

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD. and
NINTENDO OF AMERICA INC.,
Petitioners,

v.

GAMEVICE, INC.,
Patent Owner.

PTAB Case No. IPR2023-00643

Patent No. 10,391,393

PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE

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EXHIBIT LIST

- Ex. 1001 U.S. Patent No. 10,391,393 (“’393 patent”)
- Ex. 1002 Declaration of Garry Kitchen (“Kitchen”)
- Ex. 1003 U.S. Patent Application Publication No. 2001/0045938 A1 (“Willner”)
- Ex. 1004 Translation of Korean Patent No. 10-2011-0116892 (“Park”) with Korean Version and Translation Certification
- Ex. 1005 U.S. Patent No. 9,539,507 B2 (“Schoenith”)
- Ex. 1006 International Patent Application No. WO 2014/079264 A1 (“Kessler”)
- Ex. 1007 U.S. Patent Application Publication No. US 2012/0271967 A1 (“Hirschman”)
- Ex. 1008 U.S. Provisional Patent Application No. 61/477,387
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- Ex. 1010 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01521, Paper 34 (PTAB Mar. 10, 2020)
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- Ex. 1012 U.S. Patent No. 9,126,119 (“’119 patent”)
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- Ex. 1015 Nintendo's First Supplemental Response to Gamevice Interrogatory Concerning Nintendo's Invalidity Contentions, *Portable Gaming Console Systems with Attachable Handheld Controllers and Components Thereof II*, ITC Inv. No. 337-TA-1197 (June 23, 2020)
- Ex. 1016 Excerpts of Gamevice's Supplemental Objections and Responses to Nintendo of America Inc.'s First and Third Sets Interrogatories, *Portable Gaming Console Systems with Attachable Handheld Controllers and Components Thereof II*, ITC Inv. No. 337-TA-1197 (July 2, 2020)
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- Ex. 1021 Gamevice Inc's Case Management Conference Report, *Gamevice Inc. v. Nintendo Co., Ltd.*, No. 3:19-cv-1942-RS (N.D. Cal.), ECF 206 (Jan. 27, 2022)
- Ex. 1022 Nintendo's Notice of Motion and Motion for Rule 11 Sanctions, *Gamevice Inc. v. Nintendo Co., Ltd.*, No. 3:19-cv-1942-RS (N.D. Cal.), ECF 216 (Mar. 30, 2022)
- Ex. 1023 Further Case Management Scheduling Order, *Gamevice Inc. v. Nintendo Co., Ltd.*, No. 3:19-cv-1942-RS (N.D. Cal.), ECF 219 (Apr. 11, 2022)

- Ex. 1024 Order Denying Motion for Rule 11 Sanctions, *Gamevice Inc. v. Nintendo Co., Ltd.*, No. 3:19-cv-1942-RS (N.D. Cal.), ECF 225 (May 18, 2022)
- Ex. 1025 Memorandum from Katherine K. Vidal to Members of the Patent Trial and Appeal Board on Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022), available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf
- Ex. 1026 Federal Judicial Center, United States District Courts, National Judicial Caseload Profile (June 30, 2022)
- Ex. 1027 *Code200, UAB v. Bright Data Ltd.*, IPR2022-00861, Paper 18 (PTAB Aug. 23, 2022) (Director Decision)
- Ex. 1028 Order Construing Claims and Requesting Supplemental Briefing Regarding Motion for Summary Judgment, *Gamevice, Inc. v. Nintendo Co., Ltd.*, No. 18-cv-1942-RS (N.D. Cal.), ECF 241 (Jan. 19, 2023)
- Ex. 1029 Gamevice, Inc.’s Supplemental Opposition to Nintendo’s Motion for Summary Judgment, No. 18-cv-1942-RS (N.D. Cal.), ECF 244 (Feb. 23, 2023)
- Ex. 1030 Appendix A (Claim Listing for Challenged Claims of ’393 Patent)
- Ex. 1031 Declaration of Grant Kinsel
- Ex. 1032 Declaration of Kevin Zeck

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- Ex. 1033 Reply Declaration of Garry Kitchen (“Kitchen Reply”)
- Ex. 1034 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01522, Ex. 1002
- Ex. 1035 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01522, Paper 15
- Ex. 1036 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01521, Ex. 1002

- Ex. 1037 Gamevice’s Opposition to Nintendo’s Motion for Summary Judgment, *Gamevice, Inc. v. Nintendo Co., Ltd.*, No. 18-cv-1942-RS (N.D. Cal.), ECF 267 (Sept. 28, 2023)
- Ex. 1038 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01522, Paper 10
- Ex. 1039 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01521, Paper 9
- Ex. 1040 Moga Ace Power User Manual
- Ex. 1041 Deposition Transcript of Alexander Slocum
- Ex. 1042 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01522, Paper 2
- Ex. 1043 *Nintendo Co. v. Gamevice, Inc.*, IPR2018-01521, Paper 2

CLAIM LISTING

1(pre)	A combination comprising:
1(a)	a computing device;
1(b)(1)	a pair of confinement structures, the pair of confinement structures interacting with the computing device and adjacent at least two opposing sides of the computing device, but not more than three sides of the sides of the computing device,
1(b)(2)(a)	each of the pair of confinement structures comprising a communication link,
1(b)(2)(b)	each of the communication links configured for electronic communication with the computing device; and
1(c)(1)	a rigid structural bridge disposed between and secured to the pair of confinement structures,
1(c)(2)(a)	the rigid structural bridge comprising a passageway between the pair of confinement structures,
1(c)(2)(b)	the passageway promotes electrical communication between the communication link of a first confinement structure of the pair of confinement structures and the computing device, the passageway further promotes electrical communication between the communication link of a second confinement structure of the pair of confinement structures and the computing device; and
1(d)(1)	a pair of electronic game control modules,
1(d)(2)	each electronic game control module of the pair of electronic game control modules is secured to and interacts with a corresponding confinement structure of the pair of confinement structures,
1(d)(3)	each electronic game control module in electronic communication with the communication link of its corresponding confinement structure,

1(d)(4)	wherein each electronic game control module is a separate and distinct structure from each of their corresponding confinement structures, forming no structural portion of their corresponding confinement structures, and
1(d)(5)	in which each of the pair of confinement structures are separate and distinct structures from the structural bridge, forming no structural portion of the structural bridge.

I. INTRODUCTION

Gamevice concedes that the prior art cited in Grounds 1-3 (Willner/Park, Schoenith/Park, Schoenith/Kessler) renders obvious nearly all limitations of the challenged claims. And while Gamevice *says* it is contesting two limitations—1(b)(1) (“confinement-structures limitation”) and 1(d)(4) (“separate-and-distinct limitation”)—in fact, it only contests the first. Indeed, other than reciting 1(d)(4), Gamevice hardly even mentions it, offering effectively no analysis of why the proffered art does not meet that limitation.

Collateral estoppel bars Gamevice’s argument as to the limitation it actually challenges. In IPR2018-01521 and IPR2018-01522 (the “’119 IPRs”), the Board found that Willner/Park and Schoenith/Park rendered obvious the confinement-structures limitation in the ’119 patent. Gamevice provides neither legal nor factual justification to revisit that decision, and the challenged claims can, and should be, cancelled without further analysis.

Gamevice’s arguments relating to Grounds 1-3 also fail on their merits. Gamevice asserts that, when combined with the adjustable bridge of Park or Kessler, the sidewalls of Willner or Schoenith do not prevent the computing device from “coming out.” According to Gamevice, that means the sidewalls are not “confinement structures.” Putting aside that the Board already found otherwise, Gamevice’s argument requires the Board to construe “confinement structures” in a way that

Gamevice has resisted for years, making Gamevice's position not only incorrect, but disingenuous too. Gamevice also criticizes Nintendo's motivations to combine, but these arguments rest on an incorrect obviousness standard and conclusory expert opinions.

As to Ground 4 (Hirschman), Gamevice says it is challenging several limitations, but Gamevice's expert confirmed that it is really challenging only one. In making its narrow challenge, Gamevice misreads Hirschman and Nintendo's evidence.

The Board should cancel all challenged claims.

II. ISSUE PRECLUSION BARS GAMEVICE'S RE-ARGUMENT OF THE CONFINEMENT-STRUCTURES LIMITATION

Gamevice does not dispute that the Board's decisions in the '119 IPRs can constitute collateral estoppel. Nor does Gamevice dispute that collateral estoppel prevents it from relitigating that combinations based on Willner, Park, and Schoenith render obvious most limitations of the challenged claims. Paper 1, 19-20. Nor does Gamevice address the collateral-estoppel effect of the Board's prior determinations that a POSITA would have combined Willner or Schoenith with Park. Instead, Gamevice disputes only whether collateral estoppel applies to the Board's prior determination that the cited art renders "confinement structures" obvious. Paper 18, 20, 25-26, 33, 37-38, 44. It does.

A. The Board’s previous determinations regarding “confinement structures” are binding.

Gamevice’s three arguments as to why collateral estoppel does not apply, Paper 18, 25-26, fail.

1. Collateral estoppel can apply on a limitation-by-limitation basis.

Gamevice says that Nintendo *does not* argue that collateral estoppel applies to the separate-and-distinct claim limitation (1(d)(4)). Paper 18, 25. Gamevice never says why this observation matters. To the extent that Gamevice is suggesting that collateral estoppel cannot apply on a limitation-by-limitation basis, Gamevice is incorrect. Collateral estoppel applies to *any* issue between the parties that is identical, finally determined, and necessary to a prior outcome. *See, e.g., VirnetX Inc. v. Apple, Inc.*, 909 F.3d 1375, 1378 (Fed. Cir. 2018) (printed publication issue); *Nestle USA, Inc. v. Steuben Foods, Inc.*, 884 F.3d 1350, 1352 (Fed. Cir. 2018) (claim construction). Thus, whether collateral estoppel applies to the separate-and-distinct limitation, is separate from whether the doctrine applies to the confinement-structures limitation.

2. The separate-and-distinct limitation does not materially alter the question of invalidity.

Gamevice’s second argument is that the confinement-structures issue in this case differs from the issue that was before the Board in the ’119 IPRs. According to Gamevice, the separate-and-distinct limitation “narrows the scope” of the

confinement-structures limitation. Paper 18, 25. This argument relies on an incorrect legal standard.

Whether a prior litigation addressed an issue identical to a later litigation is not a question of claim scope. *Soverain Software LLC v. Victoria's Secret Direct Brands Management LLC*, 778 F.3d 1311, 1319 (Fed. Cir. 2015) (“a difference in claim scope [is] not fatal to the application of estoppel”). Rather, the Federal Circuit requires looking to whether any differences in language between the adjudicated and unadjudicated claims are relevant to invalidity. As the Federal Circuit put it in *Ohio Willow Wood Co. v. Alps S., LLC*, the relevant question is not claim scope, but rather whether any “differences between the unadjudicated patent claims and adjudicated patent claims ... *materially alter the question of invalidity.*” 735 F.3d 1333, 1342 (Fed. Cir. 2013) (emphasis added).

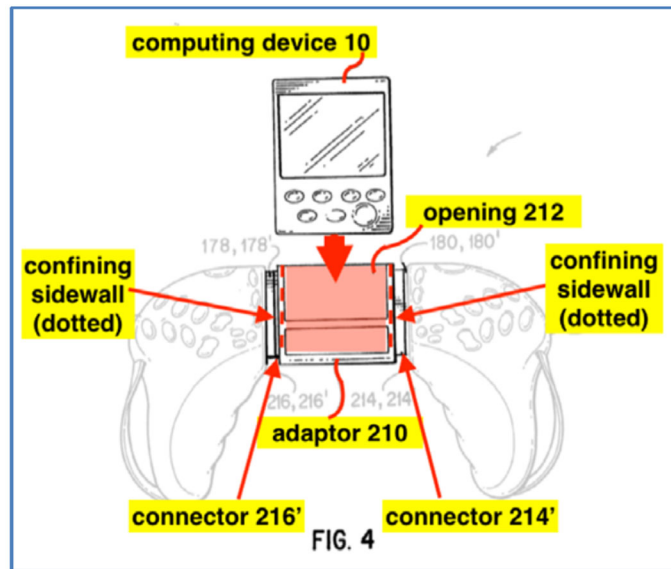
The separate-and-distinct limitation does not “materially alter the question of invalidity,” and Gamevice never says otherwise. Indeed, Gamevice’s expert, Prof. Slocum, agrees that the separate-and-distinct limitation does not alter the question of invalidity because he agrees that separate and distinct controllers were shown in both Willner and Schoenith. Ex. 1041, 38:15-39:16, 46:18-47:3. In fact, the closest Gamevice comes to trying to explain the patentable significance of 1(d)(4) is to claim that the “Examiner cited the narrowed claim limitations that Gamevice argues in his statement of reasons for allowance over the prior art of

record.” Paper 18, 1. But that observation is, at best, misleading because in his reasons for allowance, the Examiner recited materially *all of the limitations* of the claims, not just the supposedly “narrowed” ones. And anyway, the separate-and-distinct limitation does not materially alter the question of whether the confinement-structures limitation is invalid in view of the fact that the confinement-structures limitation closely tracks the one the Board considered in the ’119 IPRs. Ex. 1010, 6, 12-13; Ex. 1011, 6, 14-15.

3. Nintendo treats the confinement-structures limitation just as it did in the ’119 IPRs.

Gamevice’s third argument is that Nintendo has combined the prior art differently here than in the ’119 IPRs, and therefore, collateral estoppel does not apply. Paper 18, 25-26. Gamevice offers no legal analysis for why that would be significant. In fact, it is not because collateral estoppel applies to issues, not arguments. *Hamze v. Cummings*, 652 F. App’x 876, 879-80 (11th Cir. 2016) (quoting *Yamaha Corp. of Am. v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992)) (“once an *issue* is raised and determined, it is the entire *issue* that is precluded, not just the particular arguments raised in support of it in the first case.”). And anyway, Gamevice is factually wrong.

Here and in the '119 IPRs, Nintendo asserted that Willner's sidewalls in the Willner/Park combination correspond to the "confinement structures." Nintendo argued in the '119 IPRs that Willner's "adaptor 210 is comprised of confinement structures in the form of sidewalls, which are adjacent to the computing device" Ex. 1034 ¶485; Ex. 1035, 13 (Willner's "sidewalls ... confine ... and secure the computing device"). The sidewalls are shown in annotated Willner Figure 4. Ex. 1034 ¶486. Likewise, here Nintendo argues "the left and right sidewalls of Willner's adaptor 210 ... hold and secure the sides of the computing device" Paper 1, 21. When



Willner Fig. 4 (annotated/highlighted)

adopting Nintendo's combination including Willner's sidewalls, the Board found there was no "meaningful or structural difference between the sidewalls of Willner's adaptor and the 'pair of confinement structures' recited by claim 1." Ex. 1011, 14-15.

To suggest that Nintendo's argument was different in the '119 IPRs, Gamevice plucks out of context a single sentence from the Board's decision. Gamevice argues that "the Board decided that the 'confinement structures'

limitations of the '119 Patent's claims were met because 'movement of [Willner's] computing device [10] is confined not only by [Willner's] adaptor's opposing sidewalls but also by front, rear, and bottom walls bridging the two sidewalls.'" Paper 18, 26 (citing Ex. 1011, 16). But the quoted sentence describes Willner's adaptor generally, not Nintendo's combination. As described above, the Board expressly agreed that Willner's sidewalls alone are the "confinement structures."

Nintendo's current arguments for the Schoenith/Park combination also mirror its position in the '119 IPRs. Nintendo contended in the '119 IPRs that the Schoenith/Park combination rendered obvious "a pair of confinement structures" based on Schoenith's "raised walls": "Schoenith further discloses cradle 20 with confinement structures in the form of 'raised walls.'" Ex. 1036 ¶¶130-132, 227. Nintendo makes the same point here. Paper 1, 42-43 ("The Schoenith/Park combination includes Schoenith's "raised walls" (*confinement structures*)"). The Board in the '119 IPRs held that Schoenith's "raised walls" "satisf[y] the claim 1 limitation of a 'pair of confinement structures adjacent to and confining the computing device on at least two opposing sides." Ex. 1010, 13.

In response, Gamevice again takes a single sentence from the Board's decision out of context. According to Gamevice, the Board found that Schoenith disclosed the claimed "pair of confinement structures" because the "raised wall may be 'on the cradle's right side, left side, front side, back side, and/or a combination

thereof.” Paper 18, 38. That is false. The Board recognized that Nintendo’s combination relied on “raised walls” extending “along the right and left sides of the smart device’s perimeter.” Ex. 1010, 13.

Nintendo raises the same arguments based on the same prior art (Willner/Park and Schoenith/Park) that the Board embraced in the ’119 IPRs.¹ Collateral estoppel requires the same result. Since the confinement-structures limitation is the only one Gamevice disputes, the challenged claims of the ’393 patent are unpatentable based on at least Grounds 1 and 2. The Board need go no further.

III. GAMEVICE’S LONE CHALLENGE TO GROUNDS 1-3 FAILS.

Except for the confinement-structures (1(b)(1)) and separate-and-distinct (1(d)(4)) limitations, Gamevice does not challenge that the prior art asserted in Grounds 1-3 (Willner/Park, Schoenith/Park, Schoenith/Kessler) renders obvious all challenged claim limitations. Gamevice’s argument for the separate-and-distinct limitation relates only to Schoenith and is based on the presumption that “confinement structures” are missing from Nintendo’s combinations. Paper 18, 32, 43-44.

¹ The ITC also embraced the art, finding that the Willner/Park and Schoenith/Kessler combinations met the confinement-structures limitation of the ’393 patent. Ex. 1018, 360, 386.

Thus, Gamevice's opposition turns on the issue of whether Nintendo's combinations render obvious the confinement-structures limitation.

Gamevice offers only one argument on that issue that depends on a new narrow interpretation of the term "hold(s)" in Nintendo's construction for "confinement structures." According to Gamevice and its expert, Prof. Slocum, for "confinement structures" to "hold" a computing device, they must, by themselves, prevent the device from "popping out" toward the user. Paper 18, 18-19, 33, 44; Ex. 1041, 103:7-8, 105:1-4. Gamevice contends that Willner's and Schoenith's side-walls fail to do so. Paper 18, 18-19, 33, 44. Gamevice says that "confinement structures" must be like cradle 336 in Figures 17 and 18 of the '393 patent, which "includes a lip that prevents a computing device 302 ... from coming out in the direction of the user." *Id.*, 17.

Yet, until now (and for the last nearly five years), Gamevice advocated for the opposite, pushing a broad definition of "confinement structures" that contradicts its new take on Nintendo's construction. For instance, in the 1197 ITC Investigation, Gamevice said that "confinement structures" merely meant "components that hold a computing device" without mentioning a requirement that the device not pop out. Ex. 1018, 28-32. In the '119 IPRs, Gamevice opposed Nintendo's contention that "confinement structures" should be construed as a means-plus-function term with corresponding structure shown in, for example, Figures 17 and 18—the

same figures Gamevice now relies on in attempting to avoid the prior art. Ex. 1038, 16-18; Ex. 1039, 16-17; Ex. 1042, 10-12; Ex. 1043, 10-12. And in the district court, Gamevice asserted that “confinement structures” were “components that keep other components in place.” Ex. 1028, 11.

Gamevice’s new-found preference for a narrow interpretation is also inconsistent with its infringement positions in the district court and the ITC. In those proceedings, Gamevice’s position has always been that so long as a “confinement structure” was in at least “pressing contact” with at least a part of the supposed computing device, it met the limitation. Ex. 1018, 120-121; Ex. 1037, 10-12.

Under the construction Nintendo offers here, which is essentially the same construction Gamevice has been pushing and is what the district court adopted, Ex. 1028, 12, the proffered art meets the confinement-structures limitations. Under the proposed construction, the Willner and Schoenith sidewalls combined with the Park or Kessler bridges, are perfectly capable of holding a computing device during normal use. Ex. 1033, ¶¶36-39. As discussed in more detail below, Gamevice’s extreme view of how these devices are used is unsupported by evidence and is irrelevant to a proper understanding of obviousness. The Board should conclude, consistent with its decision in the ’119 IPR, that the Willner and Schoenith sidewalls meet the confinement-structures limitation.

IV. GAMEVICE’S MOTIVATION TO COMBINE ARGUMENTS FOR GROUNDS 1-3 LACK MERIT.

Gamevice argues a POSITA would not have combined the prior art as Nintendo proposes. Paper 18, 20-25, 33-37, 45-49. Its arguments are incorrect.

A. Gamevice does not dispute the collateral-estoppel effect of the Board’s prior findings on motivation to combine.

The Board has already determined that a POSITA would have improved Willner’s device and Schoenith’s device by adding Park’s adjustable bridge. Ex. 1011, 13, 19-20. Gamevice asks the Board to revisit this conclusion based on new arguments. Paper 18, 20-25, 33-37. But collateral estoppel prevents a party from getting “a second bite at the apple simply by changing [its] arguments.” *Rajasekaran v. Crandall*, 460 F. Supp. 3d 1269, 1275-76 (M.D. Fla. 2020). Indeed, if a party could avoid collateral estoppel by adjusting its arguments, “the bar on successive litigation would be seriously undermined.” *Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011). Gamevice is, thus, barred from relitigating motivation for Willner/Park and Schoenith/Park.

B. Gamevice’s motivation to combine arguments fail on the merits.

Gamevice’s position is that a POSITA would not have been motivated to bodily incorporate the adjustable bridge from Park or Kessler into the Willner/Schoenith devices. Central to Gamevice’s point is that a POSITA would have been limited to bodily incorporating the Park/Kessler bridge with no modifications. That is the incorrect legal standard. The Federal Circuit has long held that “[t]he

test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference’ ... but rather whether ‘a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention.’” *E.g., Allied Erecting & Dismantling Co., Inc. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) (citations omitted). Indeed, a POSITA is “a person of ordinary creativity, not an automaton,” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007), who would adjust the combination to avoid known issues. *See, e.g., Tokai Corp. v. Easton Enterprises, Inc.*, 632 F.3d 1358, 1371-72 (Fed. Cir. 2011). This is particularly true in the simple mechanical arts: “[T]he nature of the mechanical arts is such that ‘identified predicable solutions’ to known problems may be within the technical grasp of a skilled artisan.” *Tokai*, 632 F.3d at 1371. Such straightforward adjustments would have been part of a POSITA’s design process when considering Nintendo’s combinations. Ex. 1033 ¶¶ 49-50.

1. Gamevice’s attacks on Mr. Kitchen fail.

Gamevice attacks Nintendo’s expert, Mr. Kitchen, as “an electrical engineer more focused on video gaming software.” Paper 18, 2. Gamevice turns a blind eye to Mr. Kitchen’s decades of experience designing video games and handheld gaming devices. Ex. 1002 ¶¶ 24-30; Ex. 1033 ¶¶ 8-27. Gamevice, by contrast, relies on its expert, Prof. Slocum, a mechanical engineering professor with no experience

designing and marketing video games or gaming devices. Ex. 2004 ¶¶5-13; Ex. 1041, 59:13-60:1. To make matters worse, Gamevice hamstrung Prof. Slocum’s analysis, which he admits was simply to consider the combinations given by Mr. Kitchen, with no analysis of modifications a POSITA could or would make. Ex. 1041, 51:19-52:13 (“That’s from Mr. Kitchen, and my job is to opine on what Mr. Kitchen is saying. I’m offering nothing else different. I’m just commenting [on] what he’s doing.”) Given his lack of relevant experience and the narrowness of his charge, it is unsurprising that Prof. Slocum fails to address practical design considerations that would have occurred to a POSITA of ordinary creativity when combining prior art references. Prof. Slocum’s conclusory opinions to the contrary, Ex. 2004 ¶¶39, 41-44, 66-67, 69, 72-74, 84, 96-98, 100-101, 103-105, 117, 128, 130-133, 145, are entitled to no weight. *Xerox Corp., ACS v. Bytemark, Inc.*, IPR2022-00624, Paper 9, at 15 (PTAB Aug. 24, 2022) (precedential).

2. A POSITA would have combined the prior art in a way that secures a computing device, if that were an issue.

Gamevice asserts that a POSITA would not have combined the asserted references because the combinations would have resulted in devices that “cannot retain computing device 10 in position during normal user operation.” Paper 18, 21.

Gamevice presents no objective evidence that Nintendo’s combinations would have failed to hold a computing device. Citing testimony from Prof. Slocum, Gamevice argues that a computing device would “come out” during “normal”

operation of the combinations. Paper 18, 20-21, 33-34, 44-45 (citing Ex. 2004 ¶¶66, 91-101, 121-131). But other than the Park reference (which, as described below, Gamevice and Prof. Slocum misread), Prof. Slocum does not cite any evidence to support his say-so. Instead, he relies exclusively on his own observations of players at his house who he claims “wrestl[ed] with the controls.” Ex. 2004 ¶20.

Prof. Slocum’s anecdotal observations are not admissible expert testimony, as there is nothing technical or scientific about them that differentiates his supposed observations from those of Gamevice’s lawyers or any other layman. Further, the observations are unreliable as he does not know the games that were being played, Ex. 1041, 73:17-22, what controllers were being used, *id.*, 74:1-3, or whether the games had active play elements, *id.*, 75:4-9. In fact, all he does recall is that none of the controllers he supposedly observed were of the relevant type here, namely controllers combined with phones. *Id.* 75:14-76:9.

Anyway, as Mr. Kitchen explains, a POSITA who is familiar with the design and function of handheld gaming devices would have understood the normal operation of Nintendo’s combinations to differ from Prof. Slocum’s far-fetched description. A user would have kept the combinations stationary and avoided sudden movements so the screen of the computing device displaying the game remained easily visible. Ex. 1033 ¶¶26, 34. Under those conditions, Willner’s and Schoenith’s sidewalls would have held the computing device during gameplay. Ex. 1033

¶¶36-39. Indeed, that is one of the distinguishing characteristics of the combinations at issue here that contrast with Prof. Slocum’s unverifiable “observations”: In contrast to systems that display on the television where one can “wrestle” with the controller and still see the screen, the same is not true for the types of systems relevant to the combinations. Ex. 1033 ¶¶26, 34. Prof. Slocum admits he has no experience with such devices. Ex. 1041, 75:14-76:9.

Relying again on Prof. Slocum, Gamevice points to Park as purported evidence that the computing device in Nintendo’s combinations would have “come loose during gaming.” Paper 18, 21-22, 35, 47 (citing Ex. 2004 ¶¶68, 99, 129); Ex. 1004 ¶41. But Gamevice and Prof. Slocum misunderstand Park. Contrary to their (repeated) assertions, Park describes that its main embodiment “sufficiently allows for a mobile phone (1) to be mounted on the device ... and used.” Ex. 1004 ¶41. That is, during normal use, a computing device would remain mounted. Ex. 1033 ¶37. It is only in “severe cases” (i.e., abnormal use) that the phone “may come loose.” Ex. 1004 ¶41; Ex. 1033 ¶37. Thus, Park supports Nintendo, not Gamevice.

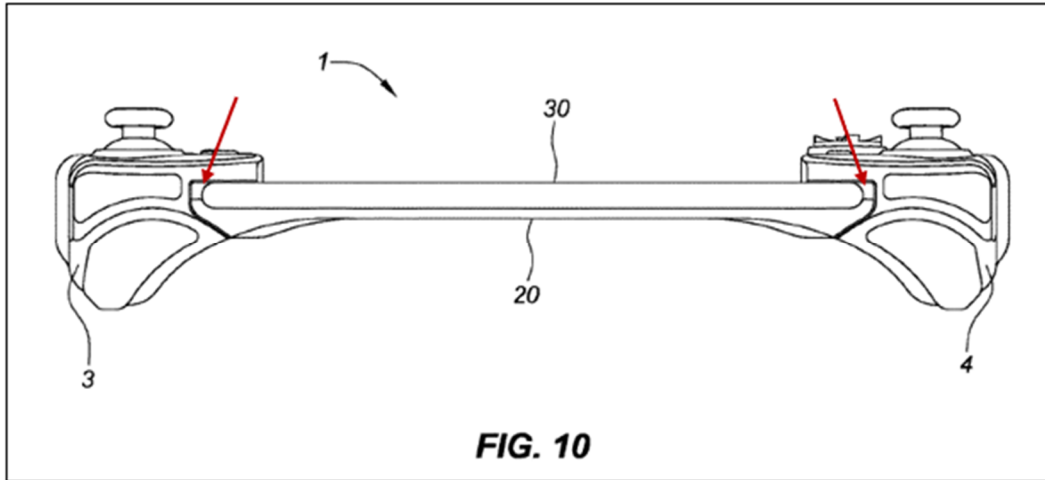
Gamevice also ignores the relevant legal standard: A POSITA is expected to exercise ordinary creativity when combining references, including to solve known problems. *Tokai*, 632 F.3d at 1371; *see also Pride Mobility Prods. Corp. v. Permobil, Inc.*, 818 F.3d 1307, 1315 (Fed. Cir. 2016) (“a relevant skilled artisan would have ‘known to compensate for’” asserted defects in the proffered art). Here,

abundant evidence supports that a POSITA would have combined the asserted references in a way that avoids the computing device “coming out.”

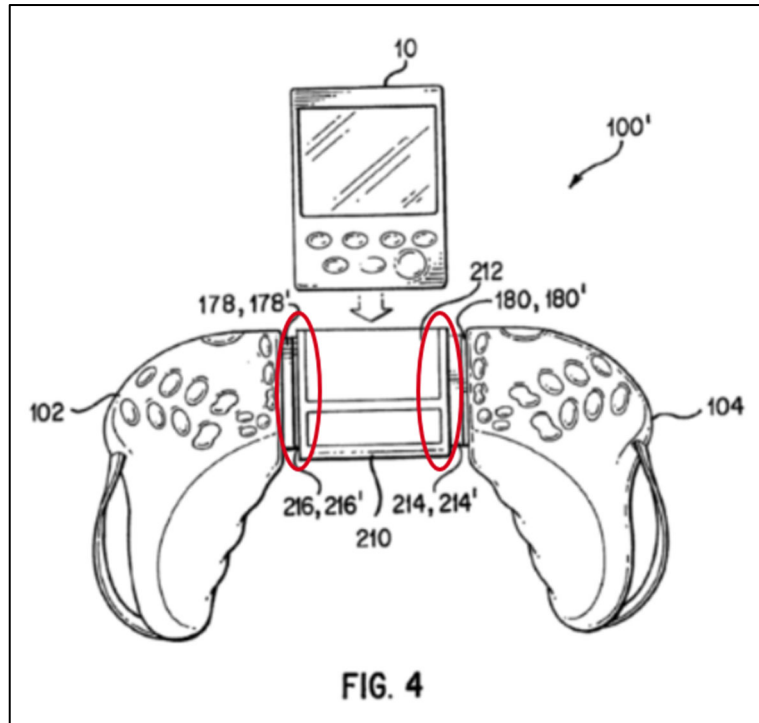
The parties propose levels of skill in the art that would require years of schooling and experience. Gamevice claims a POSITA would have had “an undergraduate degree in mechanical engineering and two years of industry or research experience in mechanical assemblies” Paper 18, 5. Nintendo’s position allows for degrees in mechanical or computer engineering “or other technical training in product design or equivalent work experience in the development of interactive products.” Paper 1, 13. In either case, a POSITA would have had a reasonable expectation of success in combining Willner/Park, Schoenith/Park, and Schoenith/Kessler.

In fact, the prior art itself identifies simple mechanical solutions to prevent a device from “coming out,” and so there can be no reasonable debate that a POSITA would have applied such minor, known modifications when combining the references. Ex. 1033 ¶¶50, 54. For example, Schoenith taught a POSITA that the raised walls “may have any size, shape, configuration, or a combination thereof so that the cradle can accommodate a smart device securely.” Ex. 1005, 6:33-43; Ex. 1002 ¶126; Ex. 1033 ¶¶55-56. Annotated Schoenith Figure 10 below shows “raised walls” that have “lips” (red arrows) to restrain a device. Ex. 1033 ¶50. In the

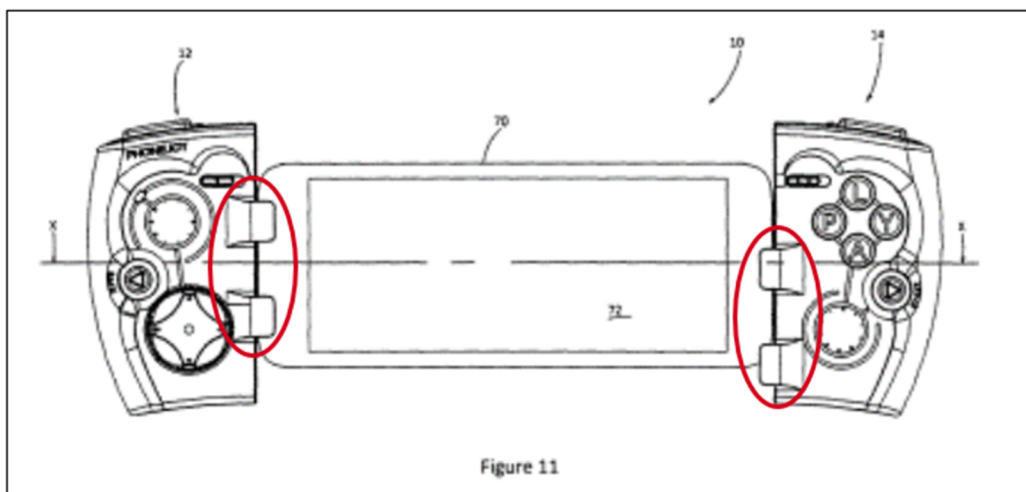
Schoenith/Park and Schoenith/Kessler combinations, a POSITA would have retained these lips (if necessary). Ex. 1033 ¶¶54-55.



Similarly, Willner taught “lips” (circled in red) on the sidewalls of its adaptor, as shown in annotated Figure 4 below. Ex. 1033 ¶56. For the reasons described in Schoenith, a POSITA would have retained the lips on the sidewalls of Willer’s adaptor when combining Willner/Park (if necessary). Ex. 1033 ¶56.

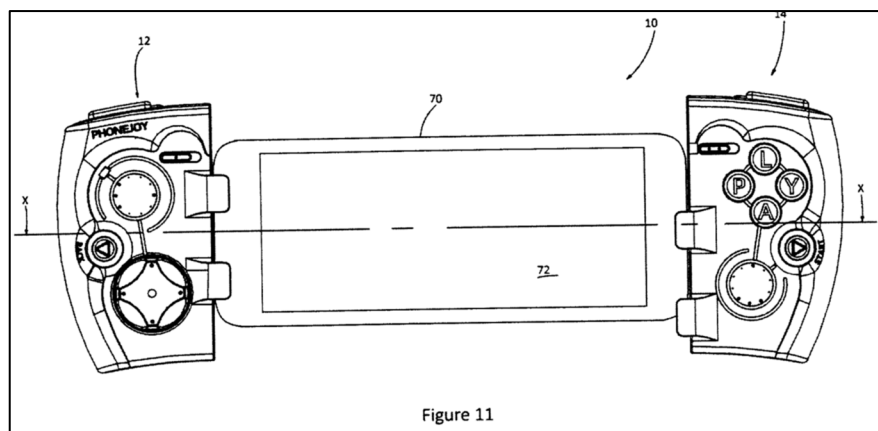
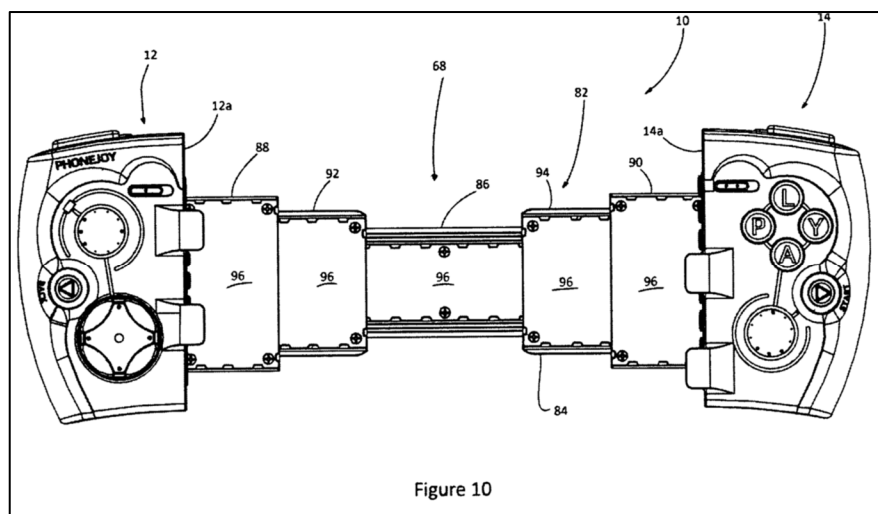


Kessler also disclosed this known technique, including “lips” (circled in red) that retain a computing device, as shown in annotated Figure 11 below. Ex. 1033 ¶57. Kessler taught this approach provided “a controller apparatus 10 that is well balanced and stable.” Ex. 1006 ¶76. These teachings would have motivated a POSITA to retain the lips disclosed in Schoenith and Willner. Ex. 1033 ¶57.



Park also disclosed simple mechanical devices to keep a computing device in place. In Park's main embodiment, the computing device is secured by adjusting the length of Park's sliding bridge so the attached controllers contact the device. Ex. 1004 ¶39, claims 1-2. But the specification also taught using "a cushioning pad (60) or connecting assembly" to increase stability. Ex. 1004 ¶¶42-43, Figs. 4, 5; Ex. 1033 ¶60. Based on these teachings, a POSITA would have used a cushion or connecting assembly with Willner's or Schoenith's sidewalls in Nintendo's combinations. Ex. 1033 ¶61. In fact, Mr. Kitchen described Park's connecting assembly and its benefits in describing the Schoenith/Park combination. Ex. 1002 ¶263.

To prevent a computing device from coming out during normal use, a POSITA also would also have pursued the simple solution of broadening Park's or Kessler's bridge or including a lock switch to offer additional stability. Ex. 1003 ¶¶58-59. As shown in Kessler's Figures 10 and 11 below, at its broadest point the bridge had the same width as the mobile phone described in the reference. In this arrangement, the bridge stabilizes the device. Ex. 1003 ¶59. To do the same for larger devices (such as tablets), a POSITA would have increased the width (i.e., north to south in Fig. 10 below) of the bridge in Nintendo's combinations. Ex. 1003 ¶¶58-59. Kessler taught a POSITA to "scale[] up" a device "to accommodate ... tablet computers." Ex. 1006 ¶18.



3. A POSITA would have used known methods to connect the sidewalls and bridges in Nintendo's combinations.

Gamevice argues that a POSITA would have had to engage in undue experimentation to connect the sidewalls and bridges in Nintendo's combinations. Paper 18, 22-23, 36-37, 47-48. But Gamevice has no evidence of this, and even though Prof. Slocum's declaration recites the factors courts consider in determining undue experimentation, Ex. 2004, ¶29, he applies none in his declaration. His conclusory testimony proves nothing. See *Cephalon, Inc. v. Watson Pharms., Inc.*, 707 F.3d 1330, 1336 (Fed. Cir. 2013).

In any case, Prof. Slocum's deposition undermined Gamevice's position on undue experimentation. Prof. Slocum conceded that a POSITA could successfully combine the relevant art, and have a reasonable expectation of success in doing so. *Id.* 224:3-7 ("And they would have a reasonable expectation of succeeding in making that combination, right? A. Well, eventually, they'd make it work, yeah."). Gamevice premises its argument on Prof. Slocum's conjecture in his declaration that a POSITA would not have been able to use well-known connectors like screws and snap-fit connectors to combine the art. Paper 18, 22-23, 36-37, 47-48 (citing Ex. 2004 ¶¶74-75, 104-105, 132-133). This is so, according to Prof. Slocum, because for example "[a] POSITA would understand that Park's bridge (30, 40) is not designed to be secured to another component using screws or snap-fit connectors." Ex. 2004, ¶58. Yet, Prof. Slocum admitted that a POSITA would, in fact, know that any number of connectors could be used to connect Park's bridge to its controller bodies, including "screw[s]," a "snap-fit," a "dovetail," and even "Velcro." Ex. 1041, 199:2-200:18. Furthermore, Prof. Slocum conceded that a POSITA "would know how to approach the problem so that ultimately they would have a vertical sidewall connected to this... element of the adjustable bridge. They would know that. They would know how to move forward." *Id.*, 223:8-224:1.

In contrast to Prof. Slocum's conclusory (and shifting) assertions, Mr. Kitchen cited real-world evidence of a prior art handheld gaming device (the

iPhone 4) that attached components using 0.8 mm screws. Ex. 1002 ¶¶209, 294, 378. A POSITA exercising ordinary creativity would have known how to connect the sidewalls and bridges in Nintendo's combinations, just as Prof. Slocum ultimately admitted in his deposition. Ex. 1041, 224:3-7. Indeed, Schoenith itself supports that a POSITA would have used screws or snap-fit connectors. Ex. 1005, 7:16-26, 8:27-37; Ex. 1033 ¶¶77-78. Schoenith recognized that these connectors were within the skill in the art and did not provide unnecessary details about them, noting instead that the snap-fit connection "can be any shape, size, configuration or a combination thereof." Ex. 1005, 7:23-26; Ex. 1033 ¶77. As Schoenith suggests, connecting the sidewalls and bridges in Nintendo's combinations using screws or snap-fit connectors would have been straightforward. Ex. 1033 ¶78. To the extent connector size and placement or sidewall/bridge shape or thickness would have required adjustments to facilitate connections, a POSITA would have simply made those changes. Ex. 1033 ¶78.

4. Nintendo's combinations provide suitable and advantageous options.

Gamevice's final contention is based on Prof. Slocum's naked assertions. Relying on Prof. Slocum, Gamevice says that Nintendo's combinations would have provided only disadvantages like increased costs and a more "compliant" bridge that may "release" a computing device. Paper 18, 24-25 (citing Ex. 2004 ¶¶38-46). Again, Prof. Slocum does not identify any objective evidence to support these

conclusory statements. For example, he provides no comparison of the cost of Willner's and Schoenith's devices, and the multiple device adaptors/cradles required for different computing devices to Nintendo's combinations with an adjustable bridge. Ex. 2004 ¶¶42-43. In addition, Prof. Slocum's assumptions about cost and complexity are incorrect. Ex. 1033 ¶¶64-71.

But downsides to combinations do not foreclose obviousness. The law "does not require that the motivation be the *best* option, only that it be a *suitable* option from which the prior art did not teach away." *PAR Pharm., Inc. v. TWI Pharms., Inc.*, 773 F.3d 1186, 1197-98 (Fed. Cir. 2014). The prior art taught toward an adjustable bridge, not away from one. Park and Kessler disclosed a major advantage of such a bridge: The ability to accommodate computing devices of different sizes with a single device. Ex. 1004 ¶¶39-40; Ex. 1006 ¶¶17-18. And Willner and Schoenith invited such a combination, describing gaming controllers that needed to be compatible with different sizes of computing devices. Ex. 1003 ¶50; Ex. 1005, 4:36-39. An adjustable bridge would have obviated the need for a user to (i) purchase multiple adaptors/cradles for Willner's and Schoenith's devices and (ii) re-configure those adaptors/cradles when using different computing devices. Ex. 1002 ¶¶136-139, 150-153, 242-244, 328-330; Ex. 1033 ¶¶66-68.

For these reasons, the Board found that a POSITA would have combined Willner/Park and Schoenith/Park. Ex. 1010, 13-14; Ex. 1011, 13. The same logic applies to Schoenith/Kessler. Ex. 1033 ¶¶67-68, 72.

C. Gamevice’s critique of Park’s bridge misses the mark.

Gamevice includes an additional argument directed at Park’s bridge. Referring to Prof. Slocum, Gamevice argues the bridge “is fundamentally flawed” because the “ratcheting action” used to adjust it “fatally compromises its ability to retain a mobile device between its controller bodies during normal user operation.” *E.g.*, Paper 18, 22 (citing Ex. 2004 ¶¶72-73). According to Gamevice, a POSITA would not have used Park’s bridge in Willner’s or Schoenith’s device because of this alleged defect.

But as described above (at IV(B)(2)), Prof. Slocum understands the “normal operation” of Nintendo’s combinations incorrectly. Furthermore, he asserts with no objective evidence that “the user is likely to apply pull forces that cause” the computing device to come out. Ex. 2004 ¶73. Park says the opposite: the bridge “allows for a mobile phone (1) to be mounted ... and used,” Ex. 1004 ¶41, and that it allows “for games to be enjoyed with the mobile phone stably seated,” *id.*, Abstract. Mr. Kitchen confirms this. Ex. 1033 ¶¶37, 47, 82, 88. And even if there were issues with the bridge’s adjustment mechanism, a POSITA exercising ordinary creativity would have compensated for them in making the combinations. *Pride*, 818 F.3d at

1315. In fact, Prof. Slocum acknowledges that much, Ex. 1041, 209:6-210:21 and confirmed that it would take no more than a “day or two” to modify Park “to get it right.” *Id.* 208:8-209:4. As another example, Kessler taught using tensioning to bias the bridge toward closing. Ex. 1006 ¶¶99-100. Combining Park’s bridge with Willner’s device or Schoenith’s device, a POSITA would have implemented a tensioning mechanism to ensure the bridge would stabilize a computing device and not pull apart easily. Ex. 1033 ¶¶90-91. Park’s adjustable bridge was a suitable option with the known advantage. Ex. 1011, 19. The law requires no more. *PAR*, 773 F.3d at 1197-98.

V. GAMEVICE’S CHALLENGES TO GROUND 4 ARE UNAVAILING.

Gamevice says that it is contesting three limitations with respect to Hirschman: (1) the confinement-structures limitation (1(b)(2)); (2) the communication-link limitations (1(b)(2)(a)-(b)); and (3) the passageway limitation (1(c)(2)(a)). But Prof. Slocum admitted that Gamevice’s dispute with respect to the communication-links limitation was really just a dispute about whether Hirschman discloses confinement structures. Ex. 1041, 173:17-174:13. As to the passageway limitation, citing Prof. Slocum, Gamevice says that there would be no passageway because there would be no “communication wire” in Hirschman. Paper 18, 61. But Prof. Slocum disagrees, testifying that “Hirschman himself is disclosing having wires ... potentially running from retention structures 260 to the circuit board 240.” *Id.*, 175:22-

176:5. Prof. Slocum’s position was that Hirschman did not include a passageway because a passageway must run from one confinement structure all the way to the other. *Id.*, 193:5-15. Of course, Gamevice has not and cannot take such a position because it has been saying the opposite for nearly five years of litigation. *See e.g.*, Ex. 1018, 101 (describing Gamevice’s infringement theory where communication wires do not need to run from confinement structure to confinement structure through a passageway).²

Gamevice’s only real attack on Hirschman is its claim that retention structures 260 and sidewalls 282 do not comprise confinement structures. Here, Gamevice makes three arguments: (1) the two structures “are not [] connected” (and thus cannot form confinement structures), (2) the retention structures and sidewalls would not meet limitation 1(d)(5); and (3) the sidewalls appear on four sides of Hirschman’s computing device (not the claimed “three sides” or fewer). Paper 18, 53, 56. None of these arguments are supported.

A POSITA would understand that the sidewalls and retention structures are connected, as supported by unrebutted testimony from Mr. Kitchen. Ex. 1007 ¶57;

² Gamevice also spends a lot of pages suggesting that Mr. Kitchen removed the USB port from the Hirschman combination. Paper 18, 54. But as Prof. Slocum conceded, Mr. Kitchen never said any such thing. Ex. 1041, 189:16-190:2.

Ex. 1002 ¶¶419-423; Ex. 1033 ¶¶100-102. Even Prof. Slocum concedes that a POSITA would understand that the sidewalls could be attached to the retention structures. Ex. 1041, 157:8-18. More importantly, Gamevice never says why it matters if the two components are directly connected together or not. Nothing in the claim construction suggests that two disconnected components cannot be “confinement structures” and neither Gamevice nor Prof. Slocum offer any explanation for why they must be connected.

Gamevice cites Prof. Slocum’s declaration for support, Paper 18, 55 (citing Ex. 2004 ¶158), but his deposition makes it clear that the reason he thinks the retention structures and sidewalls are not confinement structures is because the circuit board and LCD screens are held in place by inserts 220 and posts 288. Ex. 1041, 122:13-19. Gamevice does not, and cannot, take this position because that would be contrary to its infringement position. Thus, Gamevice’s position before the Board is utterly unsupported.

Gamevice’s second argument that retention structures 260 and sidewalls 282 would not meet 1(d)(5) is premised on Prof. Slocum’s declaration saying that the sidewalls 282 and retention structures 260 are not separate and distinct structures from the structural bridge. Ex. 2004, ¶159. But Prof. Slocum withdrew that statement, saying he never meant to say that. Ex. 1041, 164:14-19.

Gamevice’s third argument, that the sidewalls appear on all four sides, disregards Hirschman’s express disclosures. Hirschman taught that “port groups 120,” which comprise retention ports 122, may be “be included on fewer sides.” Ex. 1007, Fig. 1, ¶¶52, 56, 57-58; Ex. 1002 ¶428.

VI. CONCLUSION

Claims 1-7 of the ’393 patent are unpatentable.

Dated: April 23, 2024

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CERTIFICATION OF WORD COUNT UNDER 37 CFR § 42.24(d)

Under the provisions of 37 C.F.R. §42.24(d), the undersigned hereby certifies that the word count for the foregoing Petitioners' Reply totals 5,577 words, excluding the parts exempted by 37 C.F.R. §42.24(a).

This word count was made by using the built-in word count function tool in the Microsoft Word software used to prepare the document.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true copies of the foregoing Petitioners' Reply and supporting materials (Exhibits 1033-1043) have been served this 23rd day of April, 2023, by electronic mail on the Patent Owner via its attorneys of record::

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