

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC.,
Petitioner,

v.

DIOGENES LIMITED,
Patent Owner.

IPR2023-00268
Patent 11,200,779 B2

Before WILLIAM V. SAINDON, HYUN J. JUNG, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background

DK Crown Holdings Inc. (“Petitioner”) filed a Petition for *inter partes* review of claims 1–3, 5–10, 16–18, and 21–25 (“the challenged claims”) of U.S. Patent No. 11,200,779 B2 (Ex. 1001, “the ’779 patent”). Paper 2 (“Pet.”), 11. Diogenes Limited (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

On August 11, 2023, a majority of the panel entered a Decision denying institution of *inter partes* review. Paper 9 (“Board Decision”). On September 11, 2023, Petitioner timely filed a request for Director Review of the Board Decision. Paper 10. On November 7, 2023, the Director delegated Director Review of the Board Decision to a Delegated Review Panel (“DRP”). Paper 11.

On February 21, 2024, the DRP issued a decision granting Petitioner’s request for Director Review rehearing, vacating the Board Decision, and remanding to the original panel to reconsider whether to institute review. Paper 14 (“DRP Dec.”).

Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). A decision to institute may not institute on fewer than all claims challenged in the petition. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1354, 1359–60 (2018). If the Board institutes a trial, the Board will institute on all challenges raised in the petition. *See* 37 C.F.R. § 42.108(a) (“When instituting . . . review, the Board will authorize the review to proceed on all

of the challenged claims and on all grounds of unpatentability asserted for each claim.”).

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). For the reasons set forth below, upon considering the Petition, Preliminary Response, and evidence of record, we conclude that the information presented shows that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims. Thus, we institute *inter partes* review of all challenged claims based on all asserted grounds.

B. Real Parties in Interest

Petitioner identifies itself, DraftKings Inc., Crown Gaming Inc., and SBTech (Global) Limited as real parties in interest. Pet. 11.

Patent Owner identifies itself and Colossus (IOM) Limited as real parties in interest. Paper 4, 2.

C. Related Matters

The parties indicate that the ’779 patent is the subject of the following district court proceeding:

Diogenes Limited v. DraftKings Inc., Case No. 21-cv-01695 (D. Del. filed December 1, 2021) (“the Delaware litigation”).

Pet. 12; Paper 4, 2. Patent Owner notes other petitions for *inter partes* review filed by Petitioner and challenging patents owned by Patent Owner. Paper 4, 2. We note that each of the *inter partes* review proceedings noted by Patent Owner have terminated. Specifically, the Board issued Decisions Denying Institution in each of IPR2023-00261, IPR2023-00263,

IPR2023-00264, and IPR2023-00265, and each of IPR2023-00262, IPR2023-00266, and IPR2023-00267 were terminated due to settlement.

D. The Challenged Patent

The '779 patent discloses a system for conducting a multi-leg wagering event. Ex. 1001, 8:30–42, 14:35–45. Figure 1 illustrates the system hardware and is reproduced below. *Id.* at 5:5–7.

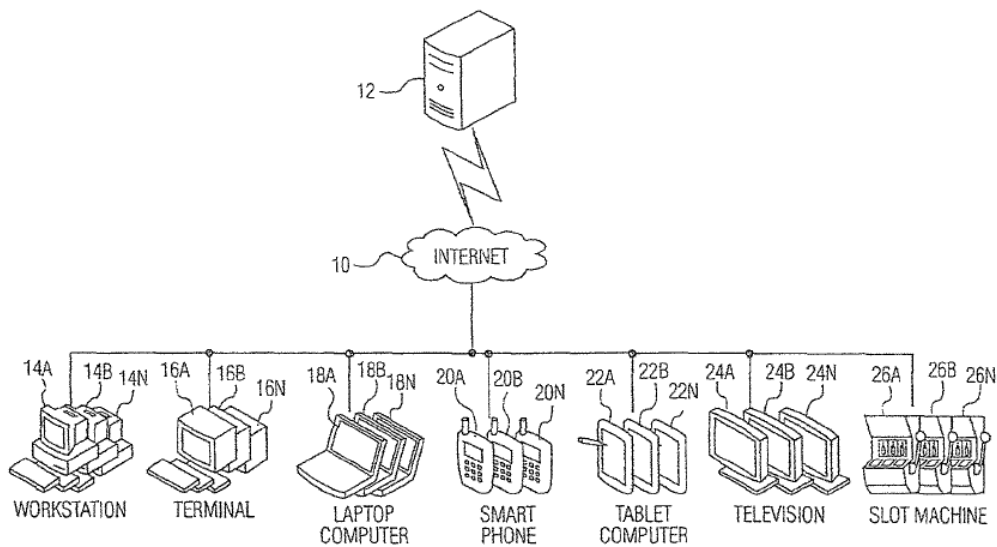


FIG. 1

Figure 1 shows the wagering system, including central server system 12 and wager input devices such as wagering stations 14 and wagering terminals 16. *Id.* at 5:8–16. The central server system controls the operation of the wagering system and allows players to enter wagers via the input devices. *Id.* at 7:25–28. The wagering event has multiple legs and the players input a selection for each leg. *Id.* at 5:24–6:7, 11:56–12:3. The player receives a printed or electronic ticket that represents the wager. *Id.* at 11:63–65. The system determines if the players' inputs for each of the legs are correct. *Id.*

at 13:29–33. After a predetermined number of legs have been completed, the system sends a buy-out offer to players that have correct inputs for the completed legs of the wager. *Id.* at 13:34–54, 20:63–21:7. The buy-out offer may be for the player’s entire ticket or a portion thereof. *Id.*

at 13:54–58. If a player accepts a full buy-out offer, the player receives the agreed-upon award and the player’s participation in the wagering event ends. *Id.* at 13:63–14:1. If a player accepts a partial buy-out offer, the player’s participation in the wagering event will continue, but the player’s award will be reduced by the agreed-upon amount. *Id.* at 14:37–43.

E. The Challenged Claims

Petitioner challenges claims 1–3, 5–10, 16–18, and 21–25 of the ’779 patent. Pet. 11, 20. Claims 1 and 16 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below.

1. A system comprising:

- a processor operatively coupled to a memory configured to store computer-readable instructions that, when executed by the processor, cause the processor to:
 - 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;
 - 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;
 - continuously retrieve, by the system controller, data in real time related to a progress of the wagering event;
 - recalculate, by the system controller, the wager information in real time based on the continuously retrieved data;

continuously evaluate, by the system controller, the recalculated wager information;

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;

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;

cause, by the system controller, the option to be presented to the participant via the user interface of the one or more input devices;

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

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.

Ex. 1001, 51:15–54.

F. Asserted Grounds of Unpatentability

The Petition relies on the following prior art reference:

Name	Reference	Exhibit
Scott	US 2012/0309489A1, published December 6, 2012	1006

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)
1–3, 5–10, 16–18, 21–25	102	Scott

Claim(s) Challenged	35 U.S.C. §	Reference(s)
1–3, 5–10, 16–18, 21–25	103	Scott and general knowledge of a Person of Ordinary Skill in the Art

Pet. 20. Petitioner submits a declaration of Dwight Crevelt (Ex. 1007, “Crevelt Declaration”) in support of its contentions. Patent Owner submits a declaration of Olaf Vancura, Ph.D. (Ex. 2001) in support of its preliminary contentions.

II. DISCRETIONARY DENIAL

Patent Owner argues that we should exercise discretion under 35 U.S.C. § 314(a) to deny institution based on the Delaware litigation. Prelim. Resp. 28–31. For the reasons set forth below, we decline to do so.

Under 35 U.S.C. § 314(a), the Director has discretion to deny institution. In determining whether to exercise that discretion on behalf of the Director, we are guided by the Board’s precedential decision in *NHK Spring Co., Ltd. v. Intri-Plex Technologies, Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (designated precedential).

In *NHK*, the Board found that the “advanced state of the district court proceeding” was a “factor that weighs in favor of denying” the petition under § 314(a). *NHK*, Paper 8 at 20. The Board determined that “[i]nstitution of an *inter partes* review under these circumstances would not be consistent with ‘an objective of the AIA . . . to provide an effective and efficient alternative to district court litigation.’” *Id.* (citing *Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (designated precedential in relevant part)).

“[T]he Board’s cases addressing earlier trial dates as a basis for denial under *NHK* have sought to balance considerations such as system efficiency, fairness, and patent quality.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5 (PTAB Mar. 20, 2020) (designated precedential). *Fintiv* sets forth six non-exclusive factors for determining “whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding.” *Id.* at 6. In evaluating the factors, we take a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review. *Id.* We are also guided by the Director’s Memorandum, *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation*, issued June 21, 2022 (“Guidance Memo”),¹ which provides several clarifications concerning the application of the *Fintiv* factors. One such clarification instructs that “the PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB.” Guidance Memo 3; *see also id.* at 7–8. Thus, we will not exercise our discretion to deny institution if a petitioner makes a stipulation similar to that provided in *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18–19 (PTAB Dec. 1, 2020) (designated precedential in relevant part).

¹ Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

Petitioner stipulates “not to pursue, in the [Delaware litigation], any argument that the Challenged Claims are invalid on any ground that was raised or could have been reasonably raised in this [*inter partes* review], should th[e] petition be instituted.” Pet. 86; *see also* Ex. 1057, 1 (“If the Patent Trial and Appeal Board institutes a proceeding for [this *inter partes* review], [Petitioner] will not pursue in the [Delaware litigation], any argument that the challenged claims of the patent in [this *inter partes* review] are invalid on any ground that was raised or could have been reasonably raised in [this *inter partes* review] proceeding.”).

Accordingly, pursuant to the Guidance Memo, we decline to exercise discretion under 35 U.S.C. § 314(a) to deny institution.

III. PATENTABILITY ANALYSIS

A. Principles of Law

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). Petitioner bears the burden of persuasion to prove unpatentability of each challenged claim by a preponderance of the evidence. 35 U.S.C. § 316(e). This burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). The Board may authorize an *inter partes* review if we determine that the information presented in the Petition and Patent Owner’s Preliminary Response shows that there is a reasonable

likelihood that Petitioner will prevail with respect to at least one of the claims challenged in the petition. 35 U.S.C. § 314(a).

“Under 35 U.S.C. § 102 a claim is anticipated ‘if each and every limitation is found either expressly or inherently in a single prior art reference.’” *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1274 (Fed. Cir. 2010) (quoting *Celeritas Techs. Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)). “Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)).

A reference inherently discloses an element of a claim “if that missing characteristic is necessarily present, or inherent, in the single anticipating reference.” *Schering Corp. v. Geneva Pharm.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003) (citing *Cont’l Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991)). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.” *Therasense*, 593 F.3d at 1332 (quoting *Cont’l Can*, 948 F.2d at 1269).

A patent claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art,

(2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) when in evidence, any objective evidence of nonobviousness.² *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). The person of ordinary skill in the art is a hypothetical person presumed to have known the relevant art at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In determining the level of ordinary skill in the art, we may consider certain factors, including: “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Best Med. Int’l, Inc. v. Elekta Inc.*, 46 F.4th 1346, 1353 (Fed. Cir. 2022) (citations omitted). “The patent’s purpose can also be informative.” *Id.*

Petitioner contends that a person having ordinary skill in the art at the time of the invention (“POSITA”) would have had “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.” Pet. 23 (citing Ex. 1007 ¶ 28). Petitioner states that “[a] person with less education but

² At this stage of the proceeding, the parties have not directed us to any such objective evidence.

more relevant practical experience may also meet this standard.” *Id.* (citing Ex. 1007 ¶ 28).

Patent Owner does not contest Petitioner’s proposed definition of the level of ordinary skill in the art. *See generally* Prelim. Resp. We note that Patent Owner’s declarant, Dr. Vancura, uses essentially the same definition as Petitioner. *See* Ex. 2001 ¶ 33.

Based on the arguments presented and the cited references, we find Petitioner’s definition of the level of ordinary skill reasonable and for purposes of this Decision, adopt it as our own.

C. Claim Construction

In an *inter partes* review, claims are construed using the same claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b), including construing the claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention” and “after reading the entire patent.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 1321 (Fed. Cir. 2005) (en banc). In addition to the specification and prosecution history, we also consider use of the terms in other claims and extrinsic evidence including expert and inventor testimony, dictionaries, and learned treatises, although extrinsic evidence is less significant than the intrinsic record. *Id.* at 1312–17. Usually, the

specification is dispositive, and it is the single best guide to the meaning of a disputed term. *Id.* at 1315.

“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (alteration in original) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Petitioner states that “[n]o terms of the ’779 Patent Challenged Claims require construction beyond their plain and ordinary meaning.” Pet. 23 (citing Ex. 1007 ¶¶ 54–55). “Patent Owner agrees . . . that the claim terms can be afforded their plain and ordinary meaning.” Prelim. Resp. 11.

The DRP interpreted two claim terms, as set forth below.

1. The “Continuously” Recitations

Independent claim 1 recites “continuously retrieve, by the system controller, data in real time related to a progress of the wagering event” and “continuously evaluate, by the system controller, the recalculated wager information.” Ex. 1001, 51:28–29, 51:33–34. Independent claim 16 contains substantially similar recitations. *Id.* at 54:21–22, 54:25–26. The DRP addressed these recitations:

[W]e construe the phrase “continuously retrieve . . . data . . . related to a progress of the wagering event” to encompass “repeatedly retrieving data related to the progress of the wagering event as developments occur that may affect the odds of the wager.” This construction does not encompass retrieving data on a predetermined time schedule (i.e., discrete time points of the wagering event) that is independent of the occurrence of developments that may affect the odds, such as capturing data at halftime of a sporting event. Similarly, we construe

“continuously evaluate . . . the recalculated wager information” to encompass “repeatedly evaluating the recalculated wager information as developments occur that may affect the odds of the wager.” As before, this construction does not encompass evaluating the recalculated wager information during the wagering event on a predetermined time schedule (i.e., discrete time points of the wagering event) that is independent of the occurrence of developments that may affect the odds, such as at halftime of a sporting event.

DRP Dec. 14–15 (all but first alteration in original). We adopt this interpretation of “continuously.”

2. “*In Real Time*”

Independent claim 1 uses the term “in real time” in three instances:

continuously retrieve, by the system controller, data in real time related to a progress of the wagering event;

recalculate, by the system controller, the wager information in real time based on the continuously retrieved data;

. . . .

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.

Ex. 1001, 51:28–43. Independent claim 16 contains substantially similar recitations. *Id.* at 54:21–33. The DRP

determine[d] that retrieving data and recalculating wager information “in real time” encompass retrieving or recalculating while the wagering event is occurring, and with sufficient frequency to promptly capture developments that may affect the odds of the event. This meaning could include a wagering event that is pre-recorded and later broadcast. In that situation, “in real time” would mean that the retrieval or recalculation action occurs while the wagering event is being broadcast, and with sufficient frequency to promptly capture developments during the broadcast that may affect the odds of the event.

DRP Dec. 21. We adopt this interpretation of “in real time.”

D. Overview of the Asserted Prior Art

Scott discloses systems for electronic wagering games, such as poker games, card games, or slot games. Ex. 1006 ¶¶ 2, 10. As part of a system operating a wagering game, Scott describes a “value engine” that calculates a “current cash value” of a player’s in-process wager and “present[s] the player with a challenging choice to . . . accept a current cash value for his or her hand or to forgo the current cash value to attempt to achieve a winning outcome (and possibly a larger award).” *Id.* ¶ 8. Figure 1B, reproduced below, illustrates a block diagram of a gaming machine having a value engine. *Id.* ¶ 25.

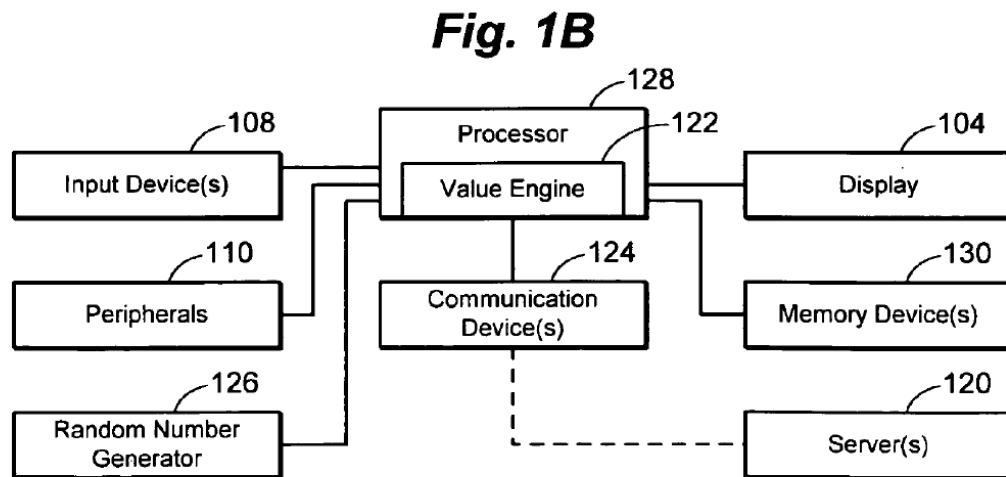


Figure 1B shows a block diagram of a gaming machine 100, including value engine 122. *Id.* ¶ 40. The value engine “is configured to evaluate game outcomes at various stages of a game” and “determine a monetary or cash value for the current game outcome and present this value to a player.” *Id.* ¶ 33. The current cash value may be determined in a number of ways, such as by averaging the awards from all likely winning outcomes or selecting the

median of such winning amounts. *Id.* ¶ 89. The player may choose to accept the presented cash value and forgo the opportunity to win a larger award. *Id.* ¶ 34.

The “determination of a current cash value can be triggered by various events.” Ex. 1006 ¶ 36. For example, “as each individual playing card or slot symbol is revealed, a new current cash value may be calculated.” *Id.* ¶ 67. “Alternatively, current cash value may be determined and presented at the end of each dealing stage of a game,” such as “after the initial deal, after one or more cards are held, or after one or more replacement cards are dealt” in a video poker game. *Id.* Such determinations “may occur in real time or in substantially real time.” *Id.*

E. Petitioner’s Anticipation Challenge

Petitioner argues that claims 1–3, 5–10, 16–18, and 21–25 are anticipated by Scott. Pet. 28–83. In support of its showing, Petitioner relies upon the Crevelt Declaration. *Id.* (citing Ex. 1007). We have reviewed Petitioner’s assertions and supporting evidence. For the reasons discussed below, and based on the record before us, we determine that Petitioner demonstrates a reasonable likelihood of prevailing in showing that at least one challenged claim is anticipated by Scott.

1. Independent Claim 1

a. The Preamble

Claim 1 recites “[a] system.” Ex. 1001, 51:15. Petitioner argues that Scott discloses electronic wagering games and systems. Pet. 28 (citing Ex. 1006 ¶ 2, Figs. 1A–1B; Ex. 1007 ¶¶ 63–66). Petitioner argues that the

system comprises multiple gaming machines 100 connected to gaming server 120 by a network. *Id.* at 29–30 (citing Ex. 1006 ¶¶ 25, 55, 96, Fig. 1B; Ex. 1007 ¶ 65).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

Scott discloses systems for electronic wagering games, such as poker games, card games, or slot games. Ex. 1006 ¶¶ 2, 10. The system includes gaming machine 100 in communication with server 120 to receive game code and information therefrom. *Id.* ¶ 55.

Accordingly, for the foregoing reasons and on this preliminary record, to the extent the preamble is limiting, Scott supports Petitioner’s contentions.

b. The Processor Recitation

Claim 1 recites “a processor operatively coupled to a memory configured to store computer-readable instructions that, when executed by the processor, cause the processor to” perform a number of operations. Ex. 1001, 51:16–18. Petitioner maps Scott’s processor 128, including value engine 122, to the recited processor, memory devices 130 to the recited memory, and machine readable code to the recited computer-readable instructions. Pet. 30–31 (citing Ex. 1006 ¶¶ 15, 48, 50–52, 57, Fig. 1B; Ex. 1007 ¶¶ 67–75).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

Scott discloses that its “gaming machine 100 includes one or more controllers or processors 128 for controlling the gaming machine, including

receiving player input and sending output signals for controlling the various components of the machine 100.” Ex. 1006 ¶ 48. “[P]rocessor 128 may access one or more memory devices 130” that “may be configured to store the machine readable code to implement and/or operate one or more wagering games.” *Id.* ¶ 51. “[M]emory device 130 may also or alternatively be configured to store . . . information related to the play or execution of a game and the value engine 122” *Id.*

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner’s contentions.

c. The First Receive Recitation

Claim 1 recites “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.” Ex. 1001, 51:19–23. Petitioner maps Scott’s “wagering machines, gaming servers, and value engines, individually or collectively,” to the recited system controller, value engine 122 to the recited trading engine module, the gaming machine’s display device 104 to the recited input device, and the display device’s touch screen display to the recited user interface. Pet. 31–32, 34–35 (citing Ex. 1006 ¶¶ 33, 42, 45, 61, 70, 75; Ex. 1007 ¶¶ 78, 82; Ex. 1001, 5:16–20, 9:26–31). Petitioner argues that Scott’s value engine receives an amount wagered on various games, such as poker games, card games, or slot games, from a player. *Id.* at 33–34 (citing Ex. 1006 ¶¶ 10, 35, 44, 61, 82–83, Fig. 5; Ex. 1007 ¶ 81). Petitioner notes that Scott’s value engine may be part of the processor or may be a separate component, and argues that the value engine is in communication

with the gaming machines in both embodiments. *Id.* at 31, 35–36 (citing Ex. 1006 ¶¶ 50, 55, Fig. 1B; Ex. 1007 ¶¶ 82–84).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

Scott discloses that its gaming machine includes a value engine and is configured to conduct various games, such as video poker games and slot-type games. Ex. 1006 ¶¶ 40, 44, 70. During play, a player enters a wager via input device 108, which can be a touch-screen display. *Id.* ¶¶ 45, 71. The wager amount and other user input is transmitted to the value engine. *Id.* ¶¶ 48, 50.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner’s contentions.

d. The Store Recitation

Claim 1 recites “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.” Ex. 1001, 51:24–27. Petitioner maps Scott’s player tracking account to the recited database and argues that Scott’s disclosure of storing “information related to the play or execution of the game,” including information regarding the amounts wagered and odds for a winning outcome, constitutes a record. Pet. 36–38 (citing Ex. 1006 ¶¶ 47, 51; Ex. 1007 ¶¶ 86–94).

Patent Owner argues that Petitioner’s reliance on Scott’s player tracking system is unavailing because “Scott’s disclosure makes no mention of a ‘database’” and “Scott’s ‘player tracking account’ is merely an alternative to using a bank account used to track funds—not wager

information.” Prelim. Resp. 21–22 (citing Ex. 1006 ¶ 47; Ex. 2001 ¶¶ 102–103). According to Patent Owner, “there is no need in Scott for storing a record in a database.” *Id.* at 22 (citing Ex. 2001 ¶¶ 104–105).

Scott discloses a player tracking account, but does not provide many details. *See* Ex. 1006 ¶¶ 46 (disclosing that the gaming machine 100 may include a card reader for reading “player tracking cards”), 47 (disclosing that a player can elect to cash out by transferring credits or currency to a “player tracking account”), 55 (disclosing that gaming server 120 may be configured to perform “player tracking”). Petitioner’s witness, Mr. Crevelt, testifies that an ordinarily skilled artisan would understand that Scott’s

“player tracking account” is a database because it is an “account,” *i.e.*, a structured dataset related to a particular player, and would have understood the player tracking account to store a record comprising the wager and wager information because such a database is for storing this precise type of information.

Ex. 1007 ¶ 90. Mr. Crevelt relies on the disclosure of a reference³ incorporated into the ’779 patent to support his assertion. *Id.* (citing Ex. 1001, 26:30–32; Ex. 1004 ¶¶ 5, 96); *see also id.* ¶ 51 (discussing DeWaal); Pet. 37–38 (discussing DeWaal). Mr. Crevelt testifies that an ordinarily skilled artisan would understand Scott’s “player tracking account” to be a structured dataset. Ex. 1007 ¶ 90.

Patent Owner’s witness, Dr. Vancura, agrees that Scott’s player tracking account stores wager information. *See* Ex. 2001 ¶ 103

³ U.S. Patent No. 8,105,149 B2 to DeWaal. Petitioner includes the publication of the application resulting in this patent as Exhibit 1004 (“DeWaal”).

(Dr. Vancura testifying that, in his experience, “player tracking systems store a player’s wagering information”).

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner’s contentions.

e. The Retrieve Recitation

Claim 1 recites “continuously retrieve, by the system controller, data in real time related to a progress of the wagering event.” Ex. 1001, 51:28–29. Petitioner argues that Scott’s value engine retrieves data related to a game in the form of a player’s current game symbols or indicia.⁴ *Id.* at 38, 42. Petitioner argues that Scott’s value engine continuously retrieves this data because Scott uses it to determine a current cash value of the player’s cards or symbols and Scott determines the current cash value “as each individual playing card or slot symbol is revealed.” *Id.* at 39 (citing Ex. 1006 ¶¶ 67, 83). According to Petitioner, “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.* (alterations in original) (emphasis omitted) (citing Ex. 1006 ¶ 81). Petitioner reproduces and annotates Scott’s Figures 4 and 5 to identify what Petitioner characterizes as Scott’s “continuous loop” of operation. *Id.* at 40–42.

⁴ We note that, at page 38 of the Petition, Petitioner also lists other types of data, but Petitioner limits its mapping to the player’s current game symbols or indicia at page 42 of the Petition.

Patent Owner argues that, rather than operating continuously, Scott retrieves data, and makes calculations and evaluations based on the retrieved data, in stages. Prelim. Resp. 12–21. Patent Owner argues that, as used in the '779 patent claims, “continuously” means “ongoing at all times.” *Id.* at 16 (emphasis omitted) (citing Ex. 2001 ¶ 89). Conversely, Patent Owner argues, in Scott’s process, “the current cash value is only ‘determined’ through data retrieval ‘after each card or other game symbol is dealt to a player’ and is thus determined in stages and not continuously.” *Id.* at 20 (emphasis omitted) (citing Ex. 2001 ¶¶ 67, 96–97). Patent Owner argues that,

while Scott’s gaming machine may, at discrete points during the event, retrieve data related to the progress of the event to determine/present the current cash value, once that current cash value is presented to the user at step 428, the system sits idle until a player either accepts or rejects the current cash value at step 432.

Id. (citing Ex. 2001 ¶ 98); *see also* Ex. 1006, Fig. 4. According to Patent Owner, “any break in retrieving data related to a progress of the wagering event is not continuous retrieval as claimed.” Prelim. Resp. 20 (emphasis omitted) (citing Ex. 2001 ¶ 99). “Simply put, just because Scott’s cash value process ‘may continue’ until it ends does not mean that the entire process, including the data retrieval, is ‘continuous,’ particularly where Scott’s disclosure shows that data retrieval is on an as-needed basis” *Id.* at 16 (citing Ex. 2001 ¶ 89).

Scott discloses that, as the game progresses, its value engine receives and evaluates game symbols or indicia presented to the player in a repeating cycle. Ex. 1006 ¶¶ 58, 71, 80–81. Thus, Scott’s value engine continuously

retrieves data, in real time, related to the progress of the wagering event per the constructions provided in section III.C above.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner's contentions.

f. The Recalculate Recitation

Claim 1 recites "recalculate, by the system controller, the wager information in real time based on the continuously retrieved data."

Ex. 1001, 51:30–32. Petitioner argues that Scott's value engine continuously recalculates the player's odds for a winning outcome by determining the current cash value of the player's game symbols or indicia as each new game symbol is revealed. Pet. 42–46 (citing Ex. 1006 ¶¶ 11, 21, 65, 67, 73–74, 81–83, 86, Figs. 4–5; Ex. 1007 ¶¶ 106–117).

Patent Owner contests Petitioner's arguments regarding this recitation in the same manner set forth regarding the Retrieve Recitation. Prelim. Resp. 12–21.

Scott discloses that the "determination of a current cash value can be triggered by various events." Ex. 1006 ¶ 36. For example, "as each individual playing card or slot symbol is revealed, a new current cash value may be calculated." *Id.* ¶ 67. "Alternatively, current cash value may be determined and presented at the end of each dealing stage of a game," such as "after the initial deal, after one or more cards are held, or after one or more replacement cards are dealt" in a video poker game. *Id.* Thus, Scott's value engine recalculates, in real time, the player's odds for a winning outcome per the constructions provided in section III.C above.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner's contentions.

g. The Evaluate Recitation

Claim 1 recites "continuously evaluate, by the system controller, the recalculated wager information." Ex. 1001, 51:33–34. Petitioner argues that Scott's value engine continuously evaluates the player's odds for a winning outcome by determining a current cash value of the player's current game indicia as each new game symbol is revealed. Pet. 46–50 (citing Ex. 1006 ¶¶ 13, 21, 35, 58–59, 65, 67, 73–74, 81–82, Figs. 4–5; Ex. 1007 ¶¶ 118–127).

Patent Owner contests Petitioner's arguments regarding this recitation in the same manner set forth regarding the Retrieve Recitation. Prelim. Resp. 12–21.

As discussed above regarding the Recalculate Recitation, Scott discloses evaluating the current cash value of a player's cards or symbols as each new card or symbol is revealed or at the end of each game stage. Ex. 1006 ¶¶ 36, 67. Thus, Scott's value engine continuously evaluates the player's odds for a winning outcome per the constructions of these terms provided in section III.C above.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner's contentions.

h. The Determine Recitation

Claim 1 recites "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."

Ex. 1001, 51:35–38. Petitioner maps Scott’s award for a winning outcome to the recited award and argues that, by calculating the current cash value of the player’s cards or symbols, Scott’s value engine determines that the game is not over and the player is eligible to win the award. Pet. 50–53 (citing Ex. 1006 ¶¶ 8, 20, 70, 72–73, Fig. 4; Ex. 1007 ¶¶ 128–133). Petitioner argues that this determination includes comparing the player’s game symbols to a paytable, and generating the current cash value is based on the amount wagered by the player. *Id.* at 53 (citing Ex. 1006 ¶¶ 72, 74; Ex. 1007 ¶¶ 131–132).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

Scott discloses electronic wagering games for which awards are provided for winning outcomes. Ex. 1006 ¶ 44. As described above, Scott’s value engine calculates a current cash value of a player’s in-process wager and “present[s] the player with a challenging choice to . . . accept a current cash value for his or her hand or to forgo the current cash value to attempt to achieve a winning outcome (and possibly a larger award).” *Id.* ¶ 8. The current cash value is only determined if the player’s cards or symbols make the player eligible for an award or potential award. *Id.* ¶ 73 (“Though a number of game indicia may be revealed it is contemplated that only some of them may be considered for purposes of determining current cash value. For example, only indicia along one or more active paylines or at one or more particular positions/locations on the gaming machine’s display may be considered.”).

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner’s contentions.

i. The Generate Recitation

Claim 1 recites “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.” Ex. 1001, 51:39–43. Petitioner maps Scott’s presentation of the current cash value to the player to the recited option and argues that Scott discloses presenting the current cash value to the player as an option to fully cash out of the wager in real time during play of the game. Pet. 53–57 (citing Ex. 1006 ¶¶ 8, 14, 19–20, 51, 63, 65, 67, 73, 76, 81, 83, Figs. 3A, 4; Ex. 1007 ¶¶ 134–140). Petitioner argues that Scott discloses that the current cash value is a portion of the award for a winning outcome. *Id.* at 58–59 (citing Ex. 1006 ¶¶ 21, 59, 62, Fig. 3A).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

As discussed above, Scott discloses that its value engine calculates a current cash value of a player’s in-process wager and “present[s] the player with a challenging choice to . . . accept a current cash value for his or her hand or to forgo the current cash value to attempt to achieve a winning outcome (and possibly a larger award).” Ex. 1006 ¶ 8. The value engine “is configured to evaluate game outcomes 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” in real time. *Id.* ¶¶ 33, 67. The current cash value may be determined in a number of ways, such as by averaging the awards from all likely winning outcomes or selecting the median of such winning amounts. *Id.* ¶ 89. The player may choose to accept the presented cash value and forgo the opportunity to win a larger award. *Id.* ¶ 34.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner's contentions.

j. The First Cause Recitation

Claim 1 recites "cause, by the system controller, the option to be presented to the participant via the user interface of the one or more input devices." Ex. 1001, 51:44–46. Petitioner argues that Scott's value engine communicates with the gaming machine's display device 104 to present the current cash value to the player. Pet. 59–61 (citing Ex. 1006 ¶¶ 20, 60–61, 69, Fig. 3A; Ex. 1007 ¶¶ 141–144).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

As discussed above, Scott discloses that its value engine calculates a current cash value of a player's in-process wager and "present[s] the player with a challenging choice to . . . accept a current cash value for his or her hand or to forgo the current cash value to attempt to achieve a winning outcome (and possibly a larger award)." Ex. 1006 ¶ 8. "[T]he value engine 122 may communicate the current cash value to a display 104 to present the current cash value to the player for evaluation." *Id.* ¶ 60. "[T]he current cash value may be presented . . . in real time or in substantially real time." *Id.* ¶ 67.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner's contentions.

k. The Second Receive Recitation

Claim 1 recites "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.” Ex. 1001, 51:47–49. Petitioner argues that Scott discloses providing the player with an “accept” button to allow the player to accept the presented current cash value. Pet. 61 (citing Ex. 1006 ¶¶ 56, 60, 75; Ex. 1007 ¶¶ 145–149). Petitioner argues that the value engine receives the user’s selection of acceptance of the current cash value. *Id.* at 61–63 (citing Ex. 1006 ¶¶ 14, 75, Fig. 4; Ex. 1007 ¶¶ 146, 148–149).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

Scott discloses that its value engine interacts with the player input devices and may present an “accept” button to the player’s display to allow the player to accept the current cash value. Ex. 1006 ¶¶ 56, 60. The user’s input is transmitted to the value engine. *Id.* ¶¶ 48, 50.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner’s contentions.

1. The Second Cause Recitation

Claim 1 recites “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.” Ex. 1001, 51:50–54. Petitioner argues that, if the player accepts the presented offer, the value engine pays the current cash value to the player. Pet. 63–64 (citing Ex. 1006 ¶¶ 56, 76; Ex. 1007 ¶¶ 150–154). Petitioner argues that an ordinarily skilled artisan would understand that such awarding payment to the player is a means of presenting the payment to the player. *Id.* at 64 (citing Ex. 1007 ¶ 150). Petitioner argues the player’s option to accept the

current cash value is confirmed by displaying the payment amount on the player's display 104 as reflected in the player's credits. *Id.* at 64–65 (citing Ex. 1006 ¶¶ 62–63; Ex. 1007 ¶ 151).

Patent Owner does not contest this aspect of the Petition. *See generally* Prelim. Resp.

Scott discloses that, if the player accepts the current cash value offer, the value engine pays that amount to the player, for example by a ticket printer, coin dispenser, or adding the amount to the player's credits. Ex. 2006 ¶¶ 56, 63. The player's display device 104 displays the player's credits. *Id.* ¶ 62, Fig. 3A.

Accordingly, for the foregoing reasons and on this preliminary record, Scott supports Petitioner's contentions.

m. Conclusion

Accordingly, at this stage of the proceeding, we determine that Petitioner has established a reasonable likelihood of prevailing on its assertion that claim 1 is anticipated by Scott.

2. Independent Claim 16

Independent claim 16 recites a system for conducting a wagering event comprising a system controller having a memory with computer-readable instructions stored thereon that, when executed, cause the system controller to perform the steps recited in claim 1. Ex. 1001, 54:1–45. Claim 16 also recites “a plurality” in instances where claim 1 recites “one or more.” *Id.* For example, claim 16 recites “a plurality of input devices” and receiving a “plurality of wagers input by a plurality of participants.” *Id.* Petitioner relies on its showing made for claim 1 regarding the similar

recitations of claim 16. Pet. 76–83. Regarding the recitations of “plurality of,” Petitioner argues that “Scott . . . 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.” *Id.* at 77–78 (citing Ex. 1006 ¶ 96).

Patent Owner notes Petitioner’s reliance on Scott paragraph 96 and argues that, here, Scott merely discloses a player wishing to sell symbols to another player may suspend the game to solicit wagers, but does not disclose multiple players participating in a wagering event. Prelim. Resp. 23 (citing Ex. 1006 ¶ 96; Ex. 2001 ¶ 107). Patent Owner argues that the player’s unilateral ability to suspend the game suggests that the game is played only by that player. *Id.* at 23–24 (citing Ex. 2001 ¶¶ 108–111).

Scott discloses “a number of players electronically connected” where one player may sell symbols to “other players.” Ex. 1006 ¶ 96. Scott also discloses various types of games, including games typically played by more than one player. *See, e.g., id.* ¶ 44 (disclosing “Class II” games, keno, lottery, bingo). Additionally, contrary to Patent Owner’s suggestion, the fact that a player has the ability to suspend a game suggests a game with multiple participants, as a participant in a single-player game would not need to engage a button to suspend the game; rather, such a player “could simply wait for the symbols to be sold before playing again.” *Id.* ¶ 96.

For the foregoing reasons and those set forth in section III.E.1 above, at this stage of the proceeding, we determine that Petitioner has established a reasonable likelihood of prevailing on its assertion that claim 16 is anticipated by Scott.

F. Petitioner's Obviousness Challenge

Petitioner argues that claims 1–3, 5–10, 16–18, and 21–25 would have been obvious in view of Scott and the general knowledge of a person of ordinary skill in the art. Pet. 83–86. In support of its showing, Petitioner relies upon the Crevelt Declaration. *Id.* (citing Ex. 1007). We have reviewed Petitioner's assertions and supporting evidence. For the reasons discussed below, and based on the record before us, we determine that Petitioner demonstrates a reasonable likelihood of prevailing in showing that at least one challenged claim would have been obvious.

Petitioner presents obviousness arguments in the event that we “determine[] that Scott fails to disclose storing the wager in a record within a database” or “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.” Pet. 83. Petitioner argues that it would have been obvious to store records regarding players' wagers in a database because it was well-known to do so, the '779 patent recognizes such database use as prior art, and it would have been merely common sense to do so. *Id.* at 83–85. Petitioner argues that it would have been merely common sense to use Scott's system with multiple players. *Id.* at 85–86.

Patent Owner argues that Petitioner's reliance on common sense as reasoning to store records regarding players' wagers in a database and to use Scott's system with multiple players falls short because Petitioner's arguments do not satisfy the requirements set forth in *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355 (Fed Cir. 2016). Prelim. Resp. 25–28. According to Patent Owner, “[c]ommon sense can only be invoked to fill in a missing limitation when ‘the limitation in question was unusually simple and the

technology particularly straightforward.” *Id.* at 25 (citing *Arendi*, 832 F.3d at 1362). However, Patent Owner argues, “the technology [of the ’779 patent] is not ‘unusually simple’ or ‘particularly straightforward.’” *Id.* (citing Ex. 2001 ¶¶ 35–55). To this end, Patent Owner argues that, “[a]lthough databases are common, storing wager information in a record format for later continuous and real-time retrieval to calculate a cash out offer” is not. *Id.* at 27 (emphasis omitted). Patent Owner also argues that it would not have been obvious to use Scott’s system with multiple players because “Scott is primarily directed to slot machines, which are traditionally only single player games.” *Id.* at 27–28 (citing Ex. 1006 Figs. 3A–3C; Ex. 2001 ¶ 113).

Having found that Petitioner has established a reasonable likelihood of showing that Scott anticipates independent claims 1 and 16 as explained in section III.E above, we also determine that Petitioner has established a reasonable likelihood of showing that Scott renders obvious independent claims 1 and 16. “It is well settled that ‘anticipation is the epitome of obviousness.’” *In re McDaniel*, 293 F.3d 1379, 1385 (Fed. Cir. 2002) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)). “Though it is never necessary to so hold, a disclosure that anticipates under § 102 also renders the claim invalid under § 103, for ‘anticipation is the epitome of obviousness.’” *Connell*, 722 F.3d at 1548 (quoting *In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982)).

Additionally, we are persuaded that Petitioner’s obviousness rationales are supported by rational underpinning. Regarding storing records regarding players’ wagers in a database, Petitioner correctly notes that Scott discloses that its memory devices “may utilize various storage technologies

to accomplish data storage and retrieval.” Ex. 1006 ¶ 53; Pet. 84 (citing same). We are persuaded by Petitioner’s arguments that, given the widespread use of databases to store data in computer systems and computerized gaming systems in particular, it would have been obvious to an ordinarily skilled artisan to store Scott’s player tracking account data as records in a database. *See* Pet. 84–85 (citing Ex. 1001, 8:19–26, 26:30–32; Ex. 1004 ¶¶ 5, 96; Ex. 1006 ¶ 53; Ex. 1007 ¶ 92); *see also* Ex. 2001 ¶ 103 (Dr. Vancura testifying that, in his experience, “player tracking systems store a player’s wagering information”).

Regarding using Scott’s system with multiple players, we note that, contrary to Patent Owner’s assertion, Scott discloses various types of games in addition to slot games, including games typically played by more than one player. *See, e.g., id.* ¶ 44 (disclosing “Class II” games, keno, lottery, bingo). We agree that it would have been obvious to an ordinarily skilled artisan to use Scott’s system in a multiplayer environment. *See* Pet. 85–86.

Accordingly, at this stage of the proceeding, we determine that Petitioner has established a reasonable likelihood of prevailing on its assertion that independent claims 1 and 16 would have been obvious in view of Scott.

IV. CONCLUSION

For the foregoing reasons, we determine that the information presented establishes a reasonable likelihood that Petitioner would prevail in showing that at least one of the challenged claims is unpatentable. At this preliminary stage, we have not made a final determination with respect to the patentability of the challenged claims or any underlying factual and legal

issues. *See TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016) (noting that “there is a significant difference between a petitioner’s burden to establish a ‘reasonable likelihood of success’ at institution, and actually proving invalidity by a preponderance of the evidence at trial”).

Accordingly, *inter partes* review is instituted as to all challenged claims and all proposed grounds of unpatentability. *See* 37 C.F.R. § 42.108(a).

V. ORDER

Accordingly, it is:

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1–3, 5–10, 16–18, and 21–25 of the ’779 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, which commences on the entry date of this decision.

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Patent 11,200,779 B2

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