

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,
Petitioner,

v.

BLACKHAWK NETWORK, INC.,
Patent Owner.

PGR2020-00084
Patent 10,769,894 B2

Before BART A. GERSTENBLITH, SCOTT C. MOORE, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining All Challenged Claims Unpatentable

35 U.S.C. § 328(a)

Dismissing Patent Owner's Motion to Exclude

Dismissing Petitioner's Motion to Exclude

37 C.F.R. § 42.64(c)

I. INTRODUCTION

Interactive Communications International, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting post-grant review (“PGR”) of claims 1–53 of U.S. Patent No. 10,769,894 B2 (Ex. 1001, “the ’894 patent”).

Blackhawk Network, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 7).¹ Pursuant to 35 U.S.C. § 324, we instituted this proceeding. Paper 11 (“Dec.”).

Patent Owner filed a Patent Owner’s Response (Paper 22, “PO Resp.”), Petitioner filed a Reply to Patent Owner’s Response (Paper 30, “Reply”), and Patent Owner filed a Corrected Sur-reply to the Reply (Paper 36, “Sur-reply”).

Additionally, Patent Owner and Petitioner each filed a Motion to Exclude (Paper 37; Paper 38); each party responded to the other’s Motion to Exclude (Paper 39; Paper 40); and each party replied to the other’s response (Paper 42; Paper 43).

An oral argument was held on December 14, 2021. Paper 46 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Decision is a final written decision under 35 U.S.C. § 328(a) as to the patentability of claims 1–53. Based on the record before us, Petitioner has proved, by a preponderance of the evidence, that claims 1–53 are unpatentable. We dismiss as moot each of the parties’ motions to exclude.

¹ In addition, with our prior authorization (Paper 8), Petitioner filed a Preliminary Reply (Paper 9) and Patent Owner filed a Preliminary Sur-reply (Paper 10) to address a claim construction issue that Patent Owner raised *only* in the Preliminary Response.

II. BACKGROUND

A. Related Matters

Petitioner and Patent Owner identify concurrently filed PGR2020-00085 as a related matter. Pet. 126; Paper 5 (Patent Owner’s Mandatory Notice), 2. In addition, Petitioner identifies the following related applications and patent: 62/104,844; 16/280,629; 16/589,067; and US 9,865,135. Pet. 126 (citing Ex. 1032).

B. Real Parties in Interest

Petitioner identifies itself as the real party in interest. Pet. 125. Patent Owner identifies itself as the real party in interest. Paper 5, 2.

C. The ’894 Patent

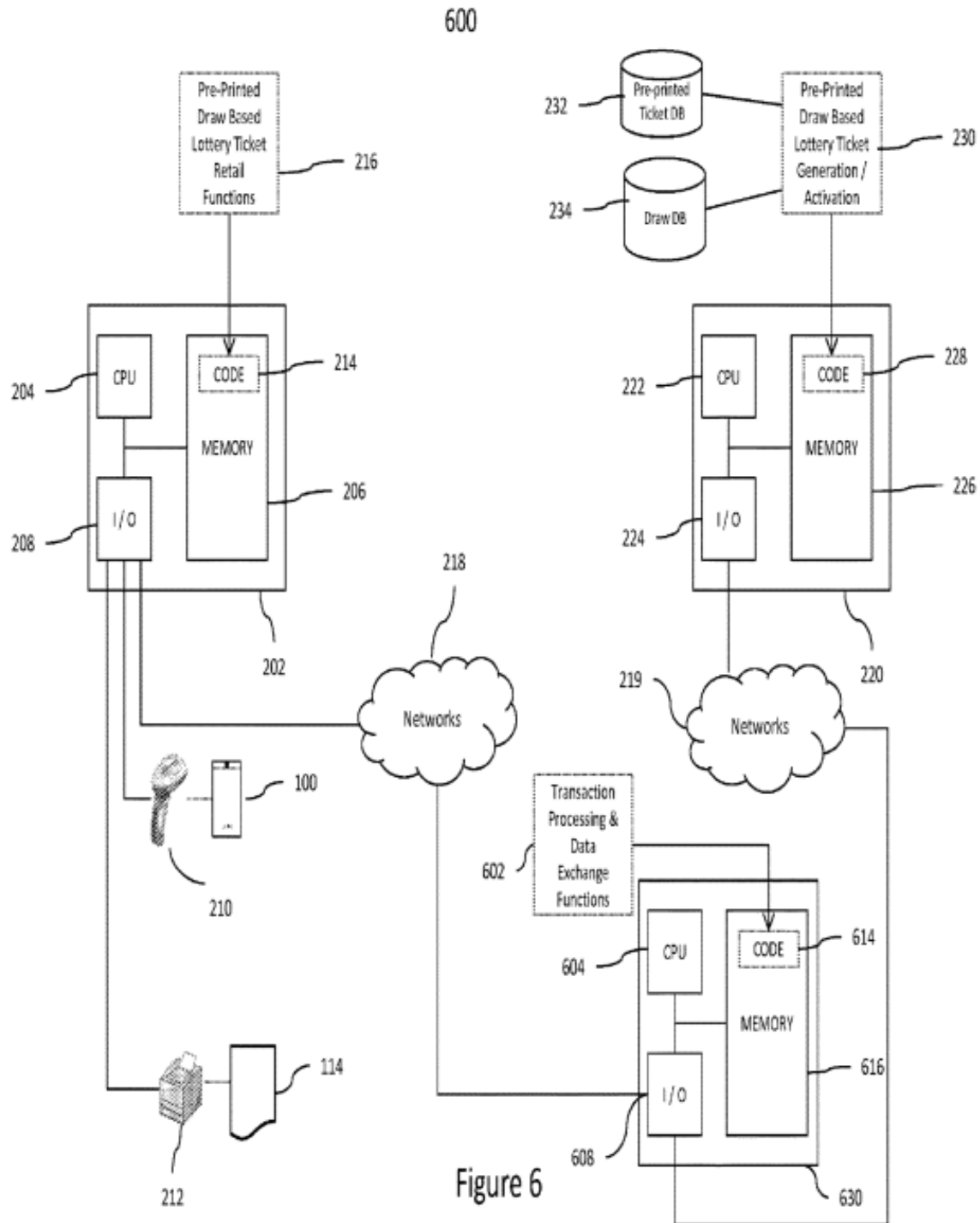
The ’894 patent teaches that, broadly speaking, there are two types of lotteries: (1) “instant win lotteries where a printed ticket provides all of the lottery information;” and (2) a “draw-based lottery or ‘online’ lottery where a player makes a wager on a subsequently occurring event.” Ex. 1001, 1:23–30. For the draw based lotteries, the ’894 patent teaches that the typical ticket is printed using a lottery-specific terminal and specialized printing device that is wholly separate from the point of sale (“POS”) terminal. *See id.* at 1:39–50.

The ’894 patent teaches that, “[a]lthough the model of a single terminal and printer is effective for single checkout lane environments such as convenience stores and gas stations, it is not ideal for multi-lane environments such as grocery stores, discount and big box retailers.” *Id.* at 1:50–54. A drawback of this system, according to the ’894 patent, is that it requires a customer to wait in two separate lines (or at a minimum go to two separate locations) to purchase their goods and to purchase a lottery ticket,

when in a multi-lane environment. *Id.* at 1:54–58. “This is extremely inconvenient for most customers who simply bypass the lottery counter.” *Id.* at 1:58–60. Other drawbacks the ’894 patent teaches are that “[i]ninstalling an approved printer or any other piece of specialized [lottery] hardware at every point of payment within a retail environment is cost prohibitive and not an effective use of capital” because “not all points of payment are open at all times” and the use of specialized hardware increases the responsibility and training required for a cashier. *Id.* at 1:61–2:2.

As a result, the ’894 patent asserts that “[i]t would be desirable to enable customers to include a lottery draw ticket in their basket along with other goods and pay for that basket at any point of payment in a retail location” by using existing point of sale equipment and without requiring any additional specialized hardware. *Id.* at 2:7–17. And the ’894 patent seeks to provide a “system and method of selling pre-printed lottery tickets for random draw lotteries through the retailers POS without the use of additional lottery hardware.” *Id.* at Abstract.

The ’894 patent describes a system and method that uses a “pre-printed lottery ticket,” which acts as a uniquely identifiable “legal instrument,” to initiate and facilitate the legal transaction necessary between a customer and a lottery administration body at a POS register to enable customers to purchase a chance at winning a prize associated with an upcoming lottery. Ex. 1001, 3:1–24. In a more detailed explanation of the invention, the ’894 patent describes an embodiment with components of a POS, transaction processor and lottery system, as shown in Figure 6 below.



Ex. 1001, 2:34–35, Fig. 6. Figure 6 above “depicts components of a lottery system, point of sale environment and a transaction processor” that are “for purchasing a pre-printed lottery ticket.” *Id.* at 8:3–6. As shown,

the environment 600 for purchasing a pre-printed lottery ticket includes a retailer's point of sale terminal 202 for the retail of the pre-printed ticket, a lottery system 220 for the generation and activation of pre-printed ticket wagers and draw date and a transaction processor 630 to facilitate the exchange of data between the retailer's point of sale 202 and the lottery system 220 each connected to one other through one or more communication networks 218; 219.

Id. at 8:5–13.

The '894 patent states, “[t]he retailer’s POS terminal 202 may include a central processing unit (CPU) 204, memory unit 206 and [I/O] interface(s) 208 for communicating with devices external to the POS terminal.” *Id.* at 8:17–20. And the '894 patent teaches that “[t]he POS terminal 202 includes instructions 214 stored in the memory unit, which when executed by the processor unit 204 configure the POS terminal 202 to provide pre-printed draw-based lottery ticketing functionality 216,” including the “functionality for communicating scanned in barcode information of pre-printed lottery tickets with the transaction processor system, and receiving confirmation of the pre-printed ticket’s activation.” *Id.* at 8:25–33.

The '894 patent describes lottery system 220 as including “[a] central processing unit (CPU) 222, memory unit 226 and [I/O] interface(s) 224 for communicating with devices external to the lottery system 220.” *Id.* at 8:34–37. When processing unit 222 executes instructions 228 stored in the memory unit 226, it “configure[s] the lottery system to provide pre-printed draw-based lottery ticket activation and cancellation functionality 230,” in addition to having the functionality to “generate draw and wager information and associate the pre-printed ticket information in a draw information database 234.” *Id.* at 8:37–40, 8:49–52.

Transaction processor system 630 is described by the '894 patent as including “a central processing unit (CPU) 604, memory unit 616 and [I/O] interface(s) 608 for communicating with devices external to the transaction processor system 630.” *Id.* at 8:56–59. Memory unit 616 stores instructions that the CPU 604 executes to “provide transaction processing and data exchange functionality 602” with a plurality of different retailers to a single lottery system and enable the activation or cancellation of pre-printed lottery tickets to be performed at retailer’s POS terminal 202. *Id.* at 8:59–67. “Once activated, the pre-printed ticket serves as a lottery ticket and may be verified as any regular lottery ticket purchased from a lottery terminal.” *Id.* at 9:27–29.

D. Illustrative Claims

Claims 1, 6, 7, 29, and 33 are the independent claims challenged in this proceeding, which includes two system claims (1 and 6) and three method claims (7, 29, and 33). Claims 1 and 7 are illustrative of the claimed subject matter and are reproduced below:

1. A transaction processor system comprising:
at least one communication interface for communicating with other devices;
at least one processing unit for executing instructions; and
at least one memory unit for storing instructions, which when executed by the at least one processing unit causes the transaction processor system to (1) provide unique identification information from a pre-printed lottery ticket, (2) receive, from a lottery administration system, a determined draw information associated with the unique identification information, (3) provide, to the lottery administration system, payment confirmation for the pre-printed lottery ticket, and (4) facilitate provision of

random draw details associated with the pre-printed lottery ticket.

7. A method for providing a lottery ticket for a random draw comprising:

- (a) receiving, by a transaction processor, a transaction request from a retailer point of sale (POS) to activate a pre-printed lottery ticket;
- (b) providing, by the transaction processor or retailer, to a lottery administration system unique identification information associated with pre-printed lottery ticket information received from the retailer POS without the use of lottery hardware; and
- (c) receiving, by the transaction processor or retailer, from the lottery administration system, indication that draw information has been associated with the pre-printed lottery ticket; wherein said pre-printed lottery ticket comprises two or more codes.

Ex. 1001, 10:30–44 (claim 1), 11:9–24 (claim 7).

E. The Asserted Grounds of Unpatentability and Declaration Evidence

Petitioner challenges the patentability of claims 1–53 of the '894 patent on the following grounds:

Claim(s) Challenged	35 U.S.C. § ²	Reference(s)/Basis
1–19, 21–42, 44–53	103	Szrek ³
1–19, 21–29, 31–42, 44–53	103	Llach, ⁴ Szrek

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103, effective March 16, 2013. Because the application from which the '894 patent issued was filed after this date, the AIA version of § 103 applies.

³ U.S. Patent No. 7,627,497 B2, issued Dec. 1, 2009 (Ex. 1007, “Szrek”).

⁴ U.S. Patent Application Publication No. 2013/0041768 A1, published Feb. 14, 2013 (Ex. 1008, “Llach”).

Claim(s) Challenged	35 U.S.C. § ²	Reference(s)/Basis
20, 43	103	Szrek, Gilmore ⁵

Pet. 31.⁶ In addition to several alleged prior art references used to demonstrate relevant background knowledge of a skilled artisan at the time of the invention (*see* Pet. 19–31 (citing Exs. 1010–1028)), Petitioner supports its challenge with Declarations by Scott Loftesness (Exs. 1003, 1036) and Michael Hutton (Ex. 1005). In response, Patent Owner counters with support from the Declarations of Stacy A. Friedman (Ex. 2001) and Thomas R. Delacenserie (Ex. 2013), who adopts as his own the opinions expressed by Anthony Molica (Ex. 2002).⁷

F. Level of Ordinary Skill in the Art

The level of 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 the “type of problems encountered in the art; prior art

⁵ U.S. Patent Application Publication No. 2005/0233797 A1, published Oct. 20, 2005 (Ex. 1009, “Gilmore”).

⁶ Petitioner noted during the oral argument that the Petition’s listing of the grounds asserted inadvertently identifies claim 43 as part of grounds 1 and 2. Tr. 6; *see* Dec. 25–26 (noting that Petitioner did not address claim 43 in either ground). Petitioner clarified that claim 43 is only being challenged in ground 3. *Id.* Therefore, the listing of the grounds above reflects that difference.

⁷ Anthony Molica could not be made available for a deposition, therefore, the parties jointly stipulated to the substitution of Mr. Delacenserie. *See* Paper 26, 1.

solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *Id.* (internal quotation marks omitted). “In a given case, every factor may not be present, and one or more factors may predominate.” *Id.*

Petitioner proposes that a person of ordinary skill in the art (“POSA”) at the time of the invention would have had “working knowledge of point of sale (POS) activation systems and/or lottery systems,” which would have been gained “through a mixture of training and work experience.” Pet. 19. In particular, Petitioner contends such mixed training and work experience would have come from “(i) having a Bachelor’s degree in computer science, computer communications, electrical engineering, or equivalent degree, coupled with at least three years of experience; (ii) by obtaining a Master’s degree in computer science, computer communications, or electrical engineering, but having less experience; or (iii) by having no formal degree, but having experience in the relevant field of at least six years.” *Id.*; *see also* Ex. 1003 ¶ 96.

Patent Owner does not challenge Petitioner’s description of a POSA except to the extent it allows for a working knowledge of *either* point of sale activation systems *or* lottery systems. PO Resp. 5–9. Patent Owner contends working knowledge of both POS activation systems and lottery systems is required. *Id.* Specifically, Patent Owner contends,

[Petitioner]’s proposed definition of the person of ordinary skill in the art, which makes knowledge of lottery systems optional in lieu of knowledge of point of sale activation systems, is incorrect because lottery systems have different design constraints than point of sale activation systems—so knowledge of both is required.

Id. at 9. Patent Owner contends a working knowledge of lottery systems, in addition to POS activation systems, is required because

[w]ithout understanding the lottery-specific constraints on computer system and network design, including the lottery administration system's position in the overall system as 'the single source of truth' and the lottery system's minimum security requirements, a system designer could not confidently design a transaction processor for activating lottery tickets with the lottery administration system.

Id. at 8. Petitioner notably does not dispute Patent Owner's contentions.

See generally Reply.

We find Patent Owner's contention persuasive. We agree that the description of a POSA in this case, which is most consistent with the scope and content of the '894 patent and the prior art, properly includes a working knowledge of both POS activation systems and lottery systems. Therefore, the level of skill in the art for this case is an artisan with a working knowledge of POS activation systems and lottery systems that was gained through a mixture of training and work experience in the relevant field such as (i) having a Bachelor's degree in computer science, computer communications, electrical engineering, or equivalent degree, coupled with at least three years of work experience; (ii) having a Master's degree in computer science, computer communications, or electrical engineering, but having less work experience; or (iii) having no formal degree, but having experience in the relevant field of at least six years of work experience.

Although Patent Owner's proposal most accurately reflects the background of the hypothetical person of ordinary skill in the art, the differences between the parties' proposed formulations are not material to any issue in dispute and the parties do not contend otherwise. All of the

findings and conclusions set forth below would have been the same had we instead adopted Petitioner's proposed formulation.

III. CLAIM CONSTRUCTION

In this post-grant 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). *See* 37 C.F.R. § 42.100(b) (2020). The claim construction standard includes construing claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art at the time of the invention. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc). In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Phillips*, 415 F.3d at 1315–17.

If the specification “reveal[s] a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess[,] . . . the inventor's lexicography governs.” *Phillips*, 415 F.3d at 1316 (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). Another exception to the general rule that claims are given their ordinary and customary meaning is “when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Uship Intellectual Props., LLC v. United States*, 714 F.3d 1311, 1313 (Fed. Cir. 2013) (quoting *Thorner v. Sony Computer Entm't Am., LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)).

Additionally, only terms that are in controversy need to be construed, and these need be construed only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795,

803 (Fed. Cir. 1999) (holding that “only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy”); *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs.* in the context of an *inter partes* review).

“Petitioner proposes that each claim term in the Challenged Claims be given its plain and ordinary meaning, and that no specific construction of any claim term is required because the prior art relied on in this Petition meets each of the claim terms under any reasonable construction.” Pet. 18. Patent Owner does not dispute Petitioner’s contention generally, but proposes clarifications for two recited phrases: (1) transaction processor system/transaction processor; and (2) data package. PO Resp. 19–26, 71–72. We address each in turn.

A. Transaction Processor/Transaction Processor System

Patent Owner contends that, “[r]ead in light of the specification, a skilled artisan would understand ‘transaction processor’ and ‘transaction processor system’ to refer to a ‘third party processor [system] that processes transactions between a lottery administration system and a retailer.’” PO Resp. 20. Patent Owner’s proposed understanding of “transaction processor” and “transaction processor system” notably restricts the plain meaning from *any* processor or processor system that processes transactions between two devices to a “third party” processor/processor system. Patent Owner argues,

[b]ecause the claims preclude any interpretation of “transaction processor” that encompasses the retailer or lottery administration system, and because the specification repeatedly and interchangeably refers to the same processor that interfaces

between a point of sale and a lottery administration system as both a “transaction processor” and a “third party processor,” a skilled artisan would have understood the claimed “transaction processor” or “transaction processor system” to refer to a third party processor or third party system, respectively, that is neither the retailer nor the lottery administration system.

Id. at 25–26 (citing Ex. 2001 ¶ 34). Thus, the issue raised by Patent Owner is whether the respective plain meaning of “transaction processor” and “transaction processor system” is limited to a *third party* processor or a *third party* system.

Patent Owner contends that the claims of the ’894 patent support limiting “transaction processor” and “transaction processor system” to a third party processor or a third party system. PO Resp. 20–26. In particular, Patent Owner identifies that independent claims 7, 29, and 33 recite, “the transaction processor or retailer” in the alternative. *Id.* at 20. In view of this alternative recitation, Patent Owner contends “a skilled artisan would understand the transaction processor in this context to be separate from the retailer.” *Id.* at 20–21 (citing Ex. 2004, 25:7–13). Otherwise, Patent Owner argues, “interpret[ing] the transaction processor to encompass the retailer would render the ‘or retailer’ language superfluous.” *Id.* at 21 (citing Ex. 2004, 26:21–27:8). Patent Owner asserts that dependent claims 30 and 31 further demonstrate that the transaction processor is separate and distinct from the retailer because the claims clearly distinguish between providing the unique identification information from either the retailer or the transaction processor. *Id.* at 22. Similarly, Patent Owner argues that the transaction processor must be separate and distinct from the lottery administration system because the claims (e.g., claims 1, 7, 29, 33) recite a

transaction processor that provides/receives information to/from the administration processor system. *Id.*

Regarding the '894 patent specification, Patent Owner contends that “[t]he specification discloses two distinct system architectures: (1) where POS terminals interface *directly* with a lottery system to activate preprinted lottery tickets, *see* Ex. 1001 at Figs. 2–5, and (2) where the POS terminals interface *indirectly* with a lottery system through a third party transaction processor, *see id.* at Figs. 6–8.” PO Resp. 23 (emphasis added). Patent Owner alleges that the description of the second system architecture supports limiting the understanding of a transaction processor because it “repeatedly describes the transaction processor [system] as a third party processor.” *Id.* at 22–23. As support, Patent Owner points to the fact that Figures 7 and 8 of the '894 patent identify numeral 630 as a “Third Party Processor” and the written description of those figures identify numeral 630 as a “transaction processor.” *Id.* at 24 (citing Ex. 1001, 9:1–2, 9:45–55, Figs. 7, 8). As a result, Patent Owner concludes “[t]he specification interchangeably refers to the transaction processor as a third party processor.” *Id.*

Petitioner does not dispute that the “transaction processor” and “transaction processor system” refers to a processor that processes transactions between two devices. *See* Reply 8–22. Instead, Petitioner focuses on the addition of the term “third party.” Petitioner contends that “[a]dding the term ‘third party’ to the recited transaction processor is improper for several reasons.” *Id.* at 9. Petitioner argues first that adding “third party” to the interpretation of “transaction processor” or “transaction processor system” creates ambiguity because there is no clear understanding

of what qualifies as, or the boundaries for, a “third party.” *Id.* at 9–11. Petitioner next argues that “adding the term ‘third party’ to the claimed transaction processor does not change the functionality or structure of the transaction processor and thus is not relevant for patentability purposes.” *Id.* at 11–14 (citing Ex. 1001, 3:36–38, 8:56–67, Fig. 7; Ex. 1035, 53:14–54:12, 56:16–57:19). Petitioner argues lastly that no support exists for Patent Owner’s underlying basis that the transaction processor and transaction processor system is “separate and distinct” from the retailer and lottery administration system. *Id.* at 14–20 (citing Figs. 2, 3; Ex. 1035, 96:1–103:11).

After considering the parties’ arguments and evidence, we determine that the plain meaning of “transaction processor”/“transaction processor system” applies, which is a processor [system] that processes transactions between two devices.⁸ We agree with Petitioner that adding “third party” to the plain meaning simply creates uncertainty. For example, it is unclear whether “third party” imports a limitation for the owner/manufacturer of the processor/system to be a different entity than the owner/manufacturer of the retailer and lottery administration devices (which is unrelated to the functionality or structure of the processor/system) or whether “third party”

⁸ Rather than “between two devices,” Patent Owner refers to “between a lottery administration system and retailer.” PO Resp. 20. Because other elements in the claims dictate the particular devices with which the transaction processor communicates, we determine that it would be improper to import that limitation into the meaning of “transaction processor”/“transaction processor system.” Nevertheless, even if those particular devices were imported, it would not change our obviousness analysis because no issue rests on whether the alleged transaction processor in the prior art is processing a transaction between a lottery administration system and retailer.

imports a limitation for the processor/system to be a separate and distinct device from the retailer point of sale and lottery administration devices. Although Patent Owner's counsel made clear that the latter interpretation was intended (Tr. 41:10–42:7, 43:2–43:15), we do not agree that the use of the words “third party” in Figures 7 and 8 of the '894 patent limits the “transaction processor” and “transaction processor system” to being a separate and distinct device from the retailer and lottery administration devices. Identifying the transaction processor as a “Third Party Processor” in two illustrative figures depicting a process (Ex. 1001, Figs. 7, 8), without anything more in the written description to explain why a “third party processor” may be an important or significant aspect of the transaction processor or invention as a whole, does not justify limiting the plain meaning of a “transaction processor” to the “third party processor” shown. *Info-Hold, Inc. v. Applied Media Techs. Corp.*, 783 F.3d 1262, 1267 (Fed. Cir. 2015) (explaining that an invention will only be limited to its preferred embodiment when “the patentee uses words that manifest a clear intention to restrict the scope of the claims to that embodiment”).

Nevertheless, Patent Owner is correct that the intrinsic record of the '894 patent demonstrates the “transaction processor” and “transaction processor system” are separate and distinct devices from the retailer POS and the lottery administration system. We turn first to the claims for support for this determination.

Independent claims 1 and 6 recite, in relevant part, a “transactional processor system” that includes a “communication interface for communicating with *other devices*,” a “processing unit for executing instructions,” and a “memory unit for storing instructions,” which “causes

the *transactional processor system*” to “provide” and “receive” specific information. Ex. 1001, 10:30–44, 10:62–8 (emphasis added). In this context, we find a skilled artisan would understand that the transaction processor system causes the recited information to be provided and received (i.e., communicated) to *other devices* through its communication interface. Claim 1 specifically identifies an “other device” that the transaction processor system exchanges information with as a “lottery administration system.” *Id.* at 10:38–42 (“the at least one processing unit causes the transaction processor system to . . . receive, from a lottery administration system, a determined draw information associated with the unique identification information . . . [and] provide, to the lottery administration system, payment confirmation for the pre-printed lottery ticket”).

Independent claims 7, 29, and 33 recite methods for providing a lottery ticket in which a transaction processor communicates with a retailer POS and a lottery administration system. Ex. 1001, 11:9–24, 12:37–48, 12:58–13:6. Claims 7 and 33 recite, in relevant part, a transaction processor “receiving . . . a transaction request from a retailer point of sale (POS) to activate a pre-printed ticket,” “providing, by the transaction processor or retailer,⁹ to a lottery administration system unique identification information,” and “receiving, by the transaction processor or retailer, from the lottery administration system, indication that draw information has been associated with the pre-printed lottery ticket.” *Id.* at 11:11–24 (footnote added), 12:60–13:4. Claim 29 is substantially similar. *See id.* at 12:39–48. In the context of these claims, the transaction processor is described as

⁹ The term “retailer” is understood to refer to a “retailer POS” because it provides the antecedent basis.

processing transactions between the retailer POS and lottery administration system. Dependent claim 30 narrows its parent claim to the retailer providing the unique identification information to a lottery administration system; dependent claim 31 separately narrows its parent claim to the transaction processor providing the unique identification information to a lottery administration system. *Id.* at 12:49–52.

Because the claims separately list the transaction processor, retailer POS, and lottery administration system, we interpret these devices to be distinct components of the claimed invention. “Where a claim lists elements separately, the clear implication of the claim language is that those elements are distinct components of the patented invention.” *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (internal quotations and citations omitted). Moreover, the Federal Circuit has more recently held that “[t]here is . . . a presumption that those components [separately listed] are distinct.” *Kyocera Senco Indus. Tools Inc. v. ITC*, 22 F.4th 1369, 1382 (Fed. Cir. 2022). Nothing within the claims or the Specification of the ’894 patent undermines this presumption.

To the contrary, the claims support the presumption by reciting a transaction processor system that has a communication interface to enable the processing unit to communicate with *other devices* and a lottery administration system is recited to be a specific device with which the system communicates. In addition, method claims 7, 29, and 33 recite the transaction processor and retailer POS as alternative devices for communicating with the lottery administration system. And dependent claims 30 and 31 recite specifically which of the two alternative devices may

communicate the unique identification information to the lottery administration system.

Similarly, the Specification of the '894 patent supports interpreting transaction processor, retailer POS, and lottery administration system as distinct components of the invention. The Specification describes the components for two exemplary embodiments and there is one notable difference between the components—one embodiment has a transaction processor and the other does not. For the first embodiment, as shown in Figure 2, the “components of a lottery system and point of sale environment” for purchasing a pre-printed lottery ticket include “a retailer’s point of sale terminal 202 and a lottery system 220 *connected to* each other through one or more communication networks 218.” Ex. 1001, 6:17–22, Fig. 2 (emphasis added). Retailer POS terminal 202 is described as including “a central processing unit (CPU) 204, memory unit 206 and I/O interface(s) for communicating with *devices external* to the POS terminal.” *Id.* at 6:25–29 (emphasis added). “The POS terminal 202 includes instructions 214 stored in the memory unit, which when executed by processor unit 204 configure the POS terminal to provide pre-printed draw-based lottery ticketing functionality 216.” *Id.* at 6:33–37. The lottery system 220 is similarly described as including “a central processing unit (CPU) 222, memory unit 226 and I/O interface(s) for communicating with *devices external* to the lottery system 220.” *Id.* at 6:42–45 (emphasis added). “Instructions 228 stored in the memory unit 226, when executed by the processing unit 222 configure the lottery system to provide pre-printed draw-based lottery ticket activation and cancellation functionality 230.” *Id.* at 6:45–48.

For the second embodiment, as shown in Figure 6, the “components of a lottery system, point of sale environment, and a transaction processor” for purchasing a pre-printed lottery ticket include “a retailer’s point of sale terminal 202 . . . , a lottery system 220 . . . and a transaction processor 630 to facilitate the exchange of data between the retailer’s point of sale 202 and the lottery system 220 *each connected to one other through one or more communication networks* 218; 219.” Ex. 1001, 8:3–12 (emphasis added), Fig. 6. The retailer POS terminal and lottery system are described as having the same structure and stored instructions as described in the first embodiment. *Id.* at 8:17–20, 8:25–29, 8:34–40. The transaction processor is described as including “central processing unit (CPU) 604, memory unit 616 and I/O interface(s) 608 for communicating *with devices external to the transaction processor system 630*,” as well as stored instructions 604 that, “when executed by the processing unit 604[,] provide transaction processing and data exchange functionality 602.” *Id.* at 8:56–62 (emphasis added).

As noted above, the most significant difference between the components in the two disclosed embodiments is that one embodiment has a transaction processor and the other does not. In the embodiment with the transaction processor, the Specification describes (and illustrates in Figure 6) the transaction processor system as having its own processor and I/O interface(s) for communicating *with devices external to the transaction processor system*. In addition, the Specification details the process for providing a pre-printed lottery ticket through the transaction processor in which the transaction processor communicates with a retailer POS terminal and a lottery system. Ex. 1001, 9:1–29, Fig. 7. When viewed in context, it is clear that the Specification is referring to the retailer POS terminal and the

lottery system as the external devices with which the transaction processor system communicates through the I/O interface(s). Thus, we find no basis in the Specification of the '894 patent to override the presumption arising from the claims identifying, as separate elements, the transaction processor/transaction processor system, retailer/retailer POS system, and lottery administration system.

Therefore, we construe “transaction processor” and “transaction processor system” in accordance with their plain meaning, which is a processor [system] that processes transactions between two devices. Additionally, we decline to limit “transaction processor” and “transaction processor system” to “third party” processors or systems because the intrinsic record does not justify such a modification and it would create uncertainty. However, we do construe the “transaction processor”/“transaction processor system,” “retailer”/“retailer POS,” and “lottery administration system” as separate and distinct components.

B. Data Package

Dependent claim 2 recites “[t]he transaction processor system of claim 1, wherein facilitate provision of random draw details comprises receiving, from the lottery administration system, an image or *data package* containing at least the random draw details.” Ex. 1001, 10:45–48 (emphasis added). As noted above, Petitioner contends each claim term has its plain and ordinary meaning (Pet. 18), which includes the term “data package.” Patent Owner does not argue or suggest that the intrinsic record of the '894 patent demonstrates a specialized or limited meaning for “data package.” See PO Resp. 19 n.1, 70–72. In fact, Patent Owner does not offer any express construction for the term “data package.” See *id.* Nevertheless,

Patent Owner contends Petitioner must present evidence of a “grouping of more than one datum” with a “packaging syntax” to demonstrate the prior art discloses a “data package.” PO Resp. 71–72.

The basis for this contention comes from testimony provided by Mr. Hutton (Petitioner’s expert) during his deposition, as reflected below. *Id.* at 71 (citing Ex. 2004, 29:14–30:1).

Q. So at least as far as this definition in the first sentence of Exhibit 2100 goes, you’d agree with that description?

* * *

A. I would agree that this document describes a data package as a simple container format used to describe and package collections of data.

Q. And my question to you is in the 2015 time frame, if someone approached you, Mr. Hutton, and said, “What is a data package,” would you agree that this description in the first sentence of Exhibit 2100 is a fair description?

* * *

A. Not necessarily. If someone just used the word “data package” to me, I would assume they meant some grouping of more than one datum together in some sort of packaging syntax. That’s all it would really mean to me, not having read and seen this.

Ex. 2004, 29:7–30:1. This testimony, however, is directed to what Mr. Hutton would have *personally* thought “data package” referred to *generally* in 2015. As a result, this testimony has limited probative value demonstrating what the term “data package” means to a skilled artisan within the context of the ’894 patent and provides even less support, if any, for limiting the plain and ordinary meaning of the claim term “data package.” Still further, Mr. Hutton’s testimony is extrinsic evidence and

neither party suggests the intrinsic evidence supports construing “data package” as proposed by Patent Owner. Therefore, because Patent Owner offers no support from the intrinsic record (nor do we find any support therein) and the extrinsic evidence offered in the form of Mr. Hutton’s testimony is based on his personal understanding of the term divorced from the context of the ’894 patent, we decline to *limit* “data package” to a “grouping of more than one datum together in some sort of packaging syntax.”¹⁰

IV. ANALYSIS

Petitioner contends instituting a post-grant review is appropriate because claims 1–53 of the ’894 patent are unpatentable under 35 U.S.C. § 103 in view of Szrek alone, with Llach, or with Gilmore. *See* Pet. 31, 37–82. For the reasons explained below, based on the complete record, we find Petitioner’s contentions regarding Szrek alone, and Szrek in combination with Gilmore, persuasive, and determine that claims 1–53 of the ’894 patent are thus unpatentable under 35 U.S.C. § 103, and, therefore, we do not address Petitioner’s contentions regarding Llach in combination with Szrek.

A. *Legal Principles*

The question of obviousness involves resolving 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 ordinary skill in the art; and (4) when available, objective evidence of

¹⁰ To be clear, the plain and ordinary meaning of “data package” may very well include a grouping of more than one datum together in some sort of packaging syntax, but we need not decide that issue at this time. Our determination is only that the plain and ordinary meaning of “data package” is not so limited.

nonobviousness such as commercial success, long felt but unsolved needs, and failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *see KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 407 (2007) (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors define the inquiry that controls.”). In this case, however, only the first three factors are relevant because neither party provides any argument or evidence regarding objective indicia of nonobviousness for us to consider. Additionally, we have already addressed the level of ordinary skill in the art (*see supra* § II.F), therefore, the perspective from which we view the evidence and arguments for the remaining factors is that of an artisan with a working knowledge of POS activation systems and lottery systems gained through a mixture of training and work experience.

“A patent for a claimed invention may not be obtained . . . if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. § 103. The Court in *KSR* set forth “an expansive and flexible approach” to the question of obviousness. *KSR*, 550 U.S. at 415. Whether a patent claiming the combination of prior art elements would have been obvious involves determining whether any improvement amounts to more than the predictable use of prior art elements according to their established functions. *Id.* at 417. Reaching this determination, however, requires more than merely showing that the prior art includes separate references covering each separate limitation in a challenged claim. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). Rather, obviousness additionally requires

that a person of ordinary skill at the time of the invention “would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.*

B. The Scope and Content of the Prior Art

Petitioner’s unpatentability contentions rely on three prior art references: Szrek, Llach, and Gilmore. Patent Owner does not dispute these references are within the scope of prior art to the ’894 patent. *See generally* PO Resp. We describe generally the content of each below.

1. Szrek

Szrek’s stated goal “is to enable the secure sale of lottery tickets at general retail point of sale (POS) checkout points, such as standard cash registers, and other similar devices.” Ex. 1007, 1:16–19. Szrek teaches that “[l]otteries and other gaming organizations [are] continuously look[ing] for ways to increase their lottery ticket sales” and that one known way to accomplish this is “by widening their market presence and improving [the] ticket sale experience for the public.” *Id.* at 1:20–23. An obstacle with widening the market presence that Szrek seeks to address is created by how lottery tickets are traditionally sold. According to Szrek, “[t]raditionally lottery tickets [were] sold at the dedicated lottery terminals, usually located in small convenience stores and in supermarkets which is typically a single terminal at a service desk.” *Id.* at 1:23–26. Although studies show a dedicated lottery terminal placed at the regular POS lanes in a supermarket was well received by customers, such a configuration did not prove financially successful, partly because of the relatively high cost of in-line lottery terminals compared to the levels of sale per lane. *Id.* at 1:26–34. To address this obstacle, Szrek teaches that “there [was] consideration in the

industry to effectuate lottery ticket sales by existing store cash registers.” *Id.* at 1:37–38.

However, Szrek states, because of the wide variety of hardware and software used for cash registers, the conventional thinking was that developing a solution would be “difficult if not impossible” without significant security, operational, and printing problems. Ex. 1007, 1:50–60, 1:63–66. Szrek teaches that skilled artisans viewed regular cash register paper stock as inadequate for lottery ticket use “because it is insecure, non-durable and non-uniform from manufacturer to manufacturer.” *Id.* at 1:57–60. These paper requirements existed because it was “understood in the industry that a lottery ticket is considered a bearer’s bond,” which serves as “proof of a valid transaction and of the bet wagered.” *Id.* at 2:4–6. As a result, “[l]ottery tickets usually contain[ed] information about [the] wagered bet, date when [the] ticket was purchased and date of [the] game draw, selling entity information . . . and a unique transaction identifier.” *Id.* at 2:6–10. Thus, Szrek states that “there is a demand for the ability to sell lottery tickets at cash registers.” *Id.* at 2:60–61.

Szrek discloses a method and system for selling lottery tickets at POS registers, which “completely obviates the need for the local printing of lottery tickets at the point of sale” because “[o]nly a receipt of [the] lottery transaction is printed locally at the cash register which does not need to be printed in as secure fashion as a lottery ticket.” Ex. 1007, 5:21–25. To carry out the disclosed system and method, Szrek states, “it is assumed that an environment is provided where the cash register is capable of communicating with the game provider (directly or indirectly) and the game provider system (or some other system on behalf of [the] game provider

system) is authorizing [the] cash register's lottery transactions," which may be "stored in [the] game provider system or in another system." *Id.* at 3:14–20.

Szrek describes a "novel" aspect of the disclosed method is that, "instead of printing the lottery ticket, from a legitimate and authorized game provider, on the cash register, the ticket is preprinted (printed ahead of the ticket sale . . .)." Ex. 1007, 3:22–28. Szrek teaches that the preprinted ticket contains many elements of a traditional lottery ticket, including bet selections, unique ticket identifier, barcode that includes ticket identifier, duration for number of eligible draws (if activated), and ticket price. *Id.* at 5:65–6:2. However, the preprinted ticket "does not have a play value until it is activated at the cash register." *Id.* at 3:38–40.

Szrek teaches that the cash register activates the ticket by scanning the ticket barcode, which "originates a transaction to the game provider requesting ticket activation" and, in response, the game provider authorizes the activation as well as provides the lottery product description, price, and the activation receipt identifier. Ex. 1007, 3:41–45, 4:56–64. Once the preprinted ticket is activated, the cash register prints a receipt, which may include product type, the original preprinted ticket identifier, activation identifier, security codes, an activation price, and a valid draw identifier, such as draw number or draw time. *Id.* at 6:54–59. "Because [the] lottery ticket is preprinted in a secure fashion, and only an activation receipt for the transaction is printed at [the] cash register, the [preprinted] ticket could be regarded as secure." *Id.* at 3:55–57. As a result, Szrek teaches that the preprinted ticket may be used as a valid bearer's bond only once the ticket is

activated and the cash register receipt serves only as proof that the ticket was activated. *Id.* at 4:26–31.

2. *Llach*

Llach “relates to a processing and activation system providing consumers with the ability to purchase a stored value card, i.e., a gift card, of various affiliated or non-affiliated service providers with additional value added beyond the purchase price.” Ex. 1008 ¶ 2. Llach describes a processing and activation system that includes “a stored value card transaction processor [that] receives an activation or redemption request,” which “comprises . . . at least one of a card identification, a point of sale terminal identification, a merchant identification, and a time of activation.” *Id.* ¶ 4. The stored value card transaction processor compares the card identification, the POS terminal identification, the merchant identification, and the time of activation to data that is stored to determine if the card to be activated or redeemed is eligible for a value added award. *Id.* If eligible, the processor then transmits a modified request to a card issuer authorization system and receives a response from the card issuer authorization system. *Id.* The processor then transmits the response to the POS terminal indicating the card has been determined to be eligible and authorized for the value added award. *Id.*

3. *Gilmore*

Gilmore relates to a “system for selling game tickets for purchase by a game player within a store.” Ex. 1009, code (57). Gilmore describes the system as including “a point of sale terminal in communication with a game monitor that detects inputted game selection data and determines therefrom the number and type of game tickets to be played” and “a ticket dispensing

system in communication with the game monitor.” *Id.* Gilmore describes that, when the game monitor detects the activation of a predetermined terminal key of the POS terminal, it “dispenses the desired number and type of game tickets from the ticket dispensing system.” *Id.*

C. Any Differences Between the Claimed Subject Matter and the Prior Art

Petitioner contends: (1) no patentable differences exist between what Szrek discloses to a skilled artisan and the subject matter of claims 1–19, 21–42, and 44–53; (2) no patentable differences exist between what Llach and Szrek together disclose to a skilled artisan and the subject matter of claims 1–19, 21–29, 31–42, and 44–53; and (3) no patentable differences exist between what Szrek and Gilmore together disclose to a skilled artisan and the subject matter of claims 20 and 43. Pet. 31, 33–125. For the reasons discussed below, we find Petitioner’s contentions regarding Szrek and Szrek in combination with Gilmore persuasive and supported by a preponderance of the evidence. We do not, however, address Petitioner’s contentions regarding the combination of Llach and Szrek because we determine that Petitioner has established the unpatentability of each of the claims challenged under this ground (claims 1–19, 21–29, and 31–53) based on Szrek alone.

1. Claims 1–19, 21–42, and 44–53 in View of Szrek

a. Independent Claims 1, 6, 7, 29, and 33

Claim 1 of the ’894 patent recites a “transaction processor system,” including a “communication interface for communicating with other devices,” a “processing unit for executing instructions,” and a “memory unit for storing instructions.” Ex. 1001, 10:30–34. Petitioner contends Szrek

discloses this recited system to a skilled artisan in the description of Figure 2, reproduced below as annotated by Petitioner. Pet. 37–40 (citing Ex. 1007, 3:14–20, 4:19–25, Figs. 1, 2; Ex. 1005 ¶¶ 52–54).

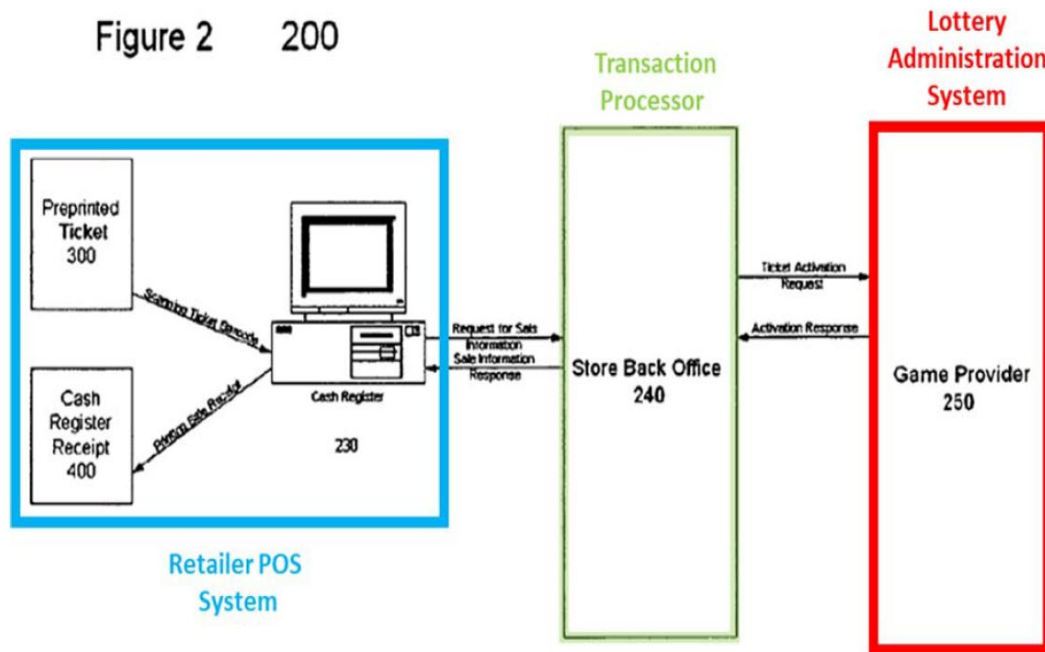


Figure 2 above illustrates “a diagrammatic view of the logical process of activation of [a] lottery ticket via [a] cash register” and Petitioner’s annotations identify a “Retailer POS System” (as preprinted ticket 300, cash register receipt 400, and cash register 230), a “Transaction Processor” (as store back office 240), and a “Lottery Administration System” (as game provider 250). Ex. 1007, 5:44–45; Pet. 40.

Szrek notes “it is assumed that an environment is provided where the cash register [230] is capable of communicating with the game provider system [250] (directly or indirectly) and the game provider system [250] (or some other system on behalf of [the] game provider system) is authorizing [the] cash register’s lottery transactions.” *Id.* at 3:14–19. Szrek states that the activation can “be done on the cash register by scanning [a] ticket bar

code . . . [and,] [a]fter the ticket identifier is obtained, an authorization request is sent to the game provider . . . indirectly via the store ‘back office’ [240].” *Id.* at 4:19–25. Szrek additionally describes the logical process of activation as follows:

The store clerk scans ticket 300 like any other product. Normally when a barcode 310 is scanned for any merchandise, the checkout register 230 application looks up the merchandise price in database or checks the price by using some algorithmic interface. In case of the ticket 300 . . . , this request will be transformed into transactional request to the game provider 250 who verifies if this [ticket] 300 was already activated. If not, it will activate this ticket by marking a status or state of corresponding identifier or record in the computer 40 memory . . . or it may even create a record with the corresponding identifier. If the ticket 300 was already activated and ticket 300 did not participate yet in the lottery drawing, the transaction would be denied.

Id. at 6:28–44.

Petitioner contends that, from Szrek’s description and illustration of the disclosed activation process of a lottery ticket using a checkout register, a skilled artisan would have recognized that “the store back office 240 includes a transaction processor system comprising communication interfaces for communicating with the cash register 230 and the game provider 250, at least one processing unit for executing instructions, and at least one memory unit for storing instructions.” Pet. 40 (citing Ex. 1005 ¶ 54).

Additionally, claim 1 of the ’894 patent recites that, when the instructions stored in the transaction processor system’s memory are executed by its processing unit, the transaction processor system: “(1) provide[s] unique identification information from a pre-printed lottery

ticket, (2) receive[s], from a lottery administration system, a determined draw information associated with the unique identification information, (3) provide[s], to the lottery administration system, payment confirmation for the pre-printed lottery ticket, and (4) facilitate[s] provision of random draw details associated with the pre-printed lottery ticket.” Ex. 1001, 10:35–44. Petitioner contends that Szrek’s description of the activation process for a lottery ticket using a POS device evidences to a skilled artisan that the transaction processor system includes stored instructions that cause its processor to perform each of the four functions claim 1 recites. Pet. 40–49 (citing Ex. 1007, 3:53–57, 4:28–29, 5:52–6:9, 6:28–38, 6:44–47, 6:54–61, 7:6–8, Figs. 2–4; Ex. 1005 ¶¶ 55–65).

Regarding the first of these four functions, Petitioner contends “Szrek discloses that the store back office 240 (*transaction processor system*) provides unique identification information from a pre-printed lottery ticket 300 to the game provider 250 (*lottery administration system*).” *Id.* at 41. As support, Petitioner points out that Szrek describes using preprinted ticket 300 that has a unique ticket identifier 330 and a barcode 310 that includes the unique ticket identifier 330, as depicted in Figure 3, and contends that “[w]hen ticket 300 is scanned at the POS terminal (cash register 230), a transaction request to activate the ticket comprising the unique ticket identifier 330 from the barcode 310 is received by the transaction processor (store back office 240) which then provides the transaction request to the lottery administration system (game provider 250).” *Id.* at 42–43 (citing Ex. 1007, 5:52–6:9, 6:28–38, Figs. 2, 3; Ex. 1005 ¶¶ 56–57); *see also* Ex. 1007, 4:56–67.

Considering the second recited function, Petitioner contends “Szrek discloses that the transaction processor (store back office 240) receives activation receipt information (*determined draw information*) associated with the unique identification information” in the form of “an ‘Activation Response’ from the lottery administration system (game provider 250).” Pet. 45 (citing Ex. 1007, 3:53–57, Fig. 2; Ex. 1005 ¶ 59); *see also* Ex. 1007, 4:56–67. As further support, Petitioner points to Szrek’s description of the cash register receipt for a successful transaction associated with pre-printed ticket 300, as shown in Figure 4, which includes valid draw identifier 460, such as the draw number and draw time, which is associated with original pre-printed ticket identifier 330. *Id.* at 46–47 (citing Ex. 1007, 6:54–61, Fig. 4; Ex. 1005 ¶¶ 60–61).

For the third function, Petitioner contends that “Szrek discloses that the transaction processor (store back office 240) provides payment confirmation to the lottery administration system (game provider 250).” Pet. 48. As support, Petitioner identifies Szrek’s teaching that a “preprinted ticket is not eligible to win unless payment and activation occurs” and that game provider 250 is able to determine whether a particular ticket is a winner. *Id.* (citing Ex. 1007, 4:28–29, 6:44–47). Thus, Petitioner argues, a skilled artisan would have understood “Szrek discloses providing payment confirmation to the lottery administration system” because, “in order for the lottery administration system (game provider 250) to authorize payment of a winning prize, the transaction processor system 240 must have provided, to the lottery administration system (game provider 250), payment confirmation for the pre-printed lottery ticket.” *Id.* at 48–49 (citing Ex. 1005 ¶¶ 62–64).

Fourth, for the last recited function of claim 1, Petitioner points to Figure 2 and the receipt generated by the POS register as showing Szrek discloses to a skilled artisan that the transaction processor (store back office 240) facilitates providing random draw details associated with the pre-printed ticket 300. Pet. 49 (citing Ex. 1007, 3:53–57, 6:54–61, Figs. 2, 4; Ex. 1005 ¶ 65); *see also* Ex. 1007, 4:56–67. In particular, Petitioner points to the fact that Szrek’s description of the cash register receipt for a successful transaction associated with pre-printed ticket 300, as shown in Figure 4, includes valid draw identifier 460, such as the draw number and draw time, which is associated with original pre-printed ticket identifier 330. Ex. 1007, 6:54–61, Fig. 4.

Claim 6 recites substantially similar limitations to those recited in claim 1 and Petitioner relies on the same evidence and arguments presented for claim 1. *See* Pet. 52–53. Claims 7, 29, and 33 recite methods that perform steps substantially similar to the stored instructions recited in claim 1 that the transaction processor system is caused to perform when executed by the processing unit. *See* Ex. 1001, 10:30–44 (claim 1), 11:9–24 (claim 7), 12:37–48 (claim 29), 12:58–13:6 (claim 33). As a result, Petitioner again relies on substantially the same evidence and arguments presented for claim 1. *See* Pet. 53–62, 80. Petitioner further notes that Szrek discloses an apparatus that “enable[s] the secure sale of lottery tickets at general retail point of sale (POS) checkout points, such as standard cash registers,” without the need for “relatively high cost in-lane lottery terminals” (Pet. 58 (citing Ex. 1007, 6:28–38, 54–61, Fig. 2; Ex. 1005 ¶ 88)), as well as, that preprinted tickets 300 in Szrek scanned by the retailer

POS may include both a barcode and a security code (*id.* at 61 (citing Ex. 1007, 5:65–6:6, Fig. 3; Ex. 1005 ¶ 93)).

For claims 1, 6, 7, and 33, Patent Owner alleges that “Szrek fails to disclose a transaction processor.” PO Resp. 27–30. Additionally, for claims 1 and 6, Patent Owner alleges that “Szrek does not disclose payment confirmation.” *Id.* at 49–54. Patent Owner, however, does not contend any deficiencies exist with Petitioner’s reliance on Szrek for claim 29. *See generally* PO Resp. 26–60. We address each alleged deficiency in turn.

First, Patent Owner argues that “Szrek fails to disclose any third party processor that interfaces between the retail store and the lottery administration system.” PO Resp. 30. Patent Owner contends that “Szrek’s ticket activation requests involve only the retail store requesting activation from the lottery administration system—without any third party transaction processor.” *Id.* at 27. Szrek’s “back office 240,” according to Patent Owner, cannot be the recited transaction processor because it is not “a third party to the activation transaction between the retail store and the lottery administration system.” *Id.* at 27–28 (citing Ex. 1007, 1:37–38, 2:36–37, 2:49–50, 4:22–25, 4:35–39, 4:58–60, 4:64, 6:30–31, claim 15). Patent Owner contends that “[t]he cash register and store back office are integral aspects of a retail store” and “operate together to price and sell all of the retailer’s merchandise.” *Id.* at 28–29 (citing Ex. 1007, 6:31–34, Fig. 2; Ex. 2001 ¶ 35). Patent Owner contends that, “unlike a third party processor, Szrek’s store back office could not interface between lottery administration system 250 and other retailers selling pre-printed lottery tickets because Szrek’s store back office only issues ticket activations on behalf of a single retail store.” *Id.* at 29–30 (citing Ex. 1001, 8:62–64).

Petitioner criticizes Patent Owner's argument as relying on an improperly imported "third party" limitation that is unclear (*see* Reply 8–22) and a misconception that the claimed transaction processor cannot be integrated with a retailer's POS terminal (*see id.* at 22–23). In particular, Petitioner notes that the '894 patent states,

[a]lternatively, the communication and data transfers between the POS and lottery system may be facilitated by a transaction processor system. This may be effective where a third party system *is already integrated with* the retailers POS for the purposes of interchanging data and transactions.

Pet. 22 (quoting Ex. 1001, 3:36–40) (emphasis added). This representation, Petitioner contends, demonstrates that a skilled artisan would have recognized that the transaction processor may be a separate, distinct device integrated with the POS terminal. *See id.* at 23 (citing Ex. 1036 ¶ 3). Petitioner also notes that Patent Owner's lottery expert (Mr. Delacenserie) agreed that the transaction processor can be part of the retailer's system. *Id.* at 23 (citing Ex. 1034, 70:3–71:16).

In response, Patent Owner notes that Petitioner does not dispute that (1) Szrek's cash register 230 and store back office 240 are part of the same retailer store, (2) Szrek's cash register and store back office operate together to price and sell merchandise, (3) it was typical for a retailer system to include both POS and back office . . . and (4) unlike a third party processor, Szrek's back office could not interface with multiple retailers.

Sur-reply 11. As a result, Patent Owner argues, Petitioner "cannot now allege that the store back office is a third party processor distinct from the claimed retailer." *Id.* Patent Owner argues

[t]hat the '894 patent discloses where a transaction processor system "may be effective where a third party system is already

integrated with the retailer[']s POS for the purpose of interchanging data and transactions,” does not speak to whether Szrek’s store back office—which undisputedly performs retailer functions for pricing and selling merchandise—is such a third party system.

Id. at 12 (citing Ex. 1001, 3:36–40). Patent Owner concludes that, “[w]hen ‘transaction processor’ is properly construed, . . . Szrek’s store back office is not a ‘transaction processor.’” *Id.* at 13.

Second, Patent Owner argues that “Szrek does not disclose payment confirmation” because “Szrek’s system requires a customer to present both preprinted ticket 300 and a cash register receipt to redeem a prize.” PO Resp. 49 (citing Ex. 1007, 6:62–63; Ex. 2004, 38:20–23). Patent Owner contends that “Szrek’s system requires the receipt to redeem a winning prize because the cash register never provides an affirmative confirmation of payment to the lottery administration system.” *Id.* at 49–50. To support this contention further Patent Owner highlights that “Szrek’s system relies on . . . an ‘undo’ message from the cash register after activation occurs but when a customer does not pay,” which Patent Owner asserts shows that “ticket activation in Szrek’s system only requires an activation request; payment confirmation is neither sent nor required, and therefore the retailer POS must send a ticket nullification message if the customer later decides not to pay for the ticket.” *Id.* at 50 (citing Ex. 1007, 5:6–16). And “Szrek’s activation request does not include a payment confirmation,” in Patent Owner’s words, because “Szrek’s activation request is sent in response to the initial scan of a ticket’s barcode, which occurs prior to customer payment.” *Id.* (citing Ex. 1007, 3:41–43, 4:20–23, 4:56–64, 6:31–38; Ex. 2004, 42:13–18).

Patent Owner criticizes the sufficiency of Petitioner’s evidence to support the contention that Szrek suggests payment confirmation is

communicated to the lottery administration system. PO Resp. 52–53. Patent Owner argues,

[r]ather than address Szrek’s disclosure, the Petition begins with the premise that payment and activation are necessary conditions to redeem a winning prize, and incorrectly concludes that Szrek’s back office “must have provided” “payment confirmation for the pre-printed lottery ticket” for the lottery administration system to “authorize winner payment” for a winning ticket.

Id. at 52 (citing Pet. 48). Patent Owner contends that, although “Szrek’s lottery administration system can ‘authorize winner payment,’ Ex. 1007 at 6:44–51, that by itself is insufficient to redeem the prize.” *Id.* This is so, Patent Owner contends, because the customer must also possess the cash register receipt as proof of payment, [which is] because Szrek’s cash register and back office do not provide any payment confirmation to the lottery administration system.” *Id.* at 52–53 (citing Ex. 1007, 4:30–32, 6:62–63).

Petitioner responds by explaining that the game provider in Szrek could not authorize winner payment without having first been provided payment confirmation because, as Szrek states expressly, “the preprinted ticket is not eligible to win prizes unless payment and activation occurs.” Reply 24 (citing Ex. 1005 ¶¶ 62, 64; Ex. 1007, 4:28–29, 5:17–20). Thus, Petitioner concludes, a skilled artisan “understood that an authorization for payment of a winning ticket from the lottery administration, as described in Szrek, would reflect that the lottery administration received payment conformation.” *Id.* (citing Ex. 1005 ¶¶ 62–64).

Patent Owner replies that Szrek contradicts Petitioner’s position that payment confirmation is provided to the lottery administration system because “Szrek discloses the opposite of payment confirmation: an ‘undo’

message from the cash register after activation occurs but only when a customer does not pay.” Sur-reply 19–20. Patent Owner asserts that Petitioner provides no support for its position, other than conclusory statements and an incorrect theory of inherency. *Id.*

After studying the submissions by both parties, we are persuaded by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses to a skilled artisan at the time of the invention and the subject matter recited in independent claims 1, 6, 7, 29, and 33. From Szrek’s description and illustration of the disclosed activation process for a pre-printed lottery ticket at a POS terminal, cited by Petitioner, we are persuaded a skilled artisan would have recognized that store back office 240 includes: (1) a system with at least a processing unit that executes instructions; (2) a communication interface for communicating with cash register 230 and game provider system 250; and (3) a memory unit for storing those instructions. *See* Pet. 37–40 (citing Ex. 1007, 3:14–20, 4:19–25, Figs. 1, 2; Ex. 1005 ¶¶ 52–54). Patent Owner notably does not dispute, from the vantage point of a skilled artisan, that store back office 240 disclosed in Szrek would have, in fact, had those recited structural components.

Instead, Patent Owner disputes more generally whether a skilled artisan would have considered the structural components of store back office 240 to be part of a transaction processor or transaction processor system. We find, however, that a skilled artisan would have viewed store back office 240 to be a transaction processor or transaction processor system because the processor [system] in store back office 240 processes a transaction (i.e., the activation of a pre-printed lottery ticket) between two devices (i.e., the POS

terminal and the lottery administration system). In addition, Szrek discloses that store back office 240, cash register/POS terminal 230, and game provider system 250 are each *structurally* separate and distinct components. Ex. 1007, 3:14–20, 4:20–25, 4:56–64, Figs. 1, 2).

Patent Owner’s argument that a skilled artisan would not have understood store back office 240 to be a transaction processor fails because the argument relies on a construction of transaction processor or transaction processor system that imports a “third party” limitation, which we reject (*see supra* § III.A). Furthermore, Patent Owner does not dispute that store back office 240, cash register/POS terminal 230, and game provider system 250 are each *structurally* separate and distinct components. To the contrary, Patent Owner appears to concede these components are separate and distinct. *See* PO Resp. 27–28 (“While the store includes both a cash register and a store back office 240, neither is a third party to the activation transaction between the retail store and the lottery administration system. Both the cash register and back office are part of the retail store.”), 29 (“[T]he cash register and store back office operate together to price and sell all of the retail store’s merchandise.”). Finally, Patent Owner’s argument that Szrek’s store back office 240 is distinguishable from a transaction processor because store back office 240 cannot interface between lottery administration system 250 *and* other retailers selling pre-printed lottery tickets (PO Resp. 29–30) lacks merit. We discern no requirement in the claims that the transaction processor is limited to being able to interface between multiple unrelated retailers and a lottery administration system, and Patent Owner’s counsel admits as much. Tr. 36:1–13.

We turn now to the recited instructions/steps. We are persuaded Szrek's description of the logical process, cited by Petitioner, for activating a pre-printed lottery ticket with two or more codes (i.e., barcodes and security codes) at a POS terminal, without the use of lottery hardware, at least suggests that a skilled artisan at the time of the invention would have known to configure store back office 240, cash register/POS terminal 230, and game provider system 250 to "provide" and "receive" the recited information.

As an initial matter, we note several undisputed points that we find supported by the evidence of record. First, Szrek discloses store back office 240, cash register/POS terminal 230, and game provider system 250 that are configured to communicate information back and forth to allow for the sale of a pre-printed ticket at a POS terminal without the need for special lottery printing media at the cash register. Ex. 1007, code (57), 3:14–20, 4:35–39, 4:56–67, 5:21–25, 6:28–61. Second, Szrek discloses that preprinted tickets 300 may include both a barcode and a security code. Ex. 1007, 5:65–6:6, Fig. 3; Ex. 1005 ¶¶ 93. Third, Szrek describes preprinted ticket 300 with unique ticket identifier 330 that, when scanned at the POS terminal (cash register 230), is communicated in a transaction request to a transaction processor (store back office 240) that then provides the transaction request to a lottery administration system (game provider 250). Ex. 1007, 5:52–6:9, 6:28–38, Figs. 2, 3; Ex. 1005 ¶¶ 56–57); *see also* Ex. 1007, 4:56–67. Fourth, store back office 240 (the transaction processor) receives activation receipt information (determined draw information) associated with the unique identification information in the form of an "Activation Response" from the lottery administration system (game provider 250). Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61. Finally, store

back office 240 (the transaction processor) facilitates providing random draw details associated with pre-printed ticket 300 through the receipt generated by the POS register. Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶ 65).

The only instruction in dispute is the one that, when executed by a processing unit, causes payment confirmation for the pre-printed lottery ticket to be provided to the lottery administration system. And Patent Owner disputes whether Petitioner has sufficiently shown Szrek discloses the transaction processor (store back office 240) provides payment confirmation to the lottery administration system (game provider 250). PO Resp. 13–14, 48–53; Sur-reply 19–20. We are persuaded by Petitioner, however, that Szrek’s description of the inter-operational characteristics of store back office 240, cash register/POS terminal 230, and game provider system 250 would have suggested to a skilled artisan at the time of the invention that store back office 240 would include an instruction to cause payment confirmation for the pre-printed lottery ticket to be provided to the game provider system 250. Ex. 1007, 4:28–29, 4:56–67, 5:17–20, 6:44–47; Ex. 1005 ¶¶ 62–64.

Patent Owner does not dispute that Szrek discloses that the store back office and the game provider communicate information back and forth to activate a pre-printed lottery ticket in order to make the ticket eligible to win a prize. PO Resp. 13–14. Szrek teaches that two conditions must be satisfied for a pre-printed lottery ticket to be eligible to win a prize: (1) payment and (2) activation. Ex. 1007, 4:28–29. In operation, Szrek explains that, after a store clerk scans a pre-printed lottery ticket at the cash register, the cash register communicates a request to the store back office

that is “transformed into an activation request by the store back office software” and communicated to the gamer provider system. Ex. 1007, 4:59–64, 6:30–28. Upon receiving the activation request, Szrek teaches that the game provider system may determine whether the ticket has already participated in a drawing and may determine whether the ticket is eligible to win a prize to enable the game provider system to communicate information back to the store back office indicating that the ticket is a winner *and* that winner payment is authorized. Ex. 1007, 6:44–51. Importantly, because Szrek teaches that, from scanning a previously activated ticket, the game provider system *alone* can make the determination about whether the ticket is eligible to win a prize, it logically follows that the game provider system possessed the information necessary to establish payment and activation for the ticket had occurred when it received the activation request.

Taking account of the knowledge, reasonable inferences, and creativity that a skilled artisan possessed at the time of the invention, which indisputably included a recognition that the lottery administration defines the information that must be provided to activate a ticket (Ex. 2002 ¶ 12), we find a natural result flowing from the game provider system being able to determine a winning ticket *and* provide authorization of a winning payment is that the store back office provided payment confirmation for the ticket to the game provider system *before* that determination. As such, we find Szrek’s disclosure sufficient to establish to a skilled artisan that the store back office would include an instruction to cause a payment confirmation for the pre-printed lottery ticket to be provided to the game provider system.

Patent Owner’s arguments do not establish a deficiency with Petitioner’s evidence from Szrek for several reasons. As detailed above,

Szrek expressly states that *the game provider system* may determine from an activation request whether to communicate information back to the store back office identifying both that the ticket is a winner and that the store is authorized to make a winning payment. Ex. 1007, 6:44–51. Thus, it is not correct that Szrek’s system requires a cashier receipt to authorize winner payment.

Szrek’s teaching regarding the nullification of a ticket activation, when a customer does not pay, does not diminish the sufficiency of Petitioner’s evidence. Although we agree that this teaching demonstrates that ticket activation may occur before payment, this fact does not weaken Szrek’s other teachings that suggest the game provider system, at some point before authorizing a winning payment, also is provided information indicating that payment occurred. There is no evidence suggesting that both functionalities cannot coexist without conflict.

Szrek’s teaching that the customer needs to present the cashier receipt when claiming a lottery-prize payment likewise does not diminish the sufficiency of Petitioner’s evidence. Szrek explains that “[i]n a case of any dispute,” the cash register receipt “will allow identifying the activation transaction.” Ex. 1007, 6:64–7:1. Importantly, Szrek does not suggest that the receipt is used to enable the game provider system to authorize a winning payment by showing proof of payment.

Therefore, for the foregoing reasons, we find that Petitioner has shown by a preponderance of the evidence that no patentable differences exist between the subject matter Szrek discloses to a skilled artisan and the subject matter recited by independent claims 1, 6, 7, 29, and 33; moreover,

we determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

b. Dependent Claims 3, 12–17, 19, 23–28, 30–32, 35–40, 42, and 46–53

For each of dependent claims 3, 12–17, 19, 23–28, 30–32, 35–40, 42, and 46–53, Petitioner provides argument and evidence identifying where the recited subject matter, respectively, is taught or suggested by Szrek.

Pet. 49–50, 66–73, 75–79, 81–82. Patent Owner does not dispute that Szrek discloses or suggests the elements additionally recited in each of those dependent claims. *See generally* PO Resp.

Therefore, on the record before us and based on the arguments and evidence presented by Petitioner (*see* Pet. 49–50, 66–73, 75–79, 81–82), we find that Petitioner has established that Szrek teaches or suggests the subject matter of claims 3, 12–17, 19, 23–28, 30–32, 35–40, 42, and 46–53 and we also determine that a preponderance of the evidence shows that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

c. Dependent Claim 2

Claim 2 recites, “[t]he transaction processor system of claim 1, wherein facilitate provision of random draw details comprises receiving, from the lottery administration system, an image or data package containing at least the random draw details.” Ex. 1001, 10:45–48. Petitioner contends the same evidence from Szrek cited to disclose the recited instructions for “receiv[ing] from a lottery administration system, a determined draw information associated with the unique identification information” (*see supra* § IV.C.1.a (citing Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4;

Ex. 1005 ¶¶ 59–61)) also teaches or suggests the subject matter of claim 2. Pet. 49. In particular, Petitioner points to Szerk’s teaching that “[t]he activation receipt information received by the transaction processor (store back office 240) is then provided to the POS terminal (cash register 230) and printed on the receipt 400 of the transaction.” *Id.* (citing Ex. 1007, 6:54–61, Fig. 4; Ex. 1005 ¶ 66).

Patent Owner alleges that the evidence Petitioner cites is deficient because Petitioner fails to “explain[] why the Activation Response sent from Szerk’s lottery administration system to the store back office contains a ‘grouping of more than one datum,’ let alone having a particular ‘packaging syntax.’” PO Resp. 71–72. Patent Owner’s argument is unavailing, however, because it is not commensurate with the scope of claim 2 (*see supra* § III.B), which broadly recites that the transaction processor system receives an image or data package containing at least the random draw details. The ’894 patent confirms the plain meaning of “data package” includes information “communicated in the form of an image, text, or *any other message format deemed appropriate.*” Ex. 1001, 4:51–55 (emphasis added).

After considering the cited information from Szerk, we find persuasive evidence supports Petitioner’s contention that Szerk teaches the elements of claim 2. Because the textual information communicated to the transaction processor from the game provider system is generated on the printed receipt by a POS device in Szerk (*see* Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61), we are persuaded that, at the time of the invention, a skilled artisan would have recognized that the transaction processor received, from the lottery administration system, an electronically

formatted message with textual information about the random draw details. Therefore, for the foregoing reasons, we find that Petitioner has persuasively shown by a preponderance of the evidence that no patentable differences exist between the subject matter Szrek teaches a skilled artisan and the subject matter recited by claim 2 and we determine claim 2 would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

d. Dependent Claims 4 and 9

Claims 4 and 9 depend from claims 1 and 7, respectively. Ex. 1001, 10:53–56, 11:31–36. Claim 4 recites “wherein facilitate provision of random draw details comprises delivery of the random draw details in response to entry of the pre-printed lottery ticket’s unique identifier into a website.” *Id.* at 10:53–56. And claim 9 is substantially the same. *See id.* at 11:31–36.

Petitioner contends the same evidence cited to show that the disclosed transaction processor in Szrek receives, from a lottery administration system, determined draw information associated with a ticket’s unique identification information, as recited in independent claims 1 and 7 (*see supra* § IV.C.1.a (citing Ex. 1007, 3:53–57, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61); *see also* Ex. 1007, 4:56–67), likewise teaches or suggests the subject matter of claims 4 and 9. Pet. 51, 64. Petitioner contends that, because websites were “well known” devices for presenting “detailed draw information . . . in response to entry of a specific lottery ticket identifier,” a skilled artisan at the time of the invention “would have been motivated to utilize a website to provide draw details specific to the pre-printed lottery ticket in order to provide the customer additional avenues/convenience for information regarding the ticket.” *Id.* (citing Ex. 1030; Ex. 1005 ¶ 71).

Patent Owner argues that Petitioner's contention is deficient because it "fails to address the claimed requirement that a transaction processor system facilitate 'delivery of the random draw details in response to entry of the pre-printed lottery ticket's unique identifier into a website.'" PO Resp. 72–73. Patent Owner argues that Mr. Hutton (Petitioner's expert) provides no documentary evidence to substantiate his opinion that the Missouri lottery website (Ex. 1030) is facilitated by a transaction processor or his opinion regarding the stated rationale for modifying Szrek to utilize a website. *Id.* at 74 (citing Ex. 2004, 55:23–56:3; Ex. 1005 ¶¶ 43–44).

After studying the submissions by both parties, we find that a preponderance of the evidence supports Petitioner's obviousness contention that, at the time of the invention, a skilled artisan would have been motivated to modify the transaction processor in Szrek to deliver the random draw details in response to an entry of the pre-printed lottery ticket's unique identifier into a website, as recited by claims 4 and 9.

We note that we have already determined in the context of parent claims 1 and 7 (*see supra* § IV.C.1.a) that Szrek discloses a transaction processor that: (1) provides unique identification information to an external device (e.g., game provider system); (2) receives, from a game provider system, determined draw information associated with the identification information; and (3) facilitates the delivery of random draw details associated with the ticket by providing the received draw information to another external device (e.g., a POS device). Petitioner's cited evidence shows that Szrek discloses the transaction processor delivering the random draw details to the external device (e.g., a POS device) for printing, which occurs in response to the entry of the pre-printed lottery ticket's unique

identifier via the external device. *See* Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61; *see also* Ex. 1007, 4:56–67 (describing that the transaction processor’s delivery of the random draw details to be printed occurs in response to an external device first providing the transaction processor the unique identification information associated with a pre-printed lottery ticket).

The difference between the recited subject matter in claims 4 and 9 and the disclosed subject matter in Szrek is that the transaction processor’s delivery is initiated by receiving the pre-printed lottery ticket’s unique identifier through the entry of identifier information into different external devices—i.e., via a POS device versus a website. But we find persuasive Petitioner’s contention that, at the time of the invention, websites were well known by skilled artisans to be devices used to provide a pre-printed lottery ticket’s unique identifier to another device (e.g., a lottery administration system). *See* Ex. 1030; Ex. 1005 ¶ 71. We do not agree with Patent Owner that the evidence provided by Mr. Hutton should be discarded because it is unsupported. On the contrary, we find Mr. Hutton’s testimony persuasive on this point because it is supported by his background and Exhibit 1030.

We likewise find persuasive Petitioner’s reasoning—to provide the customer additional avenues/convenience for information regarding the ticket—explaining why a skilled artisan would have known to modify the transaction processor in Szrek to receive, through an entry into a website, the pre-printed lottery ticket’s unique identifier and therefrom initiate the delivery of the random draw details. Once the transaction processor receives the identifier information, it would “provide” and “receive” substantially the same information following the instructions/steps recited in claims 1 and 7

to deliver the random draw details to an external device. In other words, the proposed modification only changes the origin of the lottery ticket's unique identifier, it does not change the instructions/steps that the transaction processor follows after it has that information. Such a modification is nothing more than arranging old elements with each performing the same function it had been known to perform to yield no more than one would expect from such an arrangement, which is a hallmark of obviousness. *KSR*, 550 U.S. at 417 (“the Court derived from the precedents the conclusion that when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious”).

Therefore, for the foregoing reasons, we determine that Petitioner has shown by a preponderance of the evidence that no patentable differences exist between the subject matter Szrek teaches a skilled artisan at the time of the invention and the subject matter recited by claims 4 and 9; moreover, we determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

e. Dependent Claims 5 and 10

Claims 5 and 10 depend from claims 1 and 7, respectively. Ex. 1001, 10:57–61, 11:37–42. These claims are similar to claims 4 and 9, except they recite “a mobile application” instead of “a website.” Claim 5 recites “wherein facilitate provision of random draw details comprises delivery of the random draw details in response to entry of the pre-printed lottery ticket's unique identifier into a mobile application.” *Id.* at 10:53–56. And claim 10 is substantially the same. *See id.* at 11:31–36.

Given the minimal differences between claims 5/10 and claims 4/9, the evidence and arguments by both parties are substantially similar (*see* Pet. 52, 64; PO Resp. 75–77), except Petitioner contends that, because *mobile applications* were “well known” devices for presenting “detailed draw information . . . in response to entry of a specific lottery ticket identifier,” a skilled artisan at the time of the invention “would have been motivated to utilize a mobile application to provide draw details specific to the pre-printed lottery ticket in order to provide the customer additional avenues/convenience for information regarding the ticket.” Pet. 52 (citing Ex. 1031; Ex. 1005 ¶ 73).

Because we find persuasive Petitioner’s contentions that, at the time of the invention, mobile applications were well-known by skilled artisans to be used to provide a pre-printed lottery ticket’s unique identifier to another device (e.g., a lottery administration system) (*see* Ex. 1031; Ex. 1005 ¶ 71) and that mobile applications were known to provide the customer with additional avenues/convenience for getting information, we find that a preponderance of the evidence supports Petitioner’s obviousness contention for the same reasons discussed for claims 4 and 9 (*see supra* § VI.C.1.d). We are persuaded by a preponderance of the evidence that, at the time of the invention, a skilled artisan would have known to modify the transaction processor in Szrek to deliver the random draw details in response to an entry into a mobile application of the pre-printed lottery ticket’s unique identifier, as recited by claims 5 and 10, to provide the customer with an additional avenue/convenience to get information regarding the ticket. Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses and the

subject matter recited by claims 5 and 10 and determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

f. Dependent Claim 8

Claim 8 recites, “[t]he method of claim 7, further comprising facilitating, by the transaction processor, provision of random draw details, wherein provision of the random draw details comprises delivery of the random draw details in response to a scan of the pre-printed lottery ticket on existing lottery terminals or self-serve ticket checkers.” Ex. 11:25–30. Petitioner contends claim 8 is shown by the same evidence from Szrek that was cited to teach claims 1 and 7 (*see supra* § IV.C.1.a (citing Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61)). Pet. 63. Petitioner contends that Szrek discloses the step recited in claim 8, but that it does so in response to a scan of the pre-printed lottery ticket by a cash register instead of by an existing lottery terminal or self-serve ticket checker. *Id.* Nevertheless, Petitioner contends that the cash register is only an illustrative embodiment of a POS device and that lottery terminals and self-service terminals are additional examples of POS devices, “which follow the same logical process for activating the pre-printed tickets.” *Id.*

Patent Owner disputes Petitioner’s contention by pointing out that, in the exemplary embodiment Szrek discloses, “Szrek’s back office is not involved in communications between the lottery terminals, self-service ticket checkers, and the lottery system.” PO Resp. 79–80 (citing Ex. 1007, Fig. 1; Ex. 2004, 68:13–19). Patent Owner argues that “Szrek’s back office cannot process any activation until Szrek’s customer has already obtained ticket

300—and thus wager numbers—at the lottery terminal or self-service kiosk.” *Id.* at 80.

After studying the submissions by both parties, we find that persuasive evidence supports Petitioner’s contention that Szrek suggests to a skilled artisan that the transaction processor may facilitate the delivery of the random draw details in response to a scan of the pre-printed lottery ticket on existing lottery terminals or self-serve ticket checkers. Although we agree with Patent Owner that, in Szrek’s exemplary embodiment, the lottery terminal and self-serve ticket checker communicate directly with the game provider system, this fact does not undermine the thrust of Petitioner’s argument. The thrust of Petitioner’s argument is that a cash register, lottery terminal, and self-serve ticket checker are each an example of a POS device and Szrek’s teachings about the transaction processor apply equally to all POS devices. And we agree.

Szrek suggests that POS devices include, not only cash registers, but “other similar devices.” Ex. 1007, 1:17–19. As a result, because we find a skilled artisan would consider lottery terminals and self-serve ticket checkers to be devices similar to cash registers, we are persuaded that the transaction processor disclosed in Szrek would be understood by a skilled artisan to operate in a similar manner when communicating with lottery terminals and self-serve ticket checkers. For the reasons explained in the context of claims 1 and 7 (*see supra* § IV.C.1.a (citing Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61)), we are persuaded that Szrek suggests to a skilled artisan at the time of the invention that the transaction processor facilitates random draw details in response to a scan of the pre-printed lottery ticket on lottery terminals and self-serve ticket checkers.

Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses and the subject matter recited by claim 8 and determine that the claim would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

g. Dependent Claims 11 and 34

Claims 11 and 34 depend from claims 7 and 33, respectively. Ex. 1001, 11:43–47, 14:7–11. These claims recite that the “transaction request” received by the transaction processor in claims 7 and 33 includes “unique product information associated with the pre-printed lottery ticket over a secure communication channel from a point of sale (POS) system.” *Id.* Petitioner contends claims 11 and 34 are shown by the same evidence from Szrek that was cited to teach claims 7 and 33 (*see supra* § IV.C.1.a (citing Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61)). Pet. 65. Petitioner contends that evidence shows that “[t]he transaction request received by the transaction processor (store back office 240) from the POS system (cash register 230) includes information identifying the unique lottery product being purchased.” *Id.* (citing Ex. 1007, 4:40–48; Ex. 1005 ¶¶ 99–100). Petitioner notes that Szrek demonstrates an awareness of the need to communicate information securely when discussing the use of encrypted data to communicate information. *Id.* at 66 (citing Ex. 1007, 4:9–17; Ex. 1005 ¶ 101). Petitioner contends,

[t]o the extent Szrek does not disclose receiving the transaction request from the POS system over a secure communication channel, it would have been obvious to receive the information over a secure communications channel between the POS system and the back Office given the sensitive nature of the transaction as evidenced in Szrek by the encrypted

messages between the lottery administrator and the commercial printer. A [skilled artisan] would be motivated to use a secure communication channel to protect the information/system from “internal and external fraud.”

Id. (citing Ex. 1007, 2:10–18, 4:7–18; Ex. 1005 ¶102).

Patent Owner argues that “Szrek does not disclose any secure communications channel over which data is securely transmitted.” PO Resp. 81. Patent Owner contends that, although Szrek discloses taking security measures regarding the pre-printed lottery ticket, “it does not protect any communications channel over which information is transmitted.” *Id.* at 81–82. Patent Owner criticizes Petitioner’s reasoning for modifying Szrek to include a secure communication channel as being conclusory and unsupported. *Id.* at 82–83.

After studying the submissions by both parties, we find that a preponderance of the evidence supports Petitioner’s obviousness contention that, at the time of the invention, a skilled artisan would have had a reason to modify Szrek in a manner that results in the transaction processor receiving the disclosed transaction request, which includes unique product information associated with the pre-printed lottery ticket, over a secure communication channel from a point of sale (POS) system.

For the reasons explained in the context of claims 7 and 33 (*see supra* § IV.C.1.a (citing Ex. 1007, 3:53–57, 4:56–67, 6:54–61, Figs. 2, 4; Ex. 1005 ¶¶ 59–61)), we are persuaded that the “transaction request” received by the transaction processor from a point of sale (POS) system includes “unique product information associated with the pre-printed lottery ticket.” Although Szrek does not disclose that the request is sent over a secure communication channel, we disagree with Patent Owner that Petitioner’s

proffered reason for modifying Szrek to include a secure communication channel is deficient. Szrek clearly expresses concerns with the security of the information associated with the pre-printed lottery ticket. Ex. 1007, 2:10–18, 4:7–18; Ex. 1005 ¶¶ 101–102. And there is no dispute that a skilled artisan would have known a secure communication channel can provide security for information communicated electronically between two devices. Given that a skilled artisan is not an automaton without ordinary creativity, we are persuaded that a skilled artisan would have been led to use a secure communication channel between the POS system and the transaction processor to protect the information being exchanged, as Petitioner contends.

Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses and the subject matter recited by claims 11 and 34 and determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

h. Dependent Claims 18 and 41

Claim 18 depends from claim 17, which depends from claim 16, which depends from independent claim 7. Ex. 1001, 11:9–24, 11:66–67, 17:1–7. Similarly, claim 41 depends from claim 40, which depends from claim 39, which depends from independent claim 33. *Id.* at 12:58–13:6, 13:30–38. Each of the identified parent claims to claims 18 and 41, are addressed above. *See supra* §§ IV.C.1.a (claims 7 and 33), IV.C.1.b (claims 16, 17, 39, and 40). Notably, Patent Owner does not dispute Szrek discloses the recited elements in each of the parent-dependent claims 16, 17, 39, and 40. *See generally* PO Resp. Claims 18 and 41 recite that the

validating step, which is first introduced in claims 16 and 39, “includes verifying that the product is validly distributed by the retailer.” Ex. 1001, 12:5–7, 13:36–38.

Petitioner contends that “[c]laims 18 and 41 are disclosed by Szrek in the same manner as set forth with respect to [c]laim 16.” Pet. 72 (referring to Pet. 70–71) (citing Ex. 1005 ¶ 113)). The undisputed evidence Petitioner provides from Szrek to show it discloses “validating the received transaction request,” as claim 16 recites, makes clear that the ticket identifier may be used during the activation process by the game provider system for verification purposes, including validating the legality of the transaction and validating authenticity of the ticket. *Id.* at 70–71 (citing Ex. 1007, 3:46–57, 4:9–18; Ex. 1005 ¶¶ 109–111).

Petitioner contends that, although “Szrek does not explicitly disclose (nor does the patent) . . . associating the pre-printed tickets with a specific retailer,” “a [skilled artisan] understood that lottery administrators would require some verification that the submitting retailer was authorized to sell the tickets.” *Id.* at 72 (citing Ex. 1005 ¶ 114). In addition, Petitioner contends that “[r]etailers would have undergone a rigorous application process to obtain a Retailer ID in order to participate in lottery sales.” *Id.* (citing Ex. 1005 ¶ 114). Petitioner concludes that “it would have been obvious to a [skilled artisan] to modify Szrek to include verification that the retailer submitting the request is authorized to distribute lottery tickets (*product*).” *Id.* (citing Ex. 1005 ¶ 114).

Patent Owner argues that Petitioner’s contentions are deficient because they merely rely on “common sense and general knowledge, rather

than analysis and evidentiary support.” PO Resp. 85. Patent Owner argues that “[r]ather than provide reasoned analysis on the basis of evidentiary support, the Petition impermissibly uses hindsight to reconstruct the claimed limitations, relying on nothing more than attorney argument parroted by its expert without evidentiary support.” *Id.*

After studying the submissions by both parties, we find that persuasive evidence supports Petitioner’s obviousness contention that, at the time of the invention, a skilled artisan would have known Szrek’s validating step “includes verifying that the product is validly distributed by the retailer.”

For the reasons explained by Petitioner in the context of claims 16 and 39 (Pet. 70–71 (citing Ex. 1007, 3:46–57, 4:9–18; Ex. 1005 ¶¶ 109–111)), Szrek establishes that, as part of a transaction request, the transaction processor provides information to a game provider system for the purpose of ensuring the integrity of the transaction. Szrek specifically describes that the transaction request may communicate “codes” to provide information that may be used by the game provider system to indicate, “in an algorithmic fashion,” the legality and authenticity of the pre-printed lottery ticket sale. Ex. 1007, 3:46–57, 4:9–18; Ex. 1005 ¶¶ 109–111. Patent Owner does not dispute these facts, which is significant because they provide the foundation for Petitioner’s contention that it would have been obvious to a skilled artisan to include information for verifying that a retailer is a valid distributor of a lottery ticket. Furthermore, these facts diminish the weight of Patent Owner’s argument that the Petition fails to provide a sufficiently reasoned analysis on the basis of evidentiary support.

In view of these undisputed facts and Mr. Hutton’s background (*see, e.g.,* Ex. 1006, 2), we credit, and find persuasive, Mr. Hutton’s testimony (in part, because his testimony also aligns with common sense) that a skilled artisan would have known at the time of the invention that, prior to authorizing a lottery ticket sale, a game provider would require verification that the submitting retailer is authorized to sell tickets. Ex. 1005 ¶ 114. Because one of the stated purposes of the transaction request is to provide information to enable a game provider system to verify the legality and integrity of the lottery ticket sale, we are persuaded that a skilled artisan would have known to include information in that request that allows the retailer to be verified as a “legal” distributor. Petitioner’s obviousness position changes nothing about the structure and operation of the transaction processor; it only modifies the *information* that the transaction processor communicates. In other words, the transaction processor would still perform the same function it had been known to perform to yield no more than one would expect from such an arrangement.

Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses and the subject matter recited by claims 18 and 41 and determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

i. Dependent Claims 21 and 44

Claim 21 depends from claim 7 and claim 44 depends from claim 33. Ex. 1001, 12:15–19, 14:7–11. Claims 21 and 44 recite, “wherein the information provided to the lottery administration system includes one or more randomly determined lottery numbers associated with the pre-printed

lottery ticket prior to the time the pre-printed lottery ticket is purchased at the POS.” *Id.*

Petitioner contends, “Szrek discloses the bet selection which includes user selected or quick picks numbers (*one or more randomly determined lottery numbers*) associated with the preprinted tickets is provided to the lottery administration system.” Pet. 73 (citing Ex. 1007, 3:29–31, 5:65–6:3; Ex. 1005 ¶ 116). And that,

Szrek discloses when ticket 300 is scanned at the POS terminal (cash register 230), a transaction request to activate the ticket comprising the unique ticket identifier 330 from the barcode 310 is received by the transaction provider (store back office 240) provides the transaction request including the bet selections to the lottery administration system (game provider 250).

Id. at 74 (citing Ex. 1007, 6:28–38, Fig. 2; Ex. 1005 ¶117).

Patent Owner argues that “the Petition then alleges without evidence that Szrek’s back office ‘provides the transaction request including the bet selections’ to the lottery administration system.” PO Resp. 68 (citing Pet. 74; Ex. 1005 ¶ 117). Patent Owner asserts that Mr. Hutton “conceded” that “Szrek’s POS and back office do not send any wager or bet numbers to the lottery administration system.” *Id.* at 68–69 (citing Ex. 2004, 75:20–76:1, 77:8–12). Patent Owner argues additionally that “[i]n Szrek’s ‘preloaded’ ticket system, it would make no sense for the cash register or back office to transmit any bet selection, because the lottery administration system has already predefined what bet selection corresponds to any given ticket identifier.” *Id.* at 69 (citing Ex. 1007, 3:46–50). Patent Owner argues that “it is because the lottery administration system predetermines the correspondence between ticket identifiers and bet selections that Szrek’s

tickets can be preprinted with ‘bet data 350’ and ‘ticket identifier 330.’” *Id.* (citing Ex. 1007, 5:65–6:3, Fig. 3).

After studying the submissions by both parties, we find that persuasive evidence supports Petitioner’s obviousness contention that, at the time of the invention, a skilled artisan would have known the transaction processor may provide information to the lottery administration system of randomly determined lottery numbers associated with a pre-printed lottery ticket prior to the time the ticket is purchased at the POS. In particular, Szrek makes clear that

[t]he ticket can be preprinted¹¹ . . . as a computer generated selection[] (quick pick)” and that “the preprinted ticket identifier 330 on the self-service terminal 130 or kiosk 130 could be constructed in a way that part of ticket identifier 330 could correspond to the bet combination 350 chosen by the players.

Ex. 1007, 3:29–31, 7:19–22 (footnote added). As a result, a skilled artisan would have appreciated that “the game provider system may learn [a] bet combination from the ticket identifier and authorize this bet.” *Id.* at 7:26–28.

Patent Owner’s arguments are unavailing because we find that they either misapprehend the evidence or are outweighed by the evidence to the contrary. For example, Patent Owner misapprehends Mr. Hutton’s testimony allegedly conceding that Szrek’s POS and back office do not send any wager or bet numbers to the lottery administration system. Although Mr. Hutton agreed that, in the exemplary embodiment disclosed by Szrek,

¹¹ Szrek describes “preprinted” as referring to a ticket “printed ahead of the ticket sale by a commercial printer capable of printing lottery tickets.” Ex. 1007, 3:26–27.

the wager or bet numbers are not identified specifically as information sent to the lottery administration (Ex. 2004, 75:20–76:1), this testimony is limited to exemplary embodiment(s) disclosed and does not support the broader concession that Patent Owner alleges. Further, and contrary to Patent Owner’s representation, Mr. Hutton disagreed with Patent Owner’s broader contention that there is no sending of wager or bet selections at the time of purchase in Szrek—“Q. So in Szrek, there is no sending of wager or bet selections at the time of purchase, correct? A. **No.**” Ex. 2004, 77:8–12 (emphasis added).

Additionally, Szrek undermines Patent Owner’s argument that Petitioner’s contentions make “no sense” because the “quick pick” numbers associated with a pre-printed lottery ticket generated at a self-serve terminal are necessarily sent to the lottery administration before the ticket is scanned at the POS. Szrek does so by stating, “this type of ticket identifier assignment allows printing customer selected wagers on tickets 300 on self-service terminals 130 and in kiosks 130 *without game provider 250 connectivity.*” Ex. 1007, 7:33–36 (emphasis added). Without connectivity, the lottery administration, in fact, could not have received the customer’s quick pick lottery number prior to a ticket’s activation at the POS terminal.

Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses and the subject matter recited by claims 21 and 44 and determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

j. Dependent Claims 22 and 45

Claim 22 depends from claim 7 and claim 45 depends from claim 33. Ex. 1001, 12:20–21, 14:12–13. Claims 22 and 45 recite, “wherein the retailer POS is online.” *Id.* And Petitioner contends, because “online shopping and POS interfaces were ubiquitous and well known in the art,” a skilled artisan at the time of the invention would have known to provide lottery tickets over the internet with an online POS and would have been motivated to do so “to expand the customer base by providing greater access and convenience.” Pet. 74–75 (citing Ex. 1005 ¶ 118). Patent Owner argues that the proposed motivation lacks merit because “the only disclosed embodiment in Szrek requires the customer to return with both the preprinted ticket and the physical receipt to redeem a winning prize” and, therefore, modifying Szrek to utilize “an online POS would not provide greater access or convenience because the customer would still have to make a visit to the store.” PO Resp. 86–87.

After studying the submissions by both parties, we find that a persuasive evidence supports Petitioner’s obviousness contention that, at the time of the invention, the need to expand the customer base by providing greater access and convenience would have led a skilled artisan to modify Szrek to provide lottery tickets over the internet with an online POS. We find additional support for this determination from Szrek’s recognition that the disclosed system may be part of a network. *See* Ex. 1007, 2:48–51. Additionally, Patent Owner’s argument fails because Szrek expressly states that *the game provider system* may determine from an activation request alone whether to communicate information back to the store back office identifying both that the ticket is a winner and that the store is authorized to

make a winning payment. Ex. 1007, 6:44–51. Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter Szrek discloses and the subject matter recited by claims 22 and 45 and determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek.

2. *Claims 1–19, 21–29, 31–42, and 44–53 in View of Llach and Szrek*

Petitioner asserts that the combination of Llach and Szrek teaches each limitation of claims 1–19, 21–29, 31–42, and 44–53, and supports this contention with detailed citations to the record. *See* Pet. 82–120. For the reasons discussed above (*see supra* § IV.C.1), we have already determined that the recited subject matter in those claims is unpatentable as being obvious in view of Szrek alone. Therefore, it is not necessary to reach Petitioner’s alternative ground challenging the patentability of the same claims in view of the combined disclosures of Szrek and Llach. *See SAS Inst. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (holding that a petitioner “is entitled to a final written decision addressing all of the claims it has challenged”); *Boston Sci. Scimed, Inc. v. Cook Grp. Inc.*, 809 F. App’x 984, 990 (Fed. Cir. 2020) (nonprecedential) (stating that the “Board need not address issues that are not necessary to the resolution of the proceeding,” such as “alternative arguments with respect to claims [the Board] found unpatentable on other grounds”).

3. *Claims 20 and 43 in View of Szrek and Gilmore*

Claim 20 depends from claim 7 and claim 43 depends from claim 33. Ex. 1001, 12:10–13, 14:3–6. Claims 20 and 43 recite, “wherein the information provided to the lottery administration system includes one or

more randomly determined lottery numbers generated at the time the pre-printed lottery ticket is purchased at the POS.” *Id.*

Although Szrek “discloses that tickets with user selected numbers or quick picks may be printed via a kiosk and purchased at the register,” Petitioner acknowledges that Szrek “does not explicitly disclose[] generating the quick pick numbers at the time the ticket is purchased at the POS.” Pet. 122. Nevertheless, Petitioner contends that Gilmore demonstrates that a skilled artisan fully appreciated that POS terminals could successfully provide the functionality of generating the quick pick numbers at the time of purchase. *Id.* at 122–24 (citing Ex. 1009 ¶¶ 63, Figs. 5, 6A; Ex. 1005 ¶¶ 204–205). And Petitioner contends that a skilled artisan would have been motivated to modify Szrek to allow the retailer POS to generate the quick pick numbers at the time of purchase in order to:

- 1) distribute the generation of numbers away from the central office as taught by Gilmore; 2) further reduce the need for a kiosk to print quick picks; 3) minimize the in lane wait time associated with the lottery administrator generating the numbers; and 4) provide each quick pick customer access to all the possible combinations of the current draw, a feature not possible when the random draw is already associated with the pre-printed tickets.

Id. at 124–25 (citing Ex. 2005 ¶ 206). Because “the generation of random numbers (quick pick) was ubiquitous in processors and relied upon well-known technologies,” Petitioner contends that a skilled artisan would have understood modifying Szrek in this manner as having “a high likelihood of success.” *Id.* at 125 (citing Ex. 1005 ¶ 207).

Patent Owner argues that there are two reasons Petitioner fails to establish the unpatentability of claims 20 and 43. “First, the Petition relies solely on Szrek to disclose the claimed transaction processor, but Szrek does

not disclose any transaction processor as properly construed.” PO Resp. 61. “Second, [Petitioner’s] proposed modification of Szrek with Gilmore is fundamentally incompatible with Szrek’s preloaded ticket system.” *Id.* Patent Owner argues that the proposed modification is incompatible because Szrek is allegedly centered around a system in which the pre-printed lottery tickets are “preloaded” and Gilmore discloses the use of specialized lottery printing devices at the POS terminal. *See id.* at 61–68.

After studying the submissions by both parties, we find that a preponderance of the evidence, as cited by Petitioner, supports Petitioner’s contention that Szrek and Gilmore satisfy the elements recited in claims 20 and 43 and that a skilled artisan would have had a reason to combine the references’ teachings. We adopt the supporting analysis in the Petition as our own in this Decision. Patent Owner’s first argument regarding the lack of any disclosure of a transaction processor is unavailing for the detailed reasons explained in the context of the independent claims (*see supra* § IV.C.1). Patent Owner’s second argument is also unavailing because it focuses on the references individually, and on specific embodiments within each, rather than what Szrek and Gilmore teach or suggest when viewed collectively and in their entirety. Therefore, we find Petitioner has shown by a preponderance of the evidence that there are no patentable differences between the subject matter of the combined teachings of Szrek and Gilmore and the subject matter recited by claims 20 and 43 and determine that those claims would have been obvious to a skilled artisan at the time of the invention in view of Szrek and Gilmore.

V. THE PARTIES' MOTIONS TO EXCLUDE

Patent Owner and Petitioner each filed a Motion to Exclude. Papers 37, 38. Patent Owner seeks to exclude Exhibit 1039, which is relied upon by Petitioner to challenge the patentability of the '894 patent claims in view of Llach and Szrek. *See generally* Paper 37. Petitioner seeks to exclude portions of Mr. Friedman's Declaration (Ex. 2001) that also address Petitioner's challenge to the patentability the '894 patent claims in view of Llach and Szrek. Because, for the reasons explained above, we do not address Petitioner's challenge based on Llach and Szrek, none of the materials sought to be excluded is relevant to the patentability determination in this proceeding. Therefore, we need not decide either party's Motion to Exclude.

Accordingly, we dismiss Patent Owner's and Petitioner's Motions to Exclude as moot.

VI. CONCLUSION¹²

For the foregoing reasons, Petitioner has demonstrated by a preponderance of the evidence that challenged claims 1–19, 21–42, and 44–53 are unpatentable as being obvious in view of Szrek and that claims 20 and 43 are unpatentable as being obvious in view of Szrek and Gilmore. We dismiss Patent Owner’s and Petitioner’s Motions to Exclude as moot.

In summary:

Claims	35 U.S.C. §	Reference(s)/ Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–19, 21–42, 44–53	103	Szrek	1–19, 21–42, 44–53	
1–19, 21–42, 44–53	103	Llach, Szrek ¹³		
20, 43	103	Szrek, Gilmore	20, 43	
Overall Outcome			1–53	

¹² 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).

¹³ We do not address Petitioner’s contention regarding the combination of Llach and Szrek because Szrek alone demonstrates the unpatentability of claims 1–19, 21–42, and 44–53.

VII. ORDER

Accordingly, it is:

In consideration of the foregoing, it is hereby:

ORDERED, based on a preponderance of the evidence, that claims 1–53 of U.S. Patent No. 10,769,894 B2 have been shown to be unpatentable;

FURTHER ORDERED that Patent Owner’s Motion to Exclude (Paper 37) is dismissed as moot;

FURTHER ORDERED that Petitioner’s Motion to Exclude (Paper 38) is dismissed as moot; and

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

PGR2020-00084
Patent 10,769,894 B2

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