

Petition for *Inter Partes* Review of U.S. Patent No. 11,200,779

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

IPR2023-00268
Attorney Docket No.: 087764.0109

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 11,200,779**

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EXHIBIT LIST

Exhibit No.	Description
Ex.1001	U.S. Patent No. 11,200,779 (“’779 Patent”)
Ex.1002	File History for U.S. Patent ’779 Patent
Ex.1003	File History for U.S. Patent No. 9,117,341
Ex.1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
Ex.1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
Ex.1006	U.S. Patent Application Publication No. 2012/0309489 A1 (“Scott ’489”)
Ex.1007	Declaration of Dwight Crevelt
Ex.1008	<i>Curriculum Vitae</i> of Dwight Crevelt
Ex.1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
Ex.1010	Christiani Huguenii, The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated (printed 1741)
Ex.1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
Ex.1012	Jui-Pin Cheng, <i>The Origin of Probability and The Problem of Points</i> (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
Ex.1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)

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

Exhibit No.	Description
Ex.1026	Mark Davies <i>et al.</i> , <i>Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering</i> , 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005)
Ex.1027	U.S. Patent No. 7,909,694 (“Schugar ’694”)
Ex.1028	Betfair Trading Software, <i>About Bet Angel Software</i> (via The Wayback Machine dated Dec. 26, 2007)
Ex.1029	Green All Over Blog (Dec. 7, 2008)
Ex.1030	Dan Thomas, <i>Betfair’s ‘Cash Out’ Trading Tool Used for the Millionth Time</i> , BETTFAIR (Sept. 13, 2011)
Ex.1031	Betfair Financial Statement (Jun. 29, 2011)
Ex.1032	Dan Thomas, <i>Cash Out Comes to Betfair Mobile</i> , Betfair (Dec. 19, 2011)
Ex.1033	Michael Taylor, <i>Cash In My Bet with William Hill</i> , WILLIAMHILL.COM (Dec. 18, 2012)
Ex.1034	Tal Grant <i>et al.</i> , <i>UK Gaming</i> , Credit Suisse (Aug. 14, 2017)
Ex.1035	James Conrey McMath, <i>Speculation and Gambling in Options, Futures and Stocks in Illinois</i> (Hawkins & Loomis 1921)
Ex.1036	LeRoy Gross, <i>The Conservative Investor’s Guide to Trading Options</i> (Wiley 1999)
Ex.1037	Stuart Banner, <i>Speculation: A History of the Fine Line Between Gambling and Investing</i> (Oxford University Press 2017)
Ex.1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)
Ex.1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov’t Printing Office 1952)
Ex.1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)

Exhibit No.	Description
Ex.1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)
Ex.1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
Ex.1043	Betfair Community, <i>Football Forum</i> (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader
Ex.1044	Betfair Community, <i>Golf Forum</i> at 1 (Apr. 9, 2010), https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53
Ex.1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
Ex.1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
Ex.1047	U.S. Patent Application Publication No. 2001/0136566 A1 (“Acres”)
Ex.1048	Exhibit 338.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1049	Exhibit 341.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1050	Exhibit 439.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1051	Exhibit 516.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1052	Exhibit 716.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1053	Exhibit 779.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1054	Exhibit 822.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

Exhibit No.	Description
Ex.1055	Exhibit 969.A to Plaintiffs' Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
EX.1056	Exhibit 779.A to Plaintiffs' First Supplemental Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

I. INTRODUCTION

Petitioner requests review of Claims 1-3, 5-10, 16-18, 21-25 (the “Challenged Claims”) of U.S. Patent No. 11,200,779 (the “’779 Patent”). The Challenged Claims are directed to a known system for conducting a wagering event using continuous and real-time computer operations, wherein a player is offered the option of fully or partially “cashing out” a wager before the wagering event ends. Although the Challenged Claims recite other limitations, the ’779 Patent holds out the “cash out” functionality as the “most critical[]” aspect of the system. EX[1001] 9:20-21. But the concept of such a “cash out” is as old as the theory of probability itself, while its use in betting platforms began at least two decades ago. *See* EX[1007] ¶¶30-39.

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

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

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

No other parties exercised or could have exercised control over this Petition; no other parties funded or directed this Petition. *See* Office Patent Trial Practice

Guide, 77 FED. REG. 48759, 48759-60.

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

Patent Owner has asserted the '779 Patent against Petitioner in a co-pending litigation, *Diogenes Limited et al. v. DraftKings Inc.*, Case No. 1-21-cv-01695, District of Delaware.

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

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

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

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

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Jamie.Lynn@BakerBotts.com;	Tommy.Martin@bakerbotts.com;
Brad.Bowling@bakerbotts.com;	Andrew.Wilson@BakerBotts.com;
and	
DLDraftKingsvDiogenes@BakerBotts.com.	

III. CLAIM LISTING

A. Claim 1

1[a]	A system comprising:
1[b]	a processor operatively coupled to a memory configured to store computer-readable instructions that, when executed by the processor, cause the processor to:
1[c]	receive, by a trading engine module of a system controller, a wager on a wagering event from one or more input devices via a communications interface, the wager input via a user interface of the one or more input devices;
1[d]	store, by the system controller, the wager in a record within a database, the record comprising wager information for one or more wagers associated with one or more participants;
1[e]	continuously retrieve, by the system controller, data in real time related to a progress of the wagering event;
1[f]	recalculate, by the system controller, the wager information in real time based on the continuously retrieved data;
1[g]	continuously evaluate, by the system controller, the recalculated wager information;
1[h]	determine, by the system controller, that a participant of the one or more participants is eligible to win an award based on one or more of the wager and a potential outcome of the wagering event,
1[i]	generate, by the system controller, an option in real time for the participant to one or more of fully cash out of the wager or partially cash out of the wager prior to a conclusion of the wagering event for at least a portion of the award;
1[j]	cause, by the system controller, the option to be presented to the participant via the user interface of the one or more input devices;
1[k]	receive, by the system controller, a selection of the option for the participant from the one or more input devices prior to conclusion of

	the wagering event; and
1[i]	cause, by the trading engine module, the at least the portion of the award to be presented to the participant, such that the user interface displays one or more of a confirmation that the option has been selected and a value of the at least the portion of the award.

B. Claim 2

2	The system of claim 1, wherein the communications interface comprises one or more of: the Internet, an intranet, an extranet, a cellular network, a wired or wireless network, a networked communication system, a cloud-based system, an autonomic system, a client-server based system, a grid based system, a mainframe based system, a utility based system, a peer-to-peer based system, a cloud gaming based system, and a computer network.
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C. Claim 3

3	The system of claim 1, wherein the wagering event comprises one or more of an entire event, a partial event, a divisible component of an event, multiple independent events occurring sequentially or concurrently, and a compilation of related events, including one or more probabilistic events, sporting events, eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, fantasy games, slot machines, keno, poker, video games, racing, lotteries, live events, pre-recorded events, online events, broadcast events, card games, politics, sales, stocks, celebrity gossip, movies, reality TV, football (“soccer”), American football, Australian rules football, baseball, cricket, basketball, golf, hockey, auto racing, legends, rugby, wrestling, surfing, mixed and martial arts.
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D. Claim 5

5	The system of claim 1, wherein the wager comprises one or more of an accumulator, parlay, fixed odds single or fixed odds multiple wager comprising one or more combinations, wherein the one or more combinations are selectable by at least one of a participant, a third party, and the system controller, and wherein at any time before
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	completion of the wagering event, at least one further offer is initiated to any number of the one or more participants remaining eligible to win the at least one award.”
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E. Claim 6

6	The system of claim 1, wherein the award comprises one or more of a credit, a ticket, an electronic notice that is redeemable by the participant, a funding of an account of the participant, monetary awards, a designated monetary amount, a percentage of the designated monetary amount, nonmonetary awards, a prize, a payment, a designated currency, virtual currency, tokens, coupons, services, personal property, real property, virtual property, assets, investments, negotiable instruments, commodities, food, lodging, entertainment, alleviation of obligations, gaming opportunities and wager enhancement.
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F. Claim 7

7	The system of claim 1, wherein the wager comprises one or more of fixed odds single wagers, multiple wagers, full cover wagers, full cover wagers with singles, ‘Any to Come’ (ATC) or ‘if cash’ wagers, specialty wagers, forecasts, fixed, variable, guaranteed, parimutuel wagering, tote wagering, fixed-odds wagering, accumulator or parlay wagering, fixed odds, a pool, progressive, fixed pool, variable pool or guaranteed pool.
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G. Claim 8

8[a]	The system of claim 1, wherein the computer readable instructions, when executed by the processor, further cause the processor to one or more of:
8[b]	upon receiving the selection of the option, one or more of by the system controller:
8[c]	the participant to continue to participate in the wagering event with at least a portion of the wager, generate a new wager for the participant, relinquish rights of the participant in at least a portion of the wager,

	and one or more of transfer, sell or put out for bid or auction at least a portion of one or more of an entitlement, right, or ownership of the participant in at least a portion of the wager to a third party or another participant.
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H. Claim 9

9	The system of claim 1, wherein an amount of the award is variable and based on one or more of a calculated probability, an originator of the wager, a negotiation, a bidding process, an auction, the one or more participants, and a third party.
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I. Claim 10

10[a]	The system of claim 1, wherein the one or more input devices comprise one or more of:
10[b]	a wagering station, a wagering terminal, a hand held device, a mobile device, a wireless device, a computing system, a smart phone, a telephone, a tablet or desktop computer, a PDA, an interactive television, an internet connected device, and a cashier system.

J. Claim 16

16[a]	A system for conducting a wagering event among one or more participants in real time, the system comprising:
16[b]	a system controller comprising a trading engine module;
16[c]	a database;
16[d]	a plurality of input devices each having a user interface; and
16[e]	a communications interface for facilitating communications between the system controller and the plurality of input devices;
16[f]	the system controller configured to:
16[g]	receive, by the trading engine module, a plurality of wagers on the wagering event from the plurality of input devices via the

	communications interface, the plurality of wagers input by a plurality of participants via the user interfaces of respective input devices from the plurality of input devices
16[h]	store the plurality of wagers in a record within the database, the record comprising wager information for the plurality of wagers associated with the plurality of participants
16[i]	continuously retrieve data in real time related to a progress of the wagering event
16[j]	recalculate the wager information in real time based on the continuously retrieved data
16[k]	continuously evaluate the recalculated wager information,
16[l]	determine that one or more participants of the plurality of participants is eligible to win an award based on their respective one or more wagers and a potential outcome of the wagering event
16[m]	generate one or more options in real time for the one or more participants to cash out prior to a conclusion of the wagering event for at least a portion of the award
16[n]	cause the one or more options to be presented to the one or more participants via the user interfaces of the respective one or more input devices
16[o]	receive a selection of an option from the one or more options for a participant from at least one input device from the one or more input devices prior to conclusion of the wagering event, and
16[p]	cause the at least the portion of the award to be presented to the a least one participant, such that the user interface displays one or more of a confirmation that the option has been selected and a value of the at least the portion of the award.

K. Claim 17

17	The system of claim 16, wherein the communications interface comprises one or more of: the Internet, an intranet, an extranet, a
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	cellular network, a wired or wireless network, a networked communication system, a cloud-based system, an autonomic system, a client-server based system, a grid based system, a mainframe based system, a utility based system, a peer-to-peer based system, a cloud gaming based system, and a computer network.
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L. Claim 18

18	The system of claim 16, wherein the wagering event comprises one or more of an entire event, a partial event, a divisible component of an event, multiple independent events occurring sequentially or concurrently, and a compilation of related events, including one or more probabilistic events, sporting events, eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, fantasy games, slot machines, keno, poker, video games, racing, lotteries, live events, pre-recorded events, online events, broadcast events, card games, politics, sales, stocks, celebrity gossip, movies, reality TV, football (“soccer”), American football, Australian rules football, baseball, cricket, basketball, golf, hockey, auto racing, legends, rugby, wrestling, surfing, mixed and martial arts.
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M. Claim 21

21	The system of claim 16, wherein an amount of the award is variable and based on one or more of a calculated probability, an originator of the wager, a negotiation, a bidding process, an auction, the plurality of participants, and a third party.
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N. Claim 22

22	The system of claim 16, wherein the award comprises one or more of a credit, a ticket, an electronic notice that is redeemable by the participant, a funding of an account of the participant, monetary awards, a designated monetary amount, a percentage of the designated monetary amount, nonmonetary awards, a prize, a payment, a designated currency, virtual currency, tokens, coupons, services, personal property, real property, virtual property, assets, investments, negotiable instruments, commodities, food, lodging, entertainment,
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	alleviation of obligations, gaming opportunities, and wager enhancement.
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O. Claim 23

23	The system of claim 16, wherein the plurality of wagers comprise one or more of fixed odds single wagers, multiple wagers, full cover wagers, full cover wagers with singles, 'Any to Come' (ATC) or 'if cash' wagers, specialty wagers, forecasts, fixed, variable, guaranteed, parimutuel wagering, tote wagering, fixed-odds wagering, accumulator or parlay wagering, fixed odds, a pool, progressive, fixed pool, variable pool or guaranteed pool.
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P. Claim 24

24[a]	The system of claim 16, wherein the system controller is further configured to:
24[b]	upon receiving the selection of the option, one or more of terminate the participant's participation in the wagering event, allow the participant to continue to participate in the wagering event with at least a portion of the wager, generate a new wager for the participant, relinquish rights of the participant in at least a portion of the wager, and one or more of transfer, sell, or put out for bid or auction at least a portion of one or more of an entitlement, right, or ownership of the participant in at least a portion of the wager to a third party or another participant.

Q. Claim 25

25[a]	The system of claim 16, wherein the plurality of input devices comprise one or more of:
25[b]	a wagering station, a wagering terminal, a hand held device, a mobile device, a wireless device, a computing system, a smart phone, a telephone, a tablet or desktop computer, a PDA, an interactive television, an internet connected device, and a cashier system.

IV. REQUIREMENTS UNDER 37 C.F.R. 42.104

A. Grounds for Standing

Petitioner certifies that the '779 Patent is eligible for *inter partes* review and that Petitioner meets the eligibility requirements set forth in 37 C.F.R. 42.104.

B. Identification of Challenge and Statement of Precise Relief Requested

Ground	'779 Patent Claims	Basis for Challenge
1	1-3, 5-10, 16-18, 21-25	Anticipated by Scott
2	1-3, 5-10, 16-18, 21-25	Obvious over Scott in view of the general knowledge of a POSITA

V. THE '779 PATENT

The '779 Patent is directed to the well-known concept of offering players a cash out, “‘buy-out’ or opportunity to sell their tickets (in whole or alternatively ... in part (i.e., a fractional amount)” prior to the completion of a wagering event (*i.e.*, the Problem of Points). EX[1001] 35:42-57; *see also* EX[1007] ¶¶30-35. The '779 Patent explains that such a “buy-out” may be performed by selling a player’s stake “to a third party (e.g., ... one or more other persons, other player(s), etc.),” just as was done in the early 2000s via betting exchanges. EX[1001] 35:55-57; *see also* EX[1007] ¶¶38-39. The '779 Patent also contemplates performing a “buy-out” by selling a player’s stake “to the game operator.” EX[1001] 35:53-54. This also was well-known at the time. *See* EX[1007] ¶¶42-43; *see also infra* §VIII.

A. Embodiments of the '779 Patent¹

The '779 Patent purports to cover the concept of cashing out in “any event where betting may be utilized or event scenarios where play is just for fun” in virtually any known system that includes “a system controller” and one or more “wagering input devices.” *Id.* 3:67-4:2, 5:5-13.

The “system controller,” for example, “should be broadly construed to comprise any hardware device or devices that includes at least one central processing unit (CPU) or other processing device and associated memory.” *Id.* 5:16-20. This generic “system controller” is described as “most critically” including a “Cash-In 422 program.” *Id.* 9:20-21. That program is “responsible for determining when an offer to buy-out a ticket holder will be made, and the price that will be offered,” and includes an “engine” that will “generate a set of offers over all of the tickets that are still potential winners and then publish the offers and receive/process the acceptances of these offers.” *Id.* 9:23-31. Generalizing the purportedly “most critical” functionality of the system, the '779 Patent states that the functions for determining “the value or price” of any cash out offers and acceptances “as well as the form in which they are made, should be broadly construed.” *Id.* 32:16-19.

¹ Nothing herein is an admission that the '779 Patent adequately describes or enables any claim.

The wagering input devices, such as wager stations, wagering terminals, and gaming machines may be “conventional wager terminal[s]” that are “known in the art.” *Id.* 6:8-13; *see also id.* 12:7-10, 12:38-40, 26:16-18. For example, the ’779 Patent states that its disclosure can be implemented in the “gaming machines...disclosed in detail in U.S. Patent No. 8,105,149,” which is the issued patent resulting from the DeWaal publication attached hereto as EX[1004].

Regarding system functionality other than the cash out feature, including “wagering software functionality such as registration, deposit tracking, withdrawals, account sections that may include current and previous bet histories, fixtures, results, historical data, rules and regulations,” the ’779 Patent recognizes that “[t]hese types of software programs having these functionalities are in place in various totalizer facilities and are thus known in the art.” *Id.* 8:19-26; *see also id.* 8:29-32

B. Priority Claims

The ’779 Patent was filed as U.S. Application No. 17/344,313 on June 10, 2021 and claims priority through a series of continuation and continuation-in-part applications to U.S. Application No. 13/605,813 filed September 6, 2012. EX[1001] (21)-(22), (63).

C. Prosecution History

The application leading to the ’779 Patent issued without any prior art rejections. EX[1002] 29-34, 62-66.

VI. LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art (“POSITA”) would be a person with a bachelor’s degree in electrical engineering, computer science, or a similar field; and at least two years of experience in the wager based gaming industry. EX[1007] ¶28. A person with less education but more relevant practical experience may also meet this standard. *Id.*

VII. CLAIM CONSTRUCTION

No terms of the ’779 Patent Challenged Claims require construction beyond their plain and ordinary meaning. EX[1007] ¶¶54-55.

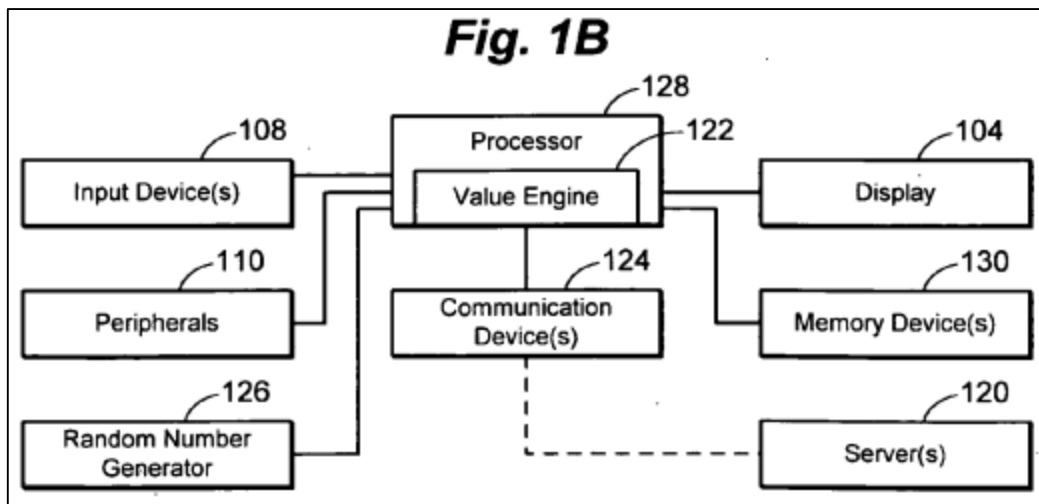
VIII. SUMMARY OF PRIOR ART – SCOTT (EX[1006])

U.S. Patent Publication No. 2012/0309489 A1 to inventor James R. Scott (hereinafter, “Scott”), is titled “Value Engine Providing Current Cash Value for Wagering Game Indicia,” and was published on December 6, 2012. EX[1006] (10), (43), (54), (76). The application leading to Scott, U.S. Patent Application No. 13/134,299 was filed June 3, 2011, roughly fifteen months prior to the assumed priority date of the ’779 Patent. *Id.* (21)-(22). Scott therefore qualifies as prior art at least under 35 U.S.C. §§102(a) and (e).

Scott is analogous prior art because it, like the ’779 Patent, is directed to “electronic wagering games and systems, particularly to a gaming machine

configured to provide **value for partial or incomplete game outcomes.**² *Id.* ¶[0002]. In one embodiment, such a game comprises “accepting a wager at the gaming machine, presenting one or more game symbols that do not form a winning outcome on a display of the gaming machine, and **presenting a cash value for the game symbols to the player before the game has ended.**” *Id.* ¶[0019].

Scott discloses one or more “gaming machines,” “one or more controllers or processors for controlling the gaming machine,” “gaming servers,” and a “value engine.” *Id.* ¶¶[0008]-[0010], [0040]-[0043], [0048], [0055]. An architecture of Scott’s system is shown in FIG. 1B below.



Scott discloses “[a] **value engine for determining and presenting current cash value of a player’s cards, symbols, or other game indicia.**” *Id.* ¶[0008]. The “value engine provides a current cash value for non-final sets of symbols or hands,”

² Emphasis throughout is added unless otherwise indicated.

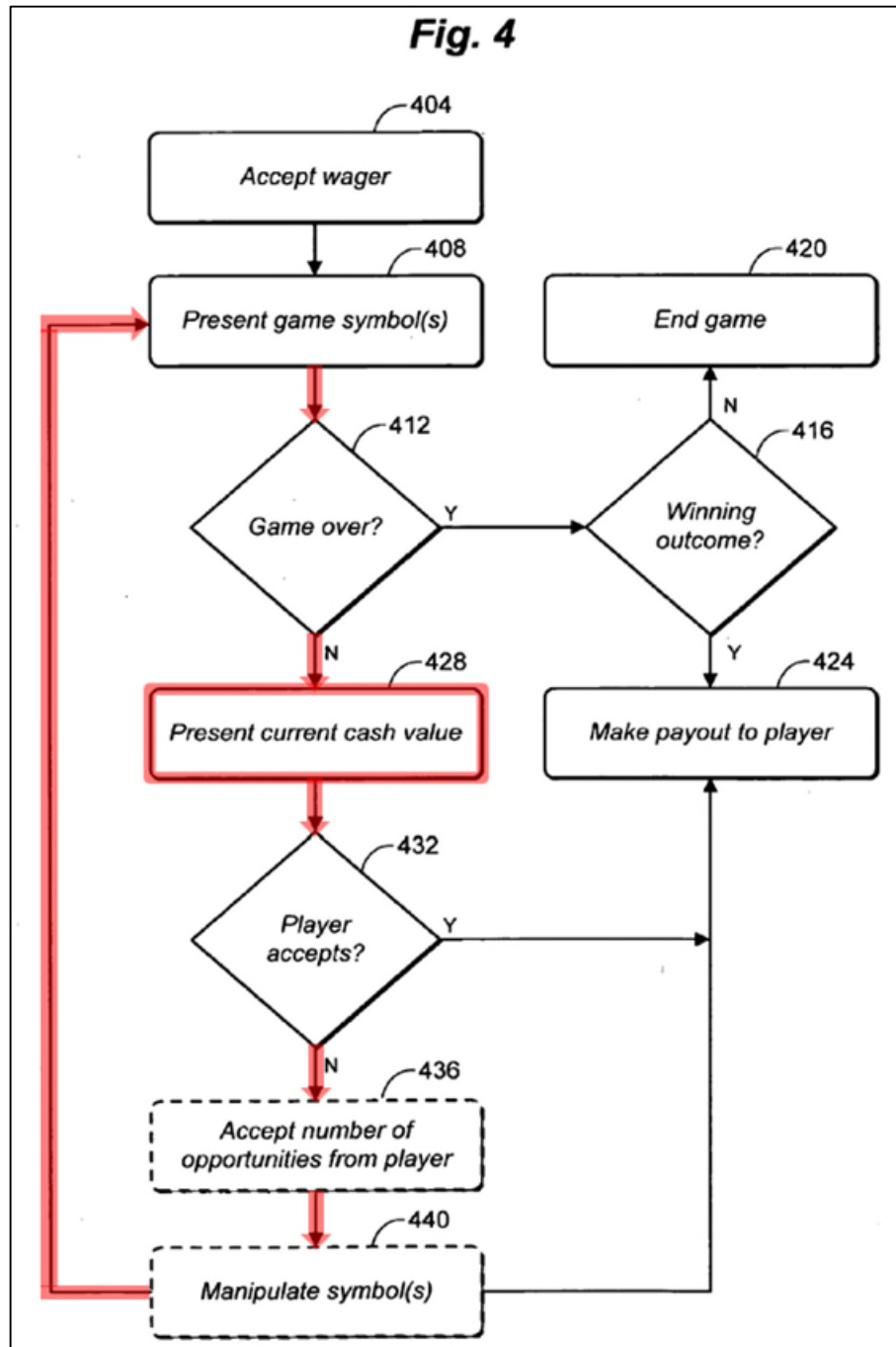
and presents the player with **“an option to take the current cash value or continue play[ing] to achieve a winning outcome.”** *Id.*

The “value engine” and “current cash value” option of Scott provide several advantages and benefits. *See, e.g., Id.* ¶¶[0035] (“**The value engine is advantageous.**”), [0038] (“**This gives players a sense of control which makes the game challenging and more entertaining.**”), [0039] (“**attract new players**”), [0067] (“**may be engaging to players.**”).

Scott’s “FIG. 4 provides a high level illustration of the operation of the **value engine that may be used with a variety of wagering games**, such as slot type games, poker type games, keno games, bingo games, or other games.” *Id.* ¶[0070]. As shown below, once the wager is accepted, the operation of value engine and game enters a loop that continues until it is determined that the game is over at step 412 or until it is determined that the player has accepted the current cash value at step 432. *See, e.g., id.* ¶[0081] (“**the process of presenting current cash value for a player’s game symbols may continue with newly presented game symbols until the game is over** at decision step 412 or until the player accepts a current cash value for his or her set of symbols at decision step 432.”).³ This continuous loop is shown in the

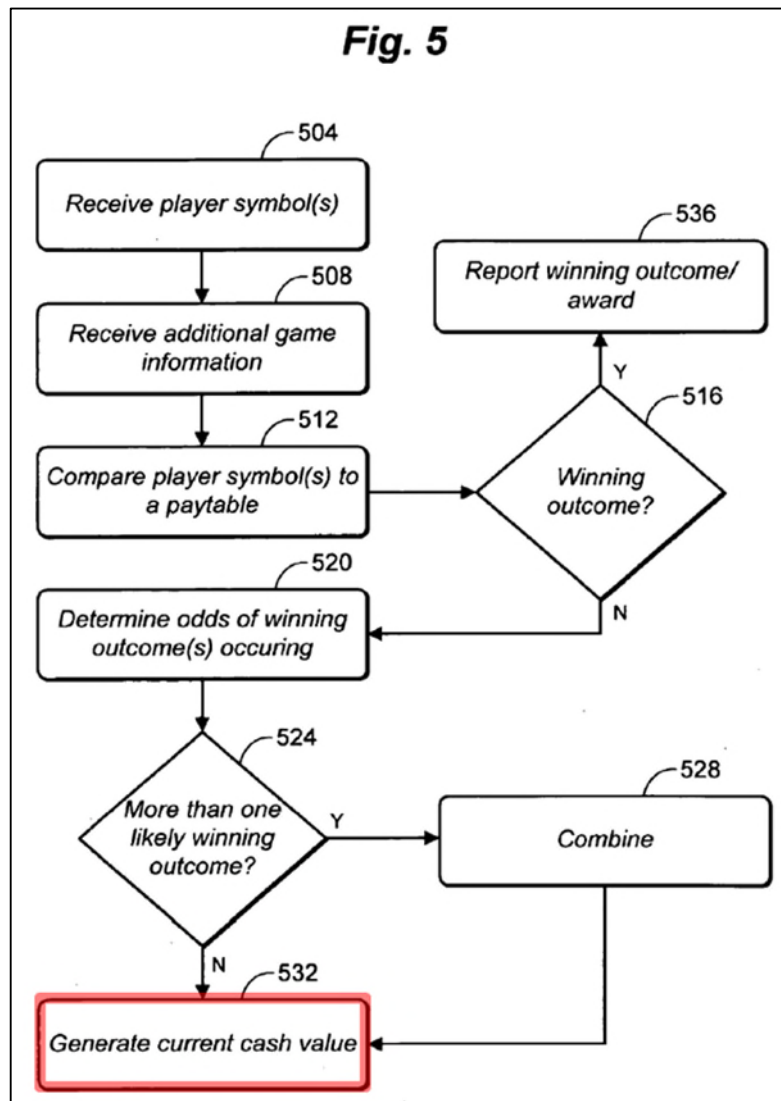
³ Steps 436 and 440 are optional steps that are not relied on herein as part of the analysis. *See, e.g., id.* ¶¶[0079]-[0080].

annotated version of FIG. 4 below.



The continuously looped process includes step 428, at which “a current cash value for the player's current game symbols may be generated and presented by the value engine of the gaming machine.” *Id.* ¶[0073]. Scott discloses that the

continuously looped step 428 for generating a current cash value itself utilizes a sub-process. In this regard, Scott discloses that “FIG. 5 is a flow diagram illustrating how current cash value may be determined by an exemplary value engine.” *Id.* ¶[0082]. As an initial matter, Scott discloses that this sub-process for generating a current cash value “**may occur in real time or in substantially real time.**” *Id.* ¶[0067]. The real time and continuously looped process for generating the current cash value is shown below.



IX. GROUNDS OF UNPATENTABILITY

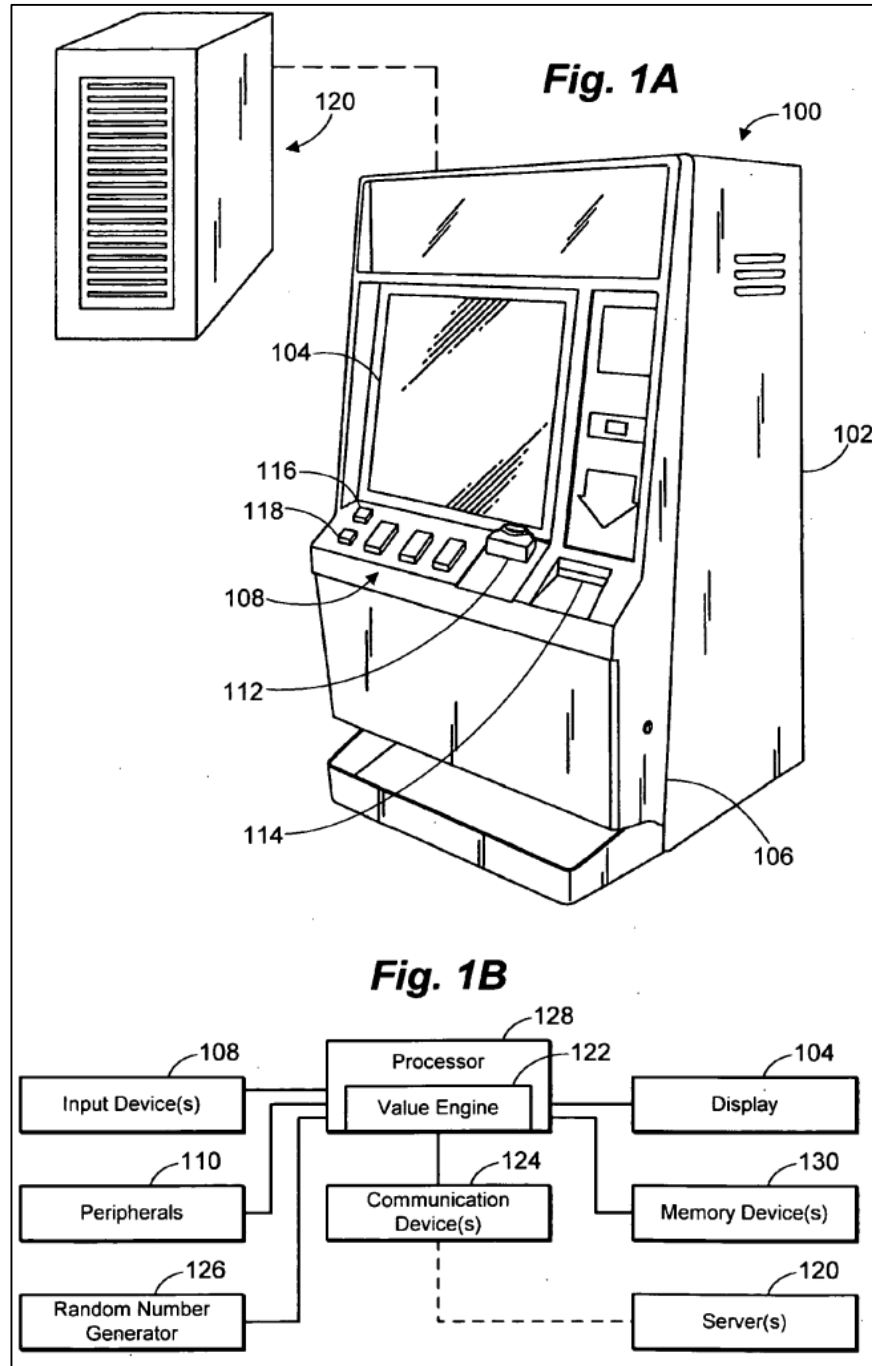
Claims 1-3, 5-10, 16-18, and 21-25 are anticipated by Scott, as set forth in Ground 1. *See* EX[1007] ¶¶61-211. The claims are also rendered obvious by Scott (Ground 2). If some generic limitations like storing a record in a “database” in claims 1 and 16 or adding more than one player to the system in claim 16 are found to be missing from Scott, those elements are rendered obvious by Scott in view of the general and common knowledge of a POSITA. *See* §§IX.A, IX.B.

A. Grounds 1 and 2: Claims 1-3, 5-10, 16-18, and 21-25 are Anticipated by Scott (Ground 1) and Rendered Obvious by Scott (Ground 2)

1. Claim 1

a. 1[a] – “A system comprising:”

Scott discloses this limitation. EX[1007] ¶¶63-66. For example, Scott discloses “electronic wagering games and **systems**...configured to provide value for partial or incomplete game outcomes. EX[1006] ¶[0002]. FIGS 1A-1B below depict the systems.



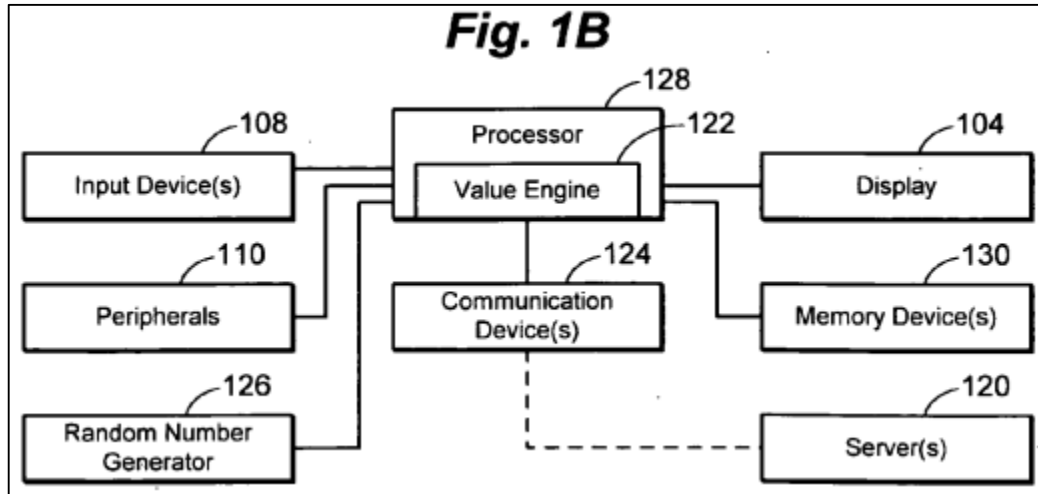
As shown in FIG. 1A, the system includes a “gaming machine 100” and a “gaming server 120” connected by a network wherein the gaming machine may be configured as a “client-type device” in the client-server architecture. EX[1006] ¶[0055]. While not illustrated in the figures above, Scott discloses that the system

may comprise “a number of players electronically connected,” including at least “a player” and “another player,” such that the system may include a plurality of gaming machines 100. *Id.* ¶[0096]; EX[1007] ¶65. FIG. 1B illustrates the system of components that make up the gaming machines. EX[1006] ¶[0025].

b. 1[b] – “a processor operatively coupled to a memory configured to store computer-readable instructions that, when executed by the processor, cause the processor to:”

Scott discloses this limitation. *See* EX[1007] ¶¶67-75. Specifically, Scott discloses that “[a] **processor 128 may be a microprocessor**, chip, electronic circuit, or the like” and that “[a] **processor 128 may access one or more memory devices 130**,” which are “**configured to store the machine readable code to implement and/or operate one or more wagering games**.” EX[1006] ¶¶[0048], [0051]. Scott also discloses that “**processor 128 may retrieve and execute machine readable code**.” *Id.* ¶[0052]. A POSITA would have understood that such processors and memory are “*operatively coupled*” because “retrieving” is an action that requires a communicative coupling and would have understood that “*computer-readable instructions*” are “machine readable code.” EX[1007] ¶¶72-75.

There are various instances of such processors and memory in Scott’s system. For example, as shown in FIG. 1B below, Scott discloses that “**a gaming machine...may comprise a memory device...and a processor**.” *Id.* ¶[0015].



In addition, Scott discloses that the value engine 122 may be “provided by the processor 128” of the gaming machine, as shown in FIG. 1B above, or that it may be “a separate component” with a “separate processor 128.” *Id.* ¶[0050]. Either way, “the value engine 122 may be in communication with...memory devices 130.” *Id.* ¶[0057]. Also, a POSITA would have understood that a “gaming server,” by virtue of it being a computer “server,” includes at least one processor and associated memory for storing computer-readable code to implement a “server” function. EX[1007] ¶[0070].

- c. 1[c] – “receive, by a trading engine module of a system controller, a wager on a wagering event from one or more input devices via a communications interface, the wager input via a user interface of the one or more input devices;”*

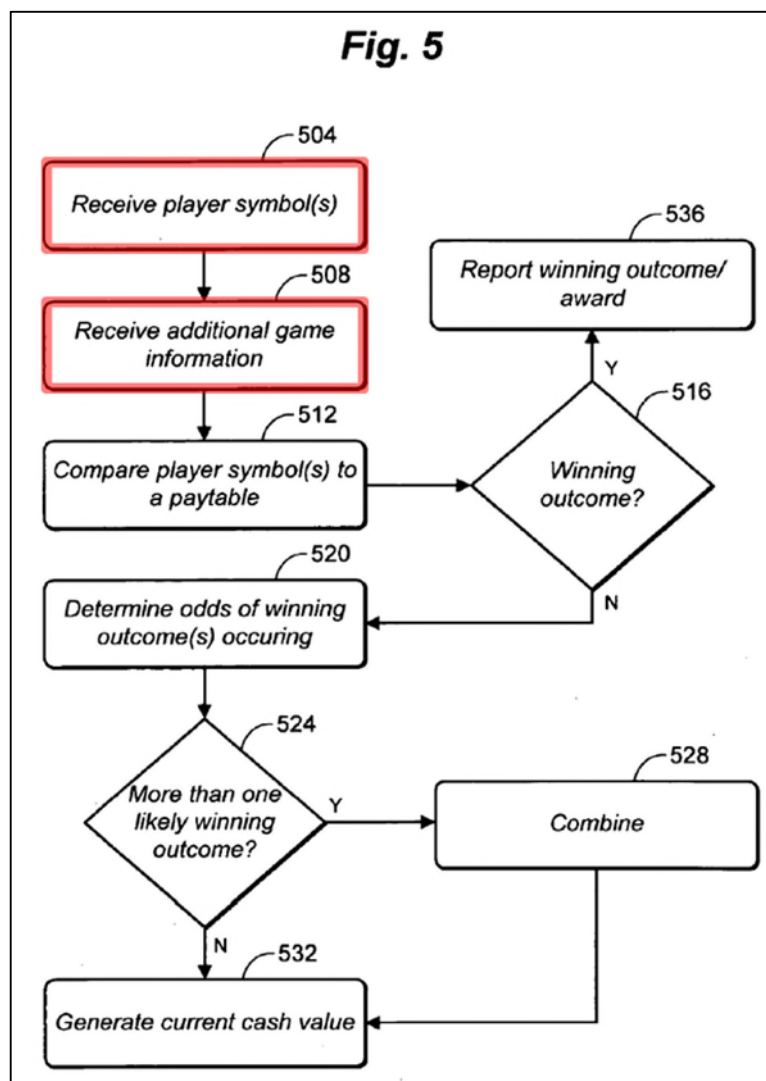
Scott discloses this limitation. See EX[1007] ¶¶76-84. Scott discloses each of the structural components of this limitation, including “a trading engine module,” “a system controller,” “one or more input devices,” “a communications interface,”

and “*a user interface of the one or more input devices.*”

Scott discloses “*a trading engine module*” because it discloses “**value engine 122**,” which is a software module implemented by “machine readable code” that is “configured to evaluate game at various stages of a game” and “determine a monetary or cash value for the current game outcome and present this value to a player” and to determine “whether or not the current cash value is accepted by the player.” EX[1006] ¶¶[0033], [0070], [0075]. Scott’s disclosure of the “value engine” corresponds exactly to the ’779 Patent’s description of a “trading engine.” EX[1001] 9-26-31. A POSITA would therefore also find it obvious to implement Scott’s value engine as a “trading engine module.”

Scott discloses the “*system controller*,” which the specification defines “broadly” to comprise “any hardware device or devices that includes at least one central processing unit (CPU) or other processing device and associated memory.” EX[1001] 5:16-20. A POSITA would therefore understand that any of Scott’s wagering machines, gaming servers, and value engines, individually or collectively, are the “system controller” because, as described above for limitation 1[b], they each comprise at least one processor and can access associated memory. EX[1007] ¶78. Therefore, Scott discloses that the trading engine module is “*of*” the system controller because the value engine is disclosed as being among or of the three devices that individually or collectively are system controllers.

Scott discloses that the function of “receive...a wager” is “by the trading engine module” because Scott states that “one or more game symbols or indicia belonging to a player may be received by the value engine” and that “additional information may be received or retrieved by the value engine,” including “the amounts wagered.” EX[1006] ¶¶[0082]-[0083], [0061]. The value engine’s reception of this information is depicted below in FIG. 5.



Scott discloses that the received wager is “on a wagering event” because Scott

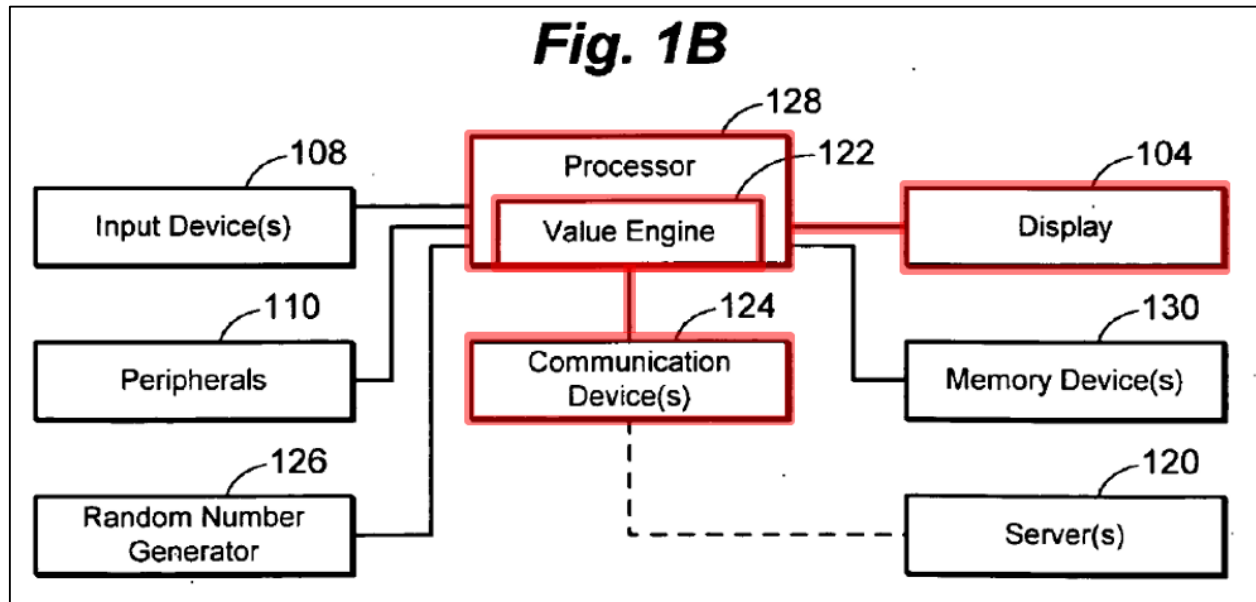
states that wagers can be placed on “various games, such as poker games, card games, or slot games.” ¶[0010]; *see also id.* ¶¶[0035] (“It is contemplated that the value engine may be used with any **wagering game** where game symbols or indicia (e.g., playing card symbols, slot machine symbols, keno numbers, bingo numbers, etc...) are revealed in subsequent stages or steps of a game.”), ¶[0044]. A POSITA would have understood that a poker game, card game, or slot game on which a wager is received is a “*wagering event*” because a game is an “*event*,” and the player places a wager on that event, thereby making it a “*wagering*” event. EX[1007] ¶81.

Scott discloses that the wager is received “*from one or more input devices*” and the wager being “*input via a user interface of the one or more input devices*” because Scott states that “gaming machine 100 preferably includes at least one **display device** 104 configured to display game information” to a player and that the display devices may include a “**touch screen display**” that the player uses to “**facilitate game play.**” EX[1006] ¶¶[0042], [0045]. A POSITA would have understood that Scotts display device is an “*input device*” because it includes a “*user interface*” touch screen that inputs player information into the system. EX[1007] ¶82. Scott also discloses that the touch-screen user interface may provide “touch buttons on a display 104” include a “**bet button 108B**” that “may be **used to wager a desired amount of credits or currency,**” “‘hold’ buttons 108A [that] may be used to hold one or more of the cards,” and a “‘deal’ button 108C is used to deal and/or

replace one or more cards 304.” EX[1006] ¶[0061]. A POSITA would have understood that Scott discloses the wager being input via and received from the touch-screen user interface of a display input device or the wagering machine. EX[1007] ¶82.

Finally, Scott discloses that the wager is received from the display input device “*via a communications interface*” whether or not a value engine is implemented within the processor of a wagering machine or separate and external to a wagering machine. EX[1007] ¶¶82-84. For example, where the value engine is implemented within the wagering machine’s processor, Scott discloses that the “**processor 128 may communicate with input devices 108**, peripherals 110, and one or more displays 104 (or other output devices) to allow a player to interact with and play a wagering game at the gaming machine 100.” EX[1006] ¶[0050]. FIG. 1B, as shown below, illustrates that the input devices and the value engine communicate “*via a communications interface*” by connecting them with a line, which a POSITA would have understood represents an electrical connection or interface for enabling communication between the components. EX[1007] ¶83. In the embodiment described above where the value engine is a separate component external to the wagering machine, Scott discloses that the communication would also occur “through one or more **communication devices**” that are used to “communicat[e] with one or more external devices” and therefore interface with

such devices. EX[1006] ¶[0055]; EX[1007] ¶84.



d. 1[d] – “store, by the system controller, the wager in a record within a database, the record comprising wager information for one or more wagers associated with one or more participants;”

Scott discloses this limitation. See EX[1007] ¶¶86-94. For example, Scott discloses that “**information related to the play or execution of a game and the value engine 122** such as but not limited to **credits, amounts wagered, paytables, paylines, odds for a winning outcome, cards/symbols dealt, jackpot amounts, bonuses**, and randomly generated numbers **may be stored** in a memory device 130,” and the memory device 130 in which such information is stored is a component of the system controller as discussed above regarding limitation 1[c]. EX[1006] ¶[0051]. A POSITA would have understood that the stored information includes “*the wager*” because it includes the “amounts wagered” and the “player’s

cards/symbols.” EX[1007] ¶87. A POSITA would have also understood that the stored information includes “*wager information for one or more wagers associated with one or more participants*” because Scott discloses that all of the stored information is associated with and “related to the play or execution of a game” that a player has wagered on and is playing. *Id.* ¶88. And a POSITA would have understood that the storage of such “related” information constitutes a “*record within a database*” because it is a structured collection of data regarding the player’s wagering game. *Id.* ¶89.

Regarding storing the information “*in a record within a database*,” Scott discloses the use of a “**player tracking account**” to perform “**player tracking**,” as was known in the prior art. EX[1006] ¶[0047]; EX[1007] ¶90. A POSITA would have known that a player tracking account is a “*a database*” because it is a structured “account” that tracks a player. EX[1007] ¶90. A POSITA also would have understood that Scott’s player tracking account included “*a record*” storing the wager information discussed above because that is precisely what such player tracking systems are for—tracking a player’s wagering activity so that such information can be retrieved later. In fact, the ’779 Patent admits that player tracking systems storing such wagering information were known in the prior art. *Id.* See also §IX.B.1.

The ’779 Patent incorporates by reference prior art U.S. Patent No. 8,105,149.

EX[1001] 26:30-32. DeWaal (EX[1004]) is the published patent application that ultimately issued as U.S. Patent No. 8,105,149. DeWaal, and thus the '779 Patent via its incorporation by reference, state that “[p]layer tracking systems are also known,” that such systems include “a player profile” or account that includes the “cumulative history of a particular player’s gaming activity,” and that “player tracking system tracks any suitable information, such as amounts wagered, average wager amounts...the times these wagers were placed,” as well as the player’s recent gaming sessions. EX[1004] ¶¶[0005], [0096]. Therefore, a POSITA would have known that Scott’s “player tracking” and a “player tracking account” meant that the wager information was stored “*in a record within a database.*”

e. 1[e] – “continuously retrieve, by the system controller, data in real time related to a progress of the wagering event;”

Scott discloses this limitation. See EX[1007] ¶¶95-105. For example, Scott discloses “*retrieve, by the system controller, data*” because Scott states that “**the value engine 122 may retrieve game information** from a memory device 130,” and the value engine is a “*system controller*” as discussed above regarding limitations 1[b] and 1[c]. EX[1006] ¶[0058]. Scott discloses that the “*retrieve[d] game information*” is “*related to a progress of the wagering event*” because it may include, for example, information “identifying the **game symbols or indicia the player currently has, the odds the player will win (or lose), the amount the player has wagered,**” “**cards or symbols remaining to be dealt, credits**

remaining, and other information related to a wagering game.” *Id.* ¶¶[0058], [0083].

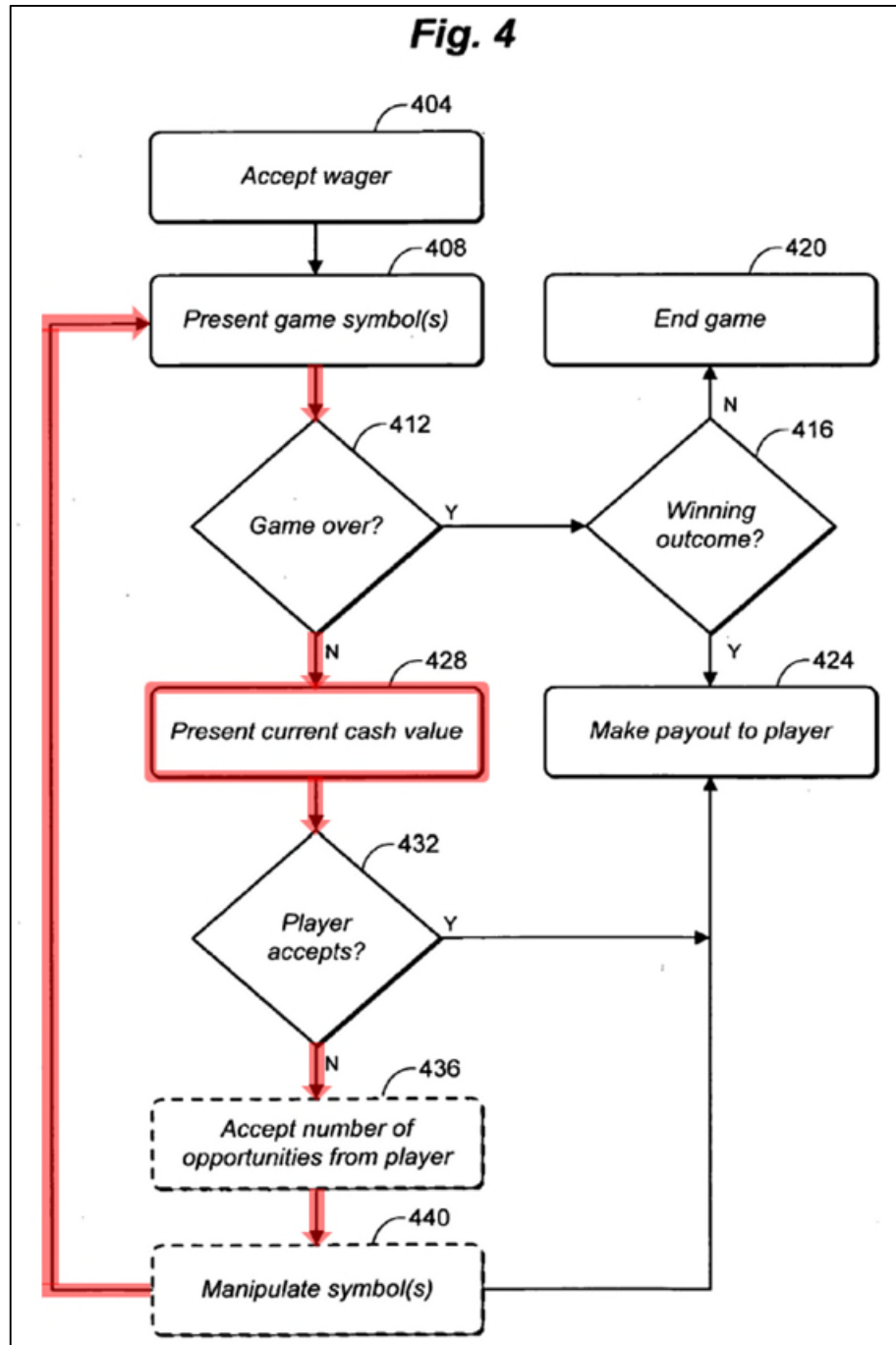
With respect to “*continuously*” retrieving such information “*in real time*,” Scott discloses that “[t]his information may be used in determining a current cash value,” and “current cash value may be determined and presented...**in real time** or in substantially real time” as each event occurs during the wagering game, such as “as each individual playing card or slot symbol is revealed” during the wagering game. *Id.* ¶¶ [0083], [0067]. That is, in addition to being a real time process, Scott discloses that the calculation and presentation of the current cash value is “*continuous*[.]” throughout the wagering game in that it “**may continue with newly presented game symbols until the game is over...or until the player accepts a current cash value for his or her set of symbols.**” *Id.* ¶[0081]. As Scott recognizes, the real time and continuous determination and presentation of the current cash value is “**dynamic**” and “provides an **animated presentation** which may be engaging to players.” *Id.* ¶¶[0065], [0067].

FIGS. 4 and 5 of Scott further demonstrate that the data related to the progress of the wagering event is continuously retrieved in real time. As shown in FIG. 4⁴

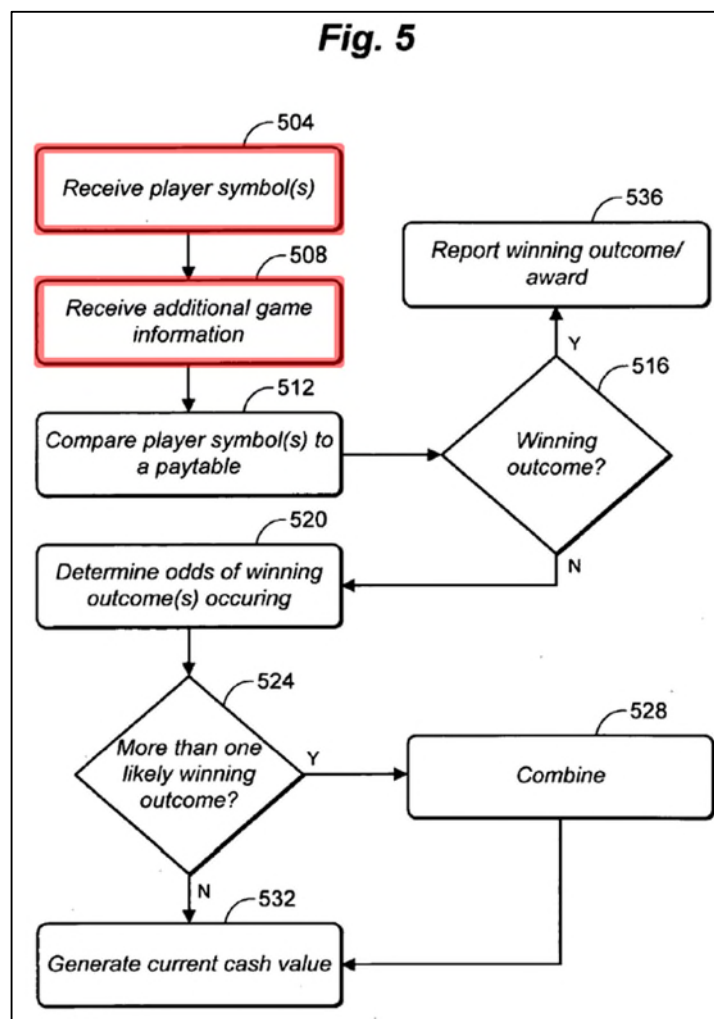
⁴ Steps 436 and 440 are optional steps, not relied on herein as part of the analysis.

Id. ¶¶[0079]-[0080].

below, once the wager is accepted, the operation of value engine and game enters a loop that “**continues**” until it is determined that the game is over at step 412 or until it is determined that the player has accepted the current cash value at step 432. *Id.* ¶[0081].



At step 428 in the continuous loop, highlighted above, “a current cash value for the player's current game symbols may be generated and presented by the value engine of the gaming machine.” *Id.* ¶[0073]. The process “illustrating how current cash value may be determined” by the value engine is illustrated in FIG. 5 below, and as mentioned above, this process “may occur **in real time** or in substantially real time.” *Id.* ¶¶[0082], [0067].



As highlighted in the figure above, the “real time” process includes steps 504 and 508, which as described above retrieves various information relating to the

progress of the wagering game. *See, e.g., id.* ¶¶[0058], [0083]. A POSITA would have understood that steps 504 and 508 are performed “*continuously*” because they are invoked during step 428 of the continuous loop illustrated in FIG. 4 and are performed in “*real time*” because they are part of the “real time” process for generating a current cash value. Similarly, a POSITA would have found it obvious to implement the steps continuously and in real time in view of those disclosures.

f. 1[f] – “recalculate, by the system controller, the wager information in real time based on the continuously retrieved data;”

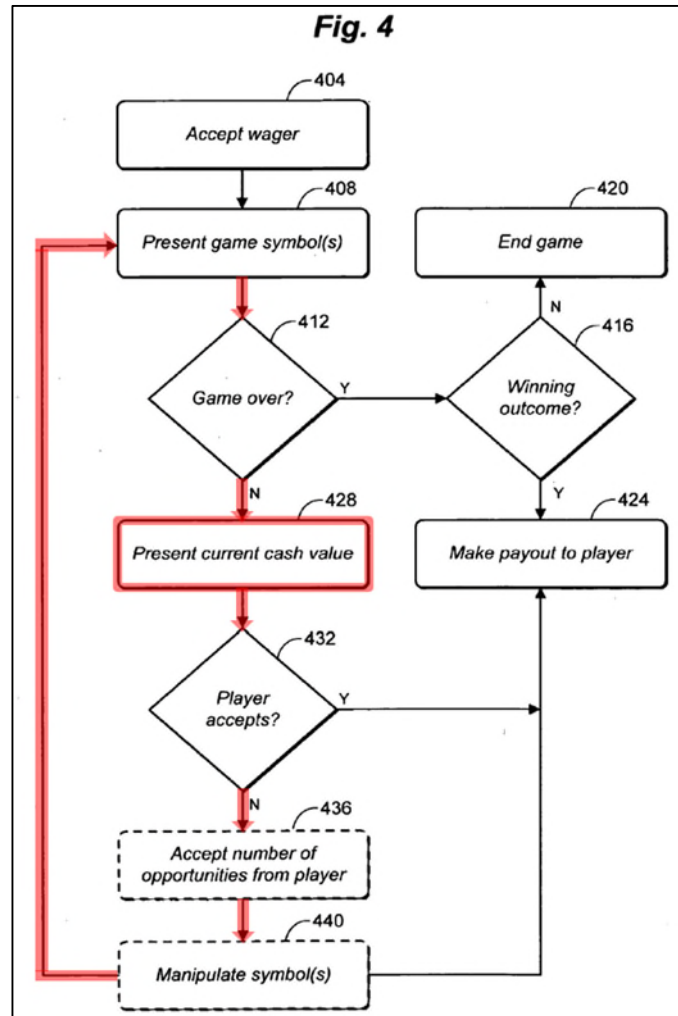
Scott discloses this limitation. *See* EX[1007] ¶¶106-117. For example, Scott discloses “*recalculate...the wager information...based on the continuously retrieved data*” because Scott states that “the likelihood or **odds that the player will achieve a winning outcome from his or her current symbols may be determined**” by comparing “**the player’s symbols...**to each winning outcome in a payable to **determine odds on whether the winning outcome will be achieved.**” EX[1006] ¶[0086]; *see also id.* ¶[0021]. As was demonstrated above with respect to limitation 1[d], the odds for a winning outcome is the “*wager information*” and, as was demonstrated above with respect to limitation 1[e], the “*continuously retrieved data*” includes the player’s current symbols or game indicia. *See supra* §§IX.A.1.d, IX.A.1.e. Scott further discloses that the recalculation is “*by the system controller*” because Scott states that the “**value engine** may be configured to determine the odds

of at least one of the winning outcomes occurring from the game symbols,” and the value engine is a “system controller” as discussed above regarding limitations 1[b] and 1[c]. EX[1006] ¶[0011].

With respect to “*recalculating*” the odds of winning “*in real time*,” Scott discloses “generating the cash value based on the odds,” and “current cash value may be determined and presented...**in real time** or in substantially real time” as each event occurs during the wagering game, such as “as each individual playing card or slot symbol is revealed” during the wagering game. *Id.* ¶¶[0021] [0083], [0067]; *see also id.* ¶[0074] (“[T]he odds of achieving a particular winning outcome...may be used to determine current cash value”). That is, in addition to being a real time process, Scott discloses that the calculation and presentation of the current cash value is “*continuous*[.]” throughout the wagering game in that it “**may continue with newly presented game symbols until the game is over...or until the player accepts a current cash value for his or her set of symbols.**” *Id.* ¶[0081]. As Scott recognizes, the real time and continuous determination and presentation of the current cash value is “**dynamic**” and “provides an **animated presentation** which may be engaging to players.” *Id.* ¶¶[0065], [0067]. Accordingly, each time a new event occurs, the step 520 in FIG. 5 of “[d]etermine odds of winning outcome(s) occurring” involves “*recalculat[ing]*” the odds based on the current symbols.

FIGS. 4 and 5 of Scott further demonstrate that the odds of winning are

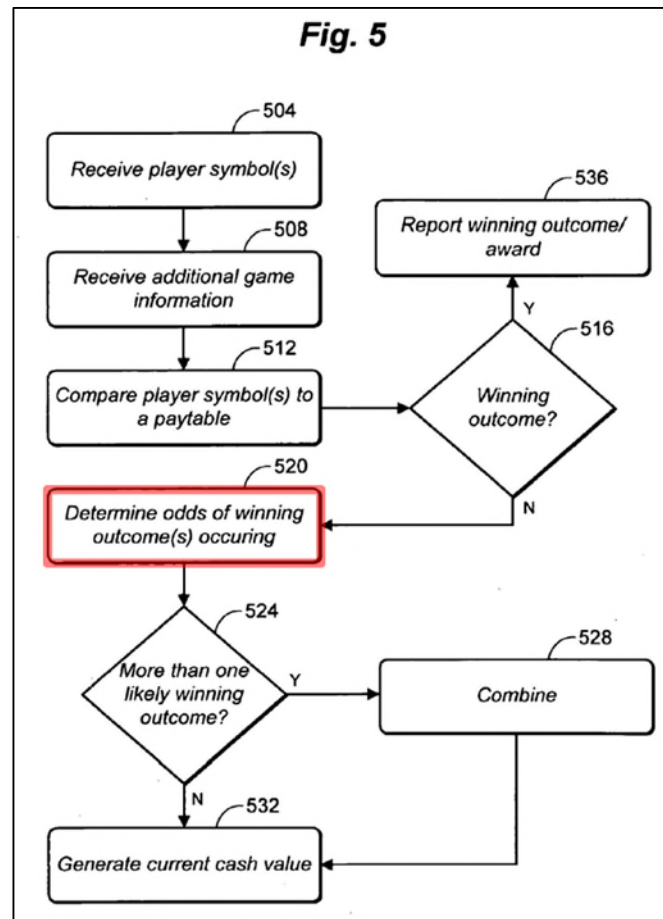
recalculated in real time. As shown in FIG. 4⁵ below, once the wager is accepted, the operation of value engine and game enters a loop that “**continues**” until it is determined that the game is over at step 412 or until it is determined that the player has accepted the current cash value at step 432. *Id.* ¶[0081].



At step 428 in the continuous loop, highlighted above, “a current cash value for the player's current game symbols may be generated and presented by the value

⁵ See *supra* n.4.

engine of the gaming machine.” *Id.* ¶[0073]. The process “illustrating how current cash value may be determined” by the value engine is illustrated in FIG. 5 below, and as mentioned above, this process “may occur **in real time** or in substantially real time.” *Id.* ¶[0082], [0067].



As highlighted in the figure above, the “real time” process includes step 520, which as described above calculates the odds of the player achieving a winning outcome based on their current game symbols/indicia. *See, e.g., id.* ¶[0086], [0021]. A POSITA would have understood that step 520 involves “*recalculate[ion]*” because it is invoked during step 428 of the “continuous” loop illustrated in FIG. 4

and is performed in “*real time*” because it is part of the “real time” process for generating a current cash value. Therefore, after the first loop around the continuous process illustrated in FIG. 4, the step of determining the odds in the real time process of FIG. 5 is a “*recalculat[ion]*” in each additional loop. A POSITA would also find it obvious to implement Scott in this way in view of those disclosures.

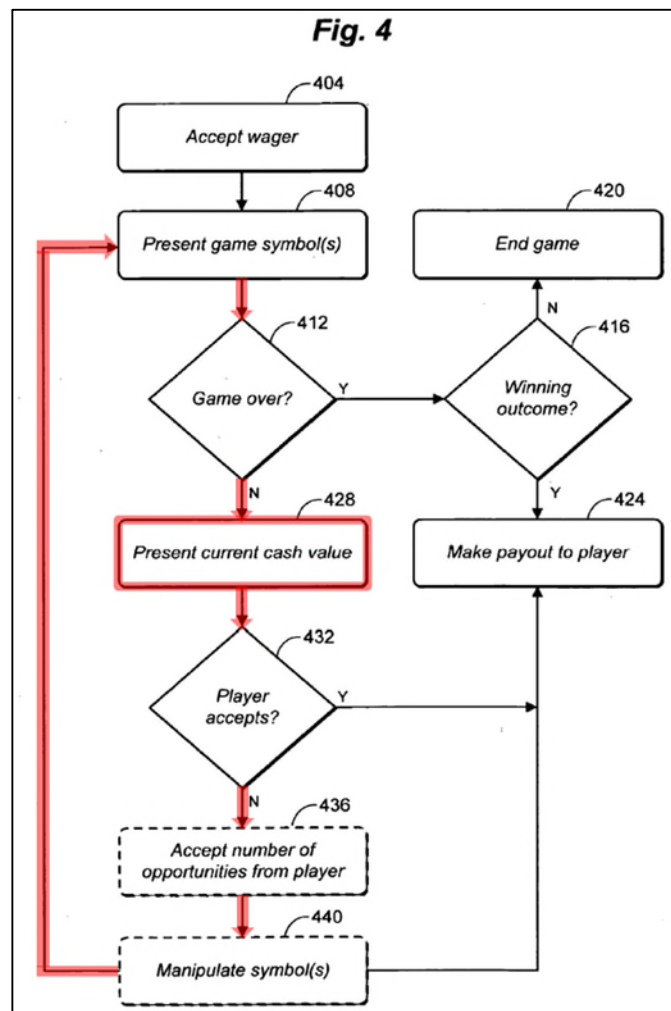
g. 1[g] – “*continuously evaluate, by the system controller, the recalculated wager information;*”

Scott discloses this limitation. See EX[1007] ¶¶118-127. For example, Scott discloses “*evaluate, by the system controller, the recalculated wager information*” because Scott states that “**the value engine 122 may evaluate game information to determine a current cash value,**” and the value engine is a “*system controller*” as discussed above regarding limitations 1[b] and 1[c]. EX[1006] ¶[0058]. Scott further states that the game information that is evaluated to determine the current cash value includes, for example, “**the odds of achieving a particular winning outcome**” from the player’s current game indicia, which is “*recalculated wager information*” as demonstrated above for limitation 1[f]. *Id.* ¶[0074]; see also *id.* ¶[0021], [0059], [0013] (“For instance, the value engine may generate the current cash value by calculating the current cash value from at least the odds of the at least one of the winning outcomes occurring from the game symbols.”). This type of continuous evaluation to determine the current cash value is precisely what the ’779 Patent purports to claim. See, e.g., EX[1001] 17:47-57 (“[A] **determination of what**

the appropriate value would be to make an offer to cash out....The server system 12 may make this determination...at certain discrete time points of a wagering event (e.g., halftime of a sporting event) or it may **continuously evaluate the wagering event...and make multiple determinations in real time.”**).

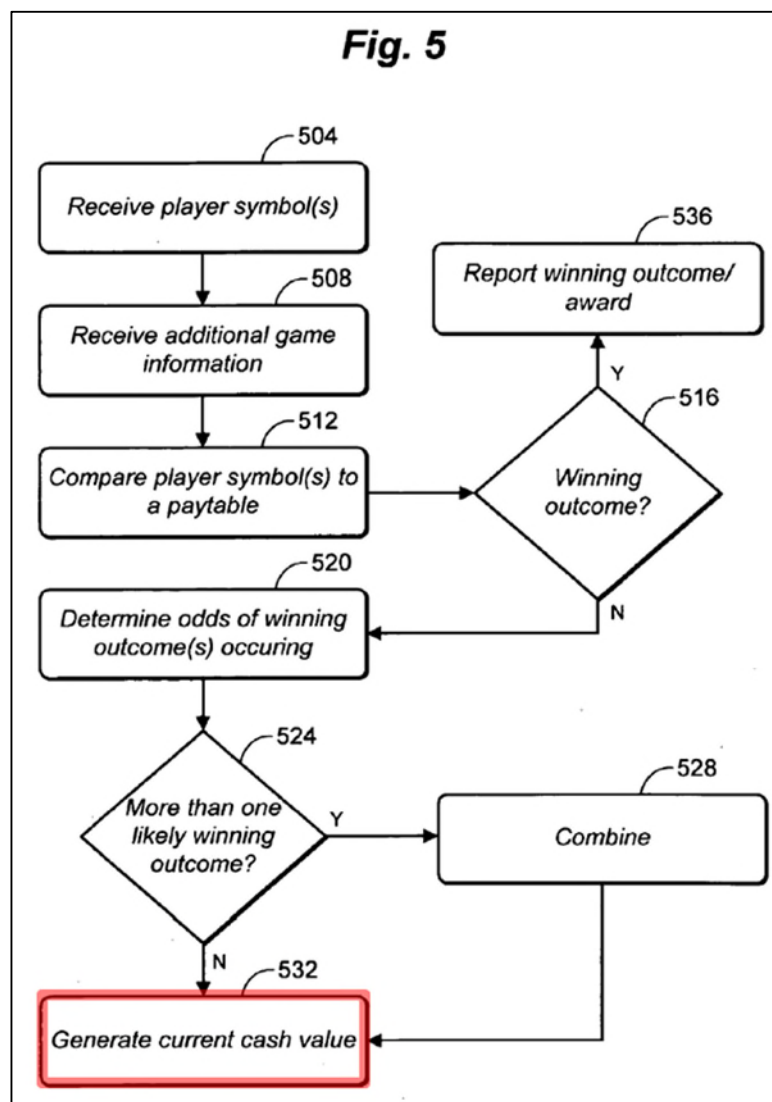
With respect to “*continuously*” evaluating the recalculated odds of winning to generate the current cash value, Scott discloses that the “current cash value may be determined and presented....**in real time** or in substantially real time” as each event occurs during the wagering game, such as “as each individual playing card or slot symbol is revealed” during the wagering game. *Id.* ¶[0067]. In addition to being real time, Scott discloses that the calculation and presentation of the current cash value is continuous throughout the wagering game, rather than at discrete time points, in that it “may **continue with newly presented game symbols until the game is over...or until the player accepts a current cash value for his or her set of symbols.**” *Id.* ¶[0081]. As Scott recognizes, the real time and continuous determination and presentation of the current cash value is “**dynamic**” and “provides an **animated presentation** which may be engaging to players.” *Id.* ¶¶[0065], [0067]. For example, in the example of a keno game, Scott discloses that “[t]he value engine may **reevaluate the keno card as additional numbers are marked to determine a cash value as each keno number is revealed and/or as individual numbers are marked on the keno card.**” *Id.* ¶[0035].

FIGS. 4 and 5 of Scott further demonstrate that the recalculated wager information, including the odds of winning, are continuously evaluated to determine a current cash value. As shown in FIG. 4⁶ below, once the wager is accepted, the operation of value engine and game enters a loop that “**continues**” until it is determined that the game is over at step 412 or until it is determined that the player has accepted the current cash value at step 432. *Id.* ¶[0081].



⁶ See *supra* n.4.

At step 428 in the continuous loop, highlighted above, “a current cash value for the player's current game symbols may be generated and presented by the value engine of the gaming machine.” *Id.* ¶[0073]. The process “illustrating how current cash value may be determined” by the value engine is illustrated in FIG. 5 below, and as mentioned above, this process “may occur **in real time** or in substantially real time.” *Id.* ¶¶[0082], [0067].



As highlighted in the figure above, the “real time” process includes step 532

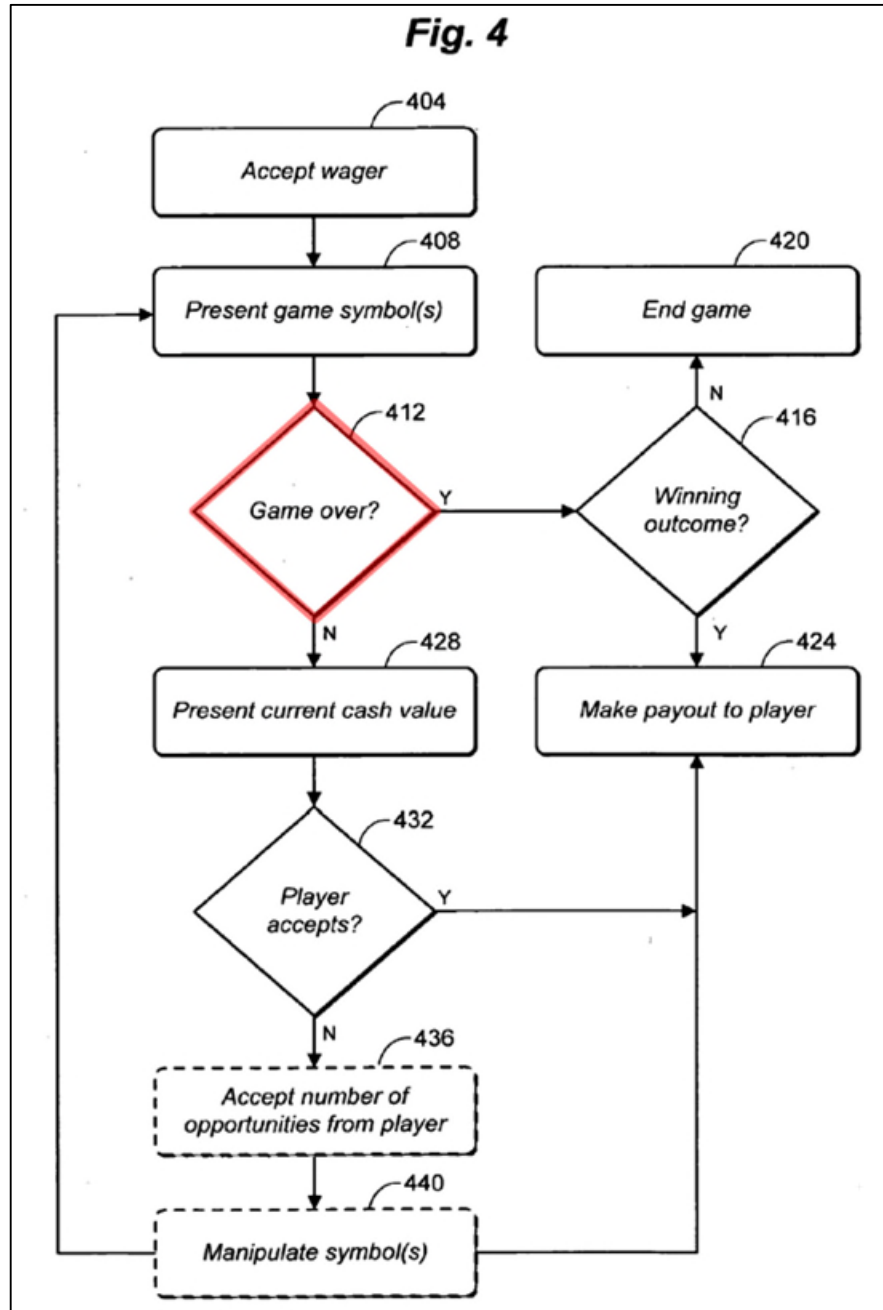
to “[g]enerate current cash value,” which as described above “evaluate[s] game information to determine a current cash value.” *Id.* ¶[0058], FIG. 5. A POSITA would have understood that step 532 is performed “*continuously*” because it is invoked during step 428 of the continuous loop illustrated in FIG. 4 and is performed in real time because it is part of the “real time” process for generating a current cash value. A POSITA would also find it obvious to implement step 532 continuously in view of those disclosures.

h. 1[h] – “determine, by the system controller, that a participant of the one or more participants is eligible to win an award based on one or more of the wager and a potential outcome of the wagering event,”

Scott discloses this limitation. EX[1007] ¶¶128-133. For example, Scott discloses “*determine, by the system controller, that a participant of the one or more participants is eligible to win an award*” because Scott states that “**it may be determined if the game is over or has concluded**,” such that the player’s wager is no longer active, as a prerequisite to offering a current cash out value. EX[1006] ¶[0072]. As Scott explains, “[t]he game may be ended by determining if the game symbols and the additional game symbols form a winning outcome....Alternatively, the player's acceptance of the cash value may be received, and if so, the game may be ended immediately thereafter by paying the player the cash value.” *Id.* ¶[0020]. A POSITA would have understood that determining that the game is not over (*e.g.*, by determining that the player’s current indicia do not correspond to a winning

outcome) is a determination that a participant is eligible to win an award because it is a determination that the game and wager are active and that the player has not yet achieved a winning outcome but has a chance to do so by continuing to play the game. Ex[1007] ¶128.

In fact, as shown in annotated FIG. 4 below, Scott discloses that “[a]t decision step 412, **if the game is not over**, at a step 428,” such that the player has not yet won and the wager is still active, then “a current cash value for the player's current game symbols may be generated and presented by the value engine of the gaming machine.” EX[1006] ¶[0073]. And, if the player “forgo[es] the current cash value,” they can “attempt to achieve a winning outcome (and possibly a larger award).” *Id.* ¶[0008]. A POSITA would have understood that generating a current cash value and presenting a player with the option to accept the current cash value reflects that the system has determined that the player is eligible to win an award because if the player declines the current cash value, they continue to play to attempt to achieve a winning outcome. EX[1007] ¶129.



Scott confirms that such determining is “*by the system controller*” because it discloses that the process illustrated in “FIG. 4,” which includes Steps 412 and 428 pertaining to determining that a player is eligible to win an award, “provides a high level illustration of the operation of the value engine,” which is a “*system controller*”

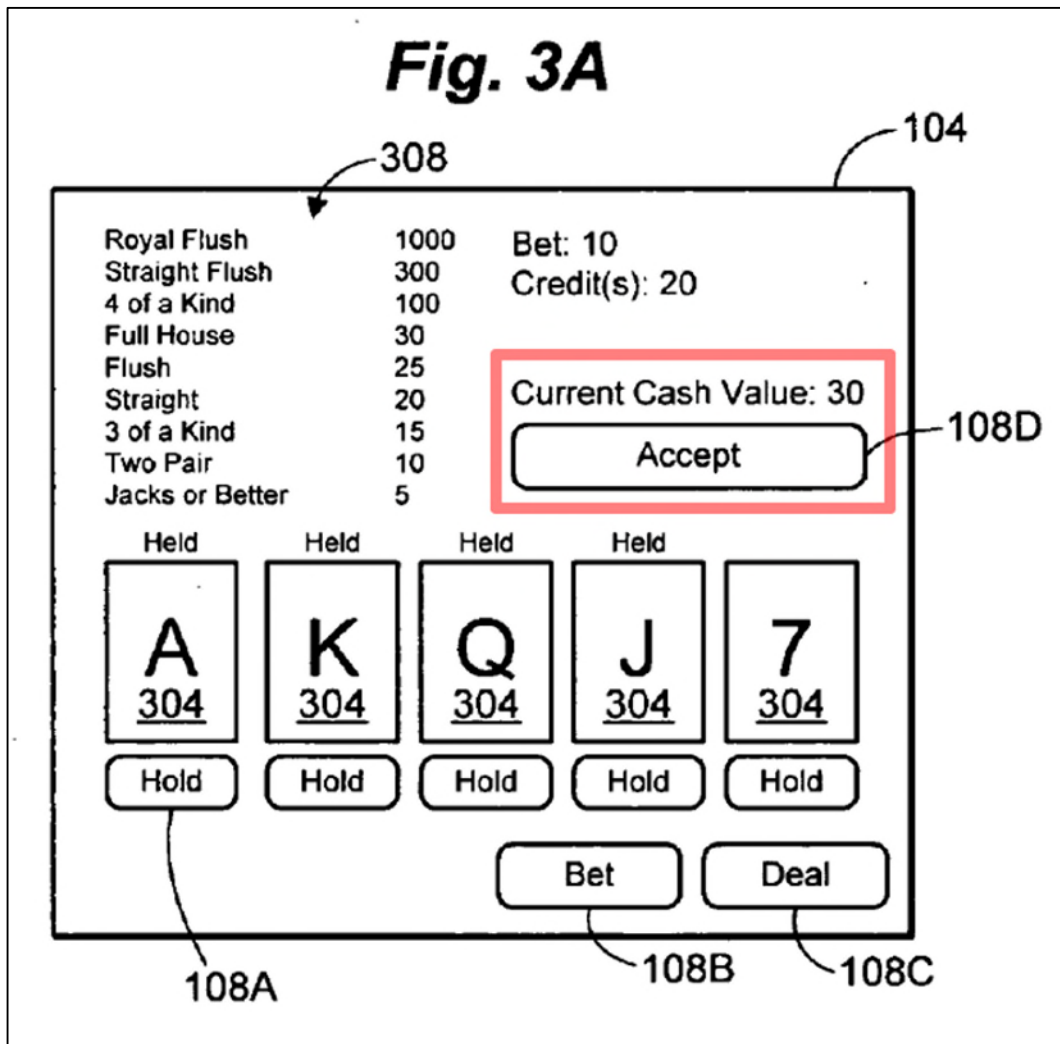
as explained above for limitations 1[b] and 1[c]. EX[1006] ¶[0070].

Scott discloses that determining whether the game is over and generating and presenting the current cash value are “*based on one or more of the wager and a potential outcome of the wagering event.*” For example, to determine whether the player has achieved a “winning combination or winning outcome,” thus ending the game, Scott discloses that “the player’s game symbols” upon which the wager amount is placed “may be compared to a paytable or otherwise evaluated to determine if they meet the requirements to be deemed a winning combination or winning outcome.” *Id.* ¶[0072]. Confirming this, Scott discloses that the paytables “defin[e] winning outcomes and their associated awards,” and a POSITA would have understood that such winning outcomes correspond to “*a potential outcome of the wagering event*” because they define winning combinations or criteria that may potentially be achieved during game play. EX[1007] ¶131. And, to generate the current cash value, Scott discloses that “the amount wagered may also be used” and that “the current cash value may also vary based on the amount wagered,” thereby indicating that the determination is “*based on...the wager.*” EX[1006] ¶¶[0074], [0083]; EX[1007] ¶132.

- i. 1[i] – “*generate, by the system controller, an option in real time for the participant to one or more of fully cash out of the wager or partially cash out of the wager prior to a conclusion of the wagering event for at least a portion of the award;*”

Scott discloses this limitation. EX[1007] ¶¶134-140. For example, Scott

discloses “*generate, by the system controller, an option in real time for the participant to one or more of fully cash out of the wager or partially cash out of the wager*” because it states that “[a]t the decision step 412, if the game is not over,” *i.e.*, the participant is eligible to win an award as discussed above with respect to limitation [1h], “at step 428, **a current cash value for the player’s current game symbols may be generated and presented by the value engine of the gaming machine.**” EX[1006] ¶[0073]. Scott discloses that the generated current cash value is “*an option*” because it states that it is “**an option to take the current cash value or to continue player [sic] to achieve a winning outcome.**” *Id.* at ¶[0008]; *see also id.* at ¶[0020] (“**An option for the player to accept the cash value may then be presented.**”). That is, Scott discloses that “**the player has a choice,**” *i.e.*, “*an option,*” “**to accept the current cash value or to forgo this value and continue playing the game.**” *Id.* at ¶[0063]. The generated current cash value option is shown below in annotated FIG. 3A.



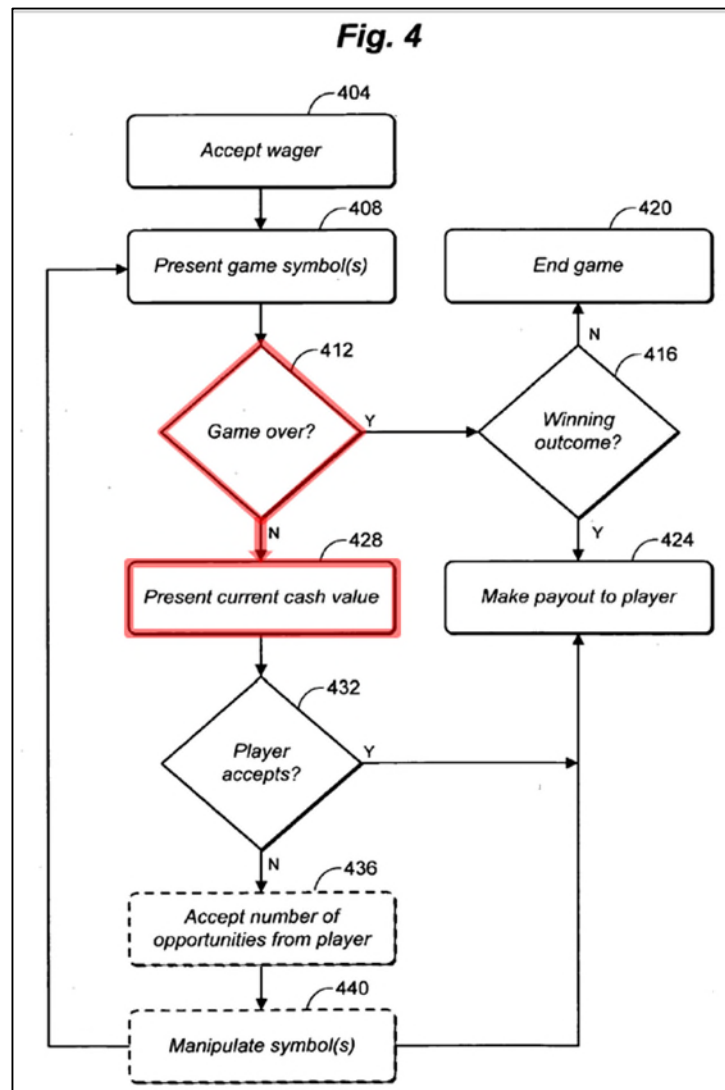
Scott discloses that the option is generated “*in real time*” by the value engine “*system controller*” because Scott states that the “**current cash value may be determined and presented....in real time** or in substantially real time” as each event occurs during the wagering game, such as “as each individual playing card or slot symbol is revealed” during the wagering game. *Id.* at ¶[0067]. In addition to being generated in real time, Scott discloses that the current cash value option is continuously generated throughout the wagering game in that the process “may

continue with newly presented game symbols until the game is over...or until the player accepts a current cash value for his or her set of symbols.” *Id.* at ¶[0081]. As Scott recognizes, the real time and continuous generation and presentation of the current cash value is “**dynamic**” and “**provides an animated presentation** which may be engaging to players.” *Id.* at ¶¶[0065], [0067].

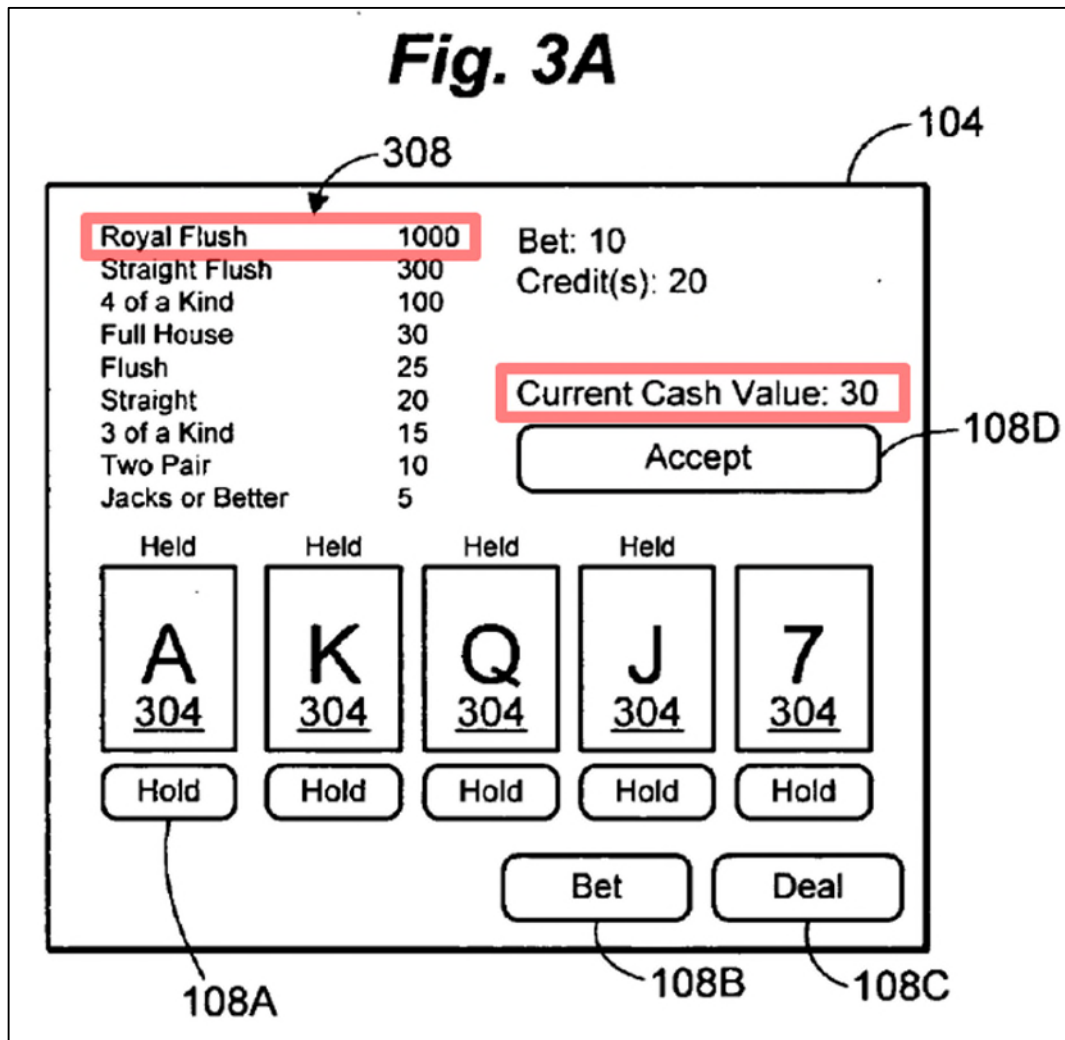
With respect to the current cash value option being “*for the participant to one or more of fully cash out of the wager or partially cash out of the wager,*” this limitation is recited in the disjunctive such that either a full **or** a partial cash out option will satisfy the claim under its plain and ordinary meaning. EX[1007] ¶134. Scott discloses that the current cash value option is “*for the participant to...fully cash out of the wager*” because Scott states that, when a player accepts the current cash value, the gaming machine is caused to “**pay out the current cash value to the player**” and fully “**end a wagering game after an indication that the player is accepting the current cash value is received.**” EX[1006] ¶[0014]; *id.* at ¶[0020] (“**[T]he player’s acceptance of the cash value may be received, and if so, the game may be ended immediately thereafter** by paying the player the cash value.”); *id.* at ¶[0076] (“If the player accepts the current cash value for his or her game symbols at decision step 432, the current cash value may be paid to the player at step 424. The game may then end.”).

Scott discloses that the option to fully cash out of the wager is generated and

made “*prior to a conclusion of the wagering event*” because Scott discloses “determining” and “presenting” “a current cash value for the one or more game symbols to the player **before the game has ended.**” *Id.* at ¶[0019], [0051], [0083]. For example, referring to FIG. 4 shown below, Scott states that, “[a]t the decision step 412, **if the game is not over, at step 428, a current cash value for the player’s current game symbols may be generated and presented by the value engine.**” *Id.* ¶[0073].



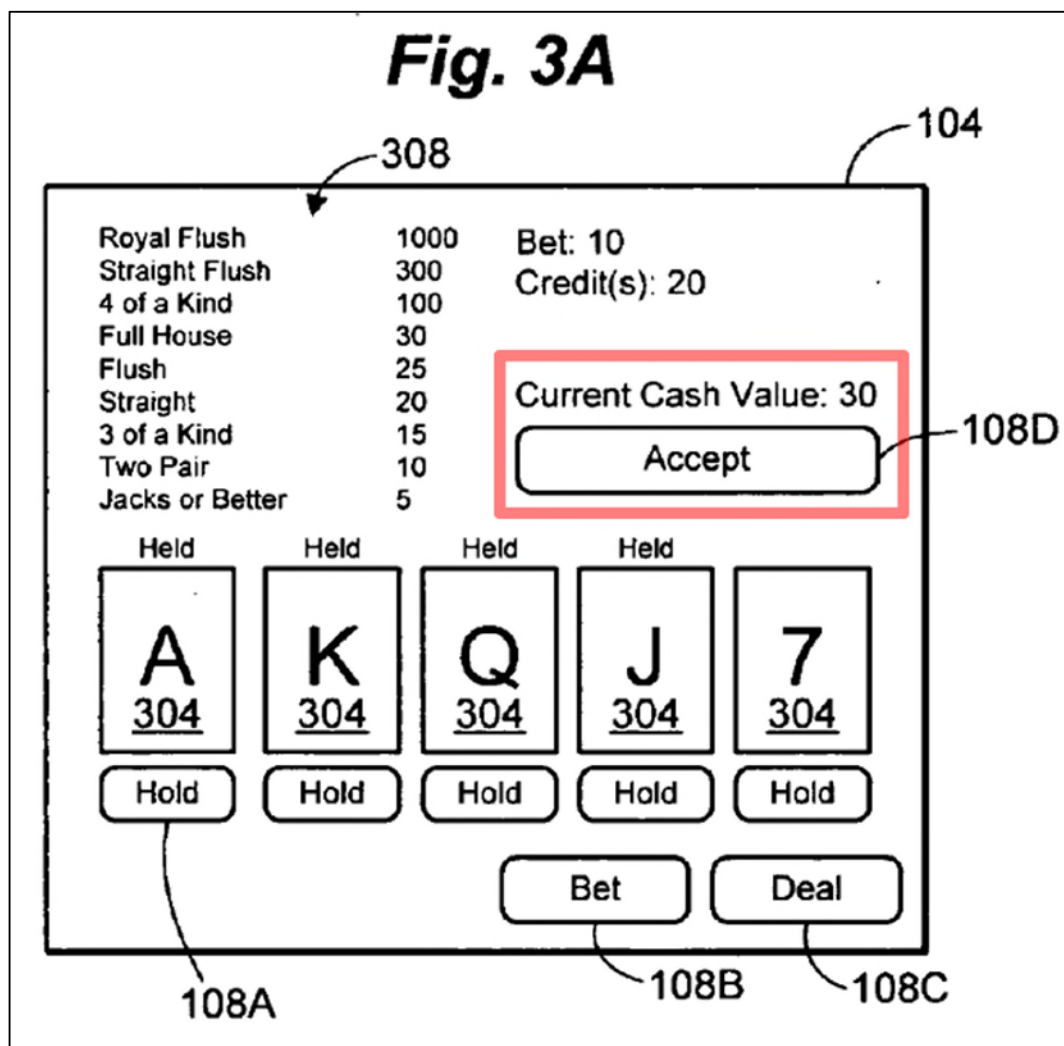
Scott discloses that the option to fully cash out is “*for at least a portion of the award*” that the player could win if they played the game to completion because Scott states that “**the cash value may be set to an amount less than an award amount associated with the winning outcome.**” *Id.* ¶[0021]. As Scott explains, where “the **current cash value will typically be lower than the amount the player would win** if he or she achieved one of the winning hands,” “the **current cash value is an enticing amount, but is less than the amount the player could possibly win**” if they continued playing with an attempt to win the potential award. *Id.* ¶[0059]. FIG. 3A, shown with annotations below, illustrates that the option to accept the current cash value is “*for at least a portion of the award*” because Scott “the value engine has evaluated the player’s cards 304 in light of the payable 308 and determined a current cash value for the cards of 30 credits,” which is “higher than the player’s wager of 10 credits and so is enticing to the player,” but “**the current cash value of 30 credits is less than the 100 credits the player could win** if he or she obtains the one card 304 needed to complete a royal flush.” *Id.* at ¶[0062].



j. 1[j] – “cause, by the system controller, the option to be presented to the participant via the user interface of the one or more input devices;”

Scott discloses this limitation. See EX[1007] ¶¶141-144. For example, Scott discloses “cause, by the system controller, the option to be presented to the participant via the user interface of the one or more input devices” because Scott states that, “as can be seen” in FIG. 3A, shown below, “**the value engine 122 may communicate the current cash value to a display 104 to present the current cash value to the player for evaluation**” along with “**an option** for the player to accept

the cash value.” EX[1006] ¶¶[0060], [0020], [0061] (“FIGS. 3A-3B illustrate an exemplary display 104 showing the **presentation of a current cash** value at a poker-type game.”). In the example depicted in FIG. 3A, the “option” is presented by the value engine “*system controller*” in the form of an “accept” button. *Id.* at ¶[0060] (“[A]n ‘accept’ button, may be provided to allow a player to indicate whether or not the player wishes to accept or take the current cash value.”).



Scott discloses that the presentation is “*via the user interface of the one or*

more input devices” because Scott states that “**display 104...present[s] the current cash value to the player**” along with an “**accept**” button to allow the player to accept the current cash value. *Id.* ¶¶[0060], [0069]. As described above for limitation [1c], such a display device may include a touch screen user interface that displays such information.

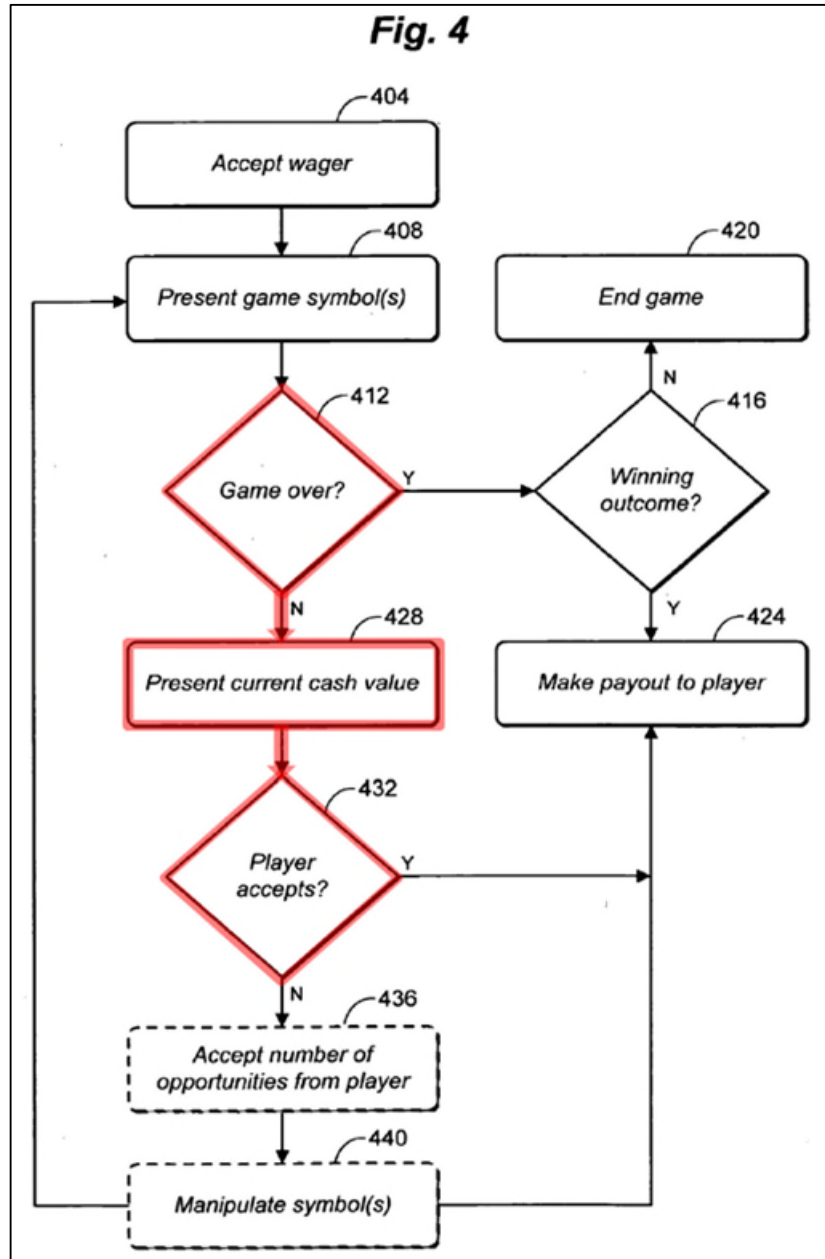
k. I[k] – “receive, by the system controller, a selection of the option for the participant from the one or more input devices prior to conclusion of the wagering event; and”

Scott discloses this limitation. *See* EX[1007] ¶¶145-149. For example, Scott discloses “*a selection of the option for the participant*” because Scott states that an “**accept**” button is provided on the touch screen user interface of the display input device “**to allow a player to accept a current cash value** presented on a display 104 by the value engine,” or in other words, “to allow a player to **indicate whether or not the player wishes to accept or take the current cash value**” option. EX[1006] ¶¶[0056], [0060]. Therefore, “**the player may engage an ‘accept’ button or the like to indicate the current cash value has been accepted**” and selected. *Id.* ¶[0075]. Scott discloses “*receive, by the system controller*” value engine the selection of the option to take the current cash value because Scott discloses that the value engine “**determine[s] at a decision step 432 whether or not the current cash value is accepted by the player.**” *Id.* ¶[0075]. A POSITA would have understood that Scott discloses that the value engine receives the selection of the

option because it determines whether or not the option has been selected. EX[1007] ¶146.

Scott discloses that the selection of the current cash value option is received “*from the one or more input devices*” because Scott states that “[o]ne or more input devices may be used to receive an indication that the player is accepting the current cash value,” such as by the player “engag[ing] an ‘accept’ button or the like to indicate the current cash value has been accepted.” EX[1006] ¶[0014], [0075].

Finally, Scott discloses that value engine receives the selection of the current cash value “*prior to conclusion of the wagering event*” because Scott discloses that the value engine determines that the game is not over prior to presenting the current cash value option and determining whether the player has accepted that option, as shown below in FIG. 4. *See* EX[1007] ¶148-149. As FIG. 4 shows, the decision step of determining whether the player has accepted and selected the option in step 428 cannot be reached unless it is first determined that the game is not over, as indicated by the path labeled “N,” standing for “No,” out of decision step 412.



- l. 1[l] – “cause, by the trading engine module, the at least the portion of the award to be presented to the participant, such that the user interface displays one or more of a confirmation that the option has been selected and a value of the at least the portion of the award.”

Scott discloses this limitation. See EX[1007] ¶¶ 150-154. For example, Scott discloses “cause, by the trading engine module, the at least the portion of the award

to be presented to the participant” because Scott discloses that “[i]f the player accepts the current cash value for his or her game symbols at step 432, the current cash value may be paid to the player at step 424,” and a POSITA would have understood that giving and/or awarding payment to a player is a means of “*present[ing]*” the award. EX[1006] ¶[0076]; *see also* EX[1007] ¶150. Scott discloses that the value engine “*system controller*” may “*cause*” the current cash value to be awarded to a player because Scott states, for example, that “the value engine 122 may utilize a ticket printer or coin dispenser to award a current cash value to a player.” EX[1006] ¶[0056]. *See supra* §IX.A.1.c.

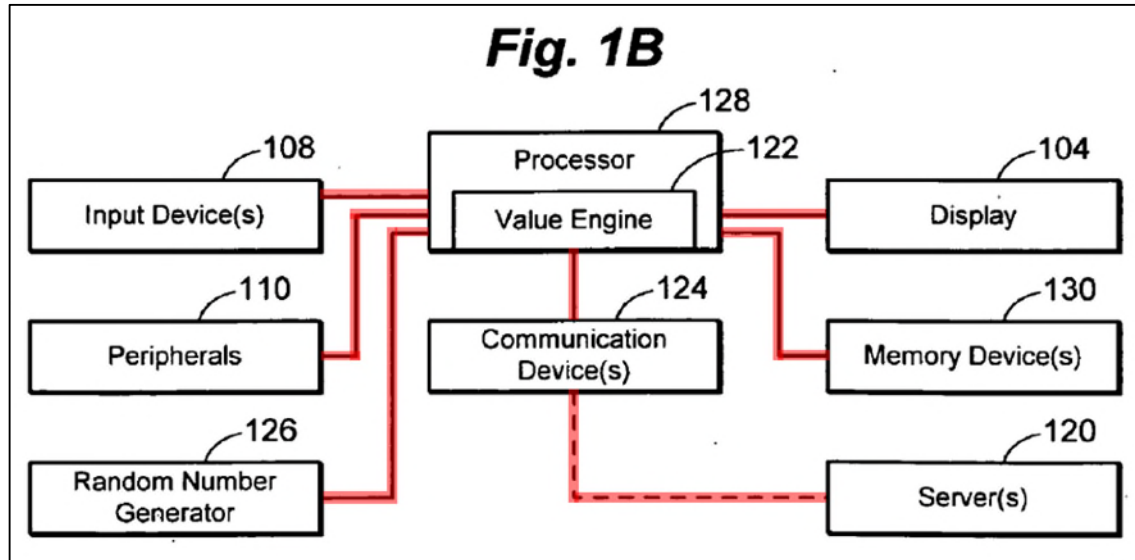
Scott discloses that the current cash value award is presented to the participant “*such that the user interface displays one or more of a confirmation that the option has been selected*” because Scott states that the touch screen user interface of the “**display 104...presents the number of credits the player has,**” and that when a player selects the current cash value option, the system “**credit[s] the current cash value to the player’s credits**” displayed on the touch screen. *Id.* ¶¶[0062]-[0063]. A POSITA would have understood that crediting/adding to the displayed credit meter in response to the player engaging the “accept” button is a displayed confirmation that the option has been selected because it is immediate feedback in response to selecting the option. EX[1007] ¶151.

Finally, Scott discloses that the current cash value award is presented to the

participant “*such that the user interface displays one or more of...a value of the at least the portion of the award*” because after any such awarding of the current cash value the player’s displayed credit meter will reflect “**the amount of the current cash value**” that was credited to the player’s credits. EX[1006] ¶¶[0063].

2. **Claim 2: “The system of claim 1, wherein the communications interface comprises one or more of: the Internet, an intranet, an extranet, a cellular network, a wired or wireless network, a networked communication system, a cloud-based system, an autonomic system, a client-server based system, a grid based system, a mainframe based system, a utility based system, a peer-to-peer based system, a cloud gaming based system, and a computer network.”**

Scott discloses claim 2. *See* EX[1007] ¶¶155-157. Scott discloses claim 2 because Scott’s “*communications interface*,” as explained above regarding limitation 1[c], is disclosed as comprising connections for facilitating electronic communication between connected computer components, thereby forming a “*wired or wireless network*” among the components. For example, such communications interfaces are shown below in annotated FIG. 1B.



In addition, Scott discloses that such connections for facilitating communication between the system components, such as between the gaming machines and “one or more external devices” such as “gaming servers 120” may be **“through network or other communications.”** EX[1006] ¶[0055]. Scott discloses that such a “network” is a *“client-server based system”* because Scott states that “the gaming machine 100 may be configured as a client-type device and obtain...information from a remote server 120 through network or other communications.” *Id.* ¶[0055].

3. **Claim 3: “The system of claim 1, wherein the wagering event comprises one or more of an entire event, a partial event, a divisible component of an event, multiple independent events occurring sequentially or concurrently, and a compilation of related events, including one or more probabilistic events, sporting events, eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, fantasy games, slot machines, keno, poker, video games, racing, lotteries, live events, pre-recorded events, online events, broadcast events, card games, politics, sales, stocks,**

celebrity gossip, movies, reality TV, football (“soccer”), American football, Australian rules football, baseball, cricket, basketball, golf, hockey, auto racing, legends, rugby, wrestling, surfing, mixed and martial arts.”

Scott discloses claim 3. *See* EX[1007] ¶¶158-159. For example, Scott discloses that “*the wagering event comprises one or more of...an entire event...a compilation of related events...including one or more...slot machines, keno, poker*” because Scott states that the wagered upon events may be “**various games, such as poker games, card games, or slot games**” involving “**playing card symbols, slot machine symbols, keno numbers, bingo numbers, etc.**” EX[1006] ¶¶[0010], [0035], [0044]. A POSITA would have understood that a “poker game,” for example, is “*an entire event*” because it refers to playing a full hand of cards. EX[1007] ¶158. In addition, a POSITA would have understood that a “poker game” is also “*a compilation of related events*” in that each card drawn or dealt during the game is a related but separate event that occurs during the overall poker game. *Id.* Furthermore, Scott discloses that such an “*entire event*” and “*compilation of related events*” “*include[e] one or more...slot machines, keno, poker*” because Scott expressly discloses that the wagered upon events may be “**video poker games, keno, [or] slot-type games.**” *Id.* ¶[0044].

4. **Claim 5: “The system of claim 1, wherein the wager comprises one or more of an accumulator, parlay, fixed odds single or fixed odds multiple wager comprising one or more combinations, wherein the one or more combinations are selectable by at least one of a participant, a third party, and**

the system controller, and wherein at any time before completion of the wagering event, at least one further offer is initiated to any number of the one or more participants remaining eligible to win the at least one award.”

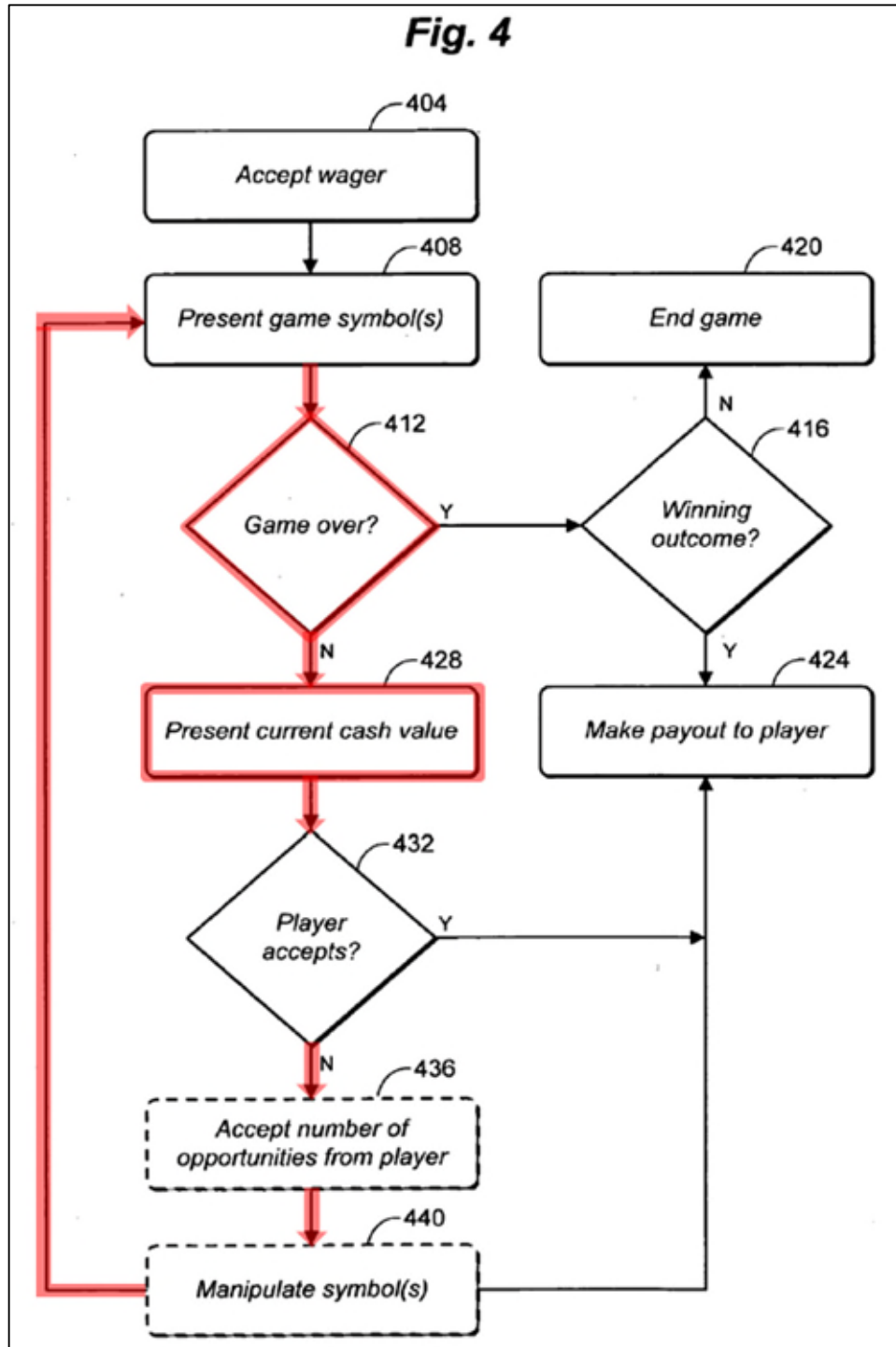
Scott discloses claim 5. See EX[1007] ¶¶160-163. For example, Scott discloses “*wherein the wager comprises one or more of...fixed odds single*” because Scott discloses, for example, that the wager may be on a “**bingo**” game, which is a known fixed odds game in that all bingo cards have the same odds of winning no matter what numbers are on them at the initiation of the game. EX[1006] ¶[0044]; EX[1007] ¶160. Similarly, a POSITA would have known that various other wagering games disclosed in Scott involved “*fixed odds single*” wagers, or that it would be obvious to implement them as fixed odds games, like certain video poker games and slot games in that all players have an equal chance of obtaining a winning outcome at the initiation of the game. *Id.* In fact, with certain respect to card games, for example, Scott discloses that specific actions are taken “**so as to preserve the odds of the game.**” EX[1006] ¶[0077]. And a POSITA would know that preserving such fixed odds on certain games is often required by regulation. EX[1007] ¶160.

Scott discloses “*at least one further offer is initiated*” because Scott states that “**the process of presenting current cash value for a player’s game symbols may continue with newly presented game symbols** until the game is over at decision step 412 or until the player accepts a current cash value for his or her set of symbols at decision step 432.” EX[1006] ¶[0081]; *see also id.* ¶[0035]. As an example, Scott

discloses that the “**current cash value may be determined and presented....in real time** or in substantially real time” as each event occurs during the wagering game, such as “**as each individual playing card or slot symbol is revealed**” during the wagering game. *Id.* at ¶[0067]. Therefore, in a card or slot game, for example, Scott discloses that, after a first offer is made and declined by the player, “*at least one further offer is initiated*” when each additional card is dealt, or additional slot symbol is revealed. EX[1007] ¶161.

Scott also discloses that the further offers, like the initial offer, is only initiated “*to any number of the one or more participants remaining eligible to win the at least one award at any time before completion of the wagering event*” because, as was explained above for limitations [1h] and [1i], the analyses of which are herein incorporated by reference, a current cash value option is only presented if the processor determines that the player is eligible to win an award by confirming that the game is not yet completed or ended. *See supra* §§IX.A.1.h-1.i. As Scott expressly states, the system will continue presenting the current cash value option “until the game is over at decision step 412 or until the player accepts the current cash value...at decision step 432,” which would end the game and render the player ineligible to win the award. EX[1006] ¶[0081]. That this process, of confirming that the game is not over and the player is eligible to win the award, occurs prior to initiating an additional current cash value option is confirmed by the loop shown in

FIG. 4, as highlighted below, which shows that the system confirms eligibility and that the game is not over prior to presenting every current cash value option.



5. **Claim 6: “The system of claim 1, wherein the award comprises one or more of a credit, a ticket, an electronic notice that is redeemable by the participant, a funding of an account of the participant, monetary awards, a designated monetary amount, a percentage of the designated monetary amount, nonmonetary awards, a prize, a payment, a designated currency, virtual currency, tokens, coupons, services, personal property, real property, virtual property, assets, investments, negotiable instruments, commodities, food, lodging, entertainment, alleviation of obligations, gaming opportunities and wager enhancement.”**

Scott discloses claim 6. See EX[1007] ¶¶164-165. For example, Scott discloses that “*the award comprises one or more of a credit*” or “*monetary awards, a designated monetary amount*” because it states “[a]wards may be provided for winning outcomes, such as **monetary payments** (or representations thereof, such as **award of credits**), prizes or the like.” EX[1006] ¶[0044]. In addition, Scott discloses that “*the award comprises one or more of...a ticket*” or “*a funding of an account of the participant*” or “*a designated currency*” because it states that “the value engine 122 may utilize a **ticket** printer or coin dispenser to award a current cash value to a player” and that “[t]he player might also elect to cash out by having a **ticket** or other media dispensed, such as via a printer, or electronically such as by transferring **credits** or **currency** to the **player's bank account** or **player tracking account**.” *Id.* ¶¶[0056], [0047].

6. **Claim 7: “The system of claim 1, wherein the wager comprises one or more of fixed odds single wagers, multiple wagers, full cover wagers, full cover wagers with singles, ‘Any to Come’ (ATC) or ‘if cash’ wagers, specialty wagers,**

forecasts, fixed, variable, guaranteed, parimutuel wagering, tote wagering, fixed-odds wagering, accumulator or parlay wagering, fixed odds, a pool, progressive, fixed pool, variable pool or guaranteed pool.”

Claim 7 and claim 5 both recite and may be satisfied by “[t]he system of claim 1, wherein the wager comprises one or more of...fixed odds single” wager. As discussed above regarding claim 5, Scott discloses and renders obvious this element, and that analysis is herein incorporated by reference. Therefore, Scott discloses claim 7 for the same reasons as claim 5.

7. Claim 8:

Scott discloses claim 8. See EX[1007] ¶¶168-173.

- a. 8[a] – “The system of claim 1, wherein the computer readable instructions, when executed by the processor, further cause the processor to one or more of: upon receiving the selection of the option, **one or more of** by the system controller:”

Scott discloses this limitation. See EX[1007] ¶¶169-171. For example, Scott discloses “wherein the computer readable instructions, when executed by the processor, further cause the processor” to perform “one or more of” the operations recited in limitation [8b] “by the system controller” “upon receiving the selection of the option” because, as discussed below with respect to limitation [8b], the analysis of which is herein incorporated by reference, Scott discloses that the computer-readable instructions “implement and/or operate one or more wagering games” and “implement a value engine” to be utilized during those games. EX[1006] ¶¶[0051]-[0052]. Scott therefore discloses that the machine-readable instructions include code

for “controlling the gaming machine” by, for example, “receiving player input and sending output signals controlling the various components of the machine.” *Id.* ¶[0048]. More specifically corresponding to triggering an operation recited in limitation [8b] “*upon receiving the selection of the option,*” Scott discloses that “[a]n **input device may be used to receive an indication that the player is accepting the current cash value**” and that “[t]he gaming machine may also” perform certain actions recited in limitation [8b] “**when the input device is engaged**” and the indication is received. *Id.* at ¶[0076].

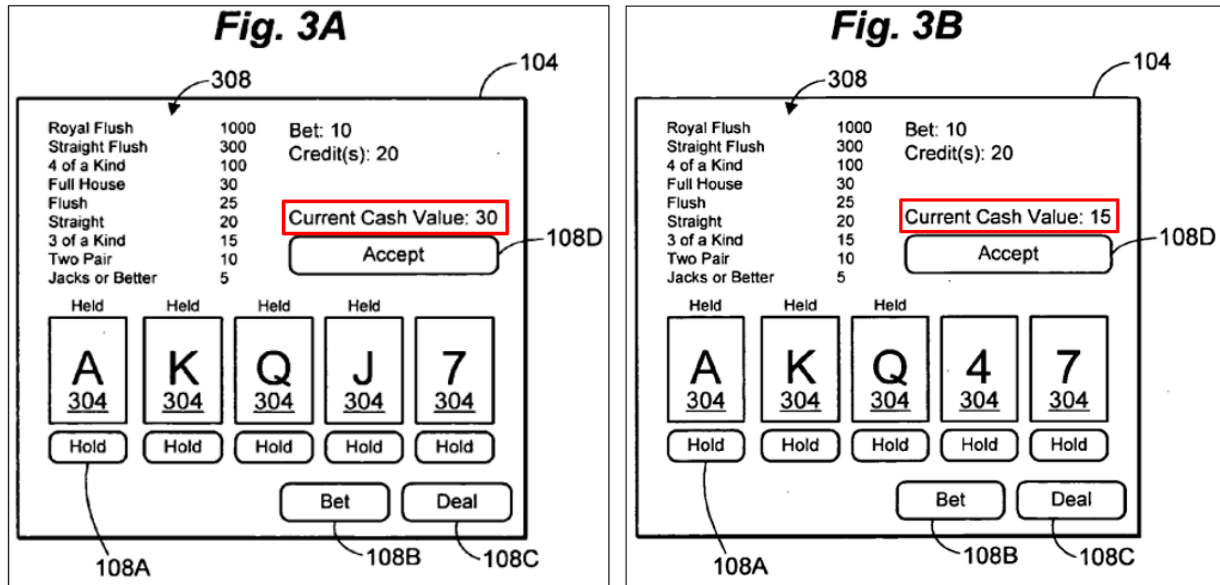
- b. 8[b] – “terminate the participant's participation in the wagering event, allow the participant to continue to participate in the wagering event with at least a portion of the wager, generate a new wager for the participant, relinquish rights of the participant in at least a portion of the wager, and one or more of transfer, sell or put out for bid or auction at least a portion of one or more of an entitlement, right, or ownership of the participant in at least a portion of the wager to a third party or another participant.”*

Scott discloses this limitation. See EX[1007] ¶¶172-173. For example, Scott discloses that the gaming machine will “*terminate the participant's participation in the wagering event*” upon receiving the selection of the current cash value option because Scott states that “[t]he gaming machine may be configured to end a **wagering game after an indication that the player is accepting the current cash value is received.**” EX[1006] ¶[0014]; *see also id.* ¶[0017] (“An input device may be used to receive an indication that the player is accepting the current cash

value....**The gaming machine may also end a current game being played on the gaming machine when the input device is engaged.**”); *id.* at ¶[0076]. That is, a POSITA would understand that Scott discloses terminating a player’s participation in a wagering event by ending the current game when the selection of the current cash value option is received. EX[1007] ¶172.

8. **Claim 9: “The system of claim 1, wherein an amount of the award is variable and based on one or more of a calculated probability, an originator of the wager, a negotiation, a bidding process, an auction, the one or more participants, and a third party.”**

Scott discloses claim 9. *See* EX[1007] ¶¶174-177. For example, Scott discloses “*wherein an amount of the award is variable and based on one or more of a calculated probability*” because Scott states that “FIGS. 3A-3B illustrate that **the current cash value is dynamic,**” *i.e.*, “*variable,*” because it is “**based on the current situation of the game being played.**” EX[1006] ¶[0065]. As shown below, FIGS. 3A-3B demonstrate that the current cash value varies in the same poker game depending on the current situation of the game. *See* EX[1006] ¶¶[0065]-[0066].



These disclosures also confirm that “*the amount of the award...is based on one or more of a calculated probability*” because Scott states, with respect to FIG. 3B, that “[b]ecause of the lower odds,” *i.e.*, lower probability, “that a winning outcome will be achieved” from the then-current set of game symbols, “**the value engine has determined a lower current cash value** of 15 credits for this set of cards” than the cash value amount shown in FIG. 3A because the player having “four cards to a royal flush” has a greater probability of obtaining the royal flush than the player having three cards to a royal flush. *Id.* ¶¶[0065]-[0066]. Similarly, Scott discloses that “**the value engine 122 will provide a current cash value based on the likelihood that a player will win an award...** a player of a poker game may be given a current cash value for his or her partial hand **based on the likelihood (i.e., odds) that the partial (or non-final) hand will become one or more particular winning hands** as the poker game progresses.” *Id.* ¶[0059].

9. **Claim 10:** “The system of claim 1, wherein the one or more input devices comprise one or more of: a wagering station, a wagering terminal, a hand held device, a mobile device, a wireless device, a computing system, a smart phone, a telephone, a tablet or desktop computer, a PDA, an interactive television, an internet connected device, and a cashier system.”

Scott discloses claim 10. *See* EX[1007] ¶¶178-179. For example, Scott discloses “*wherein the one or more input devices comprise one or more of: a wagering station, wagering terminal*” because a POSITA would have understood that Scott’s “gaming machine” is an “*input device*” that is a “*wagering station*” and “*wagering terminal*” in that “the gaming machine 100 is a **wager-based gaming machine** configured to present one or more games to a player, which games offer the possibility of an award of winnings,” and “[t]he **gaming machine may include one or more additional input devices configured to accept input from the player to allow the player to play the game.**” EX[1006] ¶¶[0018], [0040]. That is, the “gaming machine” is an “*input device*” because it is configured to accept input from the player, it is a “*station*” and a “*terminal*” because it is utilized by the player to play the game, and it is a “*wagering*” station and terminal because it is used for “wager-based gaming.” EX[1007] ¶178.

10. Claim 16:

Scott discloses each and every limitation of claim 16 and renders it obvious for the same reasons explained above for claim 1 because the claim limitations of

these claims are nearly identical. *See* EX[1007] ¶¶180-206. In fact, Patent Owner’s infringement contentions in the co-pending related matter does not provide any additional analysis of claim 16 over that which was provided for claim 1. *See* EX[1056]. Rather, Patent Owner appears to agree that the limitations of claim 16 are satisfied in the same ways as the corresponding limitations of claim 1 in that Patent Owner’s infringement contentions for claim 16 consist solely of cross references to the limitations of claim 1. *Id.*

The primary difference between claims 1 and 16 appears to be that the limitations of claim 16 sometimes, but not always, replace where claim 1 recites “one or more” with a “plurality,” such as receiving a plurality of wagers or a plurality of players participating in a wagering event. As an initial matter, such replacements appear to conflict with the preamble of claim 16, which serves as the antecedent basis for the “wagering event” and the “participants” recited in the body but recites that the system is for “one or more participants.” Therefore, the preamble states that the claim can be for just one participant, yet the body of the claim may suggest otherwise unless the Applicant intended to use “plurality” and “one or more” interchangeably.

To the extent the analysis of claim 1 above does not cover the “plurality” limitations, Scott also discloses that the system of claim 1 can be utilized by “a number of players,” including at least “a player” and “another player,” such that they

are “electronically connected” to the system via their respective wagering machines. EX[1006] ¶[0096]. Therefore, when there are at least two players their respective wagering machines in the system, Scott discloses each of the “plurality” elements in claim 16 for the same reasons provided above regarding claim 1. *See also* §IX.B.2.

a. 16[a] – “A system for conducting a wagering event among one or more participants in real time, the system comprising:”

Scott discloses this limitation. *See* EX[1007] ¶¶186-188. For example, Scott discloses “*a system*” for the same reasons previously explained for limitation 1[a]. In addition, Scott discloses that the system is “*for conducting a wagering event*” because Scott states that “a gaming machine configured to present one or more wagering games.” EX[1006] ¶¶[0009]-[0010]. Further, Scott discloses that a processor executes “machine readable code to **implement and/or operate one or more wagering events**” and to “provide the value engine 122, its features, or its functionalities disclosed herein.” *Id.* at ¶¶[0051]-[0052]. Scott discloses that the wagering event may be “*among one or more participants*” because it discloses that there may be “**a number of players electronically connected**” to the system including at least “**a player**” and potentially “**another player**.” *Id.* ¶[0096]. Scott discloses that the system conducts the wagering events “*in real time*” for the same reasons explained above for limitations 1[e]-1[g] and 1[i]. *See also id.* ¶[0067] (stating that game functionality may be performed “**in real time**”).

b. 16[b] – “a system controller comprising a trading engine module;”

Scott discloses and renders obvious this limitation for the same reasons recited in limitation 1[c]. See EX[1007] ¶189.

c. 16[c] – “a database;”

Scott discloses and renders obvious this limitation for the same reasons Scott discloses the “database” recited in limitation 1[d]. See EX[1007] ¶190.

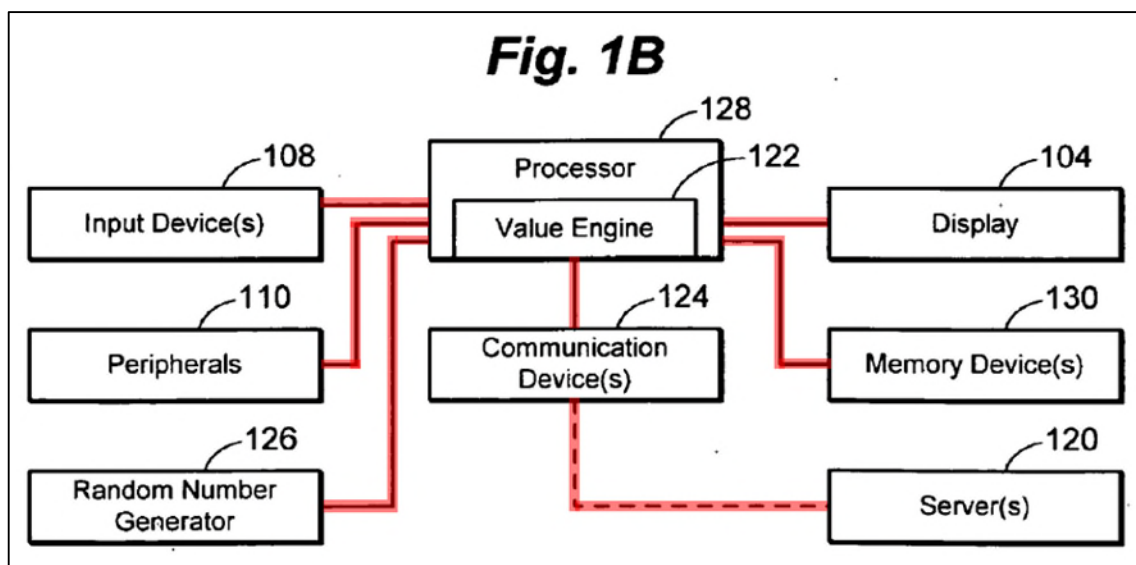
d. 16[d] – “a plurality of input devices each having a user interface; and”

Scott discloses this limitation for the same reasons Scott discloses “one or more input devices” and “a user interface of the one or more input devices” recited in limitation 1[c]. EX[1007] ¶191. In addition, as discussed above, Scott discloses that there may be “a number of players electrically connected” in the system. EX[1006] ¶[0096]. A POSITA would have understood that each such player’s wagering machine includes “one or more input devices” and “a user interface of the one or more input devices” and would have found that an obvious implementation choice for the reasons explained above for limitation 1[c], such that the system comprises “a plurality of user input devices each having a user interface” to correspond to the “number of players” connected to the system. EX[1007] ¶191.

e. 16[e] – “a communications interface for facilitating communications between the system controller and the plurality of input devices;”

Scott discloses this limitation for the same reasons previously explained for

the “*communications interface*” recited in limitation 1[c]. EX[1007] ¶192. In addition, Scott discloses that the communications interfaces are for “*for facilitating communications between the system controller and the plurality of input devices*” because Scott discloses that “[t]he **processor 128 may communicate with input devices 108, peripherals 110, and one or more displays 104 (or other output devices) to allow a player to interact with and play a wagering game at the gaming machine 100.**” EX[1006] ¶[0050]. The communications interfaces that facilitate such communication between those computer components are illustrated by the lines in FIG. 1B connecting the various components of the system to the processor and value engine therein and the server(s), as annotated below. A POSITA would have understood that such lines, as was well known in the art, represent wired or wireless electronic circuitry for enabling the communication between the connected computer components.



In addition, Scott discloses that such communication interfaces may include a network for communicating with other wagering machines via the server. Specifically, Scott discloses that the connections for enabling electronic communication between the system components, such as between the gaming machines and “one or more external devices” like “gaming servers 120,” may be “through network or other communications.” *Id.* ¶[0055]. Scott also discloses that the system and communication interfaces therein are configured to enable “a player having a particular set of symbols” to “sell[] the hand to another player” on the system. *Id.* at ¶[0096]. Thus, to facilitate the communications between different wagering machines, and their respective input devices, disclosed in Scott, a POSITA would understand that the communications interface for connecting to the “one or more external devices” would be utilized. EX[1007] ¶194.

f. 16[f] – “the system controller configured to:”

As described in the sections that follow, a POSITA would have understood that Scott discloses that gaming machines, value engine, and the gaming servers, which individually and collectively correspond to a “*system controller*” for the reasons explained above regarding limitation [16b] are configured to perform the operations recited in limitations [16g] through [16p].

g. 16[g] – “- receive, by the trading engine module, a plurality of wagers on the wagering event from the plurality of input devices via the communications interface, the plurality of wagers input by a plurality of participants via the user

interfaces of respective input devices from the plurality of input devices,”

Scott discloses and renders obvious this limitation for the same reasons explained above for limitation 1[c]. See EX[1007] ¶197. In the multiplayer configurations disclosed in Scott, a POSITA would have under that each of the trading engine modules would operate as described above regarding limitation [1c], such that the “*the plurality of wagers*” are “*input by a plurality of participants via the user interfaces of their respective input devices from the plurality of input devices*” and the one or more trading engine modules collectively “*receive....a plurality of wagers on the wagering event from the plurality of input devices.*” *Id.*

h. 16[h] – “store the plurality of wagers in a record within the database, the record comprising wager information for the plurality of wagers associated with the plurality of participants,”

Scott discloses and renders obvious this limitation for the same reasons explained above for limitation 1[d]. See EX[1007] ¶198. In the multiplayer configurations disclosed in Scott, a POSITA would have understood that the cumulative or repeated operations described above with respect to limitation [1d] by multiple players would involve storing the plurality of wagers in the manner recited in limitation [16h]. For example, a POSITA would understand that, where there are at least two players utilizing they system, there would be at least two records, one for each of the players, stored in the database in the manner described above

regarding limitation [1d]. *Id.*

i. Limitations 16[i] – 16[p]

Scott discloses and renders obvious limitations 16[i] through 16[p] for the same reasons explained above for limitations 1[e] through 1[l], respectively. EX[1007] ¶¶199-206.

11. Claims 17, 18, 21, 22, 23, 24, and 25

Scott discloses and renders obvious claim 17, 18, 21, 22, 23, 24, and 25 for the same reasons it discloses claims 2, 3, 9, 6, 7, 8, and 10, respectively. EX[1007] ¶¶207-213.

B. Additional Elements Rendered Obvious by Scott in view of the General Knowledge of a POSITA (Applicable to Ground 2)

If it is determined that Scott fails to disclose storing the wager in a record within a database as recited in limitations 1[d], 16[d], and 16[h], or it is determined that Scott does not disclose any limitation in claim 16 requiring a “plurality” rather than the “one or more” recited in the corresponding limitations of claim 1, then Scott renders these limitations obvious in view of the general knowledge of a POSITA. *See* EX[1007] ¶¶91-94, 180-185.

1. Storing a wager and wager information in a record within a database is obvious

A generic database for performing the generic function of “stor[ing]” a record as claimed here is simple technology and this limitation is minor and trivial in view of the cash out concept to which the ’779 Patent is directed. EX[1007] ¶91. Indeed,

the use of the database to store the wager is not linked to the cash out limitations of the claims, or any other claim limitation—it stands alone. *Id.* Thus, within the context of the '779 Patent claims, this feature is insignificant. *Id.*

A POSITA would have known that the “various storage technologies” disclosed in Scott include databases because databases were and still are a well-known and conventional storage structure for storing records of a player’s wagers. EX[1006] ¶[0053]; EX[1007] ¶92. For example, admitted prior art to the '779 Patent teaches that storing a player’s wager and wager information in a player profile database was known in the prior art. '779 Patent at 26:30-32 (“These types of gaming machines and their respective operation in both stand along and pool or progressive games are disclosed in detail in U.S. Patent No. 8,105,149, incorporated herein by reference.”). Specifically, the prior art that is incorporated by reference into the '779 Patent states, for example, that “[p]layer tracking systems are also known,” that such systems include “a player profile” of the tracking system includes the “cumulative history of a particular player’s gaming activity,” and that “player tracking system tracks any suitable information, such as any amounts wagered, average wager amounts, ... the times these wagers were placed” as well as “the player’s recent gaming sessions.” EX[1004] ¶[0005], ¶[0006]. The '779 Patent specification also recognizes that “wagering software functionality such as registration, deposit taking, withdrawals, **account sections that include current**

and previous bet histories, fixtures, results, historical data, rules and regulations ... are in place in various totalizer facilities and are thus known in the art.” ’779 Patent 8:19-26.

In addition, it would be common sense to store the record of the wager and the wager information as a structured set, thereby forming a database, because all such information is “related to the play or execution of a game” and the value engine and is stored in order to “implement and/or operate the value engine.” EX[1006] ¶[0051]. That is, it would have been common sense for a POSITA to store all of this information in a structured way, *i.e.*, thereby forming a database, to maintain its relationship to the play or execution of a game and the value engine. EX[1007] ¶93. Moreover, the use of a database to store the record of the wager would have been obvious and within common sense and common knowledge of a POSITA because it is using a database for its exact intended purpose, *i.e.*, to structure a set of data to make it more readily accessible and organized. *Id.*

Therefore, because the database element involves a simple and well-known technology in the prior art and is not important to the claimed invention, it would have been obvious to store the record of the wager “*within a database*” based on Scott, the knowledge of a POSITA, and common sense.

2. Adding multiple players to a system is obvious

A POSITA would not consider the addition change from one or more to a

plurality in the body of the claim to be a major difference with respect to the substance and subject of the claimed inventions. EX[1006] ¶182. This change simply amounts to saying take the system that is recited in claim 1 and use it the same way for more participants, or simply duplicate it. *Id.* This is obvious common sense. For example, if one player is able to utilize Scott’s system described above in accordance claim 1, but multiple players wanted to play, common sense dictates that such systems should be reproduced for multiple players. *Id.* ¶183-184. In addition, the claimed use of a “plurality” of players or wagers is not linked to the claimed concept of cashing out a player’s wager. For example, while certain limitations of claim 16 require the “plurality,” all of the limitations related to cashing out the wager can be satisfied by a single player, thereby demonstrating that the “plurality” elements are not significant to the core concept allegedly invented.

X. SECONDARY CONSIDERATIONS

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

XI. DISCRETIONARY DENIAL IS NOT APPROPRIATE

A. § 314(a)

Petitioner makes a *Sotera*-style stipulation not to pursue, in the co-pending district court proceeding, any argument that the Challenged Claims are invalid on any ground that was raised or could have been reasonably raised in this IPR, should this petition be instituted. *See* Memorandum, Interim Procedure for Discretionary

Denials in AIA Post-Grant Proceedings With Parallel District Court Litigation at 3
(June 21, 2022).

B. § 325(d)

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

First, this Petition relies on the entirely new prior art of Scott. Moreover, all of the arguments herein are new because the '779 Patent issued without even a single prior art rejection. The *Advanced Bionics* inquiry therefore fails at step one because no similar art or arguments were presented to the Examiner. **Second**, even if the second step is reached, the Examiner erred by misinterpreting the claims require both a “buy-out offer **and** partial buy-out offer,” as the Applicant had successfully argued during prosecution of a parent application to the '779 Patent, despite the Applicant's use of different claim language in the '779 Patent that contradict such an interpretation. Based on this flawed interpretation of the claims, the Examiner erred in its evaluation of the prior art.

1. *Advanced Bionics*: Step One

This Petition does not present “substantially the same art” or “substantially the same arguments previously presented to the Office.” *See Advanced Bionics*,

Paper 6 at 7. Scott, the primary reference presented in this Petition, was not cited or considered by the Examiner during prosecution and is not “substantially the same” as the prior art of record. “The fact that [the reference] was not the basis of rejection weighs strongly against exercising [the Board’s] discretion to deny institution.” *Intel Corp. v. Qualcomm Inc.*, IPR2019-00047, Paper 8 at 13 (P.T.A.B. July 9, 2019). Because the inquiry fails at step one, the Board need not consider step two.

2. *Advanced Bionics: Step Two*

Even if the Board considers step two, institution should be granted because the Examiner erred in evaluating the prior art of record in view of the claims. As background, during prosecution of one of the ’779 Patent’s parents—U.S. Patent No. 9,117,341 (the “’341 Patent”)—Applicant unambiguously argued that the limitation of “at least one of a buy-out offer and [a] partial buy-out offer” require both of a “buy-out” offer and a “partial buy-out” offer. Applicant made this argument in response to the Examiner’s finding that U.S. Patent Application Publication to 2011/0136566 to Acres (“Acres”) “discloses a wagering event for one or more players, wherein a player is presented with *at least one of a buy-out and partial offer* prior to completion of the wagering event” and, more particularly, that “Acres discloses initiating *at least a buy-out offer* to an eligible player based on the anticipated expected outcome of the player during the course of the game.” EX[1003] 109 (September 29, 2014 Non-Final Office Action). In other words, the

Examiner interpreted the limitation “at least one of a buy-out offer and [a] partial buy-out offer” as being written disjunctive, such that either a “buy-out offer” *or* a “partial buy-out offer” satisfied that limitation.

Applicant responded to the Examiner by arguing that “Claim 1, for example, recites a unique ability to offer *both* a buy-out offer and a partial buy-out offer to any number of players that are involved in a wagering event.” EX[1003] 86 (Dec. 18, 2014 Response to Office Action). Applicant then argued that “Acres fails to disclose or even contemplate the claimed capability to provide a ‘buy-out’ *and* ‘partial buy-out’ feature,” and that “Acres does not appear to disclose the claimed feature of a ‘partial buy-out’ *and* ‘buy-out’ that may be *offered as alternatives to players.*” *Id.* 86, 87.

Based on Applicant’s argument that “at least one of a buy-out offer *and* [a] partial buy-out offer” is a conjunctive limitation (i.e., requiring both a “buy-out” offer *and* a “partial buy-out” offer), rather than a disjunctive limitation (i.e., requiring either a “buy-out” offer *or* a “partial buy-out” offer), the Examiner withdrew its anticipation rejection over Acres. EX[1003] 69 (March 13, 2015 Office Action). No additional prior art rejections were made in any subsequent Office Action during the prosecution of the application leading to the ’341 Patent.

The same Examiner examined both the ’341 Patent and the ’779 Patent, and the Examiner’s error is demonstrated by the Examiner’s nonstatutory double

patenting rejection issued during prosecution of the '779 Patent. Specifically, based on the Examiner's evaluation of the claims of the '779 Patent, the claims were rejected as being "not patentably distinct" from the claims of the parent to the '341 Patent that included the exact same claim language "at least one of a buy-out offer **and** a partial buy-out offer." EX[1002] 62-66. That is notable because claims 1 and 16 of the '779 Patent only recite "one or more of fully cash out of the wager **or** partially cash out of the wager" in the disjunctive, whereas claim 1 of the '341 Patent and claim 1 of the '341 Patent's parent recites presenting/initiating "at least one of a buy-out offer **and** [a] partial buy-out offer," the latter of which the Examiner previously accepted as being conjunctive such that both a full buy-out offer and a partial buy-out offer were required during prosecution of the '341 Patent, as described above.

The new claim language in the '779 Patent, however, plainly is recited in the disjunctive such that only one of a full cash out or partial cash out is required, yet the examiner appeared to interpret it the same as "at least one of a buy-out offer **and** partial buy out offer," *i.e.*, requiring both a full and partial cash out offer. This is notable because the Examiner's interpretation conflicts with the plain and ordinary meaning of the '779 Patent claims.

Had the Examiner recognized that the Applicant's use of new claim language regarding the cash out offer conflicted with the Examiner's understanding that the

term “one or more of fully cash out of the wager *or* partially cash out of the wager” had the same meaning as “at least one of a buy-out offer *and* [a] partial buy-out offer,” such that the ’779 Patent claims do not require a partial cash out offer, the Examiner could have made a prior art rejection over the Acres reference that the Examiner was already aware of as “clearly anticipating” the similar claims of the ’341 Patent. EX[1003] 109. Therefore, the Examiner erred in failing to make a prior art rejection during prosecution of the ’779 Patent based on prior art that disclosed at least a full cash out/buy out offer due to a flawed interpretation of the claims.

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

XII. CONCLUSION

Petitioner respectfully requests that IPR of claims 1-3, 5-10, 16-18, 21-25 of the ’779 Patent be instituted and that the Challenged Claims be cancelled.

Respectfully Submitted,

February 7, 2023

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §§42.6(e) and 42.105, the undersigned certifies that on February 7, 2023, a complete and entire copy of the **PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 11,200,779 UNDER 35 U.S.C. §§311-319 AND 37 C.F.R. §§42.100 *ET SEQ.*** (“Petition”) including exhibits and testimony relied upon were served on the Patent Owner at the correspondence address of record for the subject patent and counsel for Patent Owner in the District Court Litigation, as included below:

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

Pursuant to 37 C.F.R. §42.24(d), the undersigned hereby certifies that the word count under §42.24(a)(1) for the foregoing Petition for *Inter Partes* Review totals 13,976 words, within the 14,000 word limit allowed under §42.24(a)(1)(i).

Date: February 7, 2023

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