

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC.,
Petitioner,

v.

DIOGENES LIMITED,
Patent Owner.

IPR2023-00268
Patent 11,200,779

Record of Oral Hearing
Held: February 20, 2025

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

IPR2023-00268
Patent 11,200,779

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P R O C E E D I N G S

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JUDGE O'HANLON: Good morning, everyone. I am Judge O'Hanlon and I'm joined by Judge Saindon and Judge Jung. This is a hearing for IPR2023-00268, *DK Crown Holdings, Incorporated v. Diogenes Limited*. This concerns U.S. Patent Number 11,200,779.

I'd like to start by having counsel for the parties introduce yourselves for the record, beginning with Petitioner, please.

MR. WILLIAMS: Good morning, Your Honor. This is Eliot Williams for Petitioner. I'll be presenting today. With me is Hopkins Guy, and on the public line, I have a few other backup counsel, Jamie Lynn and Mike Kachmarik, I believe.

JUDGE O'HANLON: Good morning, Mr. Williams. And who is presenting for Patent Owner, please?

MR. JUREN: My name is Matthew Juren, lead counsel for Patent Owner. And today I'd like to introduce Mr. Tim Gilbert, who will be presenting on behalf of Patent Owner. Also with us in the room are several associates from Mr. Gilbert's firm. And if you'd like those names, it's Thomas Dumigan, D-U-M-I-G-A-N, Zarya Cynader, and Colin Carruthers.

JUDGE O'HANLON: Thank you, Mr. Juren, and welcome, Mr. Gilbert.

MR. GILBERT: Thank you.

JUDGE O'HANLON: I have a few housekeeping items to mention before we begin today. First of all, our primary goal is to allow you to make arguments and to be heard. If at any time during the proceeding you encounter technical or other difficulties that undermine your ability to do so,

1 please let us know immediately by contacting the team members that
2 provided you with the contact information for today's hearing.

3 Recording of any PTAB hearing is prohibited. The court reporter will
4 provide a transcript of the hearing and that will become a part of the record
5 in this proceeding. To ensure that the transcript is clear, we ask you to
6 ensure that your microphone is positioned close to you when speaking. If
7 you're not speaking, please mute yourself. When referencing your
8 demonstratives, papers or exhibits, please state the slide or document
9 number so that we can follow along more easily and for clarity of the record.

10 Each side will have 45 minutes of total time to argue. Petitioner will
11 argue first, followed by Patent Owner, and each side may reserve time for
12 rebuttal. I will be keeping time during your presentations, but please keep
13 track of your time to yourself as we do not have a timer for these virtual
14 hearings. If you run over during your argument in chief, I will let you
15 continue, eating into your rebuttal time. I will endeavor to let you know
16 when this happens, but again, please keep track of your own time.

17 Please remember that your arguments should be limited to only those
18 arguments previously presented in your briefs. Please make it clear which
19 challenges and claims you're addressing at all times. And we ask that the
20 parties hold any objections regarding the opposing party's arguments until it
21 is your time at the podium.

22 Does anybody have any questions before we begin?

23 MR. WILLIAMS: Not for Petitioner, Your Honor.

24 MR. JUREN: Not for Patent Owner, Your Honor.

1 JUDGE O'HANLON: Okay, wonderful. With that, I invite Mr.
2 Williams to begin. Mr. Williams, would you like to reserve any time for
3 rebuttal?

4 MR. WILLIAMS: Yes, Your Honor, if you could try to let me know
5 when I have 10 minutes remaining.

6 JUDGE O'HANLON: Okay. I will try to remember to do that.

7 MR. WILLIAMS: All right, thank you. And I am going to try also to
8 just share my demonstratives. And I just want to confirm you can see those
9 demonstratives now, Your Honor.

10 JUDGE O'HANLON: Yes.

11 MR. WILLIAMS: Okay, super. All right. May it please the Board,
12 I'm going to cover this, essentially the three -- what I see as the three
13 disputed issues the parties have raised in the papers. Of course, happy to
14 address any other questions the Board has today. The three issues, as I see
15 them, relate to the word "continuously." The second issue relates to the
16 construction of "a" essentially as proposed by Patent Owner with respect to
17 claim 16 and its dependents. And then lastly, we'll address the fixed odd
18 singles limitation.

19 With that, let me turn to that first issue related to the term
20 "continuously." And here as we see it, Patent Owner is really just rehashing
21 an issue that we think was addressed already in the Delegated Review
22 Panel's decision related to this term. As we'll see on slide 6, these terms
23 appear in a few places in claim 1, continuously retrieve, recalculate wager
24 information in real time based on the "continuously received," "retrieved
25 data," and "continuously evaluate."

1 As seen on slide 21, I think these terms were already construed by the
2 Delegated Review Panel and Petitioner has applied those constructions
3 throughout this proceeding. We don't believe the Patent Owner's attempt to
4 further narrow this construction by attempting to further interpret it is the
5 appropriate path here. Nor do we believe that even if the Patent Owner did
6 so, it would change the outcome.

7 Let me move to kind of a quick overview of what we see the Patent
8 Owner's argument to be. This is set forth sort of on slide 16. Essentially as
9 we see what Patent Owner's attempting to do is further refine the DRP's
10 construction to essentially require that claims be limited to live sports. And
11 in doing so, they're sort of requiring this construction to essentially require
12 continuous repeated polling. That is on the next slide 17 here.

13 This is an excerpt from Patent Owner's response. So this seems to be
14 the argument Patent Owner is making that this term requires retrieving data
15 by repeated polling operation. There is no support in the record for the
16 notion that this is required. And, in fact, the only thing that Patent Owner
17 seems to point to in support of that is its own expert. That's who they cite to,
18 as you see here on slide 18, this notion that it's required.

19 The only citation for that sentence comes from their Patent Owner's
20 expert declaration. However, when we read the Patent Owner's expert
21 declaration, it never says this is a requirement, only that polling would be a
22 suitable way to implement this claim step. And that very well may be true,
23 but that certainly doesn't mean that continuous polling is required, as Patent
24 Owner is now arguing.

25 Moreover, this construction that Patent Owner proposes we don't find
26 support for in the specification you see on slide 20. We pulled out sort of

1 the most relevant discussions in the specification of the word "polling." It
2 does appear in a few other places, but this is generally enough to give you a
3 sense of how it's used in the specification. And never does this term appear
4 in connection with this continuous operation that's described in the claims.
5 The use of polling here has to do with other things going on related to the
6 implementation of the invention.

7 So, you know, when you read this back, there is no sense in which it's
8 using "polling" as part of continuously doing anything. And moreover, this
9 construction that Patent Owner is urging here, we think was already
10 foreclosed by the DRP and its decision anyway. As shown on slide 29 here,
11 the DRP has already made clear that sort of discrete operation in general is
12 not excluded by the claims. So to the extent that Patent Owner seems to be
13 arguing that no discrete operation is in the scope of the claims, we think
14 that's foreclosed by the DRP. Regardless, even if the Board here were to
15 adopt the narrowing construction Patent Owner's proposing, we think *Scott*
16 discloses it, and, in fact, we think the DRP has already said so.

17 Turning to slide 41, here we see a comparison between *Scott* and the
18 '779 specification related to this use of continuous operation and how it's
19 different from a noncontinuous operation. Both *Scott* and the '779 patent
20 talked about this in essentially exactly the same way. There is in *Scott* the
21 ability to update these sort of wagering -- the wagering information can be
22 retrieved and recalculated at the end of a stage of a game, which corresponds
23 to the notion in the '779 patent that you can update this, for instance, at
24 halftime of a sporting event. That would be one stage of the game. But it
25 also teaches the other way, which is to do it continuously. So *Scott* explains
26 that you can update this cash value as each new symbol appears or as a card

1 is dealt to the player in real time or substantially in real time, and that's
2 substantial. This language in green from *Scott* here is almost identical to
3 how the '779 patent talks about this notion of continuously updating the
4 wagering information.

5 So the issue that's being raised by Patent Owner we think was
6 presented to the DRP. And as you see on slide 42, the DRP sort of -- already
7 explicitly rejected the argument that Patent Owner is making by pointing out
8 to this disclosure that I just showed you from *Scott*. They discuss it in the
9 DRP, that's, sorry, a typo there. It should be DRP's order at 15 and 17 where
10 they talk about it, this disclosure of *Scott*. And note that this disclosure does
11 distinguish both between real time and continuous evaluation. So suggesting
12 that -- very strongly suggesting in the DRP's view that *Scott* was teaching
13 both a continuous way of doing this and a noncontinuous way of doing this,
14 which would be in the scope of the claims.

15 And again, if we look at slide 43, this is the sort of summary of the
16 DRP's view of *Scott* which, you know, they indicate, "On the present record,
17 we understand the cited portions of *Scott* to describe an embodiment in
18 which the game presents a current cash offer after each occurrence of an
19 event that affects the odds." Sorry, that's -- I left a word out, but essentially
20 that's a fair, I think, characterization of what the Board has said -- excuse
21 me, what the DRP has already said. And there's really nothing that's
22 changed in the record since then that would alter this view. *Scott* definitely
23 teaches continuous operation at any change in the event that affects of the
24 game odds, and that's all that's required to practice this claim.

25 And indeed, lastly, I guess I would point it to one other section of
26 *Scott*, which is that *Scott* discloses updating these updating the odds or

1 changing the valuation even when there's no change to the game symbols.
2 So *Scott* is not limited to just updating it when the symbols change, but there
3 may be situations where the odds would be updated even if the player's
4 symbols hadn't changed. Such as, for example, they give the example here
5 of keno where a number is drawn that doesn't actually show up on the
6 player's ticket, but does change the odds of the game.

7 Just a few other issues to mention about this, which is just to
8 emphasize sort of how the DRP construed this term maybe in a little bit
9 more detail. As you see in the bottom right box here of slide 35, we'll see
10 that, I think, we think, the most relevant discussion from the DRP's decision
11 about what this term means. And what they say is that this continuous --
12 you know, the continuous nature of this claim, what it is getting to, is that
13 you're "retrieving and recalculating while the wagering event is occurring,
14 and with sufficient frequency to promptly capture developments that may
15 affect the odds." So that's all that's required, as you see here on the left from
16 the paragraph that we've talked about, paragraph 67 of *Scott*, *Scott* certainly
17 teaches this.

18 Just maybe two more quick points on this issue before I move on.
19 With respect to the real-time nature and then the continuous way that this is
20 done in *Scott*, *Scott* explicitly makes clear that these calculations are
21 dynamic. He uses the word "dynamic" here on paragraph 65 and that they
22 continue until the game is over, as noted here in paragraph 81 of *Scott*. This
23 is also shown in figures 4 and 5 of *Scott* that show the continuous loop being
24 performed where, as you see here on slide 38, this loop is performed. One
25 of the steps in here is presenting the current cash value. The way that's
26 calculated is shown in figure 5 on slide 40.

1 So, again, what's going on in *Scott* is very certainly continuous and it's
2 keeping up with the game as it goes to update the odds in real time, exactly
3 as this claim requires.

4 The last thing I'll just mention is slide 45 even shows the paragraph 67
5 of *Scott* that even uses the term "in real time" or "substantially in real time"
6 to make super clear that this element is being performed by *Scott*.

7 Okay. With that I think I'm going move on to the next issue having to
8 do with claim 16, unless the Board had further questions about continuously.

9 Okay. Hearing none, let me move on.

10 Okay. So this next issue relating to claim 16 has to do, we think, with
11 this claim term "a". So as you see on slide 48, I've got some of the elements
12 of claim 16 pulled out here where I think the dispute is and as we see it as
13 Patent Owner's argument, we think is that the term "a," where it appears in
14 some of these terms, is limited to a singular entity and is not broad enough to
15 capture one or more of those entities. We think that's wrong as a matter of
16 law and based on the facts we have in this case, including the dependent
17 claims. But again, even if that were somehow correct, the petition addressed
18 that alternative argument and shows how *Scott* meets it.

19 As to the first sort of broader point on claim construction, what does
20 "a" mean? Does it mean one or more as we say? The answer is clearly yes.
21 That's sort of textbook Federal Circuit law that that term in a patent means
22 one or more, unless there's something in the context that would sufficiently
23 indicate otherwise. Of course, it's possible that you could use "a" and mean
24 the singular. We don't deny that. But that's not what's going on here and
25 there's no reason to think that's what's happening in these claims. And, in

1 fact, if you look at -- I'm not sure if I mentioned what slide that was, that
2 was slide 50, where we talk about that case law.

3 Slide 52 shows one of the dependent claims to claim 16, which refutes
4 Patent Owner's argument. It confirms that this construction can't be right
5 because claim 18 says, "the wagering event comprises one or more of," and
6 then it lists many things that are not single wagering events, including
7 multiple events, compilation of events. So it's very clear from reading just
8 the claims alone that this construction Patent Owner is proposing cannot be
9 right. But, again, even if the Board were to accept it, for argument's sake,
10 we addressed this in our petition, and we showed how *Scott* renders the
11 claim obvious even under this singular reading that's being proposed.

12 So, for instance, on slide 56 --

13 JUDGE O'HANLON: Before you move on, Mr. Williams, can you
14 go back to slide 52, which shows dependent claim 18. I understand Patent
15 Owner to be saying that the wagering event that is recited in claim 16 is -- it
16 can be one event, it could be a parlay of multiple events, could be whatever
17 is listed in claim 18. But whatever that wagering event is, claim 16 requires
18 multiple participants to bet on that same wagering event. So I don't know --
19 I don't really see the conflict you're saying with respect to claim 18.

20 MR. WILLIAMS: Okay. So with respect to the term having to do
21 with the plurality of players, I guess what we're saying is there's nothing in
22 the claims that would require the plurality players to be wagering on the
23 same event. We just don't think that's what the claim requires. But I'm
24 going to get to showing how that's present in *Scott* in just a second, Your
25 Honor, because we do address that construction, and *Scott* certainly meets it.

1 But I guess the point is, what this claim seems to be teaching us is that
2 when the independent claim 16 uses this word "a," it's using it in the
3 traditional sense of meaning one or more. Right? So it is possible to have
4 one entity doing these things and it's possible to have multiple entities doing
5 these things, and it's possible to have one entity wagering on one game or
6 multiple entities wagering on multiple games. That's the argument that we're
7 trying to convey here, which we think is supported by claim 18.

8 JUDGE O'HANLON: But let me ask you a question about that. So
9 step, I believe it's referred to as 16G in the briefs, where it says, "receive, by
10 the trading engine module, a plurality of wagers on the wagering event." Is
11 it your position that those plurality of wagers can be on a plurality of
12 wagering events?

13 MR. WILLIAMS: So the answer to your question is yes, we think the
14 claim is broad enough to read on that. But again, we think the way we map
15 *Scott* to these claims would include the situation where there's a single
16 wagering event happening, where multiple players are wagering on it.

17 So the answer to your question is yes, we do think it's broad enough to
18 cover that situation. But we also think *Scott* shows that even if this element
19 1 -- even if the element 16G is limited to plurality wagers on a single
20 wagering event.

21 So let me just -- unless you have further questions about that, let me
22 just turn to the merits of how that -- how *Scott* maps to that reading.

23 JUDGE O'HANLON: Sure. Please do.

24 MR. WILLIAMS: Okay, 56. Sorry, slide 56. Here we go.

1 JUDGE SAINDON: Sorry, Counsel, if I could jump in. This is Judge
2 Saindon. I have a question just to follow up on what we were just talking
3 about.

4 So I don't know if I have any issue with the idea that a wagering event
5 means one or more wagering events. I think the issue that I'm having,
6 looking at what's labeled 16G here, is we have a plurality of wagers on the
7 wagering event. So maybe there are multiple wagering events, but I think the
8 claim is describing a relationship where, however many wagering events you
9 have, you have a plurality of wagers tied to each wagering event. So if
10 there's two wagering events, you know, there's maybe three wagers for the
11 first one and six for the second one. It doesn't matter how many, but it's
12 defining a plurality to the wagering event.

13 So it's defining this many-to-one relationship, even if there are many,
14 many-to-one relationships. So I was wondering if you could speak to that
15 point.

16 MR. WILLIAMS: Let me make sure I understood the point. So
17 you're saying the 16G is receiving by the trading engine module a plurality
18 of wagers on the wagering event from the plurality of input devices, input by
19 plurality participants. So are you saying that for one participant wagering on
20 an event, they would have to put in multiple wagers for that event? Is that
21 the construction you're postulating?

22 JUDGE SAINDON: No, I think that certainly could happen. You
23 could bet multiple times. That might be weird. But what I'm saying is that
24 for a wagering event, the claim is saying that there's a plurality of wagers for
25 the wagering event. Maybe in the grand scheme of things, there are multiple
26 wagering events, but each one has a plurality of wagers associated with it.

1 MR. WILLIAMS: Yeah, got it. Okay. Yeah. So I do think I'm
2 going to address that by moving on to this point I was going to make with
3 respect to *Scott* on 56 to show how we think that's happening.

4 JUDGE SAINDON: Okay.

5 MR. WILLIAMS: And as you see here on slide 56, this is a citation
6 to our reply, although we cited the same section in our petition, and we
7 could look at that if we need to. But the point is, this section of *Scott* at
8 paragraph 96 is describing the situation where multiple players are betting
9 on the same event. And there are -- so essentially, you've got one player
10 playing a hand. Presumably, this is a poker hand. I can't remember if it says
11 that explicitly, but a hand of some game is being played by one player, and
12 at some point, this player decides to pass that hand or to sell that hand to
13 another player, which would then -- that other player would then pick up the
14 hand from there and continue the game. So that's the scenario. We have one
15 of the many scenarios in *Scott*, I think, that would satisfy this construction
16 where you've got multiple wagers happening by multiple players on the
17 same event. Here it's the hand, whatever this hand is, that's being sold at this
18 point during the game.

19 Does that address your question? I just want to make sure I'm
20 following it because it is -- there's a lot of different pluralities happening
21 here, so it can be somewhat confusing.

22 JUDGE SAINDON: Yes, I am looking at your slide 56 here. None of
23 this -- these aren't citations to *Scott*. Right?

24 MR. WILLIAMS: So the quote here --

25 JUDGE SAINDON: A characterization of what *Scott* teaches? I
26 wonder if you could just point us directly to --

1 MR. WILLIAMS: Sure, sure. Let me just -- it's probably easier to
2 just pull *Scott* up and look at paragraph 96, because that is a quote from
3 paragraph 96, but it is, you know, obviously an excerpt of it. Okay, here it
4 is.

5 Okay. So this is paragraph 96 of *Scott*, which talks about a player
6 selling his or her symbols. So here we have the player having achieved
7 some set of symbols, a playing card or slot symbols. Okay. So this does
8 clarify that this is either a kind of a poker card game or it's a slot game. But
9 either way, you've got a player with some set of symbols that he decides he
10 should sell rather than attempt to continue on and obtain the winning
11 outcome. So, and then it describes how this would work. You engage a sell
12 button to suspend the current game. Moving to the bottom of this paragraph
13 then. And then other players have a chance to then acquire those symbols.
14 And then the player who acquires the symbols would then, as you see here,
15 would then continue the game to attempt to obtain that winning, the winning
16 outcome.

17 JUDGE SAINDON: Okay. And do we have any indication that this
18 is a live game? I mean, if you're selling your poker hand or whatever, you
19 know, there's video poker, which is a solo game, and then there's, you know,
20 live poker, where you're playing against other humans. Do we know that it's
21 the latter and not the former?

22 MR. WILLIAMS: I don't think this paragraph is explicit about that,
23 Your Honor, but I'm not sure it would matter. There is -- you know, because
24 we have a game that's being played. Assuming it's a poker game, it could be
25 a slot game. Obviously, it's made clear, so maybe that's an easier case. So
26 you're in a slot game where you've gotten some symbols, but the game is not

1 over yet, right, that part is clear because what *Scott* says is the player may
2 decide that he doesn't want to try to achieve the winning outcome from the
3 symbols. So, obviously, there is some other phase to this game that's going
4 to happen, and that's when the sell takes place.

5 So I mean, it is a live game and that the game is not over yet. This
6 event is not done. You're partially through the game and are passing these
7 symbols off to another player, who would then finish the game, presumably,
8 to try to attain that winning outcome.

9 JUDGE SAINDON: Okay. I think I understand here.

10 MR. WILLIAMS: This example, by the way, of the, you know, what
11 *Scott*, I guess, calls a marketplace, is certainly very similar to what is
12 described in the actual specification itself. So if we turn to slide 60, you can
13 see that. Go back to the demonstratives. Yeah, I guess I did have paragraph
14 96 in the slides after all. Here they are. And paragraph 60, but that's -- now,
15 you can see that compared to what the '779 patent talks about, which is
16 essentially very similar, the operator would facilitate public to buy and sell
17 active tickets, like in a manner of a person to a betting exchange. So, you
18 know, again, it's a very similar thing. You've got some wager that's in
19 inchoate, it's not done yet. It's in progress. And while that's happening, you
20 can, at any point during that game, cash out by selling the value of that
21 wager to a different player.

22 JUDGE SAINDON: Okay. So I guess to put a -- to wrap this idea up,
23 a plurality of wagers on the wagering event could be, even if it is video
24 poker, I buy a hand, I sell it, somebody else buys the hand, continues the
25 game. That's a plurality of wagers on the wager event.

1 MR. WILLIAMS: Yes, sir. Yeah, yeah, that is what I think I'm
2 trying to articulate. Yes, that there would be multiple players making
3 wagers for the same event. Correct.

4 JUDGE SAINDON: And it's a serial, I suppose, as opposed to
5 parallel, where multiple people are betting on the same thing at the same
6 time?

7 MR. WILLIAMS: In this example, yes, that's right. We do have
8 other examples, though, so I don't want to lose track of them. 56 again
9 shows some of the other examples we give, which is a multiplayer wagering
10 game like keno, bingo, and lotteries. Right? These are examples where
11 there is a ongoing game that multiple players are involved in at the same
12 time.

13 And if you see here on slide 58, what's clear is that this is an example
14 in *Scott* where, you know, those events would be being run from a central
15 place. So as you see on slide 58, the paragraph 44 of *Scott* is excerpted
16 there. And it makes clear that your gaming machine that you're there --
17 you're using can be playing a central determinant game, such as, you know,
18 lottery bingo and bingo-based games. So central determinant meaning, in
19 the context of *Scott*, this is happening on a central server that's essentially
20 running the game and multiple participants are playing at the same time.

21 JUDGE SAINDON: Okay. So based on this disclosure, it would be
22 your position that even if we were to agree with Patent Owner that a
23 plurality of wagers on the wagering events requires multiple people on one
24 event, that this paragraph 44 would meet it by way of the bingo game?

25 MR. WILLIAMS: Yeah, correct. Yeah. So there are two different
26 scenarios that we think both map to the claims in the same -- essentially the

1 same way. I mean, in the case of the bingo here, you've got one bingo event
2 happening and multiple players participating, or a lottery or keno, whatever
3 the game is. And then the other scenario is you've got, you know, a user
4 playing some game, gift cards, but, you know, this is, this is a draw hand.
5 He knows it's a draw hand. I'm not winning the video poker game with this
6 hand, but I'm close, so maybe I should just sell it to someone else who can
7 then continue the game that was started by the first player. So those are two
8 different scenarios, we think, both in *Scott*, that meet this claim.

9 Unless there's any other questions about that, I did want to move to
10 the fixed odd singles. Your Honor, could you let me know how much time
11 I've used so far?

12 JUDGE O'HANLON: You have almost 20 minutes left, so 10
13 minutes left before you start eating into your rebuttal time.

14 MR. WILLIAMS: All right. Yeah, we're fine then, we have plenty of
15 time. Was there any other -- I didn't want to cut the discussion off if there's
16 still questions about claim 16, but, hopefully, I've explained our position
17 sufficiently that the Board understands it now.

18 JUDGE O'HANLON: I just had one follow-up question regarding the
19 paragraph 96 discussion we're having. So for the multiple wagers, is the
20 second wager when the second player buys the wager from the first player,
21 or does that second player already have a wager in the same game?

22 MR. WILLIAMS: Yeah, I think we were reading it as the purchase of
23 the hand, but I don't know that we necessarily intended to limit ourselves to
24 that. It is possible that the player would have some subsequent wager. Like
25 if it's a multiple draw hand in poker, obviously, you know, you get to draw
26 twice, for instance, you could certainly have a situation where after the first

1 draw, the player who's already wagered sells his hand to a second player,
2 who then makes a subsequent wager in that game. So I do think that that is
3 certainly possible given how -- the breadth of disclosures in *Scott*. But I
4 don't think he -- he doesn't explain it in quite that level of detail. I think I
5 would have to concede that. That would be more of an obviousness analysis
6 from just to see this understanding of how these games work.

7 JUDGE O'HANLON: Okay.

8 MR. WILLIAMS: Okay. Let me just turn into the fixed odds single
9 issue. This -- I guess we can look at slide 64 to introduce this idea. This
10 comes in -- I think a few of the dependent claims have this limitation in it.
11 And here the issue really to us is that you need to understand -- that the
12 Board needs to kind of look back and see how this term was being used, you
13 know, at the time by persons of skill in the art in the context of this patent.
14 And in our view, it's very clear that this term is used both in the art generally
15 and in this patent in a broad way and is not limited to any particular notion
16 of what fixed odds singles games mean. Certainly not the particular notion
17 that Patent Owner is proposing, which even under the construction they pose
18 in their patent response, you know, *Scott* easily meets this.

19 I think essentially what Patent Owner falls back to is now saying that
20 what this actually means is it has to be a sports wager and it cannot include
21 casino games, like bingo and the other games we've been talking about. So
22 again, we think that's wrong and it's inconsistent with the evidence of record.
23 So let me show you why that's true, starting just with the specification itself.

24 We have some excerpts here on slide 70 to talk about this. As you see
25 from the specification, the inventor was not limiting himself to sports
26 gaming. He makes very clear that this patent has applicability to a wide

1 range of applications, any type of actual or virtual sporting event or any type
2 of game. When he talks about fixed odds, other than in the claims, the use is
3 broad. So he here in column -- the box on the top right of slide 70 shows the
4 excerpt from the '779 patent in column 12, talking about the inventive wager
5 stations that are going on, that are involved in his -- the inventor's patentable
6 idea here, and they are in the nature of fixed odds betting terminals, FOBT.
7 Okay. So, we'll talk more about these fixed betting terminals in just a
8 moment. But that essentially, you know, was a well-known term of art to a
9 POSITA what these things were. And as we'll see, these terminals could
10 have been used and were used at the time for not just sporting betting, but
11 also casino gaming.

12 And, you know, again, as you know, claim 18, which is one of the
13 dependent claims, depending on claim 16 we talked about earlier, you know,
14 makes clear that these wagering games that are invented are not limited to
15 sports wagering. Right? They could include any of these other games with
16 *Scott* that we've been talking about.

17 We asked about these fixed odds betting terminals during the
18 deposition of Patent Owner's expert and you can see some of that testimony
19 at slide 71. And it's clear he agrees that these fixed odds betting terminals
20 could be used to play video games -- sorry, casino games. And he says it
21 again that some FOBTs provide casino games and that was his
22 understanding. That understanding, by the way, we agree with and it's
23 supported by other extrinsic evidence that we'll get to in a second.

24 But before I get there, I just wanted to point out that even, even their
25 own -- even Patent Owner's expert here, Dr. Vancura, has his own patent
26 application in this space that was filed. I mean, I think it's even prior art,

1 was filed around the same time, if not a bit earlier than the '779 patent, and is
2 shown here on slide 68. That patent, written by, you know, or Dr. Vancura
3 is an inventor, describes these fixed odds games in the same way as we're
4 applying in the petition, which is to say that they -- fixed odd games are
5 those that where you obtain a predetermined arrangement of symbols. This
6 could be, you know, bingo, slots, poker, any of these, like in *Scott*, are fixed
7 odds games. The Patent Owner's own expert has admitted that and said so.
8 You know, prior to litigation that was certainly how he was using this term,
9 the use of that broad use of the term.

10 Sorry, my computer's locked up. Bear with me one more second here.
11 Okay, yeah. That broad use that Dr. Vancura used in his own patent, and as
12 is used in the '779 patent itself, is consistent with other contemporary
13 extrinsic evidence in the art at the time. So slide 69.

14 JUDGE O'HANLON: Excuse me, Mr. Williams, before you move
15 on, turn back, can you go back to your prior slide? I'm not sure of the
16 number.

17 MR. WILLIAMS: Yeah. Sure, I think we were on this one maybe,
18 Dr. Vancura's patent. Is that the one you meant?

19 JUDGE O'HANLON: Yes. Thank you. Slide 68 I believe it is. Is it
20 your position that what you have quoted from paragraph 37 provides a
21 definition of "fixed odds?"

22 MR. WILLIAMS: I don't know that I would use the -- I don't know
23 that I would say it's a definition. I think it's -- the point of the citation is to
24 show how persons of ordinary skill in the art were using this term at the
25 time. And the way that they were, including the way Dr. Vancura himself
26 was using that term, is exactly the way we're using it in the petition, which

1 is, you know, to mean a fixed odds game, such as bingo, poker, blackjack, et
2 cetera.

3 JUDGE O'HANLON: So it's not limited -- fixed odds is not limited to
4 just sporting events, is that correct?

5 MR. WILLIAMS: Correct. Yeah.

6 JUDGE O'HANLON: I see.

7 MR. WILLIAMS: Yeah. I mean, yeah, we're not disputing that fixed
8 odds can include a sporting event wager. I mean, that's -- if that's the
9 question, that was not the intent of the argument. The argument is just that
10 fixed odds is a term of art, at the time it was used broadly, especially in
11 connection with these fixed odds betting terminals, to mean games that
12 could be played with fixed odds.

13 Okay. I was, I think, on slide 69. This is sort of an excerpt from
14 Exhibit 1062, which was kind of evidence of sort of the way that these types
15 of games were conducted on machines at the time. And as you see here,
16 there are certain events where there's a random event probability, meaning
17 that there needed to be fixed odds. Right? That the probability had to be
18 known for the event. And when -- in that situation, you would have to
19 usually actually have to tell the participant, you know, the user of the
20 machine, what those fixed odds were. So this is a very common way of
21 implementing casino games at the time.

22 If we go to slide 73. All right, here it is, 73 is another piece of
23 extrinsic evidence from 2011, just before the filing date of these patents. It's
24 Exhibit 1058. And this is describing the same fixed odds betting terminals
25 that are described in the '779 patent. And it describes them as conducting
26 these games where the size of the winnings are fixed. And it includes games

1 like bingo and other casino games. So again, this is showing that the use of
2 this term, "fixed odds," in connection with fixed odds betting terminals, just
3 as in the '779 patent, was understood by persons of ordinary skill in the art
4 and was understood in exactly the way that it's applied in our petition, which
5 is to include things, you know, all casino games of fixed odds, you know,
6 which would include, but is not limited to sporting events.

7 And then I guess the last point I would make about this is --

8 JUDGE SAINDON: Before you get to the next point, sorry to
9 interrupt, the question I have is actually two parts and maybe one of them
10 you'll get to next. But I want to jump on this betting terminal thing first
11 before we move off of slide 73 here.

12 So I'm seeing this term FOBT, fixed odds betting terminals. This is
13 striking me as the name of a machine or a class of machines. I really don't
14 see this as telling us what fixed odds means. I mean, maybe the original
15 purpose of the machine was only to provide fixed odds bets, but it looks like
16 over time they've been expanded to have all these other games on them or
17 other ways to bet. That's how I'm reading fixed odd betting machines. So
18 maybe there's some scope creep in the term and maybe this isn't the best
19 anchor for us to figure out what the term means. I wonder if you could
20 comment on that.

21 MR. WILLIAMS: So, I think, in general, as we see the extrinsic
22 evidence, we probably agree with that, Your Honor, that it is a description of
23 a terminal. So the issue is in the '779 patent, you know, the notion of fixed
24 odds is not tied. There's not -- there's no lexicography in the patent. Right?
25 You can -- there's nowhere in the patent you're going to find the definition of
26 what a fixed odd single is, much less what fixed odds is. So instead we have

1 to look to see how are they using this term "fixed odds?" Are they trying to
2 use it in some specific way that would be limited to a terminal used only for
3 conducting a sports wager, or are they using it more broadly as the -- as
4 everyone else was at the time to mean a terminal that is conducting a video
5 game where the odds are known and fixed? Right? So that's the question as
6 we see it.

7 And the extrinsic evidence here, I think, just further confirms that at
8 the time people understood that a fixed odds betting terminal is a machine
9 where you can conduct any game with fixed odds, not limited sports
10 wagering. So that seems to be a consistent usage in the art at the time, as
11 shown by, you know, not only this document, but their own expert's prior
12 patent. And that's the -- that is the meaning, we think, the inventor was
13 intending to convey with his patent. And so when he got to describing a
14 fixed odds single bet, what we think everyone in -- you know, all persons of
15 ordinary skill would have understood that meant at the time is, you know, a
16 single bet on an event where the odds were fixed. That's it. There's no
17 requirement in there that it had to be limited to a sports wager, in other
18 words.

19 JUDGE SAINDON: Okay. And so I guess the next question I have is
20 what does "odds" mean? Because, you know, I've seen that's a very well-
21 known, well-used word and maybe it has more particular meaning in
22 different contexts. To me, I see it mostly as a description of probability of
23 an event occurring, which I think in this context would mean some sort of,
24 you know, outcome, a win, perhaps a particular type of win. But then I'm
25 also seeing it in the betting context as a payoff, which I think in the record
26 you said like a multiplier. And, you know, I could definitely understand that

1 depending on the context of placing the bet, one or the other may be
2 assumed. You know, if I bet on a horse race, the horse has 20-to-1 fixed
3 odds or something like that, it's not that we think that there's, well, who
4 knows what the chance of the horse winning? You can assume it's 20-to-1
5 based on the bookie making it that way, but really 20-to-1 there, the odds is
6 your payoff --

7 MR. WILLIAMS: Yeah.

8 JUDGE SAINDON: -- regardless what the chance of winning is.

9 MR. WILLIAMS: Yeah.

10 JUDGE SAINDON: You have to -- so anyway, I'm seeing "fixed
11 odds," and particularly "odds," being a troublesome word because it has
12 common meaning and maybe a little more of a specific meaning. And I'm
13 not sure if everyone in the evidence here is using the word consistently. So I
14 was wondering if you could speak on that.

15 MR. WILLIAMS: Yeah, I'm happy to address that. Let me just say
16 the first thing I was going to say is that I think the example you give of horse
17 racing might be the one case where everyone would agree this -- that fixed
18 odds single doesn't apply because, in general, horse races are thought --
19 generally the way they're done, I mean, it's possible to do them other ways,
20 obviously, but generally it's a parimutuel betting pool. So you don't actually
21 know your odds of winning until the race is over. That is a distinction, I
22 think, and it would be, you know, relevant really to that one example. You
23 happen to pick the exact example, I think, that might be outside the scope of
24 this term.

1 JUDGE SAINDON: Well, I suppose -- okay. And we can change it
2 to some other event. Although I have seen that on off-track betting, you bet
3 --

4 MR. WILLIAMS: Sure.

5 JUDGE SAINDON: -- fixed odds in that context.

6 MR. WILLIAMS: Yeah.

7 JUDGE SAINDON: So --

8 MR. WILLIAMS: Yeah.

9 JUDGE SAINDON: So, for example, maybe 20-to-1 that somebody
10 wins a, you know, a particular sporting event.

11 MR. WILLIAMS: Yeah, yeah, but let me just address that more
12 directly in the case of *Scott* because I think it's easier if we focus this
13 discussion of what *Scott* -- you know, what the disclosures of *Scott* is that
14 relate to this fixed odds single. And, you know, we give an example here on
15 slide 82, right, of one of these video poker examples. So in the video poker
16 example -- and, by the way, on this slide we've shown here what the --
17 although this is an excerpt from our reply, we're quoting Patent Owner's
18 proposed construction of this term, which I think is getting at the issue
19 you're addressing, Your Honor, which is what does "odds" mean? Because
20 they say what it is here is the "bettor is offered a fixed multiplier for
21 wagering on a given outcome, and the multiplier, and therefore payout, is
22 fixed at the time the bettor places the wager."

23 Okay. That's fine, let's apply that construction. *Scott* definitely
24 teaches it. Right? All this is describing is essentially a pay table known in
25 advance and that's shown here on slide 82. This is an example of figure 3A
26 of *Scott* where you're seeing the pay table for a video poker machine. But, I

1 mean, certainly that's not the extent of *Scott's* teachings that are of things that
2 are fixed odds. And, in fact, we asked Dr. Vancura about this.

3 We asked him many questions about these types of fixed odds games.
4 And the Board is obviously welcome to read his deposition transcript, but
5 we have some excerpts here starting on slide 83 where we asked him, you
6 know, would video games satisfy the construction -- sorry, would casino
7 games with these pay tables satisfy the construction? And he said yes. He
8 gives examples of slot machines and he says there's a number of casino
9 games that function the same way.

10 And then on slide 84 we kind of go through, and I think this is a table
11 that that is similar to the table in our reply that goes through all the different
12 games that are discussed in *Scott* and where those are discussed in *Scott* and
13 where we asked Dr. Vancura about them. And, you know, in every one of
14 these cases, Dr. Vancura admitted that these are all games that would satisfy
15 the fixed odds single construction that we just read from Patent Owner's
16 response.

17 JUDGE O'HANLON: Mr. Williams, I just want to let you know
18 we've eaten into a considerable amount of your rebuttal time. You have
19 about four minutes left.

20 MR. WILLIAMS: Yeah, that's fine. That was actually the end of my
21 presentation, but I did want to make sure I finished answering the questions
22 or I could do that in rebuttal.

23 If the Board has no further questions, I'm happy just to reserve the
24 balance of my time for rebuttal.

1 JUDGE O'HANLON: Thank you, Mr. Williams. We'll now hear
2 from Patent Owner. Mr. Gilbert, would you like to reserve any time for
3 rebuttal?

4 MR. GILBERT: Yes, thank you. I'd like to try to reserve 10 minutes
5 for rebuttal and see how we go. I will try to keep track of my own clock
6 here.

7 If I could go -- we're going to put up some slides our presentation and
8 we could get right into the argument and that's slide 2. In our submission,
9 the Petitioner's argument fails for any of three reasons and that is the first
10 involving "continuously retrieve data in real time." And in our submission
11 the *Scott* system does not disclose those elements. It only retrieves that
12 predetermined points of games contrary to the DRP's guidance on claims 1
13 and 16.

14 Interestingly, when my friend went through his submissions, he only
15 referred to the continuous element. He did not talk about real time. I'll
16 come to that.

17 Second, "*Scott* does not disclose a plurality of bettors wagering on the
18 same event via a single trading engine module as required by claim 16."

19 And third, "*Scott* does not disclose a 'fixed odds single' on either
20 party's construction." And we say if we're successful in rebutting any of
21 these arguments, then claims survive and the patent would survive.

22 So if I could turn first, I'm going to do a brief overview of the '779
23 patent and then *Scott* and then get right into the arguments. So if I could go
24 to slide 4. This is a visual of the system described in the '779 patent. You
25 see it as a distributed system and you see the language in the disclosure
26 referencing a server that can make a determination of a cash-out offer at

1 discrete time points, as you see in the disclosure, or continuously evaluate
2 the wagering event and incoming wagers and make multiple determinations
3 in real time. And it's that latter aspect which is what is the subject of the
4 '779 patent.

5 If I could go to slide 5 briefly. And this just shows the type of events
6 both in the disclosure and the claims. And as you see in the disclosure, it
7 says, "any type of event," and can be applied to sporting and non-sporting
8 games. The point that we make about the sporting aspect, you have to read
9 the claims in light of the specification, of course. In the specification the
10 type of games that are covered involve very fluid dynamic changes in the
11 game. For example, in the context of a Super Bowl game, you have all
12 kinds of issues with whether someone's injured, the time running out in the
13 field -- in the game. Those type of events is a large volume of time sensitive
14 fluid development, which the '779 patent, among other things, addresses.

15 If I could then skip to the *Scott* game -- or *Scott* --

16 JUDGE O'HANLON: Before you do so, can you turn back to your
17 previous slide? I believe it was slide 5.

18 MR. GILBERT: Yes.

19 JUDGE O'HANLON: You've highlighted the live events, prerecorded
20 events, you know, sporting events. But claim 3 also recites things like slot
21 machines, keno, poker, things like that. So are you saying claim 1, which
22 claim 3 depends from, is only directed to sporting events? Is that your point
23 on that?

24 MR. GILBERT: No, it's any type of event. And that's what we were
25 addressing it head on. It does the simple as well as the complex. That's the
26 context of the '779 patent. To understand what *Scott* does, I would say, if

1 we're going to get right into it, it only addresses the simple pay table games.
2 This is a more robust, versatile system. That's the point that we make.

3 And then we have to look at the guidance of what does "continuous
4 retrieval" and "real time" mean in the context of both? And we have to
5 address that, and we address that head on in our submissions.

6 If I could go to *Scott*, that I would take you to is slide 9. So what
7 *Scott* is, is "a gaming machine where the player plays pay table games," as I
8 said, like poker or slots, "with easily calculable odds for various outcomes."
9 We say, "*Scott* operates in discrete stages when a card is flipped or a die is
10 rolled." And third, "*Scott* is a single-person game kiosk." It's not a
11 multiuser interactive system for betting on a common wagering event.

12 And if I could take you to slide 11, it is a bust-out of one of the visuals
13 in *Scott* itself, the fig. 4 and fig. 5. And you see in the disclosure line 33,
14 you see that the value engine is configured to evaluate games based upon
15 stages of a game. But if you look at how it does this and we'll walk through
16 in relation to what becomes important is that continuous and real time, are
17 these met, keeping that in the backdrop, on the side -- left side of the screen,
18 fig. 4, you see the presentation of the game symbol has to take place. Then
19 you have a box 428 which talks about -- which shows the presentation of the
20 cash value. On the screen fig. 5 then is a bust-out of when the retrieval takes
21 place. That only occurs after the flipping and the symbol.

22 And you'll see there's two types here, right? What kind of
23 information? Box 504 is receiving the player symbol, self-explanatory; 508
24 interestingly says receive or retrieve additional game information. And just
25 holding on to that for a moment, you'll see when we go to the disclosure

1 itself, it talks about that additional game information as being something
2 other than symbols being turned that can affect the odds. Okay?

3 So then let's turn to the language itself that we need to look at. First
4 of all, if you go to slide 14, you have the claim language, "continuously
5 retrieve in real time." That's for both 1(e) and claim 16(i). Both are
6 required. As I said, my friend took you to the continuous language, but he
7 didn't walk through the real time. And interestingly, and in their entire
8 presentation you never see all of that language appear.

9 So let's go to the language in the DRP in the green. It's more
10 highlighted in green because that's what's in. What's in according to DRP,
11 when it comes to continuously is the notion of "repeatedly retrieving data
12 related to the progress of the wagering event as developments occur that
13 may affect the odds." That's what's in, one.

14 Two, the second aspect of the construction is it "does not encompass
15 retrieving data on a predetermined time schedule, that is, discrete time points
16 of the wagering event, that is independent of the occurrence of developments
17 that may affect the odds." So, what does that mean?

18 We highlight in the next slide, slide 16, you have the notion of what's
19 excluded. And this does come from Vancura's declaration, who is asked to
20 apply and consider the DRP's guidance in his analysis and he says,
21 "Continuously excludes the performing tasks at predetermined time points of
22 the wagering event that are independent to the occurrence," the language that
23 I just took you to, but it "does not exclude performing tasks at 'discrete time
24 points' altogether, as computers necessarily perform tasks at discrete time
25 points."

1 So let's then go to the language on real time. And this appears in the
2 DRP guidance itself in two ways. I said what's in in real time and what is
3 out. The first at the top is in. What's in real time, it "relates to the time and
4 frequency of the data retrieval, wager recalculation, and option generation
5 during the wagering event." And two, it suggests that in the lower box the
6 determinations "'in real time' must be made with sufficient frequency to
7 promptly capture developments that may affect the odds of the event." So
8 there's this notion of time frequency. And then three, there is an exclusion,
9 which is in the language of the DRP's guidance itself, to the effect it says
10 and "cannot cover only discrete determinations, such as the end of a period
11 or halftime during a sporting event." So discrete determinations based upon
12 the event are out.

13 Again, this is from page 19 of the decision and it's not cited in the --
14 and if you could go back to the previous slide 17, that exclusion language
15 isn't cited by my friends. And interestingly, when this Panel did the
16 Institution, it did not cite this exclusion clause. It said we're going to apply
17 the construction and guidance of the DRP. But when you go to the language
18 of what was covered, it didn't capture and wasn't in that decision. So this is
19 important language and guidance that hasn't yet been looked at.

20 So let's look at slide 16 -- or 18, sorry. And that is Vancura again,
21 who was asked to look at what does this mean? Well, determinations in real
22 time, we have the exclusion can't cover only discrete determinations, such as
23 things happening in the event as periods -- you know, period break. But he
24 goes on to say, "The DRP thus notes an important distinction between
25 actions undertaken only at discrete points of an event and actions undertaken

1 continuously in real time." What kind of actions? Well, the actions would
2 include retrieval.

3 Now, the next slide is slide 19 and this addresses the polling point.
4 My friends make the point that the words "polling" don't appear in the '779
5 patent. And that is correct. Vancura tries to apply the language, though, of
6 the DRP, the guidance of the DRP to the system, which is in the '779 patent.
7 So he says, well, look, "The use of frequency and capture are, in my opinion,
8 important. 'Frequency' suggests a repetitive operation at regular intervals.
9 In computing, frequency refers to cycles per unit of time and can be
10 measured in hertz," et cetera. "Retrieving, that is, going and getting
11 something, at a frequency sufficient to 'capture' suggests a polling
12 operation."

13 That's all he says. He says "suggest," because when you get to the
14 examples -- and the Petitioner's expert was actually asked a question, I don't
15 have it in the slide, but it's Exhibit 1006 is the cross, pages 58 to 59. And
16 he's asked about trying to capture something such as time. And the excerpt
17 is to the effect that to capture that type of effect you have to check very
18 frequently. And he says, "Yes, you would have to check in appropriate
19 frequency to capture anything of significance that includes time itself." So
20 this is extremely back to the frequency. That's what's going on to capture
21 developments.

22 And the questions were asked of Vancura in cross as well, about what
23 would you have to do to capture very frequent elements? It would be -- he
24 says, well, that sounds a lot like polling. I'll try to get you that reference
25 number.

1 Let's go to the next slide then. And that is simply to the point that the
2 broad -- if you're looking at the spec as a whole, the broad application of it,
3 including such things as time being an effect on odds, would mean that you
4 have to check on almost extremely frequently or polling basis.

5 So let's go to *Scott*. What does *Scott* do then? And *Scott*, in slide 21,
6 is, again, the bust-out on the left is when does this retrieval take place? It
7 only takes place in a stepwise fashion for two aspects. Those two aspects, I
8 said, are the retrieval of the symbol and the retrieval of additional game
9 information, step 508. What is additional game information? And it's in
10 *Scott* at 83. It's not on the slide, but it says, for example, the amount
11 wagered, cards or symbols remaining to be dealt, credits remaining, and so
12 it's an inclusive language. It's anything that could affect the odds.

13 Well, let's go back and say, well, when does this take place? When
14 does the retrieval of those things take place? It takes place only at stages.
15 So if something's happening about the -- other than the symbols themselves,
16 that happens in between the turning of a symbol, there is no recalculation
17 because there's no checking. So if that is -- that's a development affecting
18 the odds, that information, and it's not captured in, in real time.

19 And you can see, you know, in the case of the simple game, because
20 you -- you know, that's one of the things we have to meet. What about the
21 simple game? We'll take an example of bingo. Bingo is a relatively simple
22 game where you get a card. If *Scott* is interpreted by this Panel to apply to
23 have any number of people playing that game with different cards, well, the
24 mere purchase, mere addition of additional people actually getting a card
25 will affect the odds. We know that because the odds go down when you
26 have more people playing. So that isn't going to be captured in this *Scott*

1 system. It can't. That figure tells you how it happens and that's why
2 stepwise matters.

3 Now, if we could then go to that word. My friend took you to the use
4 of the term "real time" in *Scott*. That's at paragraph 67 and in paragraph 67
5 in *Scott*, what *Scott*'s talking about is it's not about retrieving data, it's about
6 displaying an updated cash value. And that's different. That's just
7 displaying. Once the -- the retrieval is capturing, using the language of
8 DRP, some kind of development. Well, that's not happening. The retrieval
9 is not happening. But once there's a calculation and you have, going back to
10 fig. 4, a presentation, that's all 67 is saying is once they figure out a new
11 cash value, it's presented, that's it.

12 And, of course, we know there's no indication in *Scott* that this is
13 being done at a frequency. There's nothing. We know that retrieving at a
14 frequency is intrinsic to the real time element. And this is only updated in a
15 stepwise way.

16 So when does the retrieval take place? Well, according to the
17 Petitioner's own briefing, it only takes place at two occasions. And that is
18 when each card or other game symbol is dealt to a player or at the end of
19 each dealing stage of the game. Both are triggered and they're not
20 continuous and real-time retrieval as required by the '779 claims.

21 JUDGE O'HANLON: Let me interrupt --

22 MR. GILBERT: Yes.

23 JUDGE O'HANLON: -- if I may. One of those slides, I believe was
24 your slide 15, you highlighted in green that the DRP said continuously
25 retrieving data includes "retrieving data related to the progress of the
26 wagering event as developments occur that may affect the odds of the

1 wager." But now you're saying *Scott*' retrieves information only when new
2 cards are revealed is at a discrete time. I agree that's a discrete time, but
3 that's at a discrete time that affects the odds of the wager. So I don't
4 understand your argument that that is somehow not included in the DRP's
5 construction of continuously in real time.

6 MR. GILBERT: No, the turning of a card is a development that
7 affects the odds. That's understood. However, it's not capturing on a
8 schedule. It's not capturing all the things that affects the odds. If you go
9 back to the additional game information, it doesn't do that. So that's the
10 point. It's missing something about that's a development affecting the odds
11 and it isn't being captured.

12 JUDGE O'HANLON: What's the development affecting the odds?

13 MR. GILBERT: Well, the additional -- the things that happen in
14 between, a stepwise function of a discrete game, it's not capturing anything
15 outside of that. So --

16 JUDGE O'HANLON: So if you take the example of poker game,
17 which I believe is what *Scott* is talking about there, when the new cards are
18 revealed, that's when the data is retrieved and the buyout offer is updated.
19 What other information are you talking about?

20 MR. GILBERT: Well, as I gave the example of additional people
21 playing, if that happens, that can affect the odds and it's not going to be
22 captured on this understanding. The other aspect is simple --

23 JUDGE O'HANLON: I don't understand that response. What if other
24 people are playing? I don't understand what you're saying *Scott* does not
25 capture.

1 MR. GILBERT: It's not going to capture any other -- the additional
2 information is not going to be captured in that -- at the time it affects the
3 odds. Anything to that effect will not affect the odds. So we know that 508
4 is something other than symbols, the example you gave, which would affect
5 the odds. 508 is additional information that they say is something that could
6 be this thing of being in real time and affecting odds, but it's only captured in
7 a stepwise way. And it's -- those things happen outside of the symbol. It's
8 something other than symbols affecting odds.

9 So if I could, it doesn't, in the end -- I mean, my friend never
10 addressed the whole aspect of real time, which is that second component of
11 the discrete determinations, such as the end of the period. And our point
12 here is it's not at a frequency. It's simply based upon things happening in the
13 game itself. So it can't capture anything else other than the turning of a
14 stepwise symbol in a game.

15 And then more broadly, if you think of the live sporting events, how
16 can ever one think that doing something at discrete stages captures the type
17 of thing, which in broad understanding of what the purpose of this patent is
18 about, is giving cash-out offers in real time? It doesn't capture even such
19 things as an NBA game. The last minute of the game and, you know, there's
20 a minute left and there's a close, you know, five points, say the star player is
21 injured, all that type of thing isn't going to be captured. So what's important
22 is the system is designed in '779 to capture a multitude of developments that
23 are affecting the game and the '779 is not.

24 JUDGE SAINDON: Counsel, if I could jump in here. This is Judge
25 Saindon. So I'm looking at your slide 17 you have on the screen here.
26 We've seen this a few times. This is some passages talking about the DRP.

1 I think it's page 19 of the DRP decision. But these aren't the DRP's claim
2 construction, is that correct?

3 MR. GILBERT: It's our guidance. It's what has been referred to as
4 guidance, which you're ultimately responsible for the claim construction.
5 But it's also said that you're to respect the guidance of the DRP.

6 JUDGE SAINDON: Guidance embedded as part of the DRP's
7 decision?

8 MR. GILBERT: Yes.

9 JUDGE SAINDON: So for claim construction you have reproduced
10 on slide 15.

11 MR. GILBERT: If you could just throw it up.

12 JUDGE SAINDON: Yeah. So this is --

13 MR. GILBERT: But the whole -- but that's just part of it. The rest of
14 it relates -- the second section is about real time. "Real time" is another
15 word which the DRP addresses. And that's at page 19, I believe -- or 17 --
16 pardon me, 19. So if you go to the DRP, it talks about this. I got a heading,
17 page 18. It begins, "In real time." It has the quotes for the words "In real
18 time." And then it talks about what this means. And it goes on to say --
19 repeat the language in the claim. And then it sets out what this claim
20 language indicates, that the term "real time" relates to the time and
21 frequency, et cetera.

22 And then you actually have, when you go to that DRP guidance, it
23 sets out that language about the server that I put out in the original slide of
24 what '779 is. It's a server that can do either the cash-out at discrete time
25 points of a wagering event or continuously evaluate and make multiple
26 determinations in real time. So that aspect is what they are saying that needs

1 to be considered. And then they go on to say what that passage indicates has
2 to be made with sufficient frequency and can't cover only discrete
3 determinations. And what we say is discrete determinations are internal to
4 the event itself. The frequency is a constant checking, is independent of the
5 events in a game. That's effectively -- otherwise it can't capture.

6 JUDGE SAINDON: Okay. So page 21 of the DRP has the actual
7 claim construction for in real time. Correct? I think you had mentioned
8 that. It's further down from 19, which is quoted here on slide 17.

9 MR. GILBERT: Yeah, it's -- in our submission, it's the whole thing
10 you have to apply. There's two words, "continuously" and "real time."
11 They're both in the claim. You have to give scope and meaning to both
12 terms. Both are in the DRP guidance and saying what they are. And as you
13 see, there's slightly different language. Right? It says, "cannot cover only
14 discrete determinations." It's not just time points as in continuously. So you
15 have to reflect on that with the notion of frequency and capturing and say,
16 how is that done?

17 JUDGE SAINDON: I guess you're not answering my question.
18 There is a claim construction in the DRP and that is what we will follow.
19 And I want to make sure that you point to us what you believe the claim
20 construction is just to make sure we're on the same page. Yes, there will be
21 other statements, but those other statements are not the claim construction.
22 And as I see it, the claim construction for real time is on page 21 and the
23 claim construction for the other part -- because I don't disagree with you that
24 there's two parts to it, I just want to make sure that we're on the same page
25 with the claim construction.

1 MR. GILBERT: Well, in our submission, it includes both 19 and 21.
2 That is the claim construction read together. And even if you're just reading
3 the real time language on 21, given the example I use of additional
4 information, how it works, it doesn't capture that.

5 So if I could go move on, I think from this, that effectively ends the
6 submissions on this. The last slide is 23 to the effect, to be clear, the
7 frequency to promptly capture *Scott's* retrieval is not a frequency. It is
8 triggered only at predetermined time points of its games as excluded. That's
9 how we read it reading the exclusion, it excludes "in real time." As I said,
10 that language itself is the one that we hang our hat on, so to speak, because
11 you have to apply both continuous and real time.

12 So let's go to plurality. And if we could turn first to the claim
13 language. You see the claim language, "a wagering event among one or
14 more participants, a trading engine module, a plurality of input devices, and
15 a plurality of participants." The concept is it's a multiple input, multiple
16 players wagering on the same wagering event. So let's -- and the term is
17 "among." We've highlighted what the Petitioner's arguments are here. And
18 that is the first argument that we saw in the petition was this notion of being
19 electronically connected and that *Scott* discloses a marketplace. My friend
20 didn't push that argument here, but it's how it was framed the petition. The
21 other two -- other submissions they've made weren't in the petition. They
22 were made in the context of the briefing itself.

23 If I could go to the first because I would like to deal with that. And
24 this is -- it came up in the argument this morning about claim 16, this
25 multiplicity. And my friend directed you to look at *Scott* in 96. And *Scott* in
26 96 is a section that is dealing with the selling of symbols of someone selling

1 -- playing a game. You see a player may sell their symbols. It's
2 contemplated that the player may engage a sell button or the like to suspend
3 the current game and the player may then enter into an electronic
4 marketplace for sets of symbols. And that is not wagering. It is the only
5 reference to this so-called multiplicity, but it's not even on the same event.
6 You have on the right-hand side the Patent Owner's expert about what that is
7 and it's this marketplace.

8 So if we could then go to the next slide and that's slide 28. You have
9 this effect of suspending -- suggested in there that a player could suspend the
10 game and that that would then allow them to sell their symbols and will be
11 made the point. Certainly in the context of the '779 patent which addresses
12 live waging events, it would be completely unworkable for external events.
13 The --

14 JUDGE SAINDON: Of course, Mr. Gilbert, of course these claims
15 are not limited to sporting events. Correct?

16 MR. GILBERT: That's right. Here you see that the language, the
17 point is it would not be practical. It's really not workable for multiplayer
18 events at all because you have to suspend the whole event for everyone, one
19 person stopping. It's not just live sporting events, but any other event. It's
20 simply not workable.

21 My friend --

22 JUDGE O'HANLON: This is Judge O'Hanlon. I'm not sure what you
23 mean by "unworkable." Does that mean impossible?

24 MR. GILBERT: Yes, I think that's -- unworkable is practically
25 impossible and not addressed by *Scott*. I think that's the point. There is no
26 way that *Scott* describes how this could take place for multiple players on

1 the same wagering event. He states even for a system-controlled,
2 multiplayer game like keno, this would be impractical because of the
3 necessary time delay and loss of player engagement. To a person skilled in
4 the art who's reading this and applying this in terms of spec and the type of
5 games you see that *Scott's* not directed to multiple people playing --
6 wagering on the same wagering event.

7 JUDGE O'HANLON: And that's based just on there being a pause in
8 the game?

9 MR. GILBERT: That comes from all they can point to. Remember,
10 it's the Petitioner's burden. They've tried to show how there's somehow
11 multiple players playing in *Scott*. The only thing they can point to is the
12 electronic marketplace for selling wagers. There's --

13 JUDGE O'HANLON: I understand they have the burden, but I'm
14 trying to understand your argument here. I understand you to be saying
15 *Scott's* disclosure, the player hitting a pause button and trying to sell his
16 hand, his wager, whatever that is, is unworkable. But I don't understand
17 why it would be unworkable. Why -- I can understand it would be
18 inconvenient and perhaps annoying to other players for the game to be
19 paused. But I don't see that as being an impossible situation.

20 MR. GILBERT: Well, that -- you have the -- the only evidence on the
21 point is what -- is the evidence of the Patent Owner's expert.

22 So the second point made by my friend is the Class 2, the reference to
23 Class 2 games. And he referenced what that Patent Owner's expert said that
24 -- what Class 2 games are. The important point there is the Patent Owners
25 expert addressed it in his declaration and explained, this is at paragraph 113,
26 Exhibit 2001, he explained that video versions of these games are single

1 player. So that's the context. They're not multiplayer games being played.
2 So he didn't give you that context.

3 Second, there's nothing in *Scott* that points to multiple players
4 wagering on the same underlying event. So what's the issue is they don't
5 disclose multiple players playing the same instance. They might play the
6 same type of game, but they're playing it themselves. There's nothing in --
7 and, in fact, there's no argument in the petition about that.

8 JUDGE SAINDON: Counsel, before you move on, I have a question
9 based on a discussion I had with opposing counsel in the earlier session. In
10 that there was an example given where the first player would start a video
11 poker game. So this is a single-player game. They sell their bet or they sell
12 their hand, however it works practically, into the marketplace to cash out,
13 and then somebody else comes in and buys that hand and continues to gain.
14 So it's kind of a serial. Two people have played the same game. I'm
15 wondering if you could speak on why that doesn't meet the claim limitation.

16 MR. GILBERT: Well, it's not a group of wagers wagering on -- a
17 group of people. It's only one wager that's being placed. And it's then
18 another person places one wager. So it's also not among a group of people.
19 So there's only one wager and it's on the base. It's the same wager. It's the
20 same original wager. Buying the wager and you're living with that wager.
21 There's no additional wagers.

22 JUDGE SAINDON: Well, I guess what is the wager then? You
23 know, presumably the person buying the hand wouldn't pay the same
24 amount as the original hand cost because, you know, there's been further
25 information revealed. The hand is going to be worth more or less than what
26 it was before. So isn't that a different wager?

1 MR. GILBERT: Well, the hand is the wager itself. It's just the price
2 point that you're acquiring it at.

3 JUDGE SAINDON: The hand is your wager?

4 MR. GILBERT: You're buying the wager. That's what you're buying.
5 You're not buying -- you're not making an additional wager. You're buying
6 the wager. That's what's disclosed in *Scott*. What's not disclosed is a group
7 of people wagering on the event at the same time on a single event. That's
8 not there.

9 JUDGE SAINDON: For sure, I see your point there. I'm just trying
10 to understand whether or not the particular reading that Petitioner had where
11 the multiple people, they're not at the same time, they're one after another, if
12 that falls within the scope of the claim.

13 MR. GILBERT: In our submission, it's buying a wager, the hand, the
14 position. It's not a new wager. It's not multiple people wagering, which I
15 think you have that point.

16 JUDGE SAINDON: Okay. And just before we get off of that topic,
17 so that has a certain understanding of what a wager is, and maybe you don't
18 have this and you can provide it on your rebuttal time, but is there anything
19 that tells us what a wager is so that we can say, yes, it is this, you know, the
20 original hand is a wager or something to let us know what a wager is in this
21 context to support your argument?

22 MR. GILBERT: Yes. Our team simply suggests that the wager is the
23 thing that's sold. That's the plain reading of the spec.

24 JUDGE SAINDON: Okay. But no evidence to support that, just --

25 MR. GILBERT: Just the specification itself. Players, too (phonetic).
26 It's the language in *Scott* on the left-hand side.

1 If I could go on to the rest of -- I've got to watch the time here.

2 JUDGE O'HANLON: Yes. You have just over eight minutes.

3 You're starting to eat into the rebuttal time.

4 MR. GILBERT: Yeah. So I'll go quickly through this. The slide 30
5 deals with "wagering event among." That's the grammatical. The point
6 there is that the first time it appears is "a," their language -- their case law
7 says unless context suggests otherwise. The context here is it refers in the
8 same claim to the wagering event each times afterwards.

9 The second point is slide 32 and you have the "among" language.
10 You have -- pardon me, slide 31 is their own expert agrees that the language
11 in the claim itself is singular. And then slide 33 you have the language
12 about multiple bettors betting on the same system.

13 If we could then go to their notion of "additional." The third
14 argument being *Scott* has a trading engine module, that's a tortured
15 construction. If you go to their own petition -- or their own submissions,
16 they say that the trading engine module -- the trading engine corresponds
17 exactly to the trading engine module in 16. So the value engine is the
18 trading engine module.

19 The next slide 35 tells you where is the value engine? Where does it
20 sit? It sits on the machine itself and you see those references from the spec
21 and the system. Further, you have their own expert agreeing that it's a single
22 trading engine module in the claims, whereas it's multiple in the context of
23 *Scott*.

24 So that would end that fixed odd single. If we could go briefly to that,
25 the first point is that, next slide 39, you have the claim language, it's the
26 context of the claim language of fixed odds single is it's a type of wager.

1 So if you go to the next slide, being slide 39, the expert -- the Patent
2 Owner's expert construes the terms as a whole versus individually. And in
3 doing, so points out that it's a competitive underlying -- it's making a bet on
4 a competitive underlying event that is independent of the bettor. And that
5 evidence, if you go in addition to the Patent Owners experts saying this, one
6 of his exhibits is set out here and that is from it's Exhibit 2013, and this is
7 TAB, which is an Australian betting operation. And you'll see actually the
8 term being used here, "fixed odds single." So it is a term of art and it's a
9 type of sportsbook wager you see on the right, and you see the actual
10 definition of what it is being at a fixed odds price. So it's not just Vancura
11 who says this.

12 And importantly, if you do apply this to be a fixed odds single with
13 being a type of wager and it's that construction, then there is no doubt
14 because *Scott* does not have in it any bets or any games which involve
15 betting on an event external to the player playing the game. So then if you
16 stop there, the construction would be over and we wouldn't have to move on.

17 When you get to the other arguments, my friend raises fixed odds
18 being independent, looked at independently, what is fixed odds, you see in
19 slide 41 what Vancura describes and it's the intuitive thing. On a Monday,
20 betting on something for the Super Bowl and the odds could change during
21 the week, but you lock in at the time of the wager and you have a multiplier.
22 That's the intuitive understanding. And that isn't taking place in a bingo
23 game at all. It does -- the payout does not scale with the wager.

24 If you go to what my friend says, bingo is -- whatever. Fixed odds
25 should be seen as a probability. We have the evidence in response. It

1 doesn't even have a fixed probability because every time somebody buys a
2 card it changes the odds. So it can't be even their definition.

3 When you get to the other games, and this is slide 43, the other games,
4 actually video poker, slot games, they all don't have -- they don't meet the
5 other issue. They don't meet what's agreed by everyone to be -- and that is
6 by both parties, it's not a single. So you see the multiple different outcomes
7 in fig. 3A.

8 And finally, on fixed odds betting terminals, I think the panel went
9 through this with my friend. You have the fact of it being just -- it's a
10 terminal, it's not a type of wager. And the only so-called admission is that
11 these terminals can operate many different types of wagers. That doesn't
12 mean that it changes the meaning of fixed odds or fixed odd singles.

13 So I'll stop there and leave. I think I have a grand total of a couple
14 minutes or three minutes for rebuttal, unless there are any other questions.

15 JUDGE O'HANLON: Thank you, Mr. Gilbert. We'll now hear
16 Petitioner's rebuttal. Mr. Williams, you have just under four minutes. You
17 can begin when you're ready.

18 MR. WILLIAMS: All right, thanks, Your Honor. I'm just getting
19 myself unmuted here, one more second. Okay. Just confirm you're seeing
20 slide 45 now, is that right?

21 JUDGE O'HANLON: Yes.

22 MR. WILLIAMS: Okay, great. All right. Let me -- so first let me
23 just start with this real time issue because I heard a couple times, Patent
24 Owner's counsel suggest that I made arguments I didn't make or that I didn't
25 make arguments I did. Let me start with the first one.

1 The suggestion that we ignored real time I think is belied by slide 45,
2 which, I mean, I guess the transcript will reveal whether I covered it or not,
3 but I'm pretty sure I did. It's very clear *Scott* teaches real time. It even says
4 it explicitly. There's no ambiguity about this. Right? *Scott* says you
5 determine these things in real time or substantially in real time as all
6 symbols are revealed. This is all that's required of the claims.

7 Now, the argument that Patent Owner seems to be making here is that
8 really what these claims are limited to is real-time sporting events where the
9 odds are changing, I don't know, every second, every tenth of a second. I'm
10 not sure what their argument actually is about this, but that seems to be the
11 point, that the claims are really limited to sporting events and their system is
12 more robust because it could handle sporting events. The problem is that's
13 not what the claims say. If that's what they wanted the invention to be, they
14 could certainly have limited the claims to that. And that may have required
15 us to pick some slightly different prior art or make a modification to *Scott*.
16 But since that's not what the claims say, I think their argument is just simply
17 irrelevant.

18 The fact is, *Scott* teaches continuous real-time evaluation of the odds
19 of the game in response to any event that's going to change the outcome.
20 And again, as we talked about earlier in my opening remarks, I mean, *Scott's*
21 not even limited to the situation where the player symbols change because
22 he gives examples where something else changes. A keno number is drawn
23 that's not on the player's card, the odds still change and the game is being
24 updated, the odds of winning are updated and the cash out value is being
25 updated. This happens in real time. It happens continuously. That's all the

1 Board's -- the DRP's construction requires. So everything else is really, I
2 think, just based on a misunderstanding of what their claims actually cover.

3 With respect, I'll just say a few words about this notion of frequency
4 that that is in the DRP's opinion. You know, certainly there's nothing there
5 to suggest that what's required to practice this claim is some sort of fixed
6 frequency or polling. In fact, these are the arguments that were made
7 already to the DRP that were rejected. And we already talked about that in
8 my opening comments. *Scott* does exactly what's required. It checks the
9 odds sufficiently frequently for the game. That's all the claims required.
10 That's what *Scott* does.

11 So unless there's any other questions the Board has about that first
12 issue, I was going to move on to the plurality point.

13 Okay. As to the plurality with respect to claim 16, I guess I have a
14 couple things I want to kind of mention very briefly. One is, as is clear in
15 our petition here, we're on page 81, when we're talking about this claim 16
16 we make clear what's in *Scott* is this network ability to communicate
17 between the different wager machines. So he says, we say in the petition,
18 Thus -- this is page 81 of our petition, "Thus to facilitate the
19 communications between different wagering machines and their respective
20 input devices disclosed in *Scott*, POSITA would understand that the
21 communication interface for connecting to the one or more external devices
22 would be utilized." And there we're using POSITA to mean a person of
23 ordinary skill in the art.

24 So there's no doubt that we've argued that there are multiple players
25 playing games in *Scott*. In the petition we show how *Scott* discloses a
26 network, a client server architecture where there's a server, and we describe

1 how the trading module in these various devices could collectively be
2 considered a single trading module. So we've addressed all the arguments
3 the Patent Owner is making here. It's all of this is in *Scott*. It teaches
4 exactly what this claim requires.

5 So, again, you know, I think even their slide 27, which we looked at,
6 Patent Owner presented, shows the full excerpt from *Scott* 69. And again it's
7 clear in this example where a user is going to sell his hand during a game,
8 the players are electronically connected. Right? I mean, they're even
9 highlighted there in blue for us.

10 So all this is say that I think none of the arguments for claim 16 that
11 Patent Owner makes really detract from the fact that *Scott* discloses it even
12 under the constructions the Patent Owner is here proposing.

13 JUDGE O'HANLON: Mr. Williams, you've used all your time if you
14 want to take another few minutes to finish up.

15 MR. WILLIAMS: Sure. The only thing I have to say -- yeah, if it's
16 30 more seconds or 10 seconds on fixed odd singles, which is in this
17 example here that we've got on the slide, this is an example of a single hand
18 of poker and there's no reason -- we have no evidence in the record that
19 would suggest that that's not sufficient to be a fixed odds single and our
20 expert says it is. Right? So you can look at his declaration where he
21 addresses these claims to see what the fixed odd single kind of bets would
22 be.

23 Unless the Board has any other questions, I will stop talking.

24 JUDGE O'HANLON: Thank you Mr. Williams. We'll now hear
25 Patent Owner's surrebuttal. Mr. Gilbert, you have about three minutes left.

1 MR. GILBERT: Thank you. Our simple point on the real time and
2 continuous is that you need to read all of the guidance on real time and
3 continuous, including page 19. So that's the first point.

4 And the second point about even reading the real time language and
5 applying it, if you think about it, the reality check on claim 16. If you think
6 about claim 16 and say, okay, how do I have a real time and continuous
7 application of that example I gave you earlier? You would have multiple
8 people, allegedly, we don't accept this construction, betting on a bingo game,
9 for example. And you think, well, how would they know when additional
10 people -- you accepted additional information of additional people deciding
11 to play bingo is a development affecting the odds. In *Scott*, you don't see
12 that captured until that -- a single individual wagers.

13 So what it tells you then is that *Scott*, at least as it affects a multiplayer
14 situation, which we don't concede, it does cover, but if it did, it wouldn't be
15 doing so in a real time and continuous way because it wouldn't be capturing
16 developments that affect the odds, that is the number of people. So that's a
17 reality check. We say it's not in there at all. And then when you look at
18 continuous and real time, you need to read both. I'm not going to repeat
19 what I told you before.

20 If you get into claim 16, simply the sale of symbols is not a new
21 wager. What you're doing is stepping into the first player's shoes. That's
22 what -- the simplicity of reading what is in the specification. That's the only
23 guidance I can give you is from the spec itself.

24 The last point my friend made was that this poker is a single hand.
25 The point about that is the game might be a single hand, but it has multiple
26 outcomes. You saw in that slide, you can have a royal flush, it yields certain

1 points. You could have any different combination. And to the same effect,
2 slot games have that same. You can have three threes, three sevens, three
3 cherries, whatever. So multiple outcomes.

4 And as I said to you, both parties agree that single outcome is required
5 to meet the elements of that claim. There's agreement on that, no
6 disagreement. And it's just the application to types of games which we've
7 played a bit of Whac-A-Mole to go through their many attempts to get at
8 fixed odds single, and we say they haven't met any of them. It's a type of
9 wager and it's a term of art even if you don't agree with that. They haven't
10 met any of the definitions that have been offered today of fixed odds or fixed
11 odds singles together.

12 I don't know, I think I might have -- am I early? That would be
13 exceptional.

14 JUDGE O'HANLON: Your time has expired. If you have any closing
15 comments, I'll allow you to make them.

16 MR. GILBERT: No, I think the only closing comment is to focus on
17 the three separate arguments. They're not dependent necessarily on one
18 another. If we're successful, if the Petitioner doesn't meet the burden on any
19 of these arguments, then those claims would survive.

20 JUDGE O'HANLON: Thank you both for your presentations today.
21 The final written decision will be issued in due course. And the hearing is
22 adjourned. Let's go off the record, please.

23 (Whereupon, the proceedings at 10:38 a.m. were concluded.)

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