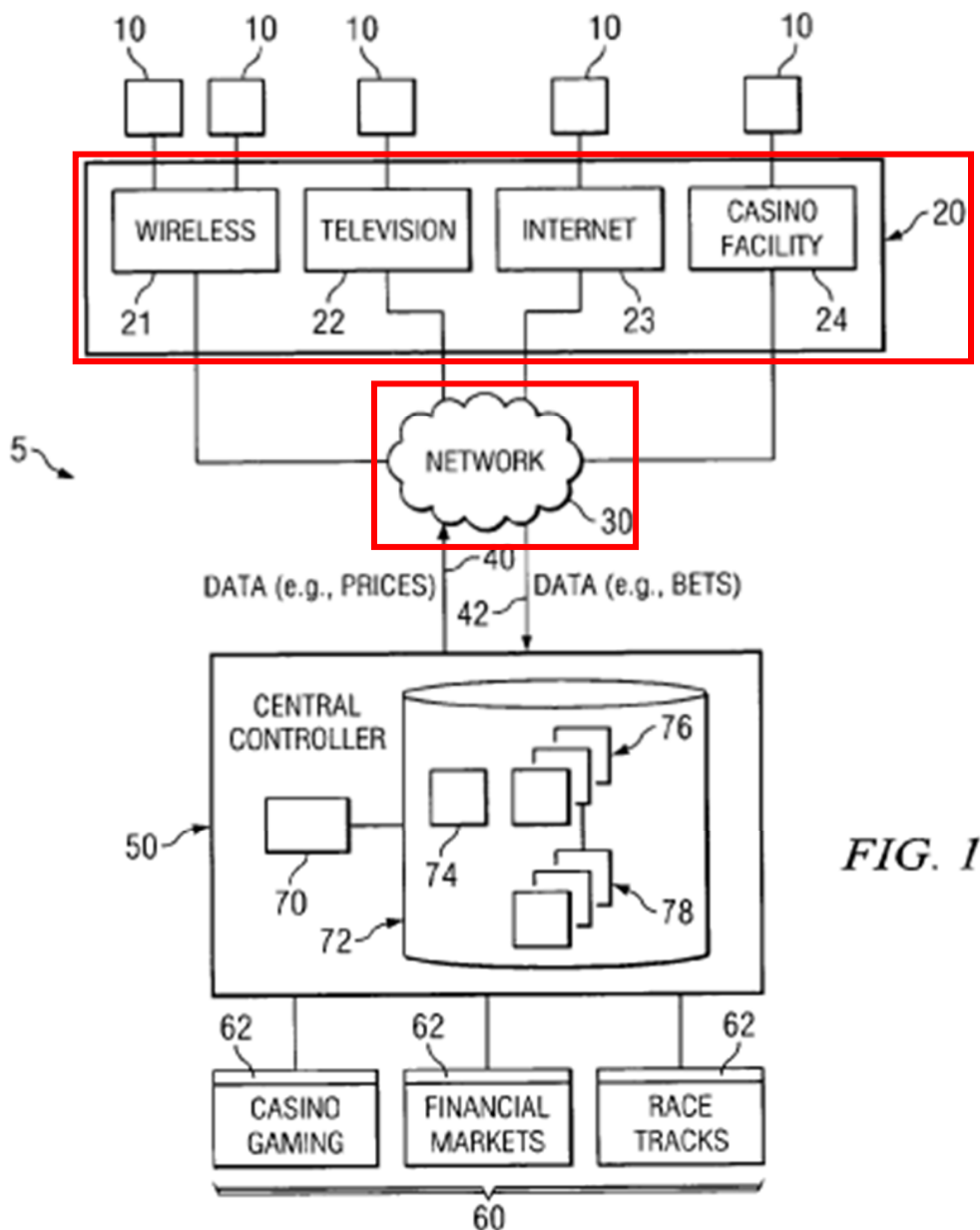


FIG. 1

Asher FIG. 1. Asher also discloses “broadcast[ing] [the updated value] to clients 10 of system 5 so that they may be apprised of the changing value of their financial instruments 76, [] *to facilitate trading of the instruments 76 between clients 10 based on their changing valuations.*” *Id.*, 9:9-13; see also *id.* 7:32-37 (“Data 40

that is ***communicated to clients 10*** may include such information as ***prices for various positions***, updated values for financial instruments 76, total number of wagers, payouts, spreads, over/unders, ranges, ***or any other information associated with financial instruments 76.***”). Asher thus discloses transmitting a system cash out offer to a first input device, at least where the house is the counterparty to a transaction and is disseminating information regarding the house-set value (or house offer price) for a financial instrument to facilitate a transaction (i.e., a cash out of the player’s interest in the wager-based financial instrument) with a player.

- i. 30[f] – “*soliciting, over the communications interface, a solicited cash out offer from a second input device,*”

29. In my opinion, Asher discloses limitation 30[f]. A POSITA would understand that Asher discloses “soliciting, over the communications interface, a solicited cash out offer from a second input device” because it discloses “receiving ***a bid to buy the first financial instrument.***” Asher 20:40, 3:60-63, 9:17-19. A POSITA would understand Asher’s disclosure of receiving a bid to purchase a financial instrument is a cash out offer because it provides the player the opportunity to cash in and avoid the risk of being eliminated at a later leg (EX1001, 35:23-28) of the multi-leg wagering event the financial instrument is based on. For example, for financial instruments covering a “sports parlay” disclosed by Asher, a POSITA would understand a “bid” to be an offer to purchase the financial instrument after

some legs but before conclusion of all legs such that the holder of the financial instrument can sell the instrument to avoid the risk of losing on a later leg of the parlay.

30. Asher discloses that such offers are “solicited” because it discloses broadcasting wager information affecting the value of financial instruments, such as the “point,” in order to “facilitate trading” (*i.e.*, to encourage transacting). *Id.* 9:3-13; *see also id.* 3:60-63 (“**matching a bid and offer** to facilitate the transfer of the financial instruments” among the clients); *id.* 20:65-21:4 (“the at least one **bid** is **associated with a first client**; the at least one **offer** is **associated with a second client**; and the processor further matches the at least one bid with the at least one offer resulting in a transfer of the at least one financial instrument from the first client to the second client”). In fact, a POSITA would understand the solicitation of cash out offers to be a necessary factor and primary goal of Asher’s disclosed “market” for financial instruments because soliciting bids and offers is necessary in order to create liquidity in the market. Such bids (and offers) may be communicated, over the “communication network 30,” over the server’s communication interface. *Id.* 7:15-40, FIG. 1. “The transfer of financial instruments 76 may take place **among clients 10** and **between a client 10 and a house[.]**” *Id.* 6:63-66. Asher therefore discloses limitation 30[f].

- j. 30[g] – “*identifying an acceptance of the solicited cash out offer from the first input device prior to the end of the wagering event,*”

31. In my opinion, Asher discloses limitation 30[g]. A POSITA would understand that Asher discloses “identifying an acceptance of the solicited cash out offer from the first input device prior to the end of the wagering event” because it discloses “the at least one *bid* is *associated with a first client*; the at least one *offer* is *associated with a second client*; and the processor *further matches the at least one bid with the at least one offer resulting in a transfer of the at least one financial instrument from the first client to the second client.*” Asher 20:65-21:4. A POSITA would have understood that “offers” in Asher’s disclosed “market” correspond to an “asking price” that the holder of the financial instrument is willing to accept. When Asher discloses matching bids to offers, it is disclosing identifying acceptance (*i.e.*, Asher’s “offer”) of solicited cash out offers (*i.e.*, Asher’s “bids”). A POSITA would have understood that a transfer of the financial instrument as a result of matching the bid with the offer would entail identifying an acceptance of the offer (or bid) from the client because it signals the instrument-holder’s acceptance.

32. Asher also discloses that “the instrument 76 *may change hands any number of times during its lifetime* and *prior to its eventual settlement.* Clients 10

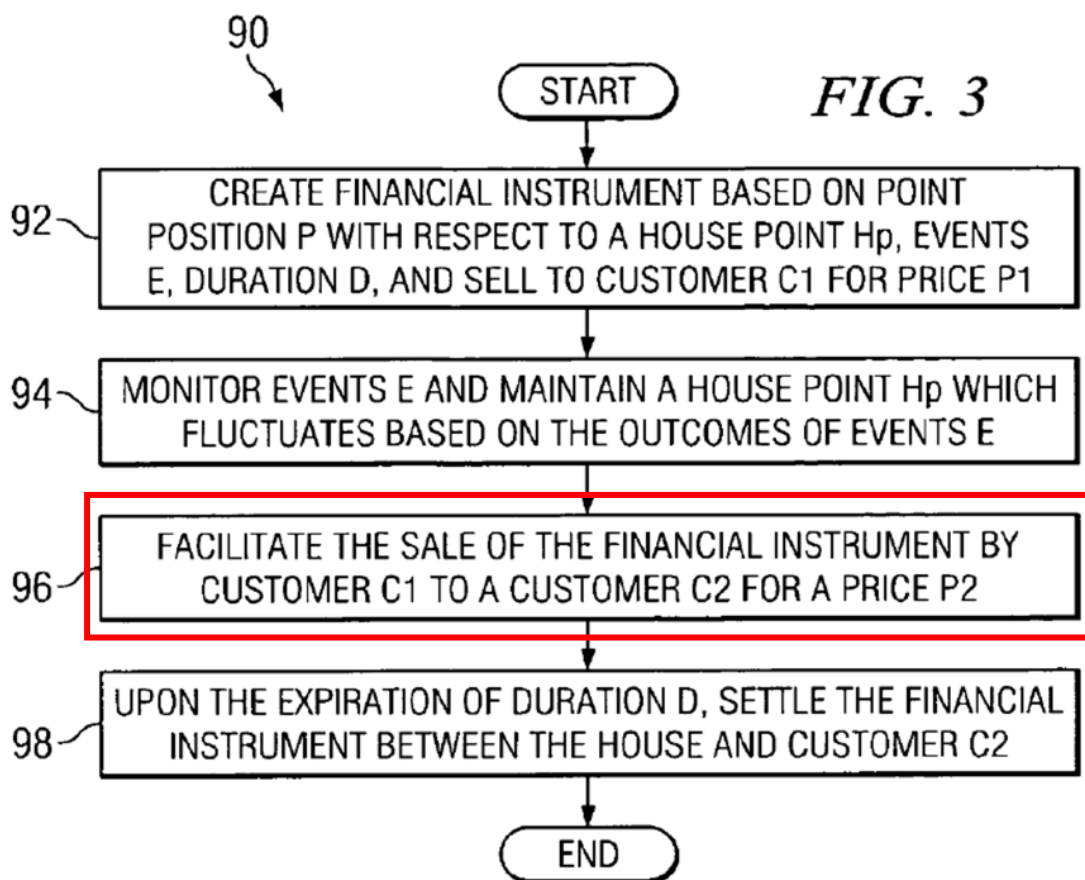
may buy or sell a financial instrument 76 ***at any time***” (i.e., being able to accept the offer any time prior to the end of wagering event). *Id.* 9:19-28. Asher therefore discloses limitation 30[g].

k. 30[h] – “*processing the solicited cash out offer, and*”

33. In my opinion, Asher discloses limitation 30[h]. A POSITA would understand that Asher discloses “processing the solicited cash out offer” because it discloses “the at least one ***bid*** is ***associated with a first client***; the at least one ***offer*** is ***associated with a second client***; and the processor ***further matches the at least one bid with the at least one offer resulting in a transfer of the at least one financial instrument from the first client to the second client.***” Asher 20:65-21:4. A POSITA would have understood that a transfer of the financial instrument as a result of matching the bid with the offer would entail processing the offer (or bid), e.g., “match[ing] the at least one bid with the at least one offer.” *Id.*; see also *id.* 4:13-18 (“at least one bid is matched with at least one offer, resulting in a transfer of the financial instrument from a first owner to a second owner”). The matching of bids to offers and transfer of the financial instrument entails processing the offer. Asher therefore discloses limitation 30[h].

l. 30[i] – “*transmitting, over the communications interface, a value of the solicited cash out offer to the first input device.*”

34. In my opinion, Asher discloses limitation 30[i]. A POSITA would understand that Asher discloses “transmitting, over the communications interface, a value of the solicited cash out offer to the first input device” because it discloses that “[a]t step 96, a sale of the financial instrument 76 from a first client 10 to a second client 10 is facilitated, presumably based on some price.” EX1067, 9:14-16, FIGS. 1, 3. Step 96 of FIG. 3 is highlighted below:



35. As a result of a transaction, “at least one bid [can be] matched with at least one offer, resulting in a transfer of the financial instrument from a first owner

to a second owner.” *Id.* 4:13-18. A POSITA would understand that the “sale” of a financial instrument for a “price” would entail distributing value in the form of payment for the transfer of the instrument from the second input device to the central controller, and from the central controller to the first input device. Asher discloses this because it also discloses that the house can serve as the “bank” in facilitating transactions between parties, and that the central system has access to client “bank account[s], credit card[s], a house line of credit, or some other indicator of the ability to pay in order to interface with system 5.” Asher, 10:5, 36-41 (“At some point during or before the interactions begin, users 10a and 10b will provide a funding source of some sort.”). Asher therefore discloses limitation 30[i].

2. Substitute Claim 31

- a. 31 – *“The system of claim 30, wherein the one or more operations further comprise: adjusting the amount of the system cash out offer.”*

36. In my opinion, Asher discloses limitation 31. A POSITA would understand that Asher discloses “adjusting the amount of the system cash out offer” because it discloses “***update[ing] regularly the house point*** based on the outcomes of [] events” as the “value of the financial instrument,” *i.e.*, the cash out offer, “may be tied directly to the point itself and move in unison [] with the point.” Asher 6:33-37, 7:32-37, 9:3-9, 14:33-35; *see also id.* 6:33-37 (“[t]he value of a financial

instrument 76 may track the outcomes of its underlying events according to a ‘point system’ whereby positive or negative points are assigned to various outcomes of events and the overall point value for the event is updated as the event or events progress.”). That is, a POSITA would have understood that Asher’s disclosure of updating the values of financial instruments according to the continuously changing point corresponds to “adjusting the amount of the system cash out offer” of Substitute Claim 31.

3. Substitute Claims 32 and 33

37. I have reviewed Substitute Claims 32 and 33 and note that they are quite similar to Claims 30 and 31, respectively, except that Claims 32 and 33 replace “cash out offer” with “buy-out offer.” Claims 32 and 33 also recite “***one or more of a solicited buy-out offer or a solicited partial buy-out offer.***” I understand that the terms “buy-out” and “cash out” have the same meaning because 1) Patent Owner has not offered any construction of the term “cash-out” or suggested that it should be interpreted differently from “buy-out;” and 2) the district court recognized that “[t]he patent specification says that a buy-out or ‘cash-out’ . . . are the same thing” (Ex. 1060 at 3). As discussed in § IV.A.1.i. *supra*, Asher discloses both “cash out offer” and “partial cash out offer.” Moreover, I understand that both PO’s and Petitioner’s constructions may be satisfied by “a buy-out offer” without any ***partial***

offer. Thus, it is my opinion that Asher discloses Claims 32-33 for the same reasons set forth above.

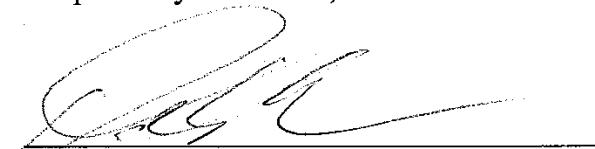
V. Conclusion

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

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

Executed this 10th day of January 2024, in WILMINGTON MD

Respectfully submitted,



Dwight Crevelt