

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC.,
Petitioner,

v.

DIOGENES LIMITED,
Patent Owner.

IPR2023-00268
Patent 11,200,779 B2

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

O'HANLON, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background

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

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

On February 21, 2024, the DRP issued a decision granting Petitioner’s request for Director Review rehearing, vacating the Board Decision, and remanding to the original panel to reconsider whether to institute review. Paper 14 (“DRP Dec.”). On May 15, 2024, we instituted an *inter partes* review of the challenged claims on all grounds raised in the Petition. Paper 20 (“Inst. Dec.”).

Subsequent to institution, Patent Owner filed a Patent Owner Response (Paper 28, “PO Resp.”), Petitioner filed a Reply to the Patent Owner Response (Paper 33, “Pet. Reply”), and Patent Owner filed a Sur-reply to Petitioner’s Reply (Paper 34, “PO Sur-reply”). An oral hearing was held on February 20, 2025. A transcript of the hearing has been entered into the record. Paper 38 (“Tr.”).

For the reasons that follow, we conclude that Petitioner has proven by a preponderance of the evidence that claims 1–3, 5–10, 16–18, and 21–25 of the '779 patent are unpatentable.

B. Real Parties in Interest

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

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

C. Related Matters

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

Diogenes Limited v. DraftKings Inc., Case No. 1:21-cv-01695
(D. Del. filed December 1, 2021).

Pet. 12; Paper 4, 2. Patent Owner identifies other petitions for *inter partes* review filed by Petitioner and challenging patents owned by Patent Owner. Paper 4, 2. We note that each of the *inter partes* review proceedings noted by Patent Owner have terminated. Specifically, the Board issued Decisions Denying Institution in each of IPR2023-00261, IPR2023-00263, IPR2023-00264, and IPR2023-00265, and each of IPR2023-00262, IPR2023-00266, and IPR2023-00267 was terminated due to settlement.

D. The Challenged Patent

The '779 patent discloses a system for conducting a multi-leg wagering event. Ex. 1001, 5:24–6:7, 8:30–42, 14:35–45. Figure 1 illustrates the system hardware and is reproduced below. *Id.* at 5:5–7.

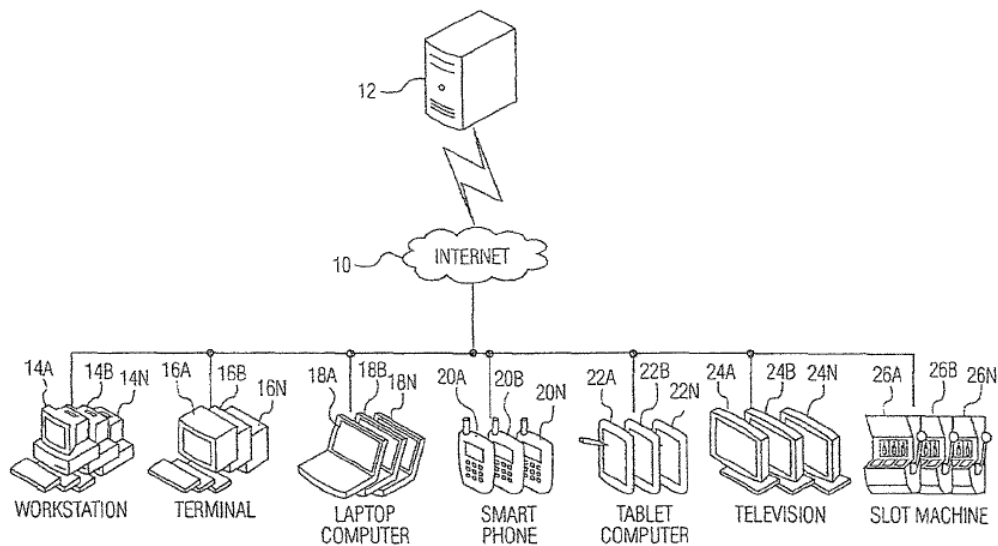


FIG. 1

Figure 1 shows the wagering system, including central server system 12 and wager input devices such as wagering stations 14 and wagering terminals 16. *Id.* at 5:8–16. The central server system controls the operation of the wagering system and allows players to enter wagers via the input devices. *Id.* at 7:25–28. The wagering event has multiple legs and the players input a selection for each leg. *Id.* at 5:24–6:7, 11:56–12:3. The player receives a printed or electronic ticket that represents the wager. *Id.* at 11:63–65. The system determines if the players’ inputs for each of the legs are correct. *Id.* at 13:29–33. After a predetermined number of legs have been completed, the system sends a buy-out offer to players that have correct inputs for the completed legs of the wager. *Id.* at 13:34–54, 20:63–21:7. The buy-out offer may be for the player’s entire ticket or a portion thereof. *Id.* at 13:54–58. If a player accepts a full buy-out offer, the player receives the agreed-upon award and the player’s participation in the wagering event ends. *Id.* at 13:63–14:1. If a player accepts a partial buy-out offer, the player’s

participation in the wagering event will continue, but the player's award will be reduced by the agreed-upon amount. *Id.* at 14:37–43.

E. The Challenged Claims

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

1. A system comprising:

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

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

receive, by the system controller, a selection of the option for the participant from the one or more input devices prior to conclusion of the wagering event; and

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

Ex. 1001, 51:15–54.

F. Instituted Grounds Asserting Unpatentability

The Petition relies on the following prior art reference:

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

We instituted trial based on all asserted claims and grounds of unpatentability as follows:

Claim(s) Challenged	35 U.S.C. §	Reference(s)
1–3, 5–10, 16–18, 21–25	102	Scott
1–3, 5–10, 16–18, 21–25	103	Scott

Inst. Dec. 34; Pet. 20. Petitioner submits a declaration of Dwight Crevelt (Ex. 1007, “Crevelt Declaration”) in support of its contentions. Patent Owner submits declarations of Olaf Vancura, Ph.D. (Exs. 2001, 2007) in support of its contentions.

II. ANALYSIS

A. Principles of Law

1. *Inter Partes Review*

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

2. *Obviousness*

A patent claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) when in evidence, any objective

evidence of nonobviousness.¹ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

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

Petitioner contends that a person having ordinary skill in the art at the time of the invention would have had “a bachelor’s degree in electrical engineering, computer science, or a similar field; and at least two years of experience in the wager based gaming industry.” Pet. 23 (citing Ex. 1007 ¶ 28). Petitioner states that “[a] person with less education but more relevant practical experience may also meet this standard.” *Id.* (citing Ex. 1007 ¶ 28).

¹ The parties have not directed us to any such objective evidence.

Patent Owner does not contest Petitioner’s proposed definition of the level of ordinary skill in the art. *See generally* PO Resp. We note that Patent Owner’s declarant, Dr. Vancura, uses essentially the same definition as Petitioner. *See* Ex. 2001 ¶ 33; Ex. 2007 ¶ 46.

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

C. Claim Construction

In an *inter partes* review, claims are construed using the same claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b), including construing the claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention” and “after reading the entire patent.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 1321 (Fed. Cir. 2005) (en banc). In addition to the specification and prosecution history, we also consider use of the terms in other claims and extrinsic evidence including expert and inventor testimony, dictionaries, and learned treatises, although extrinsic evidence is less significant than the intrinsic record. *Id.* at 1312–17. Usually, the specification is dispositive, and it is the single best guide to the meaning of a disputed term. *Id.* at 1315.

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

Petitioner states that “[n]o terms of the ’779 Patent Challenged Claims require construction beyond their plain and ordinary meaning.” Pet. 23 (citing Ex. 1007 ¶¶ 54–55). “[Patent Owner] agrees that the terms of the ’779 [p]atent have their plain and ordinary meaning,” and states that it “accepts (for purposes of this IPR) the claim construction guidance of the DRP according to the DRP Decision.” PO Resp. 12–14.

The DRP interpreted two claim terms, as set forth below. We note that we discuss the meaning of “fixed odds single” in § II.G below regarding dependent claims 5, 7, and 23.

1. The “Continuously” Recitations

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

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

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

DRP Dec. 14–15 (all but first alteration in original). We adopt these interpretations of the “continuously” recitations. *See* Inst. Dec. 13–14.

2. “*In Real Time*”

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

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

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

. . . .

generate, by the system controller, an option in real time for the participant to one or more of fully cash out of the wager or partially cash out of the wager prior to a conclusion of the wagering event for at least a portion of the award.

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

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

action occurs while the wagering event is being broadcast, and with sufficient frequency to promptly capture developments during the broadcast that may affect the odds of the event.

DRP Dec. 21. We adopt this interpretation of “in real time.” *See* Inst. Dec. 14–15.

D. Overview of the Asserted Prior Art

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

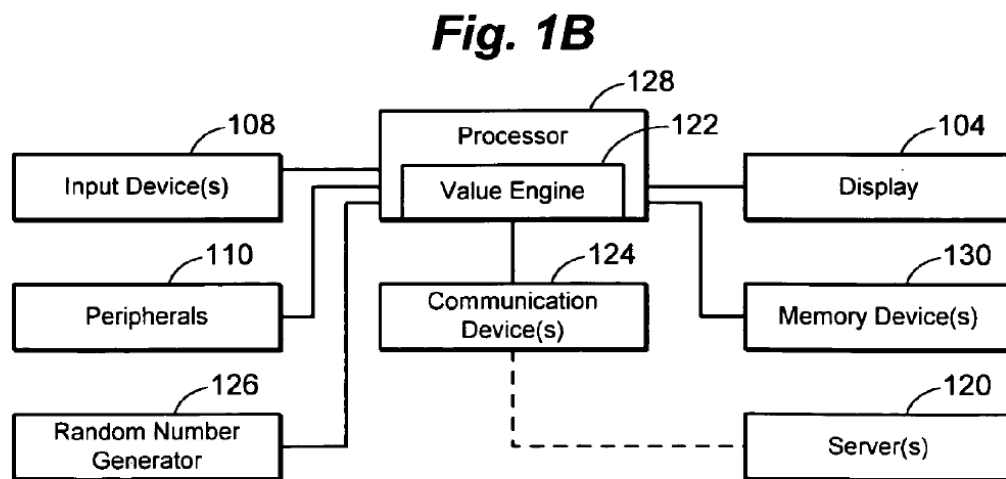


Figure 1B shows a block diagram of a gaming machine 100, including value engine 122. *Id.* ¶ 40. The value engine “is configured to evaluate game

outcomes at various stages of a game” and “determine a monetary or cash value for the current game outcome and present this value to a player.” *Id.* ¶ 33. The current cash value may be determined in a number of ways, such as by averaging the awards from all likely winning outcomes or selecting the median of such winning amounts. *Id.* ¶ 89. The player may choose to accept the presented cash value and forgo the opportunity to win a larger award. *Id.* ¶ 34.

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

E. Petitioner’s Obviousness Challenge

Petitioner argues that claims 1–3, 5–10, 16–18, and 21–25 would have been obvious in view of Scott and the general knowledge of a person of ordinary skill in the art. Pet. 83–86. In support of its showing, Petitioner relies upon the Crevelt Declaration. *Id.* (citing Ex. 1007). We have reviewed the parties’ briefs and the evidence of record and determine that, for the reasons explained below, Petitioner has shown, by a preponderance of the evidence, that claims 1–3, 5–10, 16–18, and 21–25 would have been obvious in view of Scott, and that Petitioner has set forth reasoning with

rational underpinning why it would have been obvious to modify Scott's system.

1. Independent Claim 1

a. The Preamble

Claim 1 recites “[a] system.” Ex. 1001, 51:15. Petitioner argues that Scott discloses electronic wagering games and systems. Pet. 28 (citing Ex. 1006 ¶ 2, Figs. 1A–1B; Ex. 1007 ¶¶ 63–66). Petitioner argues that the system comprises multiple gaming machines 100 connected to gaming server 120 by a network. *Id.* at 29–30 (citing Ex. 1006 ¶¶ 25, 55, 96, Fig. 1B; Ex. 1007 ¶ 65).

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

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

Accordingly, for the foregoing reasons, to the extent the preamble is limiting, Scott supports Petitioner's contentions.

b. The Processor Recitation

Claim 1 recites “a processor operatively coupled to a memory configured to store computer-readable instructions that, when executed by the processor, cause the processor to” perform a number of operations. Ex. 1001, 51:16–18. Petitioner maps Scott's processor 128, including value engine 122, to the recited processor, memory devices 130 to the recited memory, and machine readable code to the recited computer-readable

instructions. Pet. 30–31 (citing Ex. 1006 ¶¶ 15, 48, 50–52, 57, Fig. 1B; Ex. 1007 ¶¶ 67–75).

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

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

Accordingly, for the foregoing reasons, Scott supports Petitioner’s contentions.

c. The First Receive Recitation

Claim 1 recites “receive, by a trading engine module of a system controller, a wager on a wagering event from one or more input devices via a communications interface, the wager input via a user interface of the one or more input devices.” Ex. 1001, 51:19–23. Petitioner maps Scott’s “wagering machines, gaming servers, and value engines, individually or collectively,” to the recited system controller, value engine 122 to the recited trading engine module, the gaming machine’s display device 104 to the recited input device, and the display device’s touch screen display to the recited user interface. Pet. 31–32, 34–35 (citing Ex. 1006 ¶¶ 33, 42, 45, 61,

70, 75; Ex. 1007 ¶¶ 78, 82; Ex. 1001, 5:16–20, 9:26–31). Petitioner argues that Scott’s value engine receives an amount wagered on various games, such as poker games, card games, or slot games, from a player. *Id.* at 33–34 (citing Ex. 1006 ¶¶ 10, 35, 44, 61, 82–83, Fig. 5; Ex. 1007 ¶ 81). Petitioner notes that Scott’s value engine may be part of the processor or may be a separate component, and argues that the value engine is in communication with the gaming machines in both embodiments. *Id.* at 31, 35–36 (citing Ex. 1006 ¶¶ 50, 55, Fig. 1B; Ex. 1007 ¶¶ 82–84).

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

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

Accordingly, for the foregoing reasons, Scott supports Petitioner’s contentions.

d. The Store Recitation

Claim 1 recites “store, by the system controller, the wager in a record within a database, the record comprising wager information for one or more wagers associated with one or more participants.” Ex. 1001, 51:24–27. Petitioner maps Scott’s player tracking account to the recited database and argues that Scott’s disclosure of storing “information related to the play or execution of the game,” including information regarding the amounts

wagered and odds for a winning outcome, constitutes a record. Pet. 36–38 (citing Ex. 1006 ¶¶ 47, 51; Ex. 1007 ¶¶ 86–94). Additionally, Petitioner argues that it would have been obvious to store records regarding players’ wagers in a database because it was well known to do so, the ’779 patent recognizes such database use as prior art, and it would have been merely common sense to do so. *Id.* at 83–85.

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

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

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

Ex. 1007 ¶ 90. Mr. Crevelt relies on the disclosure of a reference² incorporated into the ’779 patent to support his assertion. *Id.* (citing Ex. 1001, 26:30–32; Ex. 1004 ¶¶ 5, 96); *see also id.* ¶ 51 (discussing DeWaal); Pet. 37–38 (discussing DeWaal). Mr. Crevelt testifies that an

² U.S. Patent No. 8,105,149 B2 to DeWaal. Petitioner includes the publication of the application resulting in this patent as Exhibit 1004 (“DeWaal”).

ordinarily skilled artisan would understand Scott’s “player tracking account” to be a structured dataset. Ex. 1007 ¶ 90.

Patent Owner’s witness, Dr. Vancura, agrees that Scott’s player tracking account stores wager information. *See* Ex. 2001 ¶ 103 (Dr. Vancura testifying that, in his experience, “player tracking systems store a player’s wagering information”).

Additionally, we are persuaded that Petitioner’s obviousness rationales are supported by rational underpinning. Petitioner correctly notes that Scott discloses that its memory devices “may utilize various storage technologies to accomplish data storage and retrieval.” Ex. 1006 ¶ 53; Pet. 84 (citing same). We are persuaded by Petitioner’s arguments that, given the widespread use of databases to store data in computer systems and computerized gaming systems in particular, it would have been obvious to an ordinarily skilled artisan to store Scott’s player tracking account data as records in a database. *See* Pet. 84–85 (citing Ex. 1001, 8:19–26, 26:29–32; Ex. 1004 ¶¶ 5, 96; Ex. 1006 ¶ 53; Ex. 1007 ¶ 92); *see also* Ex. 2001 ¶ 103 (Dr. Vancura testifying that, in his experience, “player tracking systems store a player’s wagering information”).

Accordingly, for the foregoing reasons, Scott and Mr. Crevelt’s testimony support Petitioner’s contentions.

e. The Retrieve Recitation

Claim 1 recites “continuously retrieve, by the system controller, data in real time related to a progress of the wagering event.” Ex. 1001, 51:28–29. Petitioner argues that Scott’s value engine retrieves data related

to a game in the form of a player's current game symbols or indicia.³ *Id.* at 38, 42. Petitioner argues that Scott's value engine continuously retrieves this data because Scott uses it to determine a current cash value of the player's cards or symbols and Scott determines the current cash value "as each individual playing card or slot symbol is revealed." *Id.* at 39 (citing Ex. 1006 ¶¶ 67, 83). According to Petitioner, "Scott discloses that the calculation and presentation of the current cash value is 'continuous[]' throughout the wagering game in that it 'may continue with newly presented game symbols until the game is over . . . or until the player accepts a current cash value for his or her set of symbols.'" *Id.* (alterations in original) (emphasis omitted) (citing Ex. 1006 ¶ 81). Petitioner reproduces and annotates Scott's Figures 4 and 5 to identify what Petitioner characterizes as Scott's "continuous loop" of operation. *Id.* at 40–42.

Patent Owner argues that an ordinarily skilled artisan "would understand 'continuously retrieve . . . data in real time related to a progress of the wagering event' to require data retrieval by a repeated, regular polling operation that is sufficiently frequent to promptly capture relevant developments in the wagering event as they occur." PO Resp. 20 (alteration in original) (citing Ex. 2007 ¶¶ 73–74). Patent Owner argues that "the '779 [p]atent is primarily directed to sports wagering," which requires monitoring events "external to the claimed system" to capture "time-sensitive, often fluid, game developments," including "in-game time." *Id.* at 21–25 (citing Ex. 2007 ¶¶ 45, 50, 71–74; Ex. 2014, 58:23–59:12).

³ We note that, at page 38 of the Petition, Petitioner also lists other types of data, but Petitioner limits its mapping to the player's current game symbols or indicia at page 42 of the Petition.

Petitioner replies that Scott’s “value engine recalculates the ‘current cash value’ in response to events that ‘may change the odds . . . of a game.’” Pet. Reply 3 (alteration in original) (citing Ex. 1006 ¶ 36; Pet. 47; Inst. Dec. 22–23). Petitioner argues that “[Patent Owner’s] arguments are foreclosed by the DRP’s binding precedent.” *Id.* at 4. Petitioner argues that “[t]he challenged claims are not limited to ‘live sports’ wagering.” *Id.* at 7 (citing Ex. 1059, 65:21–66:16; DRP Dec. 20).

Patent Owner replies that the DRP distinguished between discrete time points in computer operations and discrete time points of the wagering event. PO Sur-reply 3. Patent Owner argues that the DRP included the former in its construction and excluded that latter. *Id.* Patent Owner argues that Scott only retrieves data “at predetermined times of its wagering games.” *Id.* at 21–22.

Patent Owner’s arguments are largely directed to features not recited in the independent claims and are therefore unavailing. Patent Owner argues that “the ’779 [p]atent is primarily directed to sports wagering” and, thus, the system must be capable of retrieving “‘extremely time sensitive’ information.” PO Resp. 21, 28. The independent claims, however, recite only a “wagering event.” Although, as Patent Owner points out, dependent claim 3 recites that the wagering event may be a sporting event (*see* PO Resp. 9, 21, 25), claim 3 also provides that the recited wagering event may be “slot machines” or “poker,” which do not necessarily seem to involve “extremely time sensitive” information. Notably, Patent Owner’s witness, Dr. Vancura, testifies that the claims of the ’779 patent are not limited to sporting events. Ex. 1059, 64:19–65:3, 65:22–66:5.

Furthermore, we disagree with Patent Owner’s interpretation that the DRP excluded retrieving data at all discrete time points. *See, e.g.*, PO Resp. 27–28. Rather, the DRP explained that “in real time” “cannot cover only discrete determinations, such as the end of a period or halftime during a sporting event,” which are unrelated to developments that may affect the odds of the wagering event, but “in real time” does “encompass retrieving or recalculating while the wagering event is occurring, and with sufficient frequency to promptly capture developments that may affect the odds of the event.” DRP Dec. 19, 21; Inst. Dec. 14–15. Notably, the DRP did not exclude *all* discrete time points of the wagering event from “continuously retrieve . . . data,” instead interpreting column 17, lines 52–57 of the ’779 patent

to indicate that “continuously evaluating” the wagering event and incoming wagers does not include determining an appropriate cash out value at *predetermined discrete time points that do not impact the odds of winning*, such as halftime of a sporting event. *We determine, however, that this example of a noncontinuous system does not evidence an intent to exclude from the scope of the claims any system or method that performs calculations at “discrete time points.”* This example illustrates only that the claim term “continuous” does not encompass determining cash out value at *certain* discrete time points, such as halftime or other predetermined time points in the event.

DRP Dec. 14 (emphases added); *see also id.* at 14 (“This construction does not encompass retrieving data on a predetermined time schedule (i.e., discrete time points of the wagering event) *that is independent of the occurrence of developments that may affect the odds*, such as capturing data at halftime of a sporting event.” (emphasis added)), 15 (“Notably, the specification [of the ’779 patent] does not distinguish continuously

evaluating from determining cash value at other times, such as when . . . an event affecting the odds (*such as dealing of a card*) occurs.” (emphasis added)).

Continuing, Patent Owner argues that “Scott’s functionality—including its purported ‘retriev[al]’—is based entirely on predetermined discrete points of its games, and its operations are only conducted at those discrete points.” PO Resp. 32 (alteration in original) (citing Ex. 2007 ¶¶ 107, 114, 121–122). Patent Owner argues that Scott’s retrieval of data is not continuous and in violation of the DRP’s construction because it occurs “at predetermined stages, such as when a new symbol is drawn.” *Id.* at 33 (citing Ex. 2007 ¶¶ 114–121). Patent Owner argues that Scott’s references to “real time” “do[] not relate to its alleged ‘retrieve’ function at all,” and instead “relate[] to the determination and presentation of a current cash value.” *Id.* at 35 (citing Ex. 1006 ¶ 67; Ex. 2007 ¶ 101).

Petitioner replies that “nothing in the DRP’s construction excludes ‘triggering events’ from satisfying its construction, so long as those triggers ‘repeatedly’ and ‘promptly’ capture developments that ‘may affect odds.’” Pet. Reply 12 (citing DRP Dec. 14–15, 21).

We disagree with Patent Owner’s characterization of Scott. Patent Owner’s description of Scott’s data retrieval occurring when new game symbols are revealed (*see* PO Resp. 32–33) is within the DRP construction, as revealing new game symbols is a development that may affect the odds of the game. Patent Owner’s contention that Scott determines and presents the current cash value, rather than retrieves data, in real time is unavailing because, as Patent Owner recognizes, Scott’s determination of current cash value is based on game data. *See* PO Resp. 30 n.7.

Scott discloses that, as the game progresses, its value engine receives and evaluates game symbols or indicia presented to the player in a repeating cycle. Ex. 1006 ¶¶ 58, 71, 80–81. Thus, Scott’s value engine continuously retrieves data, in real time, related to the progress of the wagering event per the constructions provided in section II.C above.

Accordingly, for the foregoing reasons, Scott supports Petitioner’s contentions.

f. The Recalculate Recitation

Claim 1 recites “recalculate, by the system controller, the wager information in real time based on the continuously retrieved data.” Ex. 1001, 51:30–32. Petitioner argues that Scott’s value engine continuously recalculates the player’s odds for a winning outcome by determining the current cash value of the player’s game symbols or indicia as each new game symbol is revealed. Pet. 42–46 (citing Ex. 1006 ¶¶ 11, 21, 65, 67, 73–74, 81–83, 86, Figs. 4–5; Ex. 1007 ¶¶ 106–117).

Patent Owner does not contest this aspect of the Petition apart from its arguments presented for the Retrieve Recitation. *See generally* PO Resp.

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

value engine recalculates, in real time, the player's odds for a winning outcome per the constructions provided in section II.C above.

Accordingly, for the foregoing reasons, Scott supports Petitioner's contentions.

g. The Evaluate Recitation

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

Patent Owner does not contest this aspect of the Petition apart from its arguments presented for the Retrieve Recitation. *See generally* PO Resp.

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

Accordingly, for the foregoing reasons, Scott supports Petitioner's contentions.

h. The Determine Recitation

Claim 1 recites "determine, by the system controller, that a participant of the one or more participants is eligible to win an award based on one or

more of the wager and a potential outcome of the wagering event.”

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

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

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

Accordingly, for the foregoing reasons, Scott supports Petitioner's contentions.

i. The Generate Recitation

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

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

As discussed above, Scott discloses that its value engine calculates a current cash value of a player's in-process wager and “present[s] the player with a challenging choice to . . . accept a current cash value for his or her hand or to forgo the current cash value to attempt to achieve a winning outcome (and possibly a larger award).” Ex. 1006 ¶ 8. The value engine “is configured to evaluate game outcomes at various stages of a game” and “determine a monetary or cash value for the current game outcome and present this value to a player” in real time. *Id.* ¶¶ 33, 67. The current cash value may be determined in a number of ways, such as by averaging the

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

Accordingly, for the foregoing reasons, Scott supports Petitioner’s contentions.

j. The First Cause Recitation

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

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

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

Accordingly, for the foregoing reasons, Scott supports Petitioner’s contentions.

k. The Second Receive Recitation

Claim 1 recites “receive, by the system controller, a selection of the option for the participant from the one or more input devices prior to conclusion of the wagering event.” Ex. 1001, 51:47–49. Petitioner argues that Scott discloses providing the player with an “accept” button to allow the player to accept the presented current cash value. Pet. 61 (citing Ex. 1006 ¶¶ 56, 60, 75; Ex. 1007 ¶¶ 145–149). Petitioner argues that the value engine receives the user’s selection of acceptance of the current cash value. *Id.* at 61–63 (citing Ex. 1006 ¶¶ 14, 75, Fig. 4; Ex. 1007 ¶¶ 146, 148–149).

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

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

Accordingly, for the foregoing reasons, Scott supports Petitioner’s contentions.

l. The Second Cause Recitation

Claim 1 recites “cause, by the trading engine module, the at least the portion of the award to be presented to the participant, such that the user interface displays one or more of a confirmation that the option has been selected and a value of the at least the portion of the award.” Ex. 1001, 51:50–54. Petitioner argues that, if the player accepts the presented offer, the value engine pays the current cash value to the player. Pet. 63–64 (citing Ex. 1006 ¶¶ 56, 76; Ex. 1007 ¶¶ 150–154). Petitioner argues that an

ordinarily skilled artisan would understand that such awarding of the payment to the player is a means of presenting the payment to the player. *Id.* at 64 (citing Ex. 1007 ¶ 150). Petitioner argues the player's option to accept the current cash value is confirmed by displaying the payment amount on the player's display 104 as reflected in the player's credits. *Id.* at 64–65 (citing Ex. 1006 ¶¶ 62–63; Ex. 1007 ¶ 151).

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

Scott discloses that, if the player accepts the current cash value offer, the value engine pays that amount to the player, for example by a ticket printer, coin dispenser, or adding the amount to the player's credits. Ex. 1006 ¶¶ 56, 63. The player's display device 104 displays the player's credits. *Id.* ¶ 62, Fig. 3A.

Accordingly, for the foregoing reasons, Scott supports Petitioner's contentions.

m. Conclusion

For the foregoing reasons, on this record, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claim 1 would have been obvious in view of Scott.

F. Independent Claim 16

Independent claim 16 recites a system for conducting a wagering event comprising a system controller having a memory with computer-readable instructions stored thereon that, when executed, cause the system controller to perform the steps recited in claim 1. Ex. 1001, 54:1–45. Claim 16 also recites “a plurality” in instances where claim 1 recites “one or

more.” *Id.* For example, claim 16 recites “a plurality of input devices” and receiving a “plurality of wagers input by a plurality of participants.” *Id.* Petitioner relies on its showing made for claim 1 regarding the similar recitations of claim 16. Pet. 76–83. Regarding the recitations of “plurality of,” Petitioner argues that “Scott . . . discloses that the system of claim 1 can be utilized by ‘a number of players,’ including at least ‘a player’ and ‘another player,’ such that they are ‘electronically connected’ to the system via their respective wagering machines.” *Id.* at 77–78 (citing Ex. 1006 ¶ 96). Additionally, Petitioner argues that it would have been merely common sense to use Scott’s system with multiple players. *Id.* at 85–86.

Patent Owner argues that claim 16 requires a single trading engine module that receives a plurality of wagers from multiple bettors to place wagers on the same wagering event, but Petitioner and Mr. Crevelt rely on a plurality of Scott’s value engines. PO Resp. 37–40. Patent Owner argues that Scott discloses a marketplace where individual players playing individual games can exchange symbol sets, but it does not describe a system where multiple participants place wagers on the same wagering event. *Id.* at 40–43 (citing Ex. 1006 ¶¶ 92–96; Ex. 2007 ¶¶ 142–144). Additionally, Patent Owner argues that “[r]epeating’ or ‘reproducing’ the single-player games of Scott . . . would not approach constructing a multi-participant wagering system according to [c]laim 16.” *Id.* at 44.

Petitioner replies that “[c]laim 16 recites ‘a wagering event’ and ‘a trading engine module.’ By default, these terms should be interpreted to mean ‘one or more’ of each.” Pet. Reply 14 (citing *ABS Glob., Inc. v. Cytonome/ST, LLC*, 84 F.4th 1034, 1040 (Fed. Cir. 2023)). Moreover, argues Petitioner, “[t]he Petition further states the gaming machines in Scott

may be configured as a client in a client/server architecture, where multiple gaming machines communicate with a central trading engine module at a server,” and an ordinarily skilled artisan “would understand or find it obvious that the multiple gaming machines of Scott’s system would communicate with the same central controller, including a single value engine, to engage in the same underlying game instance of ‘keno,’ ‘bingo,’ and other multiplayer games disclosed by Scott.” Pet. Reply 16–17 (citing Pet. 29; Ex. 1007 ¶ 84). Petitioner argues that Patent Owner misquotes the Petition, which relies on “Scott’s disclosure of ‘*one or more* trading engine modules,’ as opposed to just the ‘multiple (plural) “trading engine modules”’” as argued by Patent Owner. *Id.* at 18 (citing Pet. 82; PO Resp. 39).

Patent Owner replies that Petitioner’s claim construction arguments are new and improper, and argues that “a wagering event among one or more participants” in the preamble of claim 16 requires that multiple bettors place wagers on the same wagering event. PO Sur-reply 10. Although the preamble states “one or more participants,” Patent Owner argues that “[a] wagering event cannot be conducted ‘among’ one participant.” *Id.* Patent Owner argues that “[t]he ‘input devices’ of Scott are not multiple ‘gaming machines’ connected to a server; they are input devices (such as buttons or joysticks) on the individual gaming machines, each of which has its own trading engine module.” *Id.* at 12.

Initially, we disagree with Patent Owner’s argument that Petitioner’s claim construction arguments are new and, therefore, improper. Petitioner’s arguments are properly responsive to Patent Owner’s arguments in its Response that claim 16 requires multiple bettors to place wagers on the same

wagering event. *See, e.g.*, PO Resp. 37 (“Petitioner’s arguments regarding independent [c]laim 16 fail for the additional reason that Scott fails to teach or suggest a system that permits multiple bettors (or participants) to place wagers on the same wagering event . . .”).

However, we agree that claim 16 recites a system where multiple participants place wagers on the same wagering event. Claim 16 uses both plural and singular terms, indicating that the recited plural terms refer to a plurality of elements and the recited singular terms refer to a single element. For example, claim 16 recites “receive, by the trading engine module, a plurality of wagers on the wagering event from the plurality of input devices via the communications interface, the plurality of wagers input by a plurality of participants via the user interfaces of respective input devices from the plurality of input devices.” Ex. 1001, 54:11–16. We interpret this language to mean that a single trading engine module receives wagers on a single wagering event from a plurality of participants each using a different input device.

Scott discloses “a number of players electronically connected” where one player may sell symbols to “other players.” Ex. 1006 ¶ 96. Scott also discloses various types of games, including games typically played by more than one player. *See, e.g., id.* ¶ 44 (disclosing “Class II” games, keno, lottery, bingo). Thus, Scott at least suggests a system where multiple participants engage in the same game. We are persuaded that it would have been obvious to use Scott’s gaming machine in a multiplayer environment. Mr. Crevelt testifies that “it is an obvious matter of common sense to take a system that can be for use by one player and put it to use for multiple players” and “if one player is able to utilize Scott’s system described above

in accordance [with] claim 1, but multiple players wanted to play, common sense dictates that such systems should be reproduced for multiple players.” Ex. 1007 ¶¶ 183–184. We agree, especially given Scott’s strong suggestion that its system may be used to host multiplayer games as noted above. Patent Owner’s arguments to the contrary are unavailing, as it is not clear to us, and Patent Owner has not explained adequately, how reproducing Scott’s system for multiple players, as proposed by Petitioner, would not result in a multiplayer wagering system.

For the foregoing reasons, on this record, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claim 16 would have been obvious in view of Scott.

G. Dependent Claims 5, 7, and 23

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

Ex. 1001, 52:24–32. Claims 7 and 23 depend directly from claim 1 and 16, respectively, and similarly recite specific types of wagers including “fixed odds single.” *Id.* at 52:44–51, 55:41–48. Regarding claim 5, Petitioner argues that Scott discloses a fixed odds single wager because “a ‘bingo’ game . . . is a known fixed odds game in that all bingo cards have the same odds of winning no matter what numbers are on them at the initiation of the

game.” Pet. 68 (emphasis omitted) (citing Ex. 1006 ¶ 44; Ex. 1007 ¶ 160).

Petitioner also argues that an ordinarily skilled artisan

would have known that various other wagering games disclosed in Scott involved “fixed odds single” wagers, or that it would be obvious to implement them as fixed odds games, like certain video poker games and slot games in that all players have an equal chance of obtaining a winning outcome at the initiation of the game.

Id. (emphasis omitted). Petitioner argues that “certain video poker games and slot games” involve fixed odds single wagers because “all players have an equal chance of obtaining a winning outcome at the initiation of the game.” *Id.* Petitioner relies on the same arguments to satisfy the “fixed odd single wagers” recitations of claim 7 and claim 23. *Id.* at 72, 83.

Patent Owner argues that “‘fixed odds’ refers to wagers where a bettor is offered a fixed multiplier for wagering on a given outcome, and the multiplier (and therefore the potential payout) is fixed at the time the bettor places the wager.” PO Resp. 46 (citing Ex. 2007 ¶ 135). According to Patent Owner, “the term ‘single’ in ‘fixed odds single’ refers to the fact that the wager is on a single outcome.” *Id.* at 47–48; *see also* Ex. 2007 ¶ 85 (“[An ordinarily skilled artisan] would understand a ‘single’ involves the selection of one outcome, in contrast to a ‘parlay,’ ‘accumulator,’ or ‘multiple’ which involve the bettor selecting the outcome of two or more such outcomes, each of which must occur for a bettor to win his/her bet.” (emphasis omitted) (footnotes omitted)). Patent Owner argues that bingo is not a fixed odds single wager because “it has a ‘pot’ available to be won, which is either pre-determined by the operator, or depends on the number of cards in play” and “a bettor’s potential winnings do not scale with their wager.” PO Resp. 51 (citing Ex. 2007 ¶¶ 136–137).

Petitioner replies by agreeing that “the term ‘fixed odds single’ [refers] to a game where ‘the odds of winning are fixed, and the wager is on a single outcome.’” Pet. Reply 19 (quoting Ex. 1007 ¶ 160).⁴ Petitioner argues that “Scott’s disclosure of bingo and various casino games, like poker and slot games, where the odds of winning are ‘fixed,’ or known prior to gameplay,” are fixed odds single wagers “because each of these games would be required to exhibit fixed, known odds in order to obtain a winning outcome, as prescribed by regulations for electronic gaming devices at the relevant time.” Pet. Reply 19 (citing Pet. 68; Ex. 1007 ¶ 160; Ex. 1061, 4:39–49, 6:33–45; Ex. 1062, 58; Ex. 1064 ¶¶ 63–66). Petitioner argues that Patent Owner’s interpretation of “fixed odds single” is “inconsistent with the ’779 [p]atent’s specification, which discloses ‘fixed-odds betting terminals,’” which Petitioner asserts to provide bingo games. *Id.* at 20 (citing Ex. 1001, 12:36; Ex. 1058, 28;⁵ Ex. 1059, 89:1–90:7). Petitioner argues that the poker-type game illustrated in Scott’s Figure 3A meets Patent Owner’s interpretation of “fixed odds single” because it “shows the amount to be won in relation to the amount bet.” *Id.* at 21.

Patent Owner replies that “fixed odds single” is a “term[] of art that [an ordinarily skilled artisan] would understand as denoting sportsbook or racebook wagers.” PO Sur-reply 14 (citing Ex. 2007 ¶¶ 45–46, 81–90, 125–128, 136).

⁴ Although Petitioner cites to “EX1007, ¶ 106,” the quoted language appears in paragraph 160.

⁵ Petitioner cites to the original pagination rather than the added exhibit pagination. We do likewise for consistency.

Both parties' witnesses interpret "fixed odds" to mean the odds/multiplier of the wager is fixed at the time the wager is placed. *See, e.g.*, Ex. 1007 ¶ 160 ("the wager on a bingo game would be a 'fixed odds single' wager *when placed* because the odds of winning are fixed" (original emphasis omitted, our emphasis added)); Ex. 2007 ¶ 135 ("'fixed odds' in the context of a 'fixed odds single' [means] a wager where a bettor is offered a multiplier for wagering on a given outcome(s), and where the multiplier and therefore the potential payout are fixed at the time the bettor places their desired wager"). It necessarily follows that the payout for the wager would also be fixed at the time the wager is placed. Petitioner does not dispute Patent Owner's interpretation that "single" means the wager is for the outcome of a single event, as opposed to, for example, a parlay wager that involves the outcomes of multiple events. *See, e.g.*, Pet. Reply 19 ("[an ordinarily skilled artisan] would understand the term 'fixed odds single' to refer to a game where 'the odds of winning are fixed, and the wager is on a single outcome'"). Accordingly, we interpret "fixed odds single" to mean a wager on the outcome of a single event in which the odds/multiplier is fixed at the time the wager is placed.

The parties disagree, however, on whether bingo is a fixed odds single wagering event. Dr. Vancura testifies that bingo does not involve a fixed odds single wager because "[b]ingo does not have a 'fixed odds' payout — it has a 'pot' available to be won, which is either pre-determined by the operator . . . , or more commonly, depends on the number of cards in play wherein part of the purchase price of each card is contributed to a jackpot." Ex. 2007 ¶ 136. Mr. Crevelt testifies that bingo does involve a fixed odds single wager because all bingo cards have the same chance of winning prior

to initiation of the game. Ex. 1007 ¶ 160. Mr. Crevelt does not address meaningfully the fact that the odds of winning at bingo are a function of the number of cards in play—as the number of cards in play increases, the chances that another card first achieves “bingo” increase and the initial player’s chance of winning decreases. Nor does Petitioner explain persuasively how the disclosure of a fixed odds betting terminal in the ’779 patent supports its assertion that bingo is a fixed odds single wager. See Pet. Reply 20. Notably, a reference relied upon by Petitioner explains that fixed odds betting terminals host games other than fixed odds games. See Ex. 1058, 28 (explaining that fixed odds betting terminals “are machines on which can be played fixed odds and betting games”); *see also* Tr. 23:12–22 (Petitioner’s counsel agreeing that there has been some scope creep regarding fixed odds betting terminals such that they include games other than fixed odds single wagers). Thus, we agree with Patent Owner that bingo is not a fixed odds single wager.

Patent Owner’s witness, Dr. Vancura, testifies that “fixed odds single[]” wagers are “most commonly associated with sportsbooks.” Ex. 2007 ¶ 81. However, Dr. Vancura does not testify that an ordinarily skilled artisan would associate fixed odds wagers *exclusively* with wagers on sporting events. Moreover, Dr. Vancura testifies that the pay tables used in casino games are known as multipliers. Ex. 1059, 34:9–11. As Patent Owner argues that “fixed odds” means the multiplier is fixed at the time the wager is placed (*see* PO Resp. 46), it follows that casino games using pay tables are fixed odds wagers per Patent Owner’s proposed interpretation.

We note that Dr. Vancura testifies that “[a] fixed odds single is not a wager on a game being *played by* the bettor and therefore is not a wager type

[an ordinarily skilled artisan] would associate with slot type games, poker type games, keno games or bingo games.” Ex. 2007 ¶ 83. However, Dr. Vancura does not provide any supporting evidence for this statement. We give little weight to this conclusory assertion; even if we were to agree that “fixed odds single” wagers are only associated with sporting events, we are not persuaded that a person engaging in such a sporting event would be unable to place a “fixed odds single” wager on that sporting event, and neither Dr. Vancura nor Patent Owner explain cogently why this would be.

We agree with Petitioner’s contentions that Scott’s disclosure of an electronic poker game, including a payable, meets Patent Owner’s interpretation of a “fixed odds single” wager. *See* Pet. Reply 21–22 (citing Ex. 1006 ¶¶ 10, 61, Fig. 3A). Scott discloses that its poker game includes a “‘bet’ button 108B [that] may be used to wager a desired amount of credits or currency” and “paytable 308 . . . to allow a player to determine the winning hands or outcomes and their associated award.” Ex. 1006 ¶ 61. As noted above, Patent Owner argues that a “fixed odds wager” is a wager in which the bettor is offered a fixed multiplier for wagering on a given outcome and Patent Owner’s witness, Dr. Vancura, testifies that an ordinarily skilled artisan would interpret a casino game pay table as a multiplier (Ex. 1059, 34:9–11).

For the foregoing reasons, on this record, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claims 5, 7, and 23 would have been obvious in view of Scott.

H. Dependent Claims 2, 3, 6, 8–10, 17, 18, 21, 22, 24, and 25

Claims 2, 3, 6, 8–10, 17, 18, 21, 22, 24, and 25 depend, directly or indirectly, from claim 1 or claim 16. Petitioner contends that Scott teaches or suggests the recitations of these claims and supports these contentions with declaration testimony. Pet. 65–76, 83 (citing Ex. 1007). Patent Owner does not contest Petitioner’s challenges to these claims apart from its contentions regarding claims 1 and 16. PO Resp. 44.

We determine that Petitioner’s contentions regarding these dependent claims are fully supported by the record. Accordingly, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claims 2, 3, 6, 8–10, 17, 18, 21, 22, 24, and 25 would have been obvious in view of Scott. *See In re NuVasive*, 841 F.3d 966, 974 (Fed. Cir. 2016) (“The Board, having found the only disputed limitations together in one reference, was not required to address undisputed matters.”).

III. CONCLUSION⁶

Based on the evidence presented with the Petition, the evidence introduced during the trial, and the parties’ respective arguments, Petitioner

⁶ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. §§ 42.8(a)(3), (b)(2).

has shown, by a preponderance of the evidence, that claims 1–3, 5–10, 16–18, and 21–25 of the '779 patent are unpatentable. In summary,

Claim(s)	35 U.S.C. §	Reference(s)/ Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–3, 5–10, 16–18, 21–25	102	Scott ⁷		
1–3, 5–10, 16–18, 21–25	103	Scott	1–3, 5–10, 16–18, 21–25	
Overall Outcome			1–3, 5–10, 16–18, 21–25	

IV. ORDER

Accordingly, it is

ORDERED that claims 1–3, 5–10, 16–18, and 21–25 of the '779 patent have been shown to be unpatentable; and

FURTHER ORDERED that, because this is a final written decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

⁷ We do not reach this challenge because we have determined that Petitioner has established, by a preponderance of the evidence, that all of the challenged claims would have been obvious in view of Scott.

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