

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

DIOGENES LIMITED, COLOSSUS (IOM) LIMITED,
Patent Owner

Case IPR2023-00266
Patent 10,970,969

**DECLARATION OF DWIGHT CREVELT IN SUPPORT OF
PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
10,970,969**

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CONTENTS

I.	Introduction.....	9
II.	Materials Considered	9
III.	Qualifications.....	10
IV.	Legal Understanding.....	14
	A. My Understanding of Claim Construction.....	14
	B. My Understanding of Obviousness	15
	C. Level of Ordinary Skill in the Art	17
V.	Background of the Technology	18
	A. Cash Out and the Problem of Points	18
	B. Cash Out and In-Play Betting.....	22
	C. Partial Cash Outs	25
VI.	The '969 Patent.....	28
	A. Priority Date	28
	B. Overview	29
	C. Prosecution History	33
VII.	Claim Construction.....	33
VIII.	Overview of Prior Art.....	34
	A. Overview of Schugar (Ex.1005).....	34
	B. Overview of DeWaal (Ex.1004).....	37
IX.	Grounds of Unpatentability	43
	A. Claims 1, 2, 8, 9, 13-16, 20-27, 29, and 30 are Obvious in view of Schugar and DeWaal	43
	1. Obviousness and Motivations to Combine	44
	2. Claim 1	54
	3. Claim 2	83
	4. Claim 8	89
	5. Claim 9	95
	6. Claim 13: “The system of claim 8, further comprising: receiving a second wager from a second player.”	96

7.	Claim 14: “The system of claim 8, wherein determining an amount of the cash out offer comprises: determining odds of winning with respect to the wager from the first player and the second wager from the second player.”	98
8.	Claim 15.....	100
9.	Claim 16.....	103
10.	Claim 20: “The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to receive a second wager from a second player.”.....	104
11.	Claim 21	105
12.	Claim 22: “The non-transitory computer readable medium of claim 21, further comprising: causing the at least one wagering input device to issue a credit, tokens, coupon, voucher, award or funding of an account of the player based on the amount of the accepted cash out offer.”	123
13.	Claim 23: “The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a wagering terminal, a hand held device, a mobile device, a wireless device, a computer, a smart phone, a telephone, a tablet computer, a PDA or an interactive television.”	125
14.	Claim 24: “The non-transitory computer readable medium of claim 21, wherein the at least one central server system is one or more of remote from the at least one wagering input device, proximate to the at least one wagering input device or a portion of the at least one wagering input device.”	125
15.	Claim 25: “The non-transitory computer readable medium of claim 21, wherein the amount of the cash out offer is variable and based on at least one of a calculated probability, an originator of the cash out offer, a negotiation, the one or more players ora third party.”	127
16.	Claim 26: “The non-transitory computer readable medium of claim 21, wherein the cash out offer comprises at least one of or both of a full cash out offer or a partial cash out offer.	130
17.	Claim 27	132

18.	Claim 29: “The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a user interface through which the player may input the wager in order to participate in the wagering event and accept or reject the cash out offer.”	134
19.	Claim 30: “The non-transitory computer readable medium of claim 21, wherein the sporting event comprises at least one of an entire sporting event, a partial sporting event, a divisible component of a sporting event, multiple independent sporting events occurring sequentially or concurrently, and a compilation of related sporting events, wherein the one or more sporting events comprises one or more selected from the group consisting of eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, fantasy games, video games, football (“soccer”), American football, Australian rules football, baseball, cricket, basketball, golf, hockey, auto racing, legends, rugby, wrestling, surfing, mixed martial arts, racing, lotteries, live events, pre-recorded events, online events, broadcast events, card games, slot machines, keno, poker, politics, sales, stocks, celebrity gossip, movies, and reality TV.”	137
20.	No Evidence of Non-Obviousness.....	139
X.	Conclusion	139

EXHIBIT LIST

Exhibit No.	Description
Ex.1001	U.S. Patent No. 10,970,969 (“’969 Patent”)
Ex.1002	File History for U.S. Patent ’969 Patent
Ex.1003	File History for U.S. Patent No. 9,117,341
Ex.1004	U.S. Patent Application Publication No. 2008/0113765 A1 (“DeWaal”)
Ex.1005	U.S. Patent Application Publication No. 2008/0311981 A1 (“Schugar”)
Ex.1006	U.S. Patent Application Publication No. 2012/0309503 A1 (“Scott”)
Ex.1007	Reserved
Ex.1008	<i>Curriculum Vitae</i> of Dwight Crevelt
Ex.1009	Vishal Jain & Jyoti Moy Chatterjee, <i>Machine Learning with Health Care Perspective</i> (Springer 2020)
Ex.1010	Christiani Huguenii, <i>The Value of all Chances in Games of Fortune; Cards, Dice, Wagers, Lotteries, &C. Mathematically Demonstrated</i> (printed 1741)
Ex.1011	C.C. Heyde & E. Seneta, <i>Statisticians of the Centuries</i> (Springer 2001)
Ex.1012	Jui-Pin Cheng, <i>The Origin of Probability and The Problem of Points</i> (2000), https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html
Ex.1013	Nicholas Hammond, <i>The Cambridge Companion to Pascal</i> (Cambridge University Press 2003)
Ex.1014	Prakash Gorroochurn, <i>Thirteen Correct Solutions to the “Problem of Points” and Their Histories</i> , THE MATHEMATICAL INTELLIGENCER (Springer 2014)
Ex.1015	Keith Devlin, <i>The Unfinished Game: Pascal, Fermat, and the Seventeenth-Century Letter that Made the World Modern</i> (Basic Books 2008)
Ex.1016	Anders Hald, <i>A History of Probability and Statistics and Their Applications before 1750</i> (John Wiley & Sons 2003)
Ex.1017	Adam Prügel-Bennett, <i>The Probability Companion for Engineering and Computer Science</i> (Cambridge University Press 2019)

Exhibit No.	Description
Ex.1018	Elizabeth A. Killick & Mark D. Griffiths, <i>In-Play Sports Betting: a Scoping Study</i> , 17 INT J MENT HEALTH ADDICTION 1456 (Apr. 16, 2018)
Ex.1019	<i>What is In-Play Betting: Live Betting Explained by William Hill</i> , WILLIAMHILL.COM (Apr. 20, 2021), https://news.williamhill.com/betting-guides/in-play-betting/
Ex.1020	Mark O’Haire, <i>The History of Betting</i> , TheSetPieces (2021), https://thesetpieces.com/latest-posts/the-history-of-betting/
Ex.1021	U.S. Patent No. 9,117,341 (“the ’341 Patent”)
Ex.1022	Chris Summers, <i>How Does a Betting Exchange Work?</i> , BBC News (Dec. 7, 2007)
Ex.1023	Landi, Gianluca, <i>Betting Exchange: The Sports Trading Revolution</i> (StreetLib 2017)
Ex.1024	Declaration of Bernard J. Marantelli, Australian Patent Application No. 2013333573 (Jun. 18, 2016)
Ex.1025	Vaughan Williams & Donald S. Siegal, <i>The Oxford Handbook of the Economics of Gambling</i> (Oxford University Press 2013)
Ex.1026	Mark Davies et al., <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 et al., <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)

Exhibit No.	Description
Ex.1038	E.V. Smalley, <i>Northern Pacific Railroad Book of Reference</i> (E. Wells Sackett & Rankin 1883)
Ex.1039	Wesley A. Sturges <i>et al.</i> , <i>Stock Option and Stock Purchase Plans</i> (U.S. Gov't Printing Office 1952)
Ex.1040	Michael C. Thomsett, <i>Getting Started in Options</i> (Wiley 2007)
Ex.1041	Lawrence G. McMillan, <i>McMillan on Options</i> (Wiley 2011)
Ex.1042	The Sports Trader, <i>The Diary of a Betdaq Trader</i> (Dec. 5, 2007)
Ex.1043	Betfair Community, <i>Football Forum</i> (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader
Ex.1044	Betfair Community, <i>Golf Forum</i> at 1 (Apr. 9, 2010), https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53
Ex.1045	Betfair Community, <i>General Betting Forum</i> (Dec. 10, 2010)
Ex.1046	Betfair Community, <i>General Betting Forum</i> at 3 (Jun. 8, 2011)
Ex.1047	U.S. Patent Application Publication No. 2001/0136566 A1 (“Acres”)
Ex.1048	Exhibit 338.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1049	Exhibit 341.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1050	Exhibit 439.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1051	Exhibit 516.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1052	Exhibit 716.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB
Ex.1053	Exhibit 779.A to Plaintiffs’ Initial Infringement Contentions, <i>Diogenes Limited v. DraftKings, Inc.</i> , C.A. No. 21-1695-MN-CJB

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

I, Dwight Crevelt, declare as follows:

I. Introduction

1. I have been retained on behalf of DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware corporation (“DraftKings”) for the above-captioned *inter partes* review (IPR) proceeding. I am being compensated for my time in connection with this IPR at my standard hourly consulting rate. I understand that this proceeding involves U.S. Patent No. 10,970,969 (“the ’969 Patent”) titled “WAGERING APPARATUS, METHODS AND SYSTEMS” by Bernard J. Marantelli.

2. I have been asked to provide my technical review, analysis, insights, and opinions regarding the ’969 Patent and the prior art references that form the basis for the grounds of unpatentability set forth in the Petition for *Inter Partes* Review of the ’969 Patent.

II. Materials Considered

3. The analysis that I provide in this Declaration is based on my education, research, and experience, as well as the documents I have considered, including the ’969 Patent (Ex.1001) and its prosecution history (Ex.1002). I have reviewed and am familiar with the specification of the ’969 Patent. I have reviewed and am familiar with the file history of the ’969 Patent.

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

III. Qualifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Legal Understanding

A. My Understanding of Claim Construction

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

B. My Understanding of Obviousness

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

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

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

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

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

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

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

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

C. Level of Ordinary Skill in the Art

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

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

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

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

28. Based on the disclosure of the ’969 Patent, a POSITA would be a person with a bachelor’s degree in electrical engineering, computer science, or a

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

V. Background of the Technology

29. I understand that analyzing the state of gaming systems during the years prior to the earliest possible priority date of the '969 Patent can provide valuable insight into what people of ordinary skill in the art were aware of at the time, and in what direction the industry was going.

A. Cash Out and the Problem of Points

30. At the heart of the '969 Patent is the concept of offering payouts, or “cash outs,” before a wagering event is complete:

[A unique differentiator of the product of the present disclosure may be that]¹ at any desired time after initiation of an event (such as at any time after a “ticket” is purchased until completion of an event, after each leg has been completed, between legs, including potentially as a leg is “in-play”, and/or during a designated span of time before, during and/or after any of the legs), any desired number of players who remain eligible for a prize (and

¹ This bracketed language was removed in the '969, '822, and '779 Patents.

potentially those still eligible for bonus and/or consolation prizes) or to win or have correct (win) predictions for each of the events or legs that are completed, may be offered a “buy-out” or an opportunity to sell their tickets (in whole or alternatively may be in part (*i.e.*, a fractional amount) to the game operator or through the game operator (or alternatively directly) to a third party (e.g., one or more system operator(s), business entity or entities such as a merchant(s), one or more other persons, other player(s), etc.).

’969 Patent at 35:8-23. Originally known as the “Problem of Points,”² this concept is as old as the theory of probability itself. In fact, it is the very foundation of the theory.

31. The Problem of Points was first identified as a mathematical thought experiment in 1400. See C.C. Heyde & E. Seneta, *Statisticians of the Centuries* at 5 (Springer 2001) (Ex. 1011); Jui-Pin Cheng, *The Origin of Probability and The*

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

Problem of Points at 2 (2000),

<https://sites.math.rutgers.edu/~cherlin/History/Papers2000/cheng.html> (Ex.1012).

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

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

of Probability and Statistics and Their Applications before 1750 at 55-56 (Wiley 2003) (Ex. 1016).

33. The solution ultimately involved counting combinations and summing binomial coefficients. See Hammond at 44; Devlin at 67. But, because the labor of calculating all the different combinations was “excessive,” Pascal devised a “shortcut,” or “abridgement,” that involved a ground-breaking procedure for calculating expectations recursively. Hammond at 44; Hald at 59-60.

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

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

B. Cash Out and In-Play Betting

36. “In-play” betting refers to wagering on an event that has already started but not yet finished. Elizabeth A. Killick & Mark D. Griffiths, *In-Play Sports Betting: a Scoping Study*, 17 INT J MENT HEALTH ADDICTION 1456, 1457 (Apr. 16, 2018) (Ex.1018); *What is In-Play Betting: Live Betting Explained by William Hill*, WILLIAMHILL.COM (Apr. 20, 2021), <https://news.williamhill.com/betting-guides/in-play-betting/> (Ex. 1019). This form of betting first appeared in the 1990s when bookmakers began taking bets over the telephone while a sporting event was in progress. Killick at 1457; Mark O’Haire, *The History of Betting*, TheSetPieces at 2 (2021), <https://thesetpieces.com/latest-posts/the-history-of-betting/> (Ex. 1020). It gained even more popularity with the birth and growth of the internet. *Id.*; O’Haire 2-3.

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

38. The rise of the internet and advances in computing also led to the advent of the betting exchange marketplace, which first appeared in 2000. Chris Summers, *How Does a Betting Exchange Work?*, BBC News at 1 (Dec. 7, 2007) (Ex.1022); Gianluca Landi, *Betting Exchange: The Sports Trading Revolution* at 17 (StreetLib 2017) (Ex.1023); see also Declaration of Bernard J. Marantelli, Australian Patent

Application No. 2013333573 at ¶ 2 (Jun. 18, 2016) (Ex. 1024) (“Around 2001 I was introduced to betting exchanges, primarily the leading exchange Betfair, which had launched in 2000.”). A betting exchange is a marketplace that allows bettors to “back” (*i.e.*, bet that an outcome will occur) and “lay” (*i.e.*, bet that an outcome will not occur) a wager on the outcome of an event. Summers at 2; Landi at 25. It is characterized by real-time online betting with attributes analogous to a modern stock exchange. Vaughan Williams & Donald S. Siegal, *The Oxford Handbook of the Economics of Gambling* at 138, 140 (Oxford University Press 2013) (Ex.1025). Betfair—the first such marketplace—is the most recognizable and popular example of a betting exchange. Williams at 140 (citing Mark Davies *et al.*, *Betfair.com: Five Technology Forces Revolutionize Worldwide Wagering*, 23 EUROPEAN MANAGEMENT JOURNAL 533 (Oct. 2005) (Ex.1026)); Summers at 1.

39. Leveraging on the exchange, Betfair permitted a way to “Cash Out” that was called “greening up,” whereby bettors on the Betfair betting exchange were able sell, or trade back, their bets in the middle of a wagering event as the odds changed, thereby locking in profits before the wagering event concluded. Betfair Trading Software, *About Bet Angel Software* at 1, 3 (via The Wayback Machine

dated Dec. 26, 2007) (Ex.1028);³ Green All Over Blog at 8-9 (Dec. 7, 2008) (Ex.1029). Betfair subsequently rebranded this technology as “Cash Out” in February 2011 and released the technology on its mobile platform by December of that same year. See Dan Thomas, *Betfair’s ‘Cash Out’ Trading Tool Used for the Millionth Time*, BETTFAIR at 1-2 (Sept. 13, 2011) (Ex.1030); Betfair Financial Statement at 13 (Jun. 29, 2011) (Ex.1031); Dan Thomas, *Cash Out Comes to Betfair Mobile*, Betfair at 1-2 (Dec. 19, 2011) (Ex.1032). Others soon followed suit, with reputed betting company William Hill launching similar technology on their sportsbook in December 2012. See Michael Taylor, *Cash In My Bet with William Hill*, WILLIAMHILL.COM at 2 (Dec. 18, 2012) (Ex.1033); Tal Grant *et al.*, *UK Gaming*, Credit Suisse at 51 (Aug. 14, 2017) (Ex.1034). Thus, real-time cash-outs as part of in-play betting via a networked betting system were well known prior to the earliest claimed priority date of the Asserted Patents.

³ MPEP 2128 II E. Wayback Machine (“Prior art obtained via the Wayback Machine® sets forth a prima facie case that the art was publicly accessible at the date and time provided in the time stamp.”).

C. Partial Cash Outs

40. It is no coincidence that betting exchanges, like Betfair, operate like a modern stock exchange. Playing the stock market has long been likened to gambling, particularly options trading. *See, e.g.,* James Conrey McMath, *Speculation and Gambling in Options, Futures and Stocks in Illinois* at 3-5 (Hawkins & Loomis 1921) (Ex.1035); LeRoy Gross, *The Conservative Investor's Guide to Trading Options* at 96 (Wiley 1999) (Ex.1036); Stuart Banner, *Speculation: A History of the Fine Line Between Gambling and Investing* at 1, 73, 76, 83 (Oxford University Press 2017) (Ex.1037). And the concept of the partial exercise, or partial cash out, of a position in an option is as old as the concept of the option itself. *See, e.g.,* E.V. Smalley, *Northern Pacific Railroad Book of Reference* at 318-320 (E. Wells Sackett & Rankin 1883) (Ex.1038); Wesley A. Sturges *et al.*, *Stock Option and Stock Purchase Plans* at 47-48 (U.S. Gov't Printing Office 1952) (Ex.1039).

41. A “partial exercise” allows the owner of an option to sell, or cash out, a portion of his or her position before the strike date while holding the remainder until the actual strike date. *See, e.g.,* Smalley at 320; Michael C. Thomsett, *Getting Started in Options* at 322 (Wiley 2007) (Ex.1040); *see also, e.g.,* Lawrence G. McMillan, *McMillan on Options* at 595 (Wiley 2011) (Ex.1041) (“partial profits”). Betfair began allowing players to do this via its betting exchange at least as early as December 2007. Specifically, Bet Angel software allowed bettors to partially “green

up” on the Betfair betting exchange by selling, or trading back, a portion of a bet at a profit while allowing the remainder of the bet to play out until the conclusion of the wagering event. *See, e.g.,* Betfair Trading Software, *About Bet Angel Software* at 1, 3 (via The Wayback Machine dated Dec. 26, 2007) (Ex.1028); The Sports Trader, *The Diary of a Betdaq Trader* at 4 (Dec. 5, 2007), https://thesportstrader.typepad.co.uk/the_sports_trader/2008/09/index.html (Ex.1042); Betfair Community, *Football Forum* at 1 (Dec. 11, 2009), https://community.betfair.com/football/go/thread/view/94070/23545078/i-didnt-think-you-got-your-green-until-after-events-were-finished?post_id=421340998#421340998#flvWelcomeHeader (Ex.1043); Betfair Community, *Golf Forum* at 1 (Apr. 9, 2010), <https://community.betfair.com/golf/go/thread/view/94086/23563950/masters-day-2---in-running?liveView=0&pg=53> (Ex.1044); Betfair Community, *General Betting Forum* at 2 (Dec. 10, 2010), https://community.betfair.com/general_betting/go/thread/view/94082/26488561/greening-up?liveView=0 (Ex.1045); Betfair Community, *General Betting Forum* at 3 (Jun. 8, 2011), https://community.betfair.com/general_betting/go/thread/view/94082/27736281/greening-up---does-it-really-pay-long-term?liveView=0&pg=2 (Ex.1046).

42. This concept also began appearing in patent applications at around the same time. For example, U.S. Patent Application Publication No. 2008/0311981 to Schugar (Ex.1047) (“Schugar”) discloses an instance in which a bettor “can be ‘winning’ before the game is over” and, therefore, “may wish to have a way to cash in on the winning state before completing the game.” Schugar at ¶ [0077]. Schugar discloses an example in which a bettor has made a \$100 wager on a Yankee’s game and by the fifth inning the expected payout of that wager is \$132. *Id.* at ¶ [0120]. In this example, the bettor “may use \$1 of that amount and make a second wager,” which will result in \$1.52 (*i.e.*, the adjusted value of that dollar based on the new odds) being “subtracted from the original \$100 wager to result in a \$98.48 wager remaining on the Yankees.” *Id.* Thus, Schugar discloses a partial cash out method similar to what was available in Betfair at the time. Schugar also makes clear that “the player need not be in a positive expectation situation in order to utilize the method of cashing in value for a current wager in progress in order to place a second wager.” *Id.*

43. In addition, Schugar explains that its partial cash out method “can be applied to all games, including live table games or live sporting events,” and that it also may be implemented in “any wagering machine game, such as a slot machine, video poker machine, or machine game which plays any game which can have multiple states (*e.g.*, games which a player can wager on a progression).” Schugar

at ¶¶ [0104], [0106]. Thus, real-time partial cash-outs also were well known prior to the earliest claimed priority date of the Asserted Patents.

VI. The '969 Patent

A. Priority Date

44. The application that led to the '969 Patent was filed July 18, 2019, as U.S. Patent Application No. 16/515,916, and is a continuation of U.S. Patent Application No. 15/884,876 filed January 31, 2018, which is a continuation-in-part of U.S. Patent Application No. 15/422,348 filed February 1, 2017, which is a continuation-in-part of U.S. Patent Application No. 15/212,392 filed July 18, 2016, which is a continuation of U.S. Patent Application No. 14/990,538 filed January 7, 2016, which is a continuation of U.S. Patent Application No. 14/833,572 filed August 24, 2015, which is a continuation of U.S. Patent Application No. 14/449,541 filed August 1, 2014, which is a continuation-in-part of U.S. Patent Application No. 14/275,136 filed May 12, 2014, which is a continuation of U.S. Patent Application No. 13/958,028 filed August 2, 2013, which is a continuation-in-part of U.S. Patent Application No. 13/605,813, which was filed September 6, 2012. *See generally* '16 Patent. For purposes of my analysis and opinions, I have assumed that the '969 Patent has the priority date of the earliest filed application to which it claims priority—September 6, 2012.

B. Overview

45. The '969 Patent, entitled "Wagering Apparatus, Methods and Systems," states that it is directed to "the creation of unique betting products where multiple players can combine their resources when participating in the betting product," such as by "crowdfund[ing] or rais[ing] contributions for a single wager." '969 Patent 2:6-10. However, none of the challenged claims of the '969 Patent recite or appear to require any such "crowdfund[ed]" wagers, the techniques for crowdfunding a wager discussed in the specification, or the like.

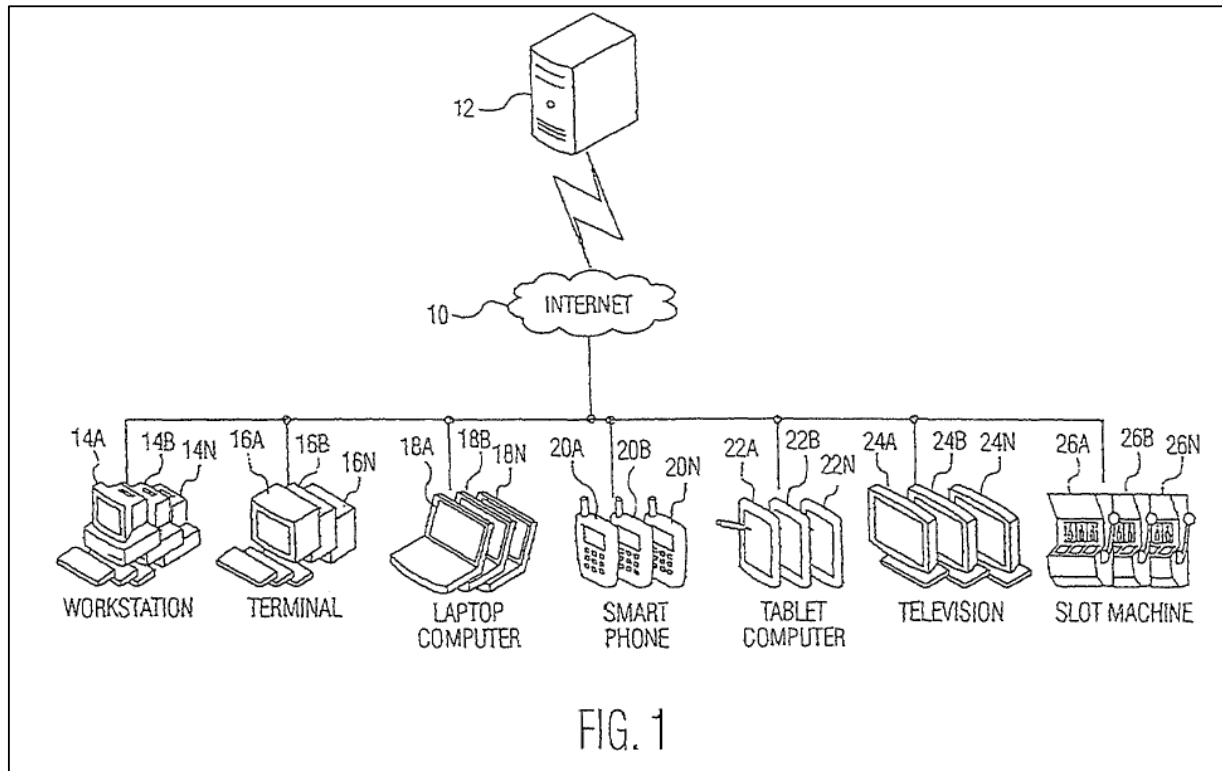
46. Rather, the challenged claims appear to be directed to a method, system, or computer program for wagering on sporting events that offers a player the ability to "buy-out/cash-in" a wager in progress. Describing the concept of cashing/buying in/out, the '969 Patent states as follows:

In one embodiment, at any desired time after initiation of an event ... any desired number of players who remain eligible for a price ... or win or have correct (win) predictions for each of the events or legs that are completed, ***may be offered a 'buy-out' or an opportunity to sell their tickets (in whole or alternatively may be in part (i.e., a fractional amount) to the game operator (or alternatively directly) to a third party (e.g., one or more system operator(s), business entity or entities such as merchant(s), or one or more other persons, other player(s), etc.).***

Id. 35:8-23.

47. The concept of a “buy out” or “cash out” described in the ’969 Patent is broad. For example, the ’969 Patent explains that “the value or price of any full and/or partial buy-out/cash-in offers and acceptances, as well as the form in which they are made, should be broadly construed.” *Id.* 31:51-54. Further, as these passages from the specification suggest, the ’969 Patent also uses several different terms to describe this same concept. For example, the ’969 Patent describes the same buy-out concept as, for example, a buy out, buy back, cash out, cash in, etc. Indeed, the ’969 Patent states that “the terms buy-out and cash-in as used herein have the same intended meaning.” 31:6-8. Therefore, in this context, the ’969 Patent implies that the terms “buy” and “cash” refer to the same thing and the terms “in” and “out” refer to the same things under the meaning prescribed to those terms in the ’969 Patent.

48. As to the wagering system in which the buy-out/cash-out concept may be used, as shown in FIG. 1 below, the system includes “a system controller” such as a “central server system being interconnected through the internet 10 to a plurality of wager input devices such as wagering stations 14, wagering terminals (including self-service wagering terminals) 16, and internet connected computing systems 18.” *Id.* 6:36-44.



Id. FIG. 1.

49. Briefly addressing the primary components of the system, as the '969 Patent states, the wager stations and wagering terminals may be a “conventional wager terminal” “as known in the art.” *Id.* 7:39-44; *see also id.* 13:34-27 (“The embodiments as generally illustrated in FIG. 1 may include, as known in the art, a display device which displays the betting options.”), 13:63-65 (“Any other suitable types of products or devices commercially known may also be utilized where desired in accordance with the needs of a particular implementation.”), 25:51-53 (“The present disclosure may be implemented in various configurations for gaming machines or wager terminals known in the art.”). The wager stations and terminals

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

50. Similarly, the central controller or server is described as being “one or more rack mounted server computers 120 each with at least one central processing unit (CPU) or other processing device and associated memory,” such as a known commercial rack mounted server such as the “PowerEdge R420 Rach Chassis devices having a 300 GB hard drive, one or two Intel Xeon E5-2450 processors, 24 GB memories with RAID connectivity using a RAID controller card.” *Id.* 8:59-67. Notable with respect to my analysis and opinions herein, the ’969 Patent recognizes that its “present disclosure” may be implemented in the “gaming machines and their respective operations in both stand alone and pool or progressive games ... disclosed in detail in U.S. Patent No. 8,105,149, incorporated herein by reference,” which is the DeWaal reference that I have analyzed throughout this declaration. *Id.* 25:51-67.

51. In addition to the system components being conventional and well-known, the ’969 Patent also recognizes that many of the basic operations of the wagering system for providing a wagering event, and the software for implementing those operations, were well-known in the prior art. For example, the ’969 Patent states that the server “may include software programs for wagering software

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

C. Prosecution History

52. I have reviewed the prosecution history of the '969 Patent. In the first non-final office action, the Examiner issued a nonstatutory double patenting rejection for all pending claims, 1-30, in the application. '969 Patent File History 60-67. Subsequently, the Examiner approved a terminal disclaimer filed by the applicant. *Id.* 54. Claim 1-30 were then allowed without issuing a single prior art rejection. *Id.* 30-34.

VII. Claim Construction

53. I have been instructed that the challenged claims of the '969 Patent are to be given their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention in light of the specification and the prosecution history pertaining to the patent. I have followed these principles in my analysis set forth in this document.

54. Based on this understanding it is my opinion that no terms of the '969 Patent require construction beyond their plain and ordinary meaning.

VIII. Overview of Prior Art

A. Overview of Schugar (Ex.1005)

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

56. Thus, Schugar describes "equity concepts" for "any" multi-stage or multi-round game that has "variable states and is not over without an interval between states," such as "a sporting event, a gambling game (e.g., card game etc.), any event that bettors have placed wagers on in the prior art." Schugar ¶¶ [0075], [0122]; *see also* Schugar ¶ [0104] ("A machine game 400 can be any wagering game, such as a slot machine, video poker machine, or machine game which plays any game that can have multiple states (e.g. games which a player can wager on a progression)."). For example, Schugar discloses that "[w]hen the player is playing a game in which the player can be 'winning' before the game is over, the player may

wish to have a way to cash in on the winning state before completing the game.”

Schugar ¶ [0075]. In this regard, Schugar recognizes that “[a] player may find it attractive to be able to accumulate (or ‘bank’) a portion of a positive expectation situation for later redemption” so that “even if the player ultimately loses his or her wager, the player has not lost everything because the banking has been performed.”

Schugar ¶ [0077]. “In this way,” as Schugar explains, “the player can continue to wager, but limit his losses by ensuring that some amount is still saved for later.”

Schugar ¶ [0079]. Further, Schugar discloses that the player can choose to cash out or “bank” “some or all” of the wager, which indicates that the player is presented with an interesting choice of fully cashing in/out their wager, cashing in/out their wager in part, or not cashing in/out their wager at all. Schugar ¶ [0092].

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

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

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

59. By leveraging the equity concepts as disclosed in Schugar, i.e., by offering the player an ability to “cash[] out” all or some portion of their wager and keep playing with any remainder, the player can use the banked portion to, for example, place additional wagers. Schugar ¶¶ [0078], [0118], [0120], [0127] (“a player can still utilize the method described herein of cashing out a portion of a current bet in progress in order to pay for an additional wager”). By doing so, “[t]he house makes money ... and the player gets the peace of mind of the sure win.” Schugar ¶ [0078]. That is, the player can use the cashed out amount to put

themselves in “a no-lose situation and can relax and enjoy the game without worry.”

Schugar ¶ [0126].

B. Overview of DeWaal (Ex.1004)

60. U.S. Patent Publication No. 2008/0113765 A1 to Daniel DeWaal (hereinafter, “DeWaal”), entitled “Gaming System and Method Providing Venue Wide Simultaneous Player Participation Based Bonus Game,” was published on May 15, 2008. The application leading to DeWaal, U.S. Patent Application No. 11/558,683, was filed on November 10, 2006, and issued as U.S. Patent No. 8,105,149 on January 31, 2012. Based on my review and comparison, the specification of DeWaal and the specification of issued U.S. Patent 8,105,149 are identical. U.S. Patent No. 8,105,149, i.e., the U.S. Patent that issued from the DeWaal reference relied upon herein, is incorporated by reference in the ’969 Patent. ’969 Patent 25:51-67.

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

different gaming machines and gaming systems as well as new and different ways to provide awards to players including bonus awards.” *Id.* ¶¶ [0013], [0008].

62. Among such choices or inputs that provide increased excitement and enjoyment for players is DeWaal’s “offer and acceptance feature.” *See, e.g., id.* ¶¶ [0141], [0147], FIG. 7. For example, in DeWaal’s “multi-round” bonus game that has a “plurality of outcomes in each round,” and “players must pick a designated selection (i.e., a winning outcome) in each round to win all or a share of the award,” and players that pick the winning outcome in a round advance to a subsequent round and players that fail to pick the winning outcome in a given round are eliminated from the bonus event, the system “offers each advancing player an award to quit the bonus event” between each round. *Id.* ¶¶ [0128] (“The multi-round bonus event includes a plurality of outcomes in each round the bonus even includes a selection game and the plurality of outcomes include player selectable elements or selections”), [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round. That is, only eligible players may advance to the subsequent round of the bonus event.”), [0131] (“if a player does not make an input associated with the designated selection (i.e., a winning outcome) in an initial round, that player may be deemed ineligible for advancement to a subsequent round.”), [0141] (“four hundred players qualified to advance from the

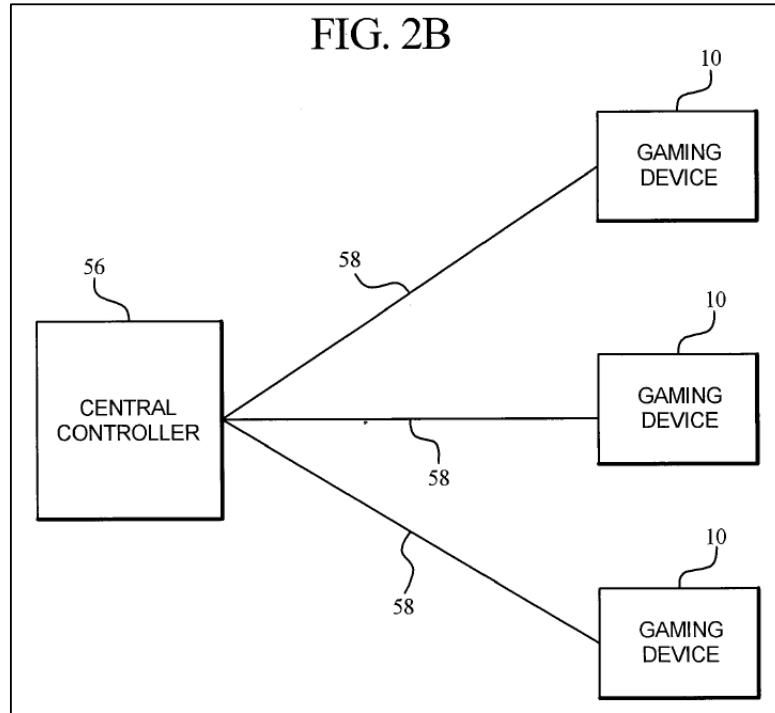
first round to a second round (i.e., by making an input associated with the winning outcome in the first round). Prior to the second round, the central controller offers each advancing player an additional award to quit the bonus event.”), [0147] (“This offer and acceptance process continues for a designated number of rounds.”).

63. Any player that accepts the “offer to quit” in exchange for the “additional award” between rounds is paid the award and is eliminated from the bonus event. *Id.* ¶ [0142] (“In this embodiment, one hundred players chose to quit and accept the offered second additional award The central controller provides those players with the second additional award and eliminates those players from the bonus event.”). In other words, players that accept the money are effectively selling 100% of their ticket for the offered amount, forfeiting their potential to win the jackpot. On the other hand, “[i]f the player rejects the offer, the player is advanced to the subsequent round.” *Id.* ¶ [0162]; *see also id.* ¶ [0159] (“The central controller offers Players C, D and E to quit the bonus event prior to the third round. If any of the players quit the bonus event, the central controller provides these players with the accumulated additional awards associated with the first and second rounds. If the players reject the offer, these players are risking the accumulated additional awards associated with the first and second rounds to play the third round of the bonus event.”).

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

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

66. Further, as the ’969 Patent recognizes, DeWaal also describes in detail the systems and machines for implementing its disclosures. FIG. 2B of DeWaal, shown below, illustrates a primary embodiment of the general architecture of such a system.



Id. FIG. 2B; *see also id.* ¶ [0032] (“FIG. 2B is a schematic block diagram illustrating a plurality of gaming terminals in communication with a central controller.”).

67. As illustrated in FIG. 2B of DeWaal, “one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56.” *Id.* ¶ [0084]. The central server/controller may be “any suitable server or computing device with at least one processor and at least one memory or storage device.” *Id.* Similarly, the gaming devices include “at least one processor 12” that is “in communication with or operable to access or to exchange signals with at least one data storage or memory device 14,” and the “memory device stores program code and instructions, executable by the processor, to control the gaming device.” *Id.* ¶ [0046]. As a POSITA would expect, “the central

server or controller is capable of storing and utilizing program code or other data similar to the processor and memory device of the gaming device.” *Id.* ¶ [0086].

68. DeWaal also discloses details regarding the allocation of control between the central server and the client gaming devices. For example, “the computerized instructions for controlling any games are executed by a central server, central controller or remote host” in what is known to refer as a “thin client” configuration such that “the central server remotely controls any games (or other suitable interfaces) and the gaming device is utilized to display such games (or suitable interfaces) and receive one or more inputs or commands from a player.” *Id.* ¶ [0042]. That is, “the memory device of the central server stores different game programs and instructions” that are “executable by a gaming device processor ... to control the gaming device.” *Id.* ¶ [0099]. In this client-server configuration, a POSITA would understand that the server performs the processing and the clients rely on the server for that processing and computation.

69. DeWaal discloses that such a configuration is advantageous for several reasons. For example, such a configuration allows users to access the platform on nearly any device with an internet connection because the computational load on the client devices is minimized in a thin-client configuration. As DeWaal explains, where the “data network is an internet” and “the operation of the gaming device can be viewed at the gaming device with at least one internet browser” and “a connection

to the central server or controller” is required, “players may access an internet game page from any location where an internet connection and computer, or other internet facilitator is available.” *Id.* ¶ [0098]. This would promote high accessibility and usability of the gaming platform, as DeWaal explains, given the “expansion in the number of computers and number and speed of internet connection in recent years.” *Id.* As such, there are greater “opportunities for players to play from an ever-increasing number of remote sites.” *Id.* In addition, with the “enhanced bandwidth of digital wireless communications” and “[h]igher data transmission speeds,” the “sophistication and response of the display and interaction with the player” can be “enchanc[ed],” to provide more enjoyment to the player. *Id.*

IX. Grounds of Unpatentability

70. In this section, I will explain why all challenged claims of the ’969 Patent are rendered obvious by the disclosures of Schugar and DeWaal. I note that in this discussion, I may focus on the particular language in specific claims, but it should be understood that my analysis applies to the corresponding limitations of all claims containing identical or substantially identical language.

A. Claims 1, 2, 8, 9, 13-16, 20-27, 29, and 30 are Obvious in view of Schugar and DeWaal

71. In my opinion, a POSITA would have understood that claims 1, 2, 8, 9, 13-16, 20-27, 29, and 30 were obvious over the combined teachings of Schugar and DeWaal. More specifically, in my opinion, and as set forth in the sections that

follow, Schugar teaches all of the functionalities recited in the challenged claims of the '969 Patent, and it recognizes that its methods and functionalities may be implemented using client-server wagering systems that were known in the prior art, but it does not specifically recite or limit itself to which system component (e.g., client wagering device or central controller) performs each function as is recited in the challenged claims of the '969 Patent.

72. DeWaal, on the other hand, describes a similar wagering game to that disclosed in Schugar (e.g., a selection game) and describes its implementation in detail on a centrally controlled wagering system that includes a central server/controller and several client gaming devices. In my opinion, in view of the teachings of the prior art and the knowledge and common sense of a POSITA discussed herein, it would have been obvious to a POSITA implementing Schugar's wagering events and features to do so using known client-server systems like that disclosed in DeWaal. And, as set forth in the sections that follow, Schugar's wagering games and functionalities, as implemented on DeWaal's server system, covers each and every limitation of the challenged claims of the '969 Patent.

1. Obviousness and Motivations to Combine

73. The challenged claims recite certain method steps or computer executed functionalities involving a "wagering input device" and a "central server system" or a system "processor" that performs such steps or functionalities. See,

e.g., '969 Patent Claims 1, 8, 15. As described above in my overview of the '969 Patent, which is herein incorporated by reference, these system components were admittedly routine and conventional client and server devices as were known in the prior art.

74. Although Schugar provides more detail regarding the functionalities and features of the wagering games disclosed therein, Schugar incorporates by reference a priority application, U.S. Patent Application No. 11/158,919 that issued as U.S. Patent No. 7,909,694 ("'694 Patent"), that teaches a POSITA that "any description of a component or embodiment herein also includes hardware, software, and configurations which already exist in the prior art and may be necessary to the operation of such component(s) or embodiment(s)," that "the embodiments described herein can be applied to any type of gaming machine," and that functionalities may be performed "at a central server and served to local machines." '694 Patent 10:48-55; *see also* Schugar ¶ [0001] ("This application is also a continuation in part of application Ser. No. 11/158,919, now pending, which is incorporated by reference herein in its entirety."). Therefore, although Schugar does not describe in detail a specific implementation of its teachings on such systems, Schugar's teachings direct the POSITA to implement Schugar's wagering events and functionalities utilizing known prior art wagering systems.

75. As the '969 Patent itself recognizes, and as would be known to a POSITA, DeWaal “disclose[s] in detail” “these types of gaming machines and their respective operations.” '969 Patent 25:64-67. For example, DeWaal discloses a commonly known type of centrally controlled wagering system wherein “the computerized instructions for controlling any game are executed by a central server, central controller or remote host” in a ““thin client”” environment or configuration where “the central server remotely controls any games (or other suitable interfaces) and the gaming devices is utilized to display such games (or suitable interfaces) and receive one or more inputs or commands from a player.” DeWaal ¶ [0042].

76. The prior art would have expressly motivated a POSITA to implement Schugar’s wagering games/events in a centrally controlled server system as disclosed in DeWaal for several reasons. For example, DeWaal explicitly teaches that “[c]entral production or control can assist a gaming establishment or other entity in” performing several essential functions of a gaming operator, such as “maintaining appropriate records, controlling gaming, reducing and preventing cheating or electronic or other errors, reducing or eliminating win-loss volatility and the like.” DeWaal ¶ [0088]. A POSITA would have been motivated to obtain these several expressly described benefits of centralized control in a wagering system in implementing Schugar’s wagering events.

77. In addition to these desirable administration and loss-prevention type benefits provided by centrally controlled wagering systems, a thin-client implementation as described in DeWaal would enable a POSITA to capture the promising benefits of the Internet in the context of wagering game systems, thereby further motivating the POSITA. Specifically, although the “operation of the gaming device ... may be accomplished only with a connection to the central server or controller (the internet/intranet server) through a conventional phone or other data transmission line” in such an implementation, dedicated gaming machines or physical presence in a brick-and-mortar gaming establishing or parlor are not required. DeWaal ¶ [0098]. In fact, with a thin-client server-controlled system, the wagering system is far more accessible because “players may access an internet game page from any location where an internet connection and computer, or other internet facilitator is available.” *Id.* That was particularly true in view of the known “expansion in the number of computers and number and speed of internet connections in recent years,” which “increases opportunities for players to play from an ever-increasing number of remote sites” and “may be useful for enhancing the sophistication and response of the display and interaction with the player.” *Id.* In other words, a POSITA would have been motivated to implement Schugar’s teachings using a thin-client server-controlled system because it would enable the gaming system to leverage popular and ever-increasing Internet and computing

technology that enhances the user/bettor experience on the platform and because it facilitates far greater accessibility to the system.

78. In addition, a POSITA would have recognized, at least from Schugar's express teachings, that the wagering events and operations disclosed therein are particularly suited for a server-controlled implementation such as that described in DeWaal and known in the prior art. For example, a POSITA would have recognized that centrally controlled wagering systems are particularly useful and efficient for multiplayer wagering on a common external "sporting event," like "horse racing" or "football." Schugar ¶ [0109]. As a POSITA would recognize, there is a great risk of data error and inconsistency in a sport wagering system if each individual gaming device independently monitored the sporting event and calculated and recalculated ever-changing odds and payouts as the sporting event progresses. As just one example, having a centralized controller handling such operations and administration of the system would, as DeWaal states, "assist a gaming establishment" in "controlling gaming" and "reducing and preventing ... electronic or other errors" and "win-loss volatility."

79. Similarly, with respect to Schugar's teachings regarding sports betting "pools" and "parimutuel" wagering, where all bets on such a sporting event may be pooled together and potential payouts depend on the status of the common pool, a POSITA would have recognized that a centrally-controlled system would be the

most practical and efficient implementation, if not the necessary implementation, because such pools/parimutuel wagering require providing and sharing information amongst the plurality of bettors participating in the pool to determine awards, odds, winners, and the like. Schugar's description of the central "database" accessible by a plurality of gaming machines is evidence of this understanding. See Schugar ¶ [0105]. For example, rather than have a large number of individual wagering devices accessing the common/shared database, retrieving information, and individually calculating odds, payouts, and the like, such operations could far more efficiently be performed by a central server and simply served to the gaming device clients substantially simultaneously.

80. More generally speaking, implementing Schugar's wagering events and operations using a centrally controlled wagering system would have been obvious because it simply involves combining prior art elements according to known methods to yield predictable results. As set forth in the sections that follow, the prior art, namely Schugar and DeWaal, included each limitation of the challenged claims. More specifically, while the only difference between the challenged claims and Schugar is that Schugar does not expressly describe how its wagering events would be implemented utilizing a central controller/server and one or more client wagering devices, DeWaal discloses how wagering systems may be implemented utilizing a central controller/server and one or more client wagering devices. In my opinion, a

POSITA could have combined Schugar's wagering events with DeWaal's central server/controller-based system using standard and conventional network programming and off-the-shelf network components, as Schugar expressly confirms. See, e.g., '694 Patent 10:48-55 ("**any description of a component or embodiment herein also includes hardware, software, and configurations which already exist in the prior art** and may be necessary to the operation of such component(s) or embodiment(s)"). And as DeWaal shows, standard prior art wagering systems routinely implemented wagering events utilizing a thin-client centrally controlled system. In combination, DeWaal's system and Schugar's wagering events and operations perform the same functions that they do separately. That is, DeWaal's system would continue to facilitate remote access to wagering platforms and Schugar's wagering event would still provide a game that leverages the equity concept by allowing a bettor to cash out of their in-progress bets to maximize gains or minimize losses. The results of the combination—remote access to Schugar's wagering event—would have been entirely predictable to a POSITA because the combination simply serves to provide standard and well-understood centralized infrastructure support for Schugar's wagering events and operations rather than to change the operation of the wagering event in any way. In addition, DeWaal discloses that its system is capable of providing numerous types of different games such that a POSITA would have a reasonable expectation of success in being

able to implement Schugar's games on DeWaal's system. DeWaal ¶ [0108]. In this regard, a POSTIA would have been motivated to implement Schugar's wagering game on DeWaal's system because, as DeWaal states, there is a "continuing need to provide ***new ad different***" games and gaming machines to players. *Id.* ¶ [0008].

81. In addition, a POSITA would have understood that implementing Schugar's wagering event method on a centralized server would have been obvious to try. There was a recognized need in the art to implement wagering systems that take advantage of the "increas[ing] opportunities for players to play" wagering games "from an ever-increasing number of remote sites" due to the "expansion in the number of computers and number and speed of internet connection in recent years." DeWaal ¶ [0098]. A POSITA also would have understood that there was a finite number of identified and predictable potential solutions to recognized need of implementing Internet-based wagering systems. For example, a POSITA would have recognized the options for implementing the functionalities of the gaming system included client-based implementation or control, where the client devices have some level of control over the wagering event, or central server based implementation or control, where the central server remotely controls any games occurring on the client devices. *See, e.g.*, DeWaal ¶ [0042] (discussing "dedicated gaming machine[s]" wherein the instructions for controlling games are provided on the gaming machine and gaming systems where the "instructions for controlling any

games are executed by a central server, central controller or remote host” in a “thin client” embodiment). A POSITA could have pursued these options with a reasonable expectation of success because both stand-alone or dedicated client game systems and client-server Internet based gaming systems were well known in the prior art. See, e.g., '694 Patent 10:48-55 (“any description of a component or embodiment herein also includes hardware, software, and configurations which already exist in the prior art and may be necessary to the operation of such component(s) or embodiment(s),” that “***the embodiments described herein can be applied to any type of gaming machine,***” and that certain shared functionalities may be performed “at ***a central server and served to local machines.***”); see also Schugar ¶ [0001] (“This application is also a continuation in part of application Ser. No. 11/158,919, now pending, which is incorporated by reference herein in its entirety.”). Moreover, as indicated above, of the known options, a POSITA would have been motivated to pursue the centrally controlled implementation where a central controller controls any games on the remote gaming devices because doing so provided numerous administrative and loss-prevention type benefits and would provide greater accessibility to the gaming system.

82. Further, Schugar and DeWaal are analogous art. In addition to both disclosing systems and methods for cashing out a wager before the event is complete, and considering the prior art as a whole, a POSITA would have understood that

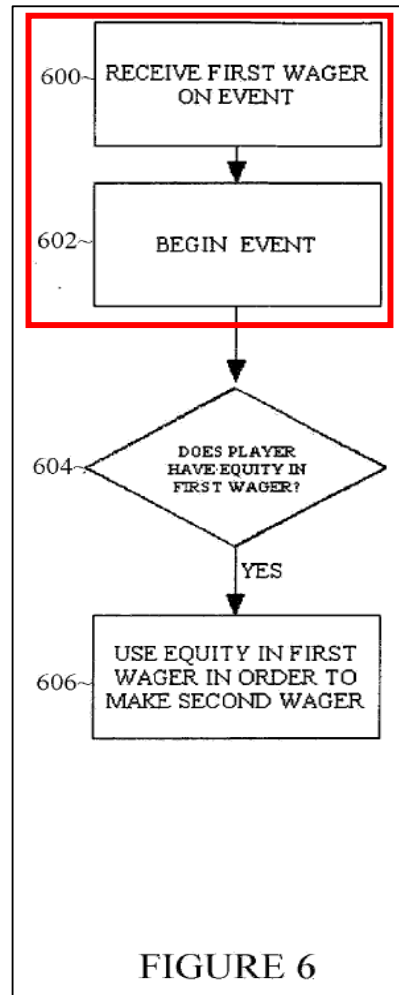
Schugar's sports betting concept and wagering on the games in a series, such as a seven-game series like the baseball World Series or a four-quarter football game like the Patriots versus the Giants, is analogous to and compatible with the structure and operation of DeWaal's multi-round bonus event including the offer and acceptance feature. *See* Schugar ¶¶ [0072], [0120], [0126]. For example, a multi-round wagering event on a four-quarter sporting event as described in Schugar naturally aligns with a four-round bonus event as described in DeWaal, where each round corresponds to each quarter in the sporting event and each quarter has at least two outcomes, team A is winning or team B is winning at the end of the quarter, and players make selections on each quarter/round in the four-quarter series. *See* Schugar ¶¶ [0120], [0126]. Similarly, a multi-round wagering event on a seven-game series sporting event as described in Schugar naturally aligns with a seven-round bonus event as described in DeWaal, where each game corresponds to each game in the sporting event and each game has at least two outcomes, team A wins or team B wins, and players make selections of outcomes on each game/round in the seven-game series. *See* Schugar ¶ [0072]. In each of these examples, a POSITA would understand that there could be additional outcomes associated with each round in this example, such as team A winning by X amount or team B losing by Y amount.

2. Claim 1

83. In my opinion, a POSITA would have understood that the combination of Schugar and DeWaal discloses each and every element of claim 1 of the '969 Patent, as set forth in the sections that follow, and that the combination was obvious as set forth in the preceding section.

a. 1[a] – “A method of conducting a wagering event for one or more players, comprising:”

84. Limitation 1[a] is the preamble of claim 1 of the '969 Patent. In my opinion, and to the extent the preamble is limiting, a POSITA would have understood that Schugar discloses limitation 1[a] of the '969 Patent. For example, corresponding to “a method of conducting a wagering event,” Schugar discloses “**a method of conducting a wagering game**” and explains that “[t]he method can start with operation 600, which **receives a first wager on an event**,” thereby indicating that the “wagering game” involves a “wagering event.” Schugar Claim 1, ¶ [0122]. For the avoidance of doubt, a POSITA would have understood that there is no substantive difference between a “wagering game” and a “wagering event” at least because the “wagering game” involves placing and receiving a “wager on [an] event” and thereafter “begin[ning the] event” upon which the wager was received. *See, e.g., id.* FIG. 6 (shown below).



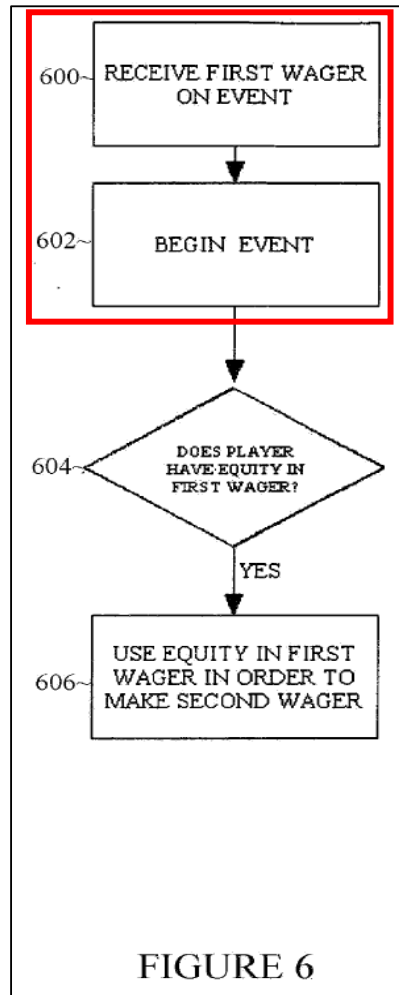
Id. FIG. 6.

85. Regarding the wagering game/event being “for one or more players,” Schugar discloses that its wagering game “allows **a player** to alter payouts based on an equity position the player has in the wagering game,” thereby indicating that the wagering event is for at least one player. *Id.* ¶ [0003]. In addition, Schugar discloses that multiple players can participate in the wagering event. For example, Schugar’s method of conducting a wagering event “can also be used to bet on sporting events, either at intervals on individual games or series of games,” and “**players**” can make

wagers on the sporting events during the games or series. *Id.* ¶ [0072]. This is consistent, for example, with Schugar’s disclosure and discussion of “parimutuel” odds and “betting pool[s],” which a POSITA would have understood refer to a betting system involving multiple players where all bets are placed together in a pool and the payoff odds depend on the number of (winning) bettors on a given event. Accordingly, a POSITA would understand that Schugar discloses limitation 1[a].

b. 1[b] – “causing a central server system to initiate a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;”

86. In my opinion, a POSITA would have understood that limitation 1[b] was obvious in view of Schugar and DeWaal. For example, corresponding to “initiat[ing] a wagering event for one or more players,” Schugar discloses, with reference to FIG. 6 shown above, that “the method can proceed to operation 602, which ***begins the event*** and progresses a portion of the event (but the event is not over yet).” Schugar ¶ [0123]. A POSITA would have understood that to “begin” an event upon which a wager may be placed is the same as to “initiate” a wagering event at least because initiating is commonly understood to mean beginning and in this context those terms are utilized to refer to the same thing. And, as I stated before, the initiating is performed “for one or more players” that placed a wager on the event, as shown in FIG. 6.



Id. FIG. 6.

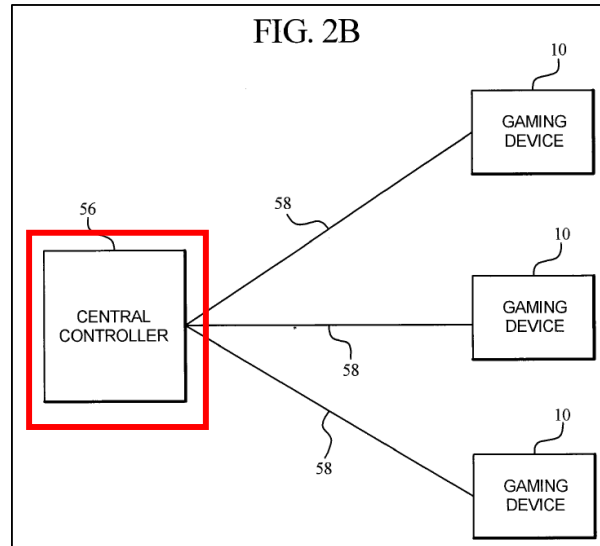
87. A POSITA also would have understood that Schugar’s wagering game/event “corresponds to a sporting event” at least because Schugar discloses that the event upon which the wager may be placed “can be a **sporting event.**” *Id.* ¶ [0122]; *see also id.* ¶ [0072] (“The embodiments described herein can also be used to **bet on sporting events, either at intervals on individual games or series of games.**” For example, two teams can play a best 4/7 series. After each game in the series (and event during particular games), payout odds for each team winning the series can

change to reflect the current conditions (as described herein and/or known in the art) and players can make wagers during the series.”), [0106] (“It is further noted that the methods described herein can be applied to all games, including ... **live sporting events.**”). Specifically, Schugar discloses that the “sporting event” may be “**horse racing, football, etc., simulated by machine or real.**” *Id.* ¶ [0109]. Consistent with the understanding of a POSITA, these are precisely the type of “sporting event[s]” that are referred to in the ’969 Patent. *See, e.g.,* ’969 Patent 5:39-40 (“sporting events (i.e., American football, horse racing....”).

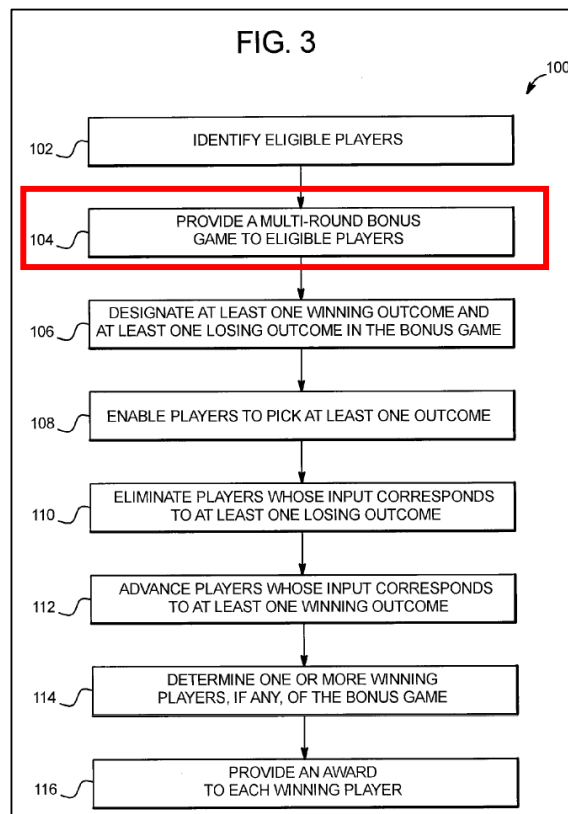
88. Although Schugar contemplates the use of a central server system, as described above, it does not expressly state that a “central server system” initiates the wagering event. However, in implementing Schugar’s wagering events and operations in DeWaal’s centrally controlled wagering system that includes a central controller/server, it would have been obvious to a POSITA to have the central server perform the initiating functions of Schugar described above because DeWaal discloses that similar such functions are performed by the central server/controller.

89. For example, DeWaal discloses a centrally controlled wagering system, as shown in FIG. 2B for example, where “**the central server remotely controls any games,**” including by “**provid[ing] the multi-round bonus event** (or causes the gaming machines to provide the multi-round bonus event) to those eligible players as indicated by block 104” in FIG. 3. DeWaal ¶¶ [0123], [0126]; *see also id.* ¶ [0123]

(“the process 100 is embodied in computerized instructions executed by a central controller or remote host.”).



DeWaal FIG. 2B.

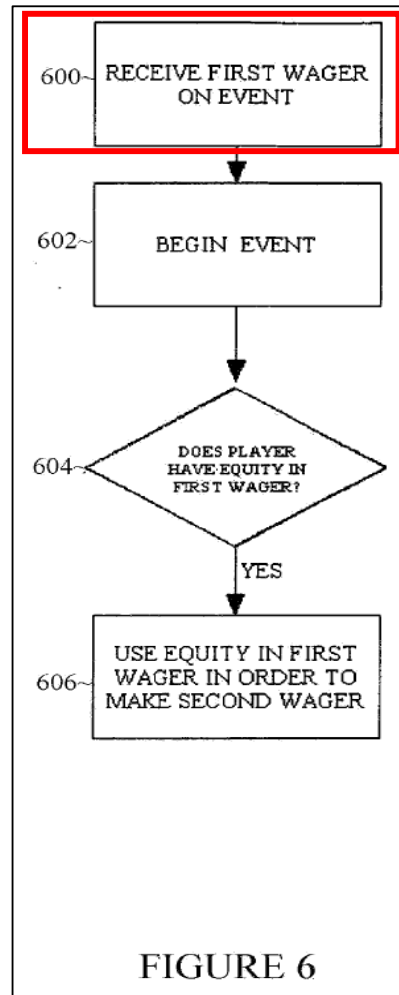


DeWaal FIG. 3. A POSITA would therefore understand that DeWaal's central controller/server initiates the wagering events provided thereon by providing or supply the wagering events to a plurality of players' gaming machines.

90. In addition, it would have been obvious to a POSITA to implement Schugar's wagering events in DeWaal's centrally controlled system such that limitation 1[b] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

b. 1[c] – “causing a wager corresponding to a player of the one or more players that is received by a wagering input device for the sporting event to be transmitted to the central server system;”

91. In my opinion, a POSITA would have understood that limitation 1[c] was obvious in view of Schugar and DeWaal. For example, with respect to “a wager ... that is received ... for the sporting event,” Schugar discloses that the method of conducting the wagering game includes “**receiv[ing] a first wager on an event,**” and that the “**event can be a sporting event.**” Schugar ¶ [0122]. This step is illustrated, for example, in FIG. 6 shown below.



Id. FIG. 6.

92. Regarding the wager “corresponding to a player of the one or more players,” Schugar discloses “receiving a wager *from a player on a player chosen outcome.*” *Id.* ¶ [0007]. For example, in the context of FIG. 6 and with respect to a sport wagering event such as “*a football game with the Patriots vs. the Giants,*” Schugar discloses that “*[a] bettor wagers \$100 on the Patriots.*” *Id.* ¶ [0126]. This would indicate to a POSITA that the received wager corresponds to the player from which it was received and the particular outcome chosen by that player because it

specifically associates the received wager with the player of the wagering event. *Id.*

¶ [0007]. A POSITA would understand that a wager received from a player “correspond[s]” to that player.

93. Regarding the wager being received “by a wagering input device,” Schugar discloses that “[a]n electronic gaming apparatus” comprising a “computer” “perform[s]” the step of “receiving a wager from a player on a chosen outcome.” Schugar Claim 9. A POSITA would understand that such an electronic gaming apparatus that “receiv[es] a wager from a player on a chosen outcome,” such as the \$100 wager on the Patriots in the sporting event example given above, corresponds to the wager being received by a “wagering input device” at least because the wager is input into the gaming apparatus/device. Such a computer corresponding to a “wagering input device” is consistent with the ’969 Patent. *See, e.g.,* ’969 Patent 36:24-27.

94. With respect to “causing” the wager “to be transmitted to the central server system” and received by the central server system, although Schugar discloses the use of a “player record” in a centrally accessible database (*See, e.g., id.* ¶ [0105]), Schugar does not expressly state that the player’s wager is transmitted to a “central server system.” However, in implementing Schugar’s wagering events and operations in DeWaal’s central controller/server, it would have been obvious to a POSITA to have the central server perform Schugar’s functions described above

because DeWaal discloses that similar such functions are performed by the central server/controller.

95. For example, DeWaal's central controller/server tracks the amounts wagered and receives signals representing the input selections upon which the user is wagering in the wagering event. Specifically, DeWaal discloses that "that the gaming network includes a real-time or on-line accounting and gaming information system operably coupled to the central server or controller," which "***includes a player database*** for storing player profiles, a player tracking module for tracking players and a credit system for providing automated casino transactions." DeWaal ¶ [0094]. The tracking system of the central server or controller "***tracks any players gaming activity at the gaming device,***" including "***any suitable information, such as any amounts wagered, average wager amounts and/or the time these wagers are placed.***" DeWaal ¶¶ [0095], [0096]. Therefore, as DeWaal discloses, the amount wagered is entered at the gaming device and sent to and received by the accounting and tracking module of the central controller so that the central controller can perform its functions, including but not limited to, its tracking and player recording functions. And, as a matter of common sense, a POSITA would understand that, because wagers are input at the client wagering input devices and tracked/stored in a remote player record database, they must necessarily be transmitted from the client gaming device to the central controller. Such centralized

player tracking systems were well-known in the art prior to the '969 Patent. See, e.g., DeWaal ¶¶ [0005] (“Player tracking systems are also known.”).

96. In addition, it would have been obvious to a POSITA to implement Schugar’s wagering events in DeWaal’s centrally controlled system such that limitation [1c] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

c. 1[d] – “causing the central server system to generate a cash out offer for the player based on the wager and progress of the sporting event, by:”

97. In my opinion, a POSITA would have understood that limitation 1[d] was obvious in view of Schugar and DeWaal. For example, with respect to the limitation of “generate a cash out offer for the player,” Schugar discloses that the method for providing the wagering event includes determining whether the player’s current game state has a “positive expectation for the player” such that they have “equity” in the game, and “determin[ing] whether the player chooses to bank his or her positive expectation,” which “can be prompted by ***an automatic pop up window which allows the player to choose whether he wishes to bank some or all of his recent gains in expectation for later redemption.***” Schugar ¶ [0092]. A POSITA would have understood that such an offer to allow the player to bank, or “***cash[] in,***” “***some or all***” of his or her wager in progress corresponds to the claimed “cash out offer,” and that causing an automatic pop up window to appear offering that option

to the player comprises “generat[ing]” the cash out offer because the system produces/generates that window containing the offer. *Id.*; *see also id.* ¶ [0127] (“[E]ven if the player is in a negative expectation situation, the player can still utilize the method described herein of **cashing out** a portion of a current bet in progress”).

98. For example, in the context of the football sports wagering event described above, Schugar describes the generation of a cash out offer for the player that placed the wager as follows:

For example, consider a football game with the Patriots vs. the Giants. The Patriots are a +900 long shot. The bettor wagers \$100 on the Patriots. At halftime, the Patriots are winning by +28 points. At this point, a parimutuel halftime betting pool determines that the Giants are now a +1000 long shot. Assuming no house commission for simplicity, a +1000 translates into a 10% probability of occurrence of the Giants winning. Thus, the bettor has a 90% chance of winning \$900, thus the effective value of the original wager is now $0.90 \times 900 = \$810$. ***The bettor can now surrender \$10 of his original wager which is effectively worth \$81.*** This \$81 can now be wagered on the Giants which would result in a \$810 win if the Giants win. ***The player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win.***

Schugar ¶ [0126]; *see also id.* ¶ [0120] (“Therefore, \$1.52 can be subtracted from the \$100 original wager to result in a \$98.48 wager remaining on the Yankees.”).

99. A POSITA would recognize that Schugar's disclosure of generating an offer for the player to cash out some or all of their wager in progress, such as by way of the automatic pop-up window, maps squarely to the concept of a buy/cash out offer described in the '969 Patent. For example, like Schugar's disclosure of offering a player the ability to "cash[] in" "all or some" of their wager in progress, the '969 Patent states that a player "may be offered a 'buy-out' or an opportunity to sell their tickets (in whole or alternatively may be in part (i.e., a fractional amount) to the game operator (or alternatively directly) to a third party." '969 Patent 35:17-21; see also *id.* 15:12-23 ("In one example, the buy-out offer is for buying an entire ticket from a player (i.e., 100%) for an indicated value. As should be understood, the buy-out offer may be for any desired percentage of a ticket (i.e., any percentage between 0%-100%).").

100. In addition, with respect to the cash out offer being generated "based on the wager and progress of the sporting event," Schugar discloses that in a progression game that "has a plurality of game states," like a sporting event for example, "each game state may have a different expected return," and thus potential cash out value, "for the player ***based on the player's wager and the current game state.***" Schugar ¶ [0054]. Schugar discloses an exemplary formula used for determining the player's "expectation in a game," which is the amount that the player is offered the option of cashing out in full or in part, and which is based on the wager

and the progress of the sporting event. Specifically, the cash out value may be calculated, as shown below, by determining “[f]or all outcomes” the sums of the “probability of [the] outcome” times the “reward for the outcome.”

For all outcomes, $\Sigma(\text{probability of outcome} \times \text{reward for the outcome})$.
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Id. ¶ [0090].

101. As is disclosed in Schugar and was known in the art, the “reward for the outcome,” and thus the amount of the cash out offer that is determined based on that value, is “based on the wager” because it depends on the wagered amount in view of the pay table or schedule. *Id.* ¶ [0120]. “In other words,” as Schugar explains, “***the current payouts*** based on the current state ***can be used to determine a current value of already placed wagers.***” *Id.* ¶ [0118].

102. For example, on a \$100 wager, where the wagered upon team is a +900 longshot (i.e., 9:1 odds), the potential reward for the outcome is calculated to be “\$900.” Schugar ¶ [0126]. Likewise, for an \$81 wager, where the wagered upon team is a +1000 longshot (i.e., 10:1 odds), the potential reward for the outcome is calculated to be “\$810.” *Id.* Based upon these examples, a POSITA would understand, for example, that if the player only placed a \$10 wager where the wagered upon team was a +900 longshot (i.e., 9:1 odds), the potential reward would only be \$90. Similarly, if the player only placed a \$8.10 wager on a +1000 longshot

(i.e., 10:1 odds), the potential reward would only be \$81. Therefore, these examples, as would be understood by a POSITA, demonstrate that the value of the “reward for the outcome” as utilized by Schugar in determining the cash out value is based upon the amount wagered because it changes depending upon the amount wagered (and other factors). Therefore, because one of the variables upon which the cash out offer is the wager amount, the cash out offer is generated based on the wager.

103. In addition, a POSITA would understand that Schugar’s cash out offer amount (e.g., the expectation value) is also based on the “progress of the sporting event.” As Schugar explains, “the current payouts based on ***the current state can be used to determine a current value of already placed wagers.***” *Id.* ¶ [0118]; see also *id.* ¶ [0071] (“Thus, the player can choose to continue rolling (and win or lose) or accept ***the surrender value of \$133.33, which is based on equity in his position based on events that have occurred in the game***”). In fact, as Schugar discloses, the expectation value is a calculation of the player’s “equity” or expectation in the game based on the progress of the sporting event as of its “current game state” and the “probability” or odds of the player’s wagered upon outcome occurring as of that “current game state.” *Id.* ¶ [0089]. Specifically, as Schugar discloses in the context of wagering on a sporting event, after each game in a series “and even during particular games,” the “payout odds for each team winning the series can change to reflect ***the current conditions*** (as described herein and/or known in the art).” *Id.* ¶

[0072]. And, as the odds change depending on the progress of the sporting event and its “current conditions,” the better’s cash out value (current expected value) changes, as shown in Schugar’s examples. For example, based on the progress of the Yankees v. the Giants example discussed herein, the player’s expected value changed based on the progress of the sporting event because the odds changed at halftime. *See, e.g., id.* ¶ [0126]. A POSITA would have recognized that the “current game state” upon which the cash out value is determined is a reflection of the “progress of the sporting event” at a particular time during the wagering event, such as “halftime,” for example. *Id.*

104. With respect to “causing the central server system” to perform the claimed generating, Schugar does not expressly state that a central server system performs the claimed generating of the cash out offer as described above. However, in implementing Schugar’s wagering events and operations in DeWaal’s centrally controlled wagering system that includes a central controller/server, it would have been obvious to a POSITA to have the central server to perform Schugar’s functions and operations with respect to generating the cash out offer because DeWaal discloses that similar such functions are performed by the central server/controller.

105. For example, DeWaal discloses that “the central controller offers each advancing player an additional award to quit the bonus event” and that the “central controller may cause the display device to display an offer of \$10 to the advancing

players. The display may include appropriate messages, such as ‘YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND!’” DeWaal ¶ [0146]. By disclosing that the “central controller” makes the “offers,” and that the central controller “cause[s] the display device to display an offer,” a POSITA would understand that DeWaal discloses the central controller generating and initiating such offer to buy/cash in/out of a wagering event in progress.

106. In addition, it would have been obvious to a POSITA to implement Schugar’s cash out offer generating operations in DeWaal’s centrally controlled system such that limitation 1[d] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

d. 1[e] – “monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,”

107. In my opinion, a POSITA would have understood that limitation 1[e] was obvious in view of Schugar and DeWaal. For example, with respect to the central server’s generating of the cash out offer including “monitoring progress of the sporting event,” Schugar discloses that its wagering game operations include “**record[ing] the event states** ... on a digital media, on video capture, etc.” after the event begins. Schugar ¶ [0110]. A POSITA would have understood that recording the event states is a way of “monitoring” the progress of the sporting event, i.e.,

monitoring the state of the sporting event because the recording of the progress involves “monitoring” activities such as listening to and recording.

108. Further demonstrating that generating the cash out offer involves monitoring the progress of the sporting event and that “the progress of the sporting event may comprise at least a current status,” Schugar’s operations involve identifying, from among the “plurality of game states,” which is the “**current game state**” (i.e., the “current status” of the game) upon which the cash out offer amount will be determined. *See, e.g., id.* ¶ [0054]; *see also id.* ¶¶ [0092] (“If the **current game state** has a positive expectation (or positive expected profit for the player, then the method can proceed to operation 304, which then determines whether the player chooses to bank his or her positive expectation.”), [0087] (“The wagering game should be one which has multiple game states, either discrete (each successive game state is prompted and advanced by the player) or continuous (the game automatically advances throughout game states until a player takes an affirmative action to freeze **the current game state** and take action).”). A POSITA would have understood that identifying a “current game state” from among a plurality of continuously progressing game states, for example, includes monitoring the progress of the event because it involves identifying with respect to the progress of the event the current progress or state.

109. That Schugar discloses generating the cash out offer by monitoring the progress of the sporting event is also evident from Schugar's examples. For example, in the context of a \$100 wager placed on the Yankees vs. the Braves baseball game, Schugar discloses that "[a]fter the fifth inning, the Yankess are winning by 4 runs," and determining at "that point in time" that "the bettor has equity in his wager" that can be offered to the player to cash in/out. *Id.* ¶ [0120]. Similarly, in the context of a \$100 wager placed on the Patriots vs. the Giants football game, Schugar discloses that "[a]t halftime, the Patriots are winning by +28 points," and determining "[a]t this point" that "the effective value of the original wager is now ... \$810," such that the bettor can now "surrender" some of his original wager" and "cash[] out a portion of a current bet in progress in order to," for example, "pay for an additional wager" on the sporting event. *Id.* ¶¶ [0126]-[0127]. And, similarly, in the context of a player using some of the "cash[ed] out" value to fund an additional or conditional wager, Schugar discloses monitoring the progress of a horse race so that the "odds can be determined for the outcomes" at the "halfway point" of the race. *Id.* ¶ [0118]. A POSITA would have understood that each of these examples demonstrates Schugar's monitoring of the progress of the sporting event because each of them involves identifying a specific point during the progression of the sporting event, such as "halftime" or the "halfway point." And, as these examples show, Schugar's generation of the cash out offer is based on and involves monitoring

the progress of the sporting event because the cash out offer amount is determined based on the monitored “current game state.” *See, e.g., id.* ¶¶ [0092], [0110].

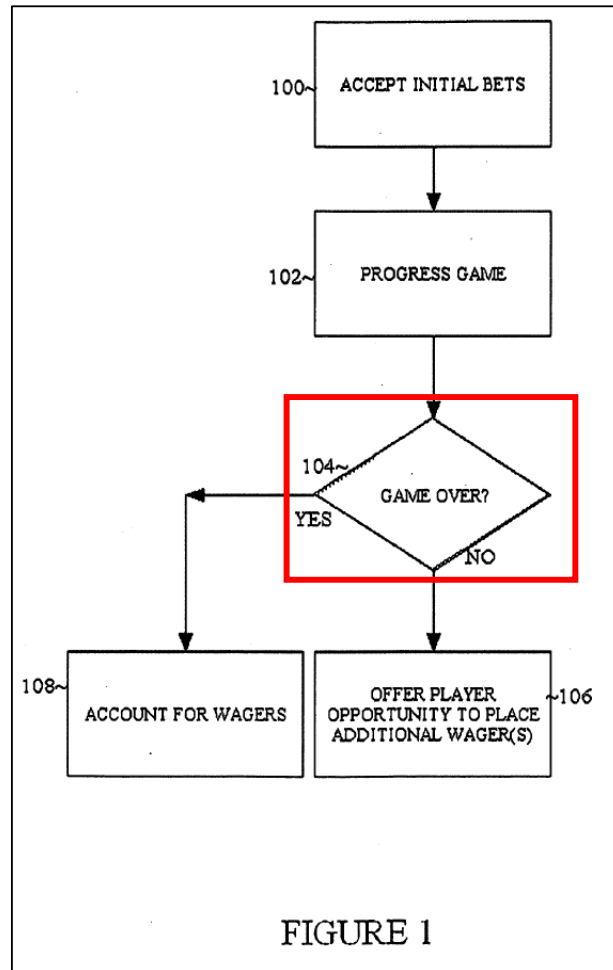
110. With respect to the claimed “monitoring” being performed by the claimed “central server system,” Schugar does not express state that the monitoring is done by a central server system. However, in implementing Schugar’s wagering methods in DeWaal’s centrally controlled wagering system that includes a central controller/server, it would have been obvious to a POSITA to have the central server perform Schugar’s monitoring functions at least because the monitoring functions are part of the cash out offer generation function that would be performed by the central server, as explained above with respect to limitation 1[d], and because DeWaal describes that the central server is suitable for performing monitoring functions. *See, e.g.,* DeWaal ¶ [0094] (“the central server or controller monitors the activities and events occurring on the plurality of gaming devices.”).

111. In addition, it would have been obvious to a POSITA to implement Schugar’s wagering events and methods in DeWaal’s centrally controlled system such that limitation 1[e] was satisfied by the combined teachings for at least the reason stated above, which are herein incorporated by reference.

e. 1[f] – “identifying that the player's wager is active, and”

112. In my opinion, a POSITA would have understood that limitation 1[f] was obvious in view of Schugar and DeWaal. For example, with respect to the

central server's generating of the cash out offer including "identifying that the player's wager is active," Schugar discloses that its method is for "cashing in value for a **current wager in progress**." Schugar ¶ [0120]; *see also id.* ¶ [0127] ("the method described herein of cashing out a portion of a **current bet in progress**"). A POSITA would understand that Schugar's identification and designation of a wager as "current" and "in progress" is the same as identifying that it is "active." Further, Schugar discloses that a wager is active so long as the game has not reached a "terminating game state" at which "the game is over." *Id.* ¶ [0054]. And Schugar's methods include "check[ing] to see if the game is over" as indicated by "variable parts of the game state" being "in a terminating condition." *Id.* ¶ [0057]. Therefore, a POSITA would also understand that Schugar identifies that a player's wager is "active" if its determination in Step 104 is "no," that the game is not over, as shown below.

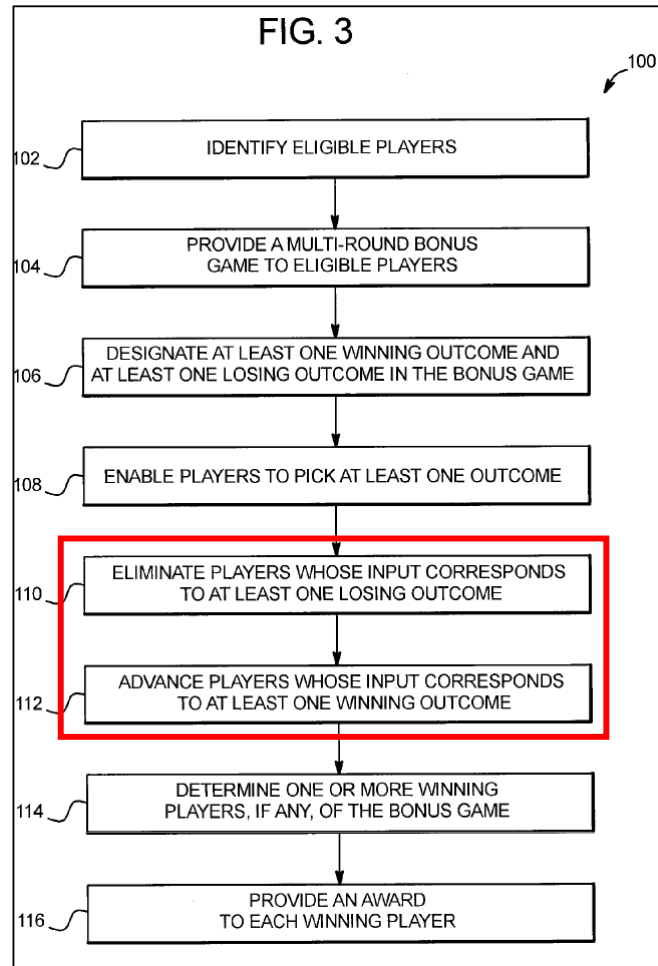


Id. FIG. 1; *see also id.* ¶ [0077] (“When the player is playing a game in which the player can be ‘winning’ before the game is over, the player may wish to have a way to cash in on the winning state before completing the game.”).

113. With respect to the claimed “identifying” being performed by the “central server system,” Schugar does not expressly state that a central server identifies that a player’s wager is “current” or “active.” However, in implementing Schugar’s wagering methods in DeWaal’s central server system, it would have been obvious to a POSITA to have the central server perform such functions at least

because those functions are part of the cash out offer generation function that would be performed by the central server, as explained above with respect to limitation 1[d], and because DeWaal discloses that similar functions are performed by the central server/controller.

114. For example, DeWaal discloses that its central controller determines whether players are eligible or ineligible to continuing participating in the wagering event, and by so doing, determines if each player's wager is active/eligible in a given round of the game. A POSITA would understand that the central controller's designation of a player being "eligible" to participate in a round of the wagering event corresponds to that player's wager being "active" in the wagering event. Specifically, for example, as shown in FIG. 3 of DeWaal, which illustrates "computerized instructions *executed by a central controller or remote host*," the central controller identifies certain player's as eligible players and advances them to the next round, thereby indicating that such advancing players' wagers are active, or eliminates certain players, thereby indicating that such players are inactive.



DeWaal FIG. 3; *see also id.* ¶ [0130] (“During play of the selection bonus game, players who pick the designated selection (i.e., a winning outcome) in an initial round may be deemed eligible for advancement to a subsequent round ... only eligible players may advance to the subsequent round”), [0131] (“if a player does not make an input associated with the designated selection ... in a round, that player may be deemed ineligible for advancement to a subsequent round”), [0012] (“For each player whose input is associated with a losing outcome ... the central controller eliminates that player from the bonus game.”).

115. In addition, it would have been obvious to a POSITA to implement Schugar's wagering events and methods in DeWaal's central server system such that limitation 1[f] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

f. 1[g] – “determining an amount of the cash out offer; and”

116. In my opinion, a POSITA would have understood that limitation 1[g] was obvious in view of Schugar and DeWaal. For example, with respect to “determining an amount of the cash out offer,” Schugar discloses a formula that is utilized to determine whether the current game state has a “positive expectation (or positive expected profit) for the player,” and if so, how much. Schugar ¶¶ [0089]-[0092]. This amount (the player's total positive expectation) is the “amount of the cash out offer” because after determining the player's positive expectation/expected profit, the method produces an automatic pop-up window that “allows the player to choose whether he wishes to bank some or all of his recent gains,” and thereby cash out all or some of the calculated amount of expected profit. *Id.* ¶ [0092]. Specifically, the formula for determining the amount of the cash out offer (i.e., the total expected profit) from Schugar is shown below.

For all outcomes, $\Sigma(\text{probability of outcome} * \text{reward for the outcome})$.

Id. ¶ [0090]. Schugar also discloses examples of how this formula is used to determine the amount of the cash out offer to be provided to a player. For example,

with respect to a \$100 wager on a Yankees game, given the current state of the game, the formula was used to determine that the player's cash out amount/expected value was \$132. *Id.* ¶ [0120]. Similarly, with respect to a \$100 wager on a Patriots game, given the current state of the game, the formula was used to determine the player's cash out offer amount of \$810. *Id.* ¶ [0126].

117. With respect to a “central server system determining an amount of the cash out offer,” Schugar does not expressly state that a central server system calculates the amount of the cash out offer utilizing the above-described formula. However, in implementing Schugar's wagering methods in DeWaal's central server system, it would have been obvious to a POSITA to have the central server perform such functions at least because those functions are part of the cash out offer generation function that would be performed by the central server, as explained above with respect to limitation 1[d], and because DeWaal discloses that similar functions are performed by the central server/controller.

118. For example, DeWaal discloses that the “central controller offers a portion of the award pool ... to each player who picked” a winning selection in one of the rounds by displaying a message containing a determined amount to offer the player “in exchange for quitting the bonus event.” DeWaal ¶ [0146]; *see also id.* (“The central controller may cause the display device to display an offer of \$10 to the advancing players. The display message may include appropriate messages, such

as, “YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND.”). Regarding the determined amount to offer each eligible/active player, DeWaal discloses that “the award share represents a portion of the award attributed to each player remaining in the bonus event. In this instance, the award share is equal to the amount of the award associated with the bonus event divided by the number of eligible players in the bonus event, which results in an equal award share being associated with each eligible player.” *Id.* ¶ [0170]. Further, as stated above, DeWaal discloses that “the central server remotely controls any games,” thereby indicating to a POSITA that the central server, rather than the gaming device, determines the amount of value to offer a player in exchange for quitting the event.

119. In addition, it would have been obvious to a POSITA to implement Schugar’s wagering events and methods in DeWaal’s centrally controlled system such that limitation 1[g] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

g. 1[h] – “causing the central server system to transmit the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.”

120. In my opinion, a POSITA would have understood that limitation 1[h] was obvious in view of Schugar and DeWaal. For example, with respect to “prompting the player to accept or reject the cash out offer,” Schugar discloses that

its method “determines whether the player chooses to bank his or her positive expectation,” and thereby determines whether the player chooses to cash out of the wagering event (in full or in part), by displaying an “automatic pop up window which allows the player to choose whether he wishes to bank some or all of his recent gains in expectation.” Schugar ¶ [0092]. As would be understood by a POSITA, a “pop up window” is a well-known type of prompt and, here, such that it “prompt[s] the player” to make the choice of “whether,” i.e., yes (accept) or no (reject), he wishes to cash out his or her wager in full or in part. *Id.* That is, given that Schugar discloses that the player can only choose to bank “some **or** all” of the value of their wager, i.e., not both, a POSITA would have understood that a player choosing to accept “some” would also be rejecting accepting “all,” and vice versa, a player choosing to accept “all” would also be rejecting accepting “some.” In this way, no matter which option the player chooses (some or all), the pop up window prompts the player to accept or reject the cash out offer. Although FIG. 6 of Schugar is missing a “no” branch of the decision tree for this step, a POSITA would understand from Schugar’s disclosure as a whole that Schugar contemplates a player having the ability to reject the offer to cash out their wager in full or in part such as by, for example, recognizing that a player may not choose to bank their expected profit. *Id.* ¶ [0093] (“**If** the player chooses in operation 304 to bank his or her positive expectation ...”); *see also id.* ¶ [0071] (“Thus, the player can choose to continue rolling (and win or lose) or

accept the surrender value of \$133.33, which is based on equity in his position based on events that have occurred in the game”). In these portions of Schugar, for example, a POSITA would understand that the player’s choice to “continue” corresponds to the player “reject[ing]” the cash out or surrender value, and the player’s alternative option to “accept the surrender value” obviously corresponds to “accept[ing]” the cash out or surrender value.

121. With respect to “causing the central server system to transmit the cash out offer to the wagering input device,” Schugar does not expressly state that a central server transmits the cash out offer to the wagering devices. However, in implementing Schugar’s wagering game methods in DeWaal’s central server system, it would have been obvious to a POSITA to have the central server system perform such functions at least because those functions are part of the cash out offer generation function that would be performed by the central server system, as explained above with respect to limitation 1[d], and because DeWaal discloses that similar functions are performed by the central server/controller.

122. For example, DeWaal discloses that “[t]he central controller may cause the display device to display an offer of \$10 to the advancing players,” and such an offer would include the a message like the following: “YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND PLAY ANOTHER ROUND.” DeWaal ¶ [0146]. Regarding

how the central server system may cause the display device to display such a cash out offer, DeWaal discloses that “the processor of the central server is designed to transmit ... commands ... between the central server and each of the individual devices,” and that “the gaming device processor is operable to execute such communicated ... commands.” *Id.* ¶ [0084]. A POSITA would therefore understand that the central server transmitted the cash out offer and appropriate message to the wagering device, thereby causing it to be displayed to the player. *See also id.* ¶ [0042] (“In such a ‘thin client’ embodiment, the central server remotely controls any games ... and the gaming device is utilized to display such games”).

123. In addition, it would have been obvious to a POSITA to implement Schugar’s wagering events and methods in DeWaal’s central server system such that limitation 1[h] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

3. Claim 2

124. In my opinion, a POSITA would have understood that the combination of Schugar and DeWaal discloses each and every element of claim 2 of the ’969 Patent, as set forth in the sections that follow, and that the combination was obvious as set forth in the preceding sections.

a. 2[a] – “The method of claim 1, further comprising:”

125. Limitation 2[a] is the preamble of claim 2. To the extent this preamble is a limitation of the claims, then in my opinion, for the reasons set forth in the preceding section, a POSITA would understand that the method of claim 1 is rendered obvious by the combination of Schugar and DeWaal.

a. 2[b] – “causing the central server system to identify that the cash out offer was accepted; and”

126. In my opinion, a POSITA would have understood that limitation 2[b] was obvious in view in Schugar and DeWaal. For example, corresponding to the limitation of “identify that the cash out offer was accepted,” Schugar discloses that the “player can also exercise this option” to cash out “with a press of a button which allows the player to bank his or her positive expectation.” Schugar ¶ [0092]. Similarly, Schugar discloses that a player can “indicate his or her desire” to accept or reject an option “on an electronic input device (e.g., touch screen, keyboard, etc.).” *Id.* ¶ [0135]. A POSITA would have understood that a player’s press of a button on an electronic input device would create a signal indicating and identifying their acceptance of the option to cash out their wager in full or in part in response to the pop-up window prompt discussed with respect to claim 1. This understanding is further confirmed and corroborated by Schugar’s explanation that “[i]f the player chooses in operation 304 to bank his or her positive expectation, then the method can proceed to operation 306, which stores the value the player has banked for later use” in the “current machine” and/or a “remote database for later retrieval.” *Id.* ¶

[0093]. From this disclosure, a POSITA would have understood that there was an identification that the cash out offer was accepted, such as by the player pressing a button indicating acceptance, because the method involves storing the cashed out value in response to such identified acceptance. That is, the method identifies that a particular input is an acceptance, as opposed to a rejection for example, and causes a specific action to occur in response to an acceptance (i.e., banking the cashed out value for later use).

127. With respect to the “causing the central server system to” identify that the cash out offer was accepted, Schugar does not expressly state that the central server identifies that the cash out offer was accepted. However, in implementing Schugar’s wagering methods in DeWaal’s central server system, it would have been obvious to a POSITA that the central server system would identify that the cash out offer was accepted by, for example, receiving a signal generated by the input device indicating that the cash out offer was accepted, because DeWaal discloses that such functions are performed by the central server/controller.

128. For example, DeWaal discloses the central controller taking action in direct response to a player accepting the offer of the additional award to quit the bonus event and discloses the central server receiving various signals of user inputs from the gaming devices. For example, DeWaal discloses that “the processor of each gaming device is designed to transmit and receive events, messages, commands

or any other suitable data or signal between the individual gaming device and the central server The processor of the central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.” DeWaal ¶ [0084]; *see also* DeWaal ¶ [0129] (“The central controller receives a signal from gaming machines in the gaming system corresponding to an input from each player in each round.”); DeWaal ¶ [0061] (“A player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate places.”). Regarding the specific actions taken by the controller when a player accepts the offer to quit, DeWaal explains that “[i]f any of the players quit the bonus event, the central controller provides these players with the accumulated awards associated with the first and second rounds.” DeWaal ¶ [0159]; *see also* DeWaal ¶ [0146] (“If fifty players accept the offer and quit the bonus event, the central controller provides these fifty players with an award portion of \$10.”). A POSITA would therefore understand that DeWaal teaches that the central controller receives an acceptance of the buy-out offer at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event and the central controller takes specific and direct actions in response to a player accepting the offer to quit.

129. In addition, it would have been obvious to a POSITA to implement Schugar's wagering events and methods in DeWaal's central server system such that limitation 2[b] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

a. 2[c] – “*causing the central server system to issue an electronic ticket corresponding to the cash out offer.*”

130. In my opinion, a POSITA would have understood that limitation 2[c] was obvious in view of Schugar and DeWaal. For example, corresponding to “issue an electronic ticket corresponding to the cash out offer,” Schugar discloses that “[i]f the player chooses in operation 304 to bank his or her positive expectation, then the method can proceed to operation 306, which ***stores the value the player has banked for later use***” in the “current machine” and/or a “***remote database for later retrieval***” using “***the player record.***” *Id.* ¶¶ [0093], [0105]. A POSITA would understand that a database entry or other electronic record using the player record that reflects the value that the player has banked or cashed out corresponds to an “electronic ticket corresponding to the cash out offer” because a database entry is an electronic record (“ticket”) entitling the player to “electronic redemption” of the cashed out value and it corresponds to the cash out offer because it “stores the value the player has banked” or cashed out and was supplied (“issue[d]”) by Schugar's wagering method. *Id.*; see also *id.* ¶[0079].

131. Pertaining to “causing the central server system to” issue such an electronic ticket/record of the cash out offer, Schugar does not expressly state that the central server system issues/supplies the database record reflecting the cash out offer. However, in implementing Schugar’s wagering methods in DeWaal’s central server system, it would have been obvious to a POSITA that the central server system would issue the electronic ticket corresponding to the buy-out offer because DeWaal discloses that similar functions, such as issuing the cash out award to a player and performing accounting and record keeping functions, are performed by the central server/controller.

132. For example, DeWaal discloses that “[i]f any of the players quit the bonus event, ***the central controller provides these players with the accumulated awards*** associated with the first and second rounds” that were offered to them in exchange for quitting the event. DeWaal ¶ [0159]. This mapping is further confirmed by additional disclosures in DeWaal. For example, DeWaal discloses that “[t]he central controller provides those players with the second additional award.” DeWaal ¶ [0142]. And, more specifically, in another example “[i]f fifty players accept the offer and quit the bonus event, ***the central controller provides these fifty players with an award portion of \$10.***” DeWaal ¶ [0146]. In addition, the central controller providing the award to a player may comprise “funding to the player’s electronically recordable identification card.” DeWaal ¶ [0060]. Such an

identification card is inserted into the gaming machine, meaning that if the server provides the award and funds the identification card that is located at the gaming machine, this demonstrates that DeWaal's server transmits an electronic record or ticket corresponding to the cash out offer in order to fund the player's identification card. *Id.* ¶[0057] (“In one embodiment, a player may insert an identification card into a card reader of the gaming device. In one embodiment, the identification card is a smart card having a programmed microchip or a magnetic strip coded with a player's identification, **credit totals** (or related data) and other relevant information.”). As DeWaal notes, such records of the cash out offer may be implemented using “electronic funds transfer.” *Id.* ¶[0057].

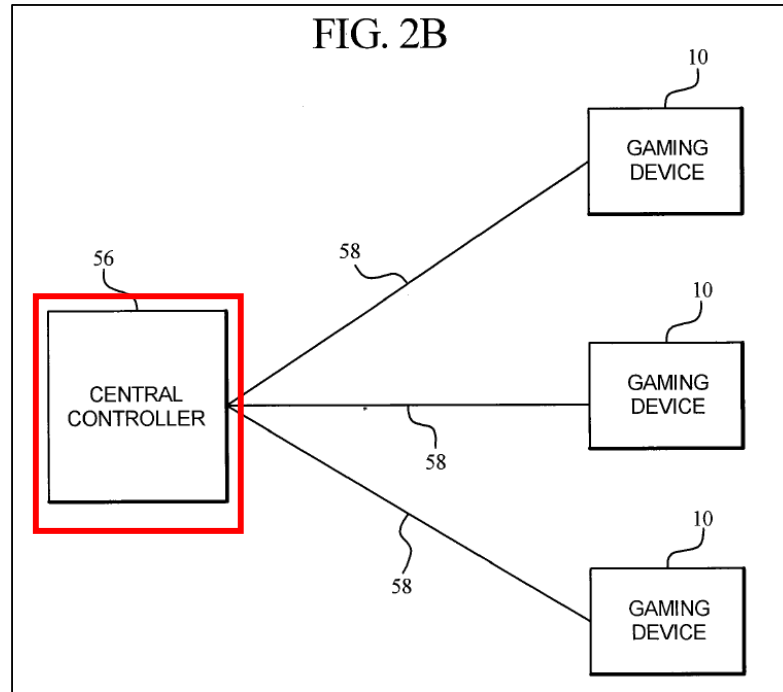
4. Claim 8

a. 8[a] – “A system for conducting a wagering event for one or more players, comprising:”

133. Limitation 8[a] is the preamble of claim 8. To the extent the preamble is limiting, it is my opinion that a POSITA would have understood that limitation 8[a] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[a] at least with respect to the overlapping and identical limitation of “conducting a wagering event for one or more players.”

134. With respect to limitation 8[a]'s recitation of a “system,” rather than a “method” as recited in limitation 1[a], for conducting the wagering event, a POSITA would have understood that the claimed “system” was obvious in view of Schugar

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



DeWaal FIG. 2B; *see also id.* FIGS. 11A-F, ¶ [0041] (“FIGS. 11A, 11B, 11C, 11D, 11E and 11F are front views of a display device of a plurality of gaming machines in the *gaming system disclosed herein* illustrating one embodiment of a multi-round bonus event, wherein the display devices substantially simultaneously display the bonus event to a plurality of players who compete for an award.”). In the obvious combination of implementing Schugar’s wagering method in DeWaal’s central controller/server, DeWaal’s “gaming system” corresponds to the claimed “system,” as explained in the sections that follow.

a. 8[b] – “a processor; and”

135. In my opinion, limitation 8[b] would have been obvious to a POSITA in view of Schugar and DeWaal. For example, DeWaal discloses that the gaming system includes a central server, and as POSITA would expect, DeWaal discloses that “**the central server**, central controller or remote host is any suitable server or computing device which **includes at least one processor**.” DeWaal ¶ [0084].

- a. 8[c] – “*a memory having programming instructions stored thereon, which, when executed by the processor, cause the processor to perform one or more operations, comprising:*”

136. In my opinion, limitation 8[c] would have been obvious to a POSITA in view of Schugar and DeWaal because, as a POSITA would expect, DeWaal discloses that the central controller/server of the gaming system includes at least one memory or storage device and that the central controller stores program code or other similar data in the memory device that performs certain functions when executed by the processor. For example, corresponding to the “memory,” DeWaal discloses that the central server/controller “**includes at least one memory or storage device**.” DeWaal ¶ [0084]. Further, corresponding to the memory “having programming instructions stored thereon,” DeWaal discloses that “**the central server or controller is capable of storing ... program code or other similar data**.” *Id.* ¶ [0086]. In addition, DeWaal confirms that the “process 100,” which is the process for “substantially simultaneously providing a bonus event to a plurality of eligible players,” is “embodied in one or more software programs stored in one or more

memories and executable by one or more processors, such as the central controller of the gaming system.” *Id.* ¶ [0122]. And, corresponding to the program code, “when executed by the processor, performs one or more operations,” DeWaal disclose that “the central controller is capable of ... utilizing program code or other data similar to the processor and memory device of the gaming device,” which means that “[t]he memory devices stores program code and instructions, executable by the processor, to control the” central server/controller in performing its functions, which are described in detail with respect to the limitations that follow. *Id.* ¶¶ [0086], [0046]. When the process that is stored in the server’s memory and executed by the server’s processor implements Schugar’s wagering methods, the operations recited in limitations 8[d] - 8[j] occur, as set forth above with respect to claim 1.

a. 8[d] – “initiating a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;”

137. In my opinion, a POSITA would have understood that limitation 8[d] was obvious in view of Schugar and DeWall for the same reasons explained above regarding limitation 1[b], which also recites “initiat[ing] a wagering event for one or more players, wherein the wagering event corresponds to a sporting event.” That is, because limitation 8[d] only changes the tense of the verb “initiate” to “initiating,” my analysis of limitation 1[b] applies equally to limitation 8[d].

a. 8[e] – “receiving, from a wagering input device, a wager corresponding to a player of the one or more players;”

138. In my opinion, a POSITA would have understood that limitation 8[e] was obvious in view of Schugar and DeWall for the same reasons explained above regarding limitation 1[c]. Specifically, whereas limitation 1[c] recites “a wager corresponding to a player of the one or more players” was caused to be “transmitted to the central server system,” limitation 8[e] similarly recites the central server system “receiving” such a wager “from a wagering input device” that transmitted it. Therefore, in my opinion, limitations 8[e] and 1[c] are substantively the same because they are both directed to the transfer or communication of the wager between the client gaming device and the central server/controller. Because limitation 8[e] does not substantively differ from limitation 1[c], my analysis of limitation 1[c] applies equally to limitation 8[e].

a. 8[f] – “generating a cash out offer for the player based on the wager and progress of the sporting event, by:”

139. In my opinion, a POSITA would have understood that limitation 8[f] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[d], which also recites “generat[ing] a cash out offer for the player based on the wager and progress of the sporting event, by.” That is, because limitation 8[f] only changes the tense of the verb “generate” to “generating,” my analysis of limitation 1[d] applies equally to limitation 8[f].

a. 8[g] – “monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,”

140. In my opinion, a POSITA would have understood that limitation 8[g] was obvious in view of Schugar an DeWaal for the same reasons explained above regarding limitation 1[e] because limitation 8[g] and limitation 1[e] are identical. Therefore, my analysis of limitation 1[e] applies equally to limitation 8[g].

a. 8[h] – “identifying that the player's wager is active, and”

141. In my opinion, a POSITA would have understood that limitation 8[h] was obvious in view of Schugar an DeWaal for the same reasons explained above regarding limitation 1[f] because limitation 8[h] and limitation 1[f] are identical. Therefore, my analysis of limitation 1[f] applies equally to limitation 8[h].

a. 8[i] – “determining an amount of the cash out offer; and”

142. In my opinion, a POSITA would have understood that limitation 8[i] was obvious in view of Schugar an DeWaal for the same reasons explained above regarding limitation 1[g] because limitation 8[i] and limitation 1[g] are identical. Therefore, my analysis of limitation 1[g] applies equally to limitation 8[i].

a. 8[j] – “transmitting the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.”

143. In my opinion, a POSITA would have understood that limitation 8[g] was obvious in view of Schugar an DeWaal for the same reasons explained above regarding limitation 1[h], which also recites “transmit[ting] the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.”

That is, because limitation 8[j] only changes the tense of the verb “transmit” to “transmitting,” my analysis of limitation 1[h] applies equally to limitation 8[j].

5. Claim 9

144. In my opinion, a POSITA would have understood that the combination of Schugar and DeWaal discloses each and every element of claim 9 of the '969 Patent, as set forth in the sections that follow, and that the combination was obvious as set forth in the preceding sections.

a. 9[a] – “The system of claim 8, wherein the one or more operations further comprise: identifying that the cash out offer was accepted; and”

145. As an initial matter, in my opinion, a POSITA would have understood that the system of claim 8 is rendered obvious by the combination of Schugar and DeWaal as set forth in the preceding section.

146. Regarding the limitation of the operations further comprising “identifying that the cash out offer was accepted,” in my opinion, this limitation would have been obvious to a POSITA for the same reasons explained above regarding limitation 2[b], which also recites causing the central server system to “identify that the cash out offer was accepted.” The slight difference in the claim language, i.e., “identify” versus “identifying,” does not impact my analysis.

a. 9[b] – “issuing an electronic ticket corresponding to the cash out offer.”

147. In my opinion, a POSITA would have understood that limitation 9[b] was obvious to a POSITA in view of Schugar and DeWaal for the same reasons I explained with respect to limitation 2[c], which also recites causing the central server system to “issue an electronic ticket corresponding to the cash out offer.” The slight difference in the claim language, i.e., “issue” versus “issuing,” does not impact my analysis.

6. Claim 13: “The system of claim 8, further comprising: receiving a second wager from a second player.”

148. In my opinion, claim 13 would have been obvious to a POSITA in view of Schugar and DeWaal. As an initial matter, to the extent the preamble of claim 13 is limiting, “[t]he system of claim 8” would have been obvious to a POSITA for the reasons I explained above regarding claim 8.

149. With respect to the “system” further comprising the step of “receiving a second wager from a second player,” Schugar discloses, with respect to “bet[ting] on sporting events,” that “**players**,” plural, “**can make wagers** during the series” of games “and even during particular games.” Schugar ¶ [0072]. Schugar’s disclosure of a plurality of player’s making wagers on sporting events is also demonstrated by Schugar’s disclosure of a “parimutuel halftime betting pool,” which a POSITA would understand is a betting configuration that involves grouping together bets from potentially different players of a particular type, e.g., on a particular sporting

event, into a pool from which odds and winning amounts are determined. Schugar ¶ [0126].

150. Further, Schugar discloses that its gaming method can receive “a second wager” on the same wagering event as a “first wager,” which would confirm for a POSITA that Schugar’s wagering methods disclose and are capable of “receiving a second wager from a second player.” For example, Schugar discloses that a player can “use some or all of his or her equity” in a first wager “in order to make a **second wager**.” Schugar ¶ [0125]; *see also* Schugar ¶ [0120] (“a player can use equity in a current wager in order to place an additional wager”). Specifically, Schugar discloses that a player can surrender, relinquish, or withdraw a “portion of the first wager ... so that it can be used for the second wager.” *Id.* ¶ [0125]. For example, a bettor that originally bet \$100 on the Patriots to win the football game against the Giants can cash out a portion of that wager during the event and place a separate wager of \$81 on the Giants to win the football game. *See, e.g., id.* ¶ [0126]. Therefore, Schugar’s wagering game methods plainly contemplate receiving a second wager from players (whether they be the same player or different players), and it is my opinion that a POSITA would understand Schugar’s gaming methods to include “receiving a second wager from a second player.”

151. Therefore, a POSITA would understand that Schugar teaches “a second wager from a second player” based on Schugar’s teachings regarding multiple

“players” making multiple “wagers” on a sporting event, and that it would have been obvious for such a second wager from a second player to be received by the central controller when Schugar’s methods are combined with DeWaal’s central server for the same reasons as with respect to the first wager as explained above regarding limitation 1[c], which are herein incorporated by reference.

7. Claim 14: “The system of claim 8, wherein determining an amount of the cash out offer comprises: determining odds of winning with respect to the wager from the first player and the second wager from the second player.”

152. In my opinion, a POSITA would have understood that claim 14 was obvious in view of the combination of Schugar and DeWaal. Moreover, to the extent the preamble of claim 14 is a limitation, then in my opinion, for the reasons set forth above regarding claim 8, which are herein incorporated by reference, a POSITA would have understood that “[t]he system of claim 8” was obvious in view of Schugar and DeWaal. Regarding the additional limitations of claim 14, a POSITA also would have understood that they are disclosed and rendered obvious by Schugar and DeWaal.

153. For example, corresponding to the step of determining an amount of cash out offer comprising “determining odds of winning with respect to the first wager from the first player and the second wager from the second player,” Schugar discloses that its wagering method includes determining the odds of the first and second wagers in determining the amount of a cash out offer on such wagers. For

example, as has been explained herein, the amount of the cash out offer, as determined for example by the formula disclosed in Schugar, depends on the “probability of [an] outcome” occurring, and a POSITA would understand that such probabilities translate to the “odds of winning.” Schugar ¶ [0090]. In addition, Schugar discloses that “the current payouts,” i.e., based on the odds of winning, “can be used to determine a current value of already placed wagers.” *Id.* ¶ [0118].

154. In a specific example of involving two wagers placed on a horse race involving two horses, horse A and horse B, for example, Schugar discloses that “[a]t the halfway point, odds can be determined for the outcomes,” and that “[t]his can be done on a pure mathematical basis (if the event is determined purely by chance), on **a pari-mutuel basis**, using a handicapper, or any other method” known in the prior art. *Id.* ¶ [0118]. As was known, a POSITA would understand that determining the odds on a “pari-mutuel basis” means that the odds and payouts depend at least on (a) how many submitted bets on an event and (b) how many people pick the winner. Thus, at least in the satiation of parimutuel odds, a POSITA would understand that the payout amount, i.e., cash out amount, depends on multiple players’ odds of winning. Schugar then discloses utilizing such determined odds of winning to determine the “expectation” of such a value, which as discussed herein corresponds to the amount of the cash out offer. With respect to a first wager, Schugar discloses that “[s]ince the player had wagered \$100 for A to win and the payout for this bet is

\$1000 (at 9:1 [odds]), the expectation of this wager is $0.87 \times 1000 = \$870$.” *Id.* ¶ [0118]. With respect to a second “additional” wager on this same horse race, Schugar similarly discloses that an additional “wager can now be on horse B which is now paying 5:1 [odds], which thus pays \$600 if horse B now wins.” Therefore, because the amount of the cash out offer (i.e., the expectation value of the wager) is determined for based on the odds of the first wager and the second wager, this example demonstrates that Schugar’s wagering method includes “determining odds of winning with respect to the first wager from the first player and the second wager from the second player.”

8. Claim 15

155. In my opinion, a POSITA would have understood that claim 15 of the ’969 Patent was obvious in view of Schugar and DeWaal for the same reasons explained above regarding claims 1 and 8, which are herein incorporated by reference, because claim 15 contains limitations that are identical to those in claims 1 and 8, as demonstrated below.

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

156. In my opinion, a POSITA would have understood that limitation 15[a] was obvious in view of Schugar and DeWaal for the same reasons provided above with respect to limitation 8[c] because the only difference between these elements is

that claim 15[a] recites a “non-transitory computer readable medium having instructions” and limitation 8[c] recites a “memory having programming instructions.” A POSITA would have understood that a “memory” is a known type of “non-transitory computer readable medium” and that the “instructions” recited in limitation 15[a] are “programming instructions” like those claimed in limitation 8[c] because limitation 15[a] confirms that such instructions are “executed by a processor ... to perform one or more operations.” Therefore, there is no substantive material difference between limitations 15[a] and 8[c], and limitation 8[c] covers all of limitation 15[a], such that my analysis of limitation 8[c] applies to limitation 15[a].

- a. *15[b] – “causing a central server system to initiate a wagering event for one or more players, wherein the wagering event corresponds to a sporting event;”*

157. In my opinion, a POSTIA would have understood that limitation 15[b] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[b], which are herein incorporated by reference, because these limitations are identical.

- a. *15[c] – “causing a wager corresponding to a player of the one or more players that is received by a wagering input device for the sporting event to be transmitted to the central server system;”*

158. In my opinion, a POSTIA would have understood that limitation 15[c] was obvious in view of Schugar and DeWaal for the same reasons explained above

regarding limitation 1[c], which are herein incorporated by reference, because these limitations are identical.

- a. 15[d] – “causing the central server system to generate a cash out offer for the player based on the wager and progress of the sporting event, by:”

159. In my opinion, a POSTIA would have understood that limitation 15[d] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[d], which are herein incorporated by reference, because these elements are identical.

- a. 15[e] – “monitoring progress of the sporting event, wherein the progress of the sporting event may comprise at least a current status,”

160. In my opinion, a POSTIA would have understood that limitation 15[e] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[e], which are herein incorporated by reference, because these elements are identical.

- a. 15[f] – “identifying that the player's wager is active, and”

161. In my opinion, a POSTIA would have understood that limitation 15[f] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[f], which are herein incorporated by reference, because these elements are identical.

- a. 15[g] – “determining an amount of the cash out offer; and”

162. In my opinion, a POSTIA would have understood that limitation 15[g] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[g], which are herein incorporated by reference, because these elements are identical.

a. 15[h] – “causing the central server system to transmit the cash out offer to the wagering input device, prompting the player to accept or reject the cash out offer.”

163. In my opinion, a POSTIA would have understood that limitation 15[h] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[h], which are herein incorporated by reference, because these elements are identical.

9. Claim 16

164. In my opinion, a POSITA would have understood that claim 16 of the '969 Patent was obvious in view of Schugar and DeWaal for the reasons explained above regarding claim 2, which are herein incorporated by reference, because the limitations of claim 16 are identical to those in claim 2.

a. 16[a] – “The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to identify that the cash out offer was accepted; and”

165. In my opinion, a POSITA would have understood that limitation 16[a] was obvious in view of Schugar and DeWaal for the same reasons set forth above regarding claims 2 and 15, which are herein incorporated by reference, because the limitations are identical. For example, and to the extent the preamble of claim 16

(“The non-transitory computer readable medium of claim 15, further comprising”) is a limitation, a POSITA would understand that Schugar and DeWaal render the preamble obvious for the reasons explained above regarding claim 15, which are herein incorporated by reference. Similarly, regarding the element of “causing the central server system to identify that the cash out offer was accepted,” a POSITA would have understood that this limitation was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 2[b], which are herein incorporated by reference, because these limitations are identical.

a. 16[b] – “causing the central server system to issue an electronic ticket corresponding to the cash out offer.”

166. In my opinion, a POSITA would have understood that limitation 16[b] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 2[c], which are herein incorporated by reference, because these limitations are identical.

10. Claim 20: “The non-transitory computer readable medium of claim 15, further comprising: causing the central server system to receive a second wager from a second player.”

167. In my opinion, a POSITA would have understood that claim 20 was obvious in view of Schugar and DeWaal. As an initial matter, and to the extent the preamble of claim 20 is a limitation, a POSITA would have understood that “[t]he non-transitory computer readable medium of claim 15” was obvious in view of Schugar and DeWaal for the reasons explained above regarding claim 15, which are

herein incorporated by reference. Further, a POSITA would have understood that “causing the central server system to receive a second wager from a second player” would have been obvious in view of Schugar and DeWaal for the reasons explained above regarding claim 13, which are herein incorporated by reference, because claim 13 also recites “receiving a second wager from a second player.” Moreover, a POSITA would understand that the second wager, like the first wager, was received by the central server system because it would have been obvious for all wagers, whether first or second, to be received by the server system in the same way, such as is explained above with respect to limitation 8[e], for example, herein incorporated by reference.

11. Claim 21

- a. 21[a] – “A non-transitory computer readable medium having stored thereon a computer program adapted for use with at least one wagering input device and at least one central server system for conducting a wagering event, the computer program comprising a routine of set instructions, which when executed by a processor cause the processor to perform one or more operations, comprising:”*

168. Limitation 21[a] of the '969 Patent is the preamble of claim 21. In my opinion, and to the extent the preamble is a limitation, a POSITA would have understood that limitation 21[a] was obvious in view of Schugar and DeWaal.

169. For example, with respect to “[a] non-transitory computer readable medium having stored thereon a computer program,” a POSITA would understand

that this limitation was obvious over Schugar and DeWaal for the same reasons as limitation 15[a], which are herein incorporated by reference, because limitation 15[a] also recites “[a] non-transitory computer readable medium having instructions stored thereon,” and a POSITA would have understood that the “instructions stored thereon, which when executed by a processor, cause the processor to perform one or more operations, comprising” the various steps recited in claim 15 correspond to “having stored thereon a computer program” at least because such instructions are a computer program.

170. With respect to the computer program being “adapted for use with at least one wagering input device and at least one central server system,” a POSITA would understand that this limitation was obvious over Schugar and DeWaal for the same reasons explained above regarding limitations 15[b], 15[c] and 15[h], for example, because my analysis of those limitation demonstrates that the computer program is “adapted for use with at least one wagering input device and at least one central server system” by causing information to be transmitted from the wagering input device to the central sever and causing information to be transmitted from the central server to the wagering input device. In this vein, DeWaal also discloses that, as shown in FIG. 2B, “one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56 through a data network or remote communication link,” and that “the

computerized instructions for controlling any games are executed by a central server, central controller or remote host” to “remotely control any games (or other suitable interaces) and the gaming device is utilized to display such games (or suitable interfaces) and receive one or more inputs or commands from a player,” which teaches a POSITA that the computer program is adapted for use by a wagering input device and at least one central server system because it implements the centralized control over the gaming activities occurring on the server and gaming devices.

171. With respect to the computer program being “for conducting a wagering event,” a POSTIA would understand that this limitation was obvious over Schugar and DeWaal because Schugar discloses “a method of conducting a wagering event,” as I explained above regarding limitation 1[a], which is herein incorporated by reference, and regarding the computer program for such a method, Schugar discloses, via its incorporation of a priority application, that “***any description of a component or embodiment herein also includes*** hardware, ***software***, and configurations which already exist in the prior art and may be ***necessary to the operation of such component(s) or embodiment(s)***,” that “the embodiments described herein can be applied to any type of gaming machine,” and that functionalities may be performed “at a central server and served to local machines.” ’694 Patent 10:48-55; *see also* Schugar ¶ [0001] (“This application is

also a continuation in part of application Ser. No. 11/158,919, now pending, which is incorporated by reference herein in its entirety.”).

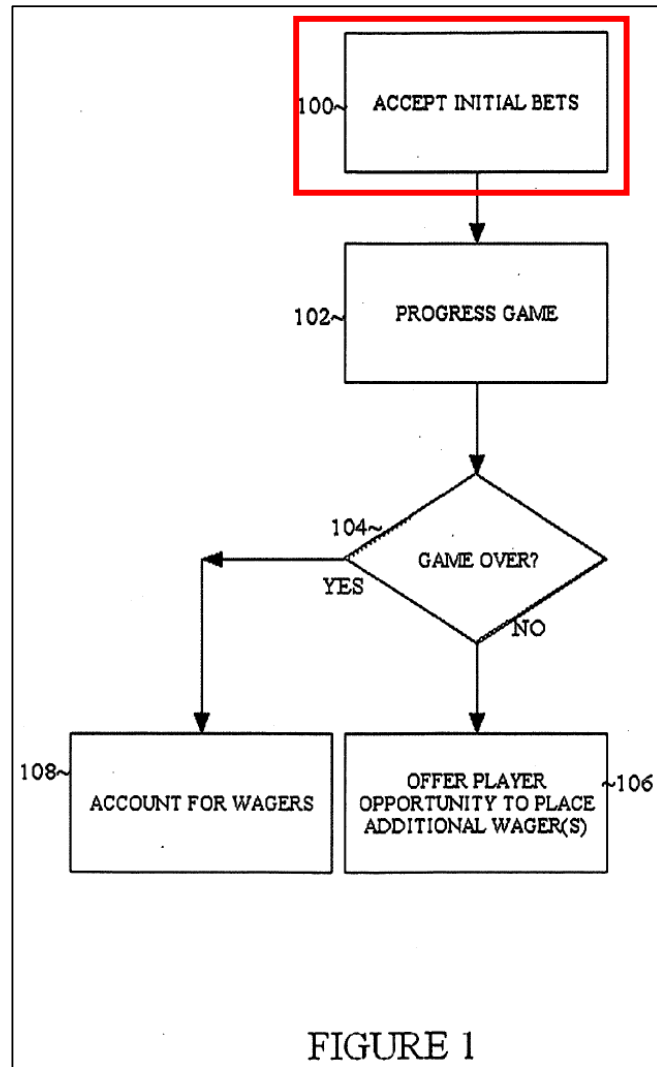
172. As to the computer program “comprising a routine of set instructions, which when executed by a processor cause the processor to perform one or more operations,” a POSTIA would have understood that this limitation was obvious over Schugar and DeWaal at least for the reasons I explained above regarding limitation 8[c], which are herein incorporated by reference, because a POSTIA would have understood that DeWaal’s “program code” and “computerized instructions for controlling any games” are “a routine set of instructions” that, “are executed by” a processor of a “central server” to perform one or more operations for “controlling any games” implemented on the system. DeWaal ¶ [0042].

a. 21[b] – “causing the at least one central server system to initiate the wagering event for one or more players, wherein the wagering event corresponds to a sporting event;”

173. In my opinion, a POSITA would have understood that limitation 21[b] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[b], which are herein incorporated by reference, because these limitations are identical with the exception of the use of different articles (e.g., “a” in limitation 1[b] and “the” in limitation 21[b]) to refer to the central server system and the wagering event. For the avoidance of doubt, the use of different articles does not change my analysis of these limitations in any way.

a. 21[c] –“causing the at least one wagering input device to accept a wager corresponding to a player of the one or more players that desires to participate in the wagering event;”

174. In my opinion, a POSITA would have understood that limitation 21[c] was obvious in view of Schugar and DeWaal. For example, as disclosed above with respect to similar limitation 1[c], my analysis of which is herein incorporated by reference, Schugar discloses an “electronic gaming apparatus” comprises a “computer” and “receiv[es] a wager from a player,” and Schugar discloses that the electronic gaming apparatus may have an associated “comp card reader,” which a POSITA would have known is an input device for receiving and accepting a wager from a player that desires to participate in the wagering event. Schugar Claim 9, ¶ [0104]. Indeed, as Schugar discloses with respect to basic “flowchart illustrating one example of a wagering game” according to an embodiment, as shown below, the “method can start at operation 100, which ***accepts initial bets.***” *Id.* ¶ [0055].



Schugar FIG. 1.

175. A POSITA would understand that Schugar’s disclosure of a wagering game apparatus with a comp card reader corresponds to “at least one wagering input device to accept a wager corresponding to a player of the one or more players that desires to participate in the wagering event” at least because such devices are known to and are described in Schugar as receiving and accepting a player’s wager, and a POSITA would have understood that a player’s “desire[] to participate in the

wagering event” is reflected at least by their active use of the comp card reader to engage with the wagering game apparatus to initiate the event by submitting the required wager.

176. To be sure, Schugar discloses that a player can “indicate his or her desire on an electronic input device,” such as by pressing a button or taking some other action, for example. Therefore, a POSITA would understand that submitting a wager via a “payment acceptor” like those described in DeWaal’s wagering input devices or a comp card reader like in Schugar’s would indicate the player’s desire to participate in the wagering event in this context.

a. 21[d] – “causing the wager that has been accepted by the at least one wagering input device to be communicated to the at least one central server system;”

177. In my opinion, a POSITA would have understood that limitation 21[d] was obvious in view of Schugar and DeWaal for the same reasons I explained above regarding limitation 1[c], which are herein incorporated by reference, that similarly recites that the received (and accepted) wager is “caus[ed] ... to be transmitted to the central server system.” A POSITA would understand that there is no substantive difference between causing the received and accepted wager to be communicated to the central server system and causing the received and accepted wager to be transmitted to the central server system, at least because transmission is the routine operation for communicating signals over a network or data link like the Internet.

For example, DeWaal explains with respect to the system illustrated in FIG. 2B that “one or more of the gaming devices 10 are ***in communication*** with each other and/or at least one central server, central controller or remote host 56 through a data network or remote communication link 58,” and that such communication takes place over the network by “***transmit[ting]*** ... events, messages, commands or any other suitable data or signal between the individual gaming devices and the central controller.” DeWaal ¶ [0084]. This understanding in the prior art would have been consistent with the knowledge and understanding of a POSITA.

a. 21[e] – “causing the at least one central server system to generate a cash out offer for the player by:”

178. In my opinion, a POSITA would have understood that limitation 21[e] was obvious in view of Schugar and DeWaal for the same reasons I explained above with respect to limitation 1[d], which are herein incorporated by reference, because limitation 21[e] is fully recited in limitation 1[d]. For the avoidance of doubt, the textual difference between limitation 1[d]’s recitation of “a central server system” and limitation 21[e]’s recitation of “at least one central server system” makes no difference for my analysis because, as the plain language states, both formulations may be satisfied by one central server system.

a. 21[f] – “evaluating a status of the sporting event,”

179. In my opinion, a POSITA would have understood that limitation 21[f] was obvious in view of Schugar and DeWaal at least for the reasons explained above regarding similar limitation 1[e], which are herein incorporated by reference.

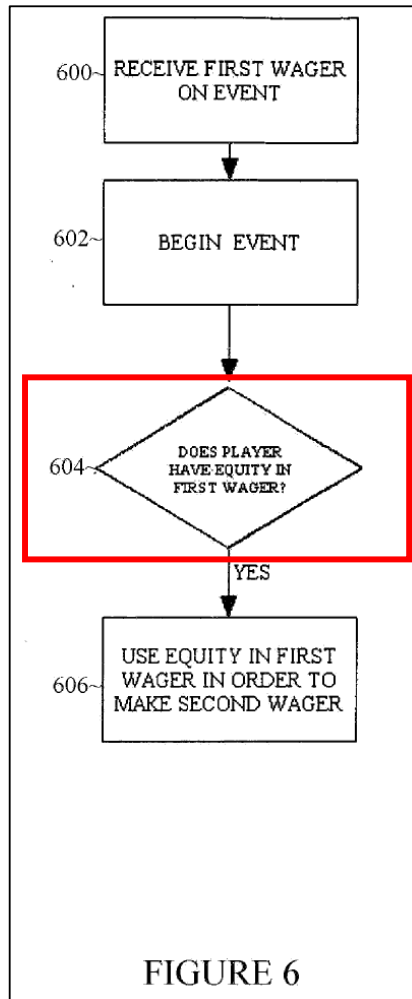
180. For example, Schugar's operations involve identifying, from among the "plurality of game states," what is the "**current game state**" (i.e., the current status of the game) upon which the cash out offer amount will be determined. *See, e.g., id.* ¶ [0054]; *see also id.* ¶¶ [0092] ("If the **current game state** has a positive expectation (or positive expected profit for the player, then the method can proceed to operation 304, which then determines whether the player chooses to bank his or her positive expectation."), [0087] ("The wagering game should be one which has multiple game states, either discrete (each successive game state is prompted and advanced by the player) or continuous (the game automatically advances throughout game states until a player takes an affirmative action to freeze **the current game state** and take action)."). A POSITA would understand from Schugar's disclosures that Schugar's wagering methods include "evaluating" the current "status" of the sporting event to determine whether the player has a positive expectation in their wager as of the current status, and if so, how much. Such an evaluation may include, as Schugar discloses, determining that "[a]fter the fifth inning, the Yankees are winning by 4 runs," or determining that "[a]t halftime, the Patriots are winning by +28 points." Schugar ¶¶ [0120], [0126].

181. For example, Schugar discloses that “[t]he method can continue to operation 302, which determines whether the **current game state** has a positive expectation for the player,” where the amount of the player’s expectation in the current game state can be calculated using the exemplary formula disclosed in Schugar. Schugar ¶¶ [0089]-[0090]. As would be understood by a POSITA, such a calculation based on the evaluation of the current game state necessarily involves evaluating a current status of the underlying sporting event to determine the current game state. This is confirmed and evidenced by Schugar’s detailed examples. For example, in the context of a \$100 wager placed on the Yankees vs. the Braves baseball game, Schugar discloses that “[a]fter the fifth inning, the Yankess are winning by 4 runs,” and determining at “that point in time” that “the bettor has equity in his wager” that can be offered to the player to cash in/out. *Id.* ¶ [0120]. Similarly, in the context of a \$100 wager placed on the Patriots vs. the Giants football game, Schugar discloses that “[a]t halftime, the Patriots are winning by +28 points,” and determining “[a]t this point” that “the effective value of the original wager is now ... \$810,” such that the bettor can now “surrender” some of his original wager” and “cash[] out a portion of a current bet in progress in order to,” for example, “pay for an additional wager” on the sporting event. *Id.* ¶¶ [0126]-[0127]. And, similarly, in the context of a player using some of the “cash[ed] out” value to fund an additional or conditional wager, Schugar discloses monitoring the progress of a horse race so

that the “odds can be determined for the outcomes” at the “halfway point” of the race. *Id.* ¶ [0118]. A POSITA would have understood that each of these examples demonstrates Schugar’s evaluation of the status of the sporting event because each of them involves identifying a specific point during the progression of the sporting event, such as “halftime” or the “halfway point,” and analyzing data such as which player or team of the game is winning and by how much.

a. 21[g] – “determining if the player is eligible to receive the cash out offer, and”

182. In my opinion, a POSITA would have understood that limitation 21[g] was obvious in view of Schugar and DeWaal. Specifically, Schugar discloses that the ability to utilize the method of cashing out value for a current wager in progress may be conditioned on the determination of whether the player has positive equity in their wager as of the current game state, and a POSITA would have understood that such a pre-condition is a “determine[ation] if the player is eligible to receive the cash out offer” because the cash out offer will only be available to the player if the player satisfies the pre-condition. For example, with respect to the flowchart of using equity in a first wager illustrated in FIG. 6 (shown below), a POSITA would understand that step 604 is the determination of eligibility step.



Schugar FIG. 6.

183. As Schugar states, only “*if* the determining in operation 604 determines that the player has equity in the first wager, the method can proceed to operation 606, wherein the player can use some or all of his or her equity in order to make a second wager.” Schugar ¶ [0125]; *see also id.* ¶ [0124] (“The player has equity if the player’s expected profit is greater than 0, or if the player’s expected winnings is greater than the initial wager.”). And, while Schugar notes that in some embodiments the player “can still utilize the method described herein of cashing out

a portion of a current bet in progress,” and thus the eligibility determination step 604 in FIG. 6 above may be “optional” in certain implementations, a POSITA would understand that it is not optional in the FIG. 6 embodiment at least because, as Schugar explains, there is an “advantage” to conditioning the ability to cash out on whether the current state has a positive expectation in that it can allow the bettor to put himself into a “no-lose situation.” *Id.* ¶ [0126].

a. 21[h] – “determining an amount of the cash out offer;”

184. In my opinion, a POSITA would have understood that limitation 21[h] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[g], which are herein incorporated by reference, because these limitations are identical.

a. 21[i] – “causing the at least one central server system to communicate the cash out offer to the at least one wagering input device;”

185. A POSITA would have understood that limitation 21[i] was obvious in view of Schugar and DeWaal for the same reasons explained above regarding limitation 1[h], which are herein incorporated by reference, because these limitations recite basically the same thing. Specifically, as discussed above in the context of limitation 21[d], the differences between these limitations (e.g., “at least one” vs. “a” central server system and wagering input device, and “communicate” vs. “transmit”) do not alter my analysis. Otherwise, the limitations are identical.

a. 21[j] – “causing the at least one wagering input device to display the cash out offer;”

186. In my opinion, a POSITA would have understood that limitation 21[j] was obvious in view of Schugar and DeWaal. For example, with respect to “the at least one wagering input device ... display[ing] the cash out offer,” Schugar discloses offering the player “an automatic pop up window which allows the player to choose whether he wishes to bank some or all of his recent gains in expectation.” Schugar ¶ [0092]. As would have been known by a POSITA, a “pop up window” refers to a common type of alert that is displayed on the screen of a computer, such as Schugar’s electronic gaming device. To be sure, Schugar’s disclosure of other pop up windows confirms that the cash out offer pop up screen “comprises offering the player” the option to cash out their wager in full or in part by “displaying” the opportunity on the screen. Schugar Claim 7.

187. Regarding the computer instructions/programming “causing” Schugar’s electronic gaming device to display the cash out offer, Schugar discloses via an incorporated priority reference that “any description of a component or embodiment herein also includes hardware, software, and configurations which already exist in the prior art and may be necessary to the operation of such component(s) or embodiment(s),” that “the embodiments described herein can be applied to any type of gaming machine,” and that functionalities may be performed “at a central server and served to local machines.” ’694 Patent 10:48-55; *see also*

Schugar ¶ [0001] (“This application is also a continuation in part of application Ser. No. 11/158,919, now pending, which is incorporated by reference herein in its entirety.”). While this disclosure in Schugar confirms that the necessary programming/instructions to cause the display are present, as known in the prior art, a POSITA would recognize that, when combined with and implemented on DeWaal’s central controller/server, the programming of the central controller is what would cause the cash out offer to be displayed on the gaming device. *See, e.g.,* DeWaal ¶ [0042] (“In such a ‘thin client’ embodiment, ***the central controller remotely controls any games (or other suitable interfaces)***”).

- a. 21[k] – “causing the at least one wagering input device to identify if the cash out offer has been accepted or rejected by the player; and”

188. In my opinion, a POSITA would have understood that limitation 21[k] was obvious in view of Schugar and DeWaal. For example, as discussed above with respect to similar limitation 2[b], Schugar discloses that the “player can also exercise this option” to cash out “with a press of a button which allows the player to bank his or her positive expectation.” Schugar ¶ [0092]. Similarly, Schugar discloses that a player can “indicate his or her desire” to accept or reject an option “on an electronic input device (e.g., touch screen, keyboard, etc.).” *Id.* ¶ [0135]. That is, the wagering device identifies whether the player accepts or rejects the offer based on the user’s input in response to the offer in the pop up window. A POSITA would have

understood that a player's press of a button on an electronic input device would create a signal indicating and "identify[ing] if the cash out offer has been accepted" in full or in part "or rejected by the player" in response to the pop-up window prompt discussed with respect to limitation 21[j]. This understanding is further confirmed and corroborated by Schugar's explanation that "[i]f the player chooses in operation 304 to bank his or her positive expectation, then the method can proceed to operation 306, which stores the value the player has banked for later use" in the "current machine" and/or a "remote database for later retrieval." *Id.* ¶ [0093]. From this disclosure, a POSITA would have understood that there was an identification that the cash out offer was accepted, as opposed to rejected, by the gaming device, such as by the player pressing a button indicating acceptance, because the method involves storing the cashed out value in response to such identified acceptance.

189. Regarding the computer instructions/programming "causing" Schugar's electronic gaming device to identify the acceptance, Schugar discloses via an incorporated priority reference that "any description of a component or embodiment herein also includes hardware, software, and configurations which already exist in the prior art and may be necessary to the operation of such component(s) or embodiment(s)," that "the embodiments described herein can be applied to any type of gaming machine," and that functionalities may be performed "at a central server and served to local machines." '694 Patent 10:48-55; *see also*

Schugar ¶ [0001] (“This application is also a continuation in part of application Ser. No. 11/158,919, now pending, which is incorporated by reference herein in its entirety.”). While this disclosure in Schugar confirms that the necessary programming/instructions to cause the disclosed identification are present, as known in the prior art, a POSITA would recognize that, when combined with and implemented on DeWaal’s central controller/server, the programming of the central controller is what would cause the gaming device to identify the acceptance. See, e.g., DeWaal ¶ [0042] (“In such a ‘thin client’ embodiment, ***the central server remotely controls any games (or other suitable interfaces) and the gaming device is utilized to display such games (or suitable interfaces) and receive one or more inputs or commands from a player.***”).

- a. 21[l] – “causing the at least one wagering input device to communicate the acceptance of the cash out offer to the at least one central server system.”

190. In my opinion, a POSITA would have understood limitation 21[l] was obvious in view of Schugar and DeWaal. For example, although Schugar does not expressly state that the electronic gaming device communicates the acceptance of the cash out offer to the at least one central server system, it would have been obvious to a POSITA implementing Schugar’s wagering methods in DeWaal’s central server/controller system that the gaming device would “communicate the acceptance

of the cash out offer to the at least one central sever system” because DeWaal discloses that such signals are communicated/transmitted to the central server.

191. For example, DeWaal discloses the central controller taking action in direct response to a player accepting the offer of the additional award to quit the bonus event and discloses the central server receiving various signals of user inputs from the gaming devices. For example, DeWaal discloses that “the processor of each gaming device is designed to transmit and receive events, messages, commands or any other suitable data or signal between the individual gaming device and the central server The processor of the central server is designed to transmit and receive events, messages, commands or any other suitable data or signal between the central server and each of the individual gaming devices.” DeWaal ¶ [0084]; *see also* DeWaal ¶ [0129] (“The central controller receives a signal from gaming machines in the gaming system corresponding to an input from each player in each round.”); DeWaal ¶ [0061] (“A player can make decisions and input signals into the gaming device by touching the touch-screen at the appropriate places.”). Regarding the specific actions taken by the controller when a player accepts the offer to quit, DeWaal explains that “[i]f any of the players quit the bonus event, the central controller provides these players with the accumulated awards associated with the first and second rounds.” DeWaal ¶ [0159]; *see also* DeWaal ¶ [0146] (“If fifty players accept the offer and quit the bonus event, the central controller provides these

fifty players with an award portion of \$10.”). A POSITA would therefore understand that DeWaal teaches that the central controller receives an acceptance of the buy-out offer transmitted to the server from the gaming device at least because DeWaal discloses that the central controller receives input signals regarding player selections during the bonus event and the central controller takes specific and direct actions in response to a player accepting the offer (e.g., awarding the player).

192. In addition, it would have been obvious to a POSITA to implement Schugar’s wagering events and methods in DeWaal’s central server system such that limitation 2[b] was satisfied by the combined teachings for at least the reasons stated above, which are herein incorporated by reference.

12. Claim 22: “The non-transitory computer readable medium of claim 21, further comprising: causing the at least one wagering input device to issue a credit, tokens, coupon, voucher, award or funding of an account of the player based on the amount of the accepted cash out offer.”

193. In my opinion, a POSITA would have understood that this limitation was obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I previously explained, a POSITA would have understood that the “non-transitory computer readable medium of claim 21” was obvious over Schugar and DeWaal, and such reasons are herein incorporated by reference. For instance, Schugar discloses that when the player accepts the offer and “[t]he expected profit [is] banked for later use,” “[t]he value can be redeemed for cash instantly, and the redeemed

cash can be immediately returned to the player's current **credit** meter," thereby indicating to a POSITA that the programming of the system "caus[ed] the at least one wagering input device to issue a credit ... based on the amount of the accepted cash out offer" because returning a value of "credit[s]" to a player's "current credit meter" would be understood as "issu[ing] a credit ... based on the amount of the accepted cash out offer." Schugar ¶ [0083]. Similarly, Schugar discloses that the value cashed out can be "stored locally and/or on a database which can be accessed at a later time," and more specifically, Schugar discloses that "a database 404 can be used to store values banked for later use" and the "value banked for later use can be stored in the database using the player record," which a POSITA would understand corresponds to "funding of an [electronic] account of the player," i.e., the "player record," with the value of the amount cashed out. *Id.*

194. Further, with respect to the programming instructions of the central server "causing" the gaming device to issue the cashed out amount to the player's credit meter or fund their electronic account, a POSITA would have recognized that when Schugar's methods are implemented in DeWaal's central server system, that the central controller would cause such issuing to occur. *See, e.g.,* DeWaal ¶¶ [0018] ("If the player chooses to quit, the central controller provides (or causes that player to be provided) with the accumulated award."), [0025] ("If one player chooses to

quit after the first round, the central controller provides that player (or causes that player to be provided) with the \$25 award.”), [0158] (same).

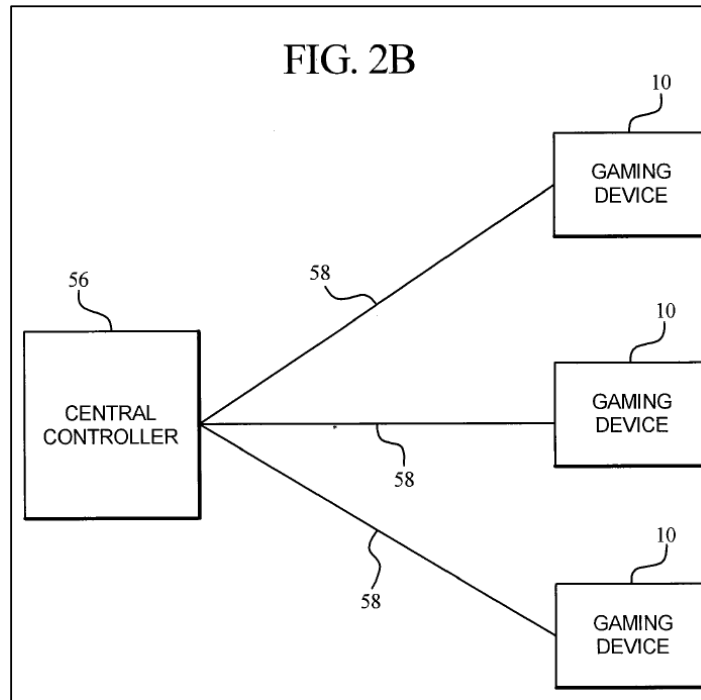
13. Claim 23: “The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a wagering terminal, a hand held device, a mobile device, a wireless device, a computer, a smart phone, a telephone, a tablet computer, a PDA or an interactive television.”

195. In my opinion, a POSITA would have understood that claim 23 was obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I previously explained with respect to claim 21, which are herein incorporated by reference, “[t]he non-transitory computer readable medium of claim 21” would have been obvious to a POSITA. In addition, I note that I interpret this claim based on its plain and ordinary language indicating that the specified list of wagering input devices is disjunctive such that as long as any one or more of the options are met then the claim is satisfied. In this way, and in my opinion, a POSITA would have understood that the combination of Schugar and DeWaal discloses and renders several of these options obvious. For example, corresponding to “wherein the at least one wagering input device comprises ... a computer,” Schugar discloses an “electronic gaming device to conduct a wagering game” that “receiv[es] a wager,” and is therefore a “wagering input device,” “compris[es]: **a computer.**” Schugar at Claim 9.

14. Claim 24: “The non-transitory computer readable medium of claim 21, wherein the at least one central server system is one or

more of remote from the at least one wagering input device, proximate to the at least one wagering input device or a portion of the at least one wagering input device.”

196. In my opinion, a POSITA would have understood that claim 24 was obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I previously explained with respect to claim 21, which are herein incorporated by reference, “[t]he non-transitory computer readable medium of claim 21” would have been obvious to a POSITA. In addition, I note that I interpret this claim based on its plain and ordinary language indicating that the specified list of arrangements or configurations of the central server system is disjunctive such that as long as any one or more of the options are met then the claim is satisfied. In this way, and in my opinion, a POSITA would have understood that the combination of Schugar and DeWaal discloses and renders several of these options obvious. For example, DeWaal discloses that its central server may be “remote,” that it “remotely” controls any games, and that, as illustrated in FIG. 2B (shown below), “one or more of the gaming devices 10 are in communication with each other and/or at least one central server, central controller or remote host 56 through a data network or remote communication link 58.” DeWaal ¶¶ [0042], [0084].



DeWaal FIG. 2B.

197. As DeWaal describes and illustrates, a POSITA would have understood that DeWaal discloses that “the at least one central server system is one or more of remote from the at least one wagering input device” at least because it is expressly described as being remote from the gaming devices and because it is described and depicted as communicating with such remote devices over remote communication links or networks, as indicated above.

15. Claim 25: “The non-transitory computer readable medium of claim 21, wherein the amount of the cash out offer is variable and based on at least one of a calculated probability, an originator

of the cash out offer, a negotiation, the one or more players or a third party.”

198. In my opinion, a POSITA would have understood that claim 25 was obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I previously explained with respect to claim 21, which are herein incorporated by reference, “[t]he non-transitory computer readable medium of claim 21” would have been obvious to a POSITA. In addition, I note that I interpret this claim based on its plain and ordinary language indicating that the claim requires “the amount of the cash out offer is variable” but the subsequently recited list of options regarding what the amount is “based on” is disjunctive such that as long as any one or more of the options are met then the claim is satisfied. In this way, and in my opinion, a POSITA would have understood that the combination of Schugar and DeWaal discloses and renders this claim obvious in several ways.

199. For example, regarding “the amount of the cash out offer is variable,” a POSITA would have understood that the amount of Schugar’s cash out offers are variable. For example, as Schugar explains, the wagering games have “multiple game states,” and throughout the game, Schugar’s method “determines whether the **current game state** has a positive expectation for the player” and this determined expectation is the amount of the cash out offer because this is the amount that the player has to “choose whether he wishes to bank some or all of.” Schugar ¶¶ [0088]-[0089], [0092]. As there are multiple game states, and the amount of the cash out

offer depends only on the “current” one of those game states, a POSITA would understand that the amount of Schugar’s cash out offers are variable in that they change depending on the “current” game state.

200. This understanding is also reflected in Schugar’s examples. For example, Schugar discloses that, in the sports betting context, and as was known in the art, that “payout odds for each team winning” a game or a “series can ***change to reflect the current conditions*** (as described herein and/or known in the art).” Schugar ¶ [0072]. Therefore, as the team wagered upon in a series wins or loses each game in the series, the odds would change and, as a POSITA would understand from Schugar’s teachings, so would the amount of the cash out offer, for better or worse. That is because, as Schugar discloses, the formula for calculating the cash out amount depends on the probabilities as of the current game state. *Id.* ¶ [0090].

201. In addition, expressly reflecting and leveraging the fact that a player’s expectation value or equity in their wager may change during the course of the wagered upon events, Schugar provides a feature by which a player may automatically accept a cash out offer when it changes in a certain way. For example, Schugar discloses that “when a player achieves a positive ***change in his or her expectation***, a portion of the increased expectation can be automatically banked for later redemption.” Schugar ¶ [0101]. Furthermore, because the formula for

determining the cash out amount also depends on the amount wagered, the cash out amount varies depending on the player's wagered amount.

202. Regarding the cash out offer being variable “and based on ... a ... probability,” Schugar expressly states, as I have discussed herein, that the amount of the cash out offer (i.e., the player's expectation in a game based on the current conditions) is based on the “probability of [the] outcome” wagered upon occurring. Schugar ¶ [0090]. This is shown for example in the exemplary formula Schugar discloses for calculating the amount of the cash out offer, as shown below.

For all outcomes, $\sum$ (probability of outcome * reward for the outcome).

Id. Notably, this probability may be calculated on a purely mathematical basis, meaning that the cash out offer is based on a “calculated probability.” *Id.* ¶[0118]. It may be determined on a parimutuel basis, meaning that the cash out offer is based on “the one or more players” of the wagering game because parimutuel odds are determined based on the number of players playing and their selected outcomes. *Id.* Or it may be determined using a “third party” such as handicapper. *Id.*

16. Claim 26: “The non-transitory computer readable medium of claim 21, wherein the cash out offer comprises at least one of or both of a full cash out offer or a partial cash out offer.

203. In my opinion, a POSITA would have understood that claim 26 was obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I

previously explained with respect to claim 21, which are herein incorporated by reference, “[t]he non-transitory computer readable medium of claim 21” would have been obvious to a POSITA. In addition, I note that I interpret this claim as having multiple option such that if any one of them is disclosed in the prior art that is sufficient to show that the claim is covered by the prior art. In this regard, I understand this claim to recite that the cash out offer can be a full cash out offer, a partial cash out offer, or both of a full and partial cash out offer.

204. In my opinion, as I have explained herein, a POSITA would have understood that Schugar discloses that “the cash out offer comprises ... both of a full cash out offer or a partial cash out offer” because the offer provides the player with the ability to “choose whether he wishes to bank *some or all* of his recent gains in expectation.” Schugar ¶ [0092]. For example, with respect to the full cash out offer, Schugar discloses that this effectively amounts to a “surrender” of the wager for the designated amount of the cash out offer. *See, e.g., id.* ¶ [0078] (“the house can let the [player] surrender the wager for \$125”). Whatever amount is chosen, i.e., “some or all,” the chosen amount is considered “surrendered,” “relinquished,” or “withdrawn” from the wagering event such that, if a player chooses to bank “all,” the player has surrendered or withdrawn their entire wager, but if they player chooses to bank just “some,” the player has only surrendered or withdrawn a portion of their wager, and may continue to participate in the wager with the surviving portion that

was not banked or cashed out. *Id.* ¶ [0125]. Therefore, because Schugar discloses that it provides the option for the player to choose to cash out or bank “some or all” of their wager’s expected value as of the current state of the game, a POSITA would understand that Schugar’s cash out offer comprises both a full cash out offer or partial cash out offer.

205. In addition, it is worth noting that because Schugar discloses both a full and partial cash out offer, a POSITA would have understood that the alternative option of this claim, wherein the cash out offer comprises “at least one of” a full “or” partial cash out offer, would have been obvious because it is simply obvious to try based on the finite set of options disclosed in Schugar (i.e., partial or full).

17. Claim 27

206. In my opinion, as set forth in the sections that follow, a POSTIA would have understood that claim 27 was obvious in view of Schugar and DeWaal.

a. 27[a] – “The non-transitory computer readable medium of claim 26, further comprising: wherein a player accepting the full cash out offer is no longer eligible to win the wagering event; and”

207. In my opinion, a POSITA would have understood that limitation 27[a] was obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I previously explained with respect to claim 26, which are herein incorporated by reference, “[t]he non-transitory computer readable medium of claim 26” would have been obvious to a POSITA.

208. In addition, regarding “wherein a player accepting the full cash out offer is no longer eligible to win the wagering event,” a POSITA would have understood that Schugar discloses this limitation. For example, a POSITA would have understood that if a player elected to cash out “all” of the expectation in their wager, i.e., a full cash out, they have elected to effectively “surrender the wager,” or “withdraw[]” or “relinquish” it in its entirety to the house. Schugar ¶¶ [0078], [0125]; *see also id.* ¶ [0071] (“Thus, the player can choose[] to continue rolling (and win or lose) or accept the surrender value ... which is based on equity ... in the game”). At such a point, the player would no longer be able to win any value in the wagering event because his or her expected value, which as discussed herein depends on the amount wagered, would be \$0. That is, in the exemplary formula disclosed in Schugar, the value for “reward for the outcome” would be 0 because the player has \$0 remaining bet on the outcome, such that the multiplication by 0 would thereafter always result in the player’s expected winnings being \$0, i.e., no winnings at all.

a. 27[b] – “wherein a player accepting the partial cash out offer remains eligible to win the wagering event.”

209. In my opinion, a POSITA would have understood that limitation 27[b] was obvious in view of Schugar and DeWaal. For instance, Schugar discloses that if a player accepts the partial cash out offer, i.e., by electing to bank only “some” of their expected value, the partial value that is cashed out is simply “subtracted from

the ... original wager” such that they player will have some amount “remaining” wagered under the original wager. Schugar ¶ [0120]. For example, with respect to an original \$100 wager placed on the Yankees to win a baseball game, at some point during the game the player achieves a positive expectation and the player elects to cash out \$1 of the original wager. *See, e.g., id.* In such an example, “the \$1.52 can be subtracted from the \$100 original wager to result in a \$98.48 wager remaining on the Yankees.” *Id.* Similarly, in a scenario regarding a partial cash out of a wager on a football game between the Patriots and Giants, Schugar discloses that if the bettor “surrender[s] \$10 of his original [\$100] wager,” then the “player now has \$90 wagered on the Patriots for a win of \$810 if the Patriots win.” *Id.* ¶ [0126]. Therefore, a POSITA would understand that Schugar discloses “wherein a player accepting the partial cash out offer remains eligible to win the wagering event” because Schugar’s partial cash out leaves some “remaining” amount left under the original wager such that the player can still win the wagering event, i.e., is eligible to win the wagering event (although they may end up losing), albeit with an expected payout that is reduced in proportion to the partial amount cashed out.

18. Claim 29: “The non-transitory computer readable medium of claim 21, wherein the at least one wagering input device comprises a user interface through which the player may input the

wager in order to participate in the wagering event and accept or reject the cash out offer.”

210. In my opinion, a POSITA would understand that claim 29 is obvious in view of Schugar and DeWaal. As an initial matter, for the reasons I previously explained with respect to claim 21, which are herein incorporated by reference, “[t]he non-transitory computer readable medium of claim 21” would have been obvious to a POSITA.

211. Further, corresponding to “wherein the at least one wagering input device comprises a user interface through which a player may input the wager in order to participate in the wagering event,” Schugar discloses an “electronic gaming apparatus” that comprises a “computer” and “receiv[es] a wager from a player,” thereby making it a “wagering input device, and Schugar discloses that the electronic gaming apparatus may have an associated “comp card reader,” which a POSITA would have known is a user input device/interface for receiving and accepting a wager from a player. Schugar Claim 9, ¶ [0104]. As was well-known in the art, such user comp cards are routinely utilized by system operators to facilitate player wagering and tracking. *See, e.g.*, DeWaal ¶ [0005] (“When the player is at a gaming device, the player inserts the card into the card reader.”). Moreover, particularly because Schugar discloses that the gaming device is operable to receive and accept player bets, and discloses via an incorporated priority application that “any description of a component or embodiment herein also includes hardware, software,

and configurations which already exist in the prior art and may be necessary to the operation of such component(s) or embodiment(s),” it would have been obvious for a POSITA to implement other types of known user interfaces through which a player may input their wager in order to participate in the wagering event. ’694 Patent 10:48-55; *see also* Schugar ¶ [0001] (“This application is also a continuation in part of application Ser. No. 11/158,919, now pending, which is incorporated by reference herein in its entirety.”). For example, the obvious options include, but are not limited to, the various known “payment acceptor” devices described in DeWaal, such as a coin slot, note or bill acceptor, credit card, debit card or credit slip acceptor, or the like. DeWaal ¶ [0057].

212. Further, corresponding to “wherein the at least one wagering input device comprises a user interface through which the player may ... accept or reject the cash out offer,” Schugar discloses that the “player can exercise” the “option” of ***“choos[ing] whether he wishes to bank some or all of his recent gains in expectation” “with the press of a button*** which allows the player to bank his or her positive expectation.” Schugar ¶ [0092]. Such a button may be provided via ***“an electronic input device”*** such as a “touch screen, keyboard, etc.” as were known in the art. *Id.* ¶ [0135]. Because these buttons are utilized by the player to “input” their selected choice into the “electronic gaming apparatus” a POSITA would have understood that Schugar’s wagering input device comprises a user interface through

which the player may accept or reject the cash out offer. Therefore, as Schugar discloses, the gaming apparatus includes a user interface comprised at least of a payment acceptor input device that allows the player to fund the device, and a button, touchscreen, or keyboard input device that allows a user to accept or reject the cash out offer.

19. Claim 30: “The non-transitory computer readable medium of claim 21, wherein the sporting event comprises at least one of an entire sporting event, a partial sporting event, a divisible component of a sporting event, multiple independent sporting events occurring sequentially or concurrently, and a compilation of related sporting events, wherein the one or more sporting events comprises one or more selected from the group consisting of eSports, e-sports, competitive gaming, electronic sports, fantasy events, real games, virtual games, fantasy games, video games, football (“soccer”), American football, Australian rules football, baseball, cricket, basketball, golf, hockey, auto racing, legends, rugby, wrestling, surfing, mixed martial arts, racing, lotteries, live events, pre-recorded events, online events, broadcast events, card games, slot machines, keno, poker, politics, sales, stocks, celebrity gossip, movies, and reality TV.”

213. In my opinion, a POSITA would have understood that claim 30 was obvious over Schugar and DeWaal because Schugar discloses that its wagering methods “can also be used to bet on sporting events, either at intervals on individual games or series of games” such as in “horse racing, football, etc.” and can be “simulated by machine or real.” Schugar ¶¶ [0072], [0109]. For example, “two teams can play a best 4/7 series,” like the World Series of baseball for example, and “players can make wagers during the series” and “even during particular games” in

the series. *Id.* Such wagers may be, for example, “whether particular team or horse wins an event, a proposition wager within that event, or any outcome that the player has wagered on.” *Id.* ¶ [0113]. Such a proposition wager may be, for example, whether “the game will go into extra innings.” *Id.* ¶ [0120]. A POSITA would understand that these disclosures of Schugar satisfy claim 30 in several ways.

214. For example, a POSITA would understand that Schugar’s disclosure of betting on individual sporting events corresponds to “wherein the sporting event comprises at least one of an entire sporting event” because each individual game is an “entire sporting event.” Similarly, a POSITA would understand that Schugar’s disclosure of wagering on a 4/7 game series corresponds to the claimed “multiple independent sporting events occurring sequentially or concurrently,” because a POSITA would understand that such a “series” of games/sporting events occur sequentially. In addition, a POSITA would understand that Schugar’s disclosure that the sporting event may be “real” or “simulated” corresponds to the claimed options that the sporting event may be “real” or “virtual” because a POSITA would understand that a computer simulated sporting event is “virtual.” And, corresponding to the claimed options that the sporting event may be one of “American football,” “racing,” or “reality TV,” a POSITA would obviously understand that Schugar’s disclosure that the event may be “football,” “horse

rating,” “or even a dramatic work (such as a reality show)” corresponds directly to these claimed options. *Id.* ¶ [0109].

20. No Evidence of Non-Obviousness

215. It is my understanding that in order for evidence of non-obviousness to be relevant, there must be a nexus between the claimed invention and the evidence. I am not aware of any evidence of non-obviousness.

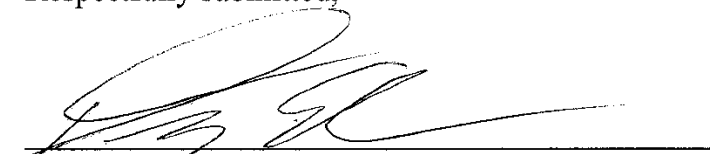
X. Conclusion

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

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

Executed this 1st day of December 2022, in WALTON COUNTY MO.

Respectfully submitted,


Dwight Crevelt