

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,  
*Petitioner,*

v.

BLACKHAWK NETWORK INC.,  
*Patent Owner*

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Case IPR2024-00465  
U.S. Patent No. 11,488,451

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**SUPPLEMENTAL DECLARATION OF MICHAEL HUTTON**

I, Michael Hutton, declare as follows:

1. I have been retained on behalf of Interactive Communications International, Inc. (“Petitioner”) in connection with the above-captioned *inter partes* review (IPR). I am being compensated for my time at the rate of \$375 per hour. I have no interest in the outcome of this proceeding.

2. The statements made herein are based on my own knowledge and opinion. This Declaration represents only the opinions I have formed to date. I may consider additional documents as they become available or other documents that are necessary to form my opinions. I reserve the right to revise, supplement, or amend my opinions based on new information and on my continuing analysis.

3. I have been retained to provide my opinions regarding two narrow issues, as discussed herein.

## **I. LEGAL UNDERSTANDING**

4. I incorporate the “Legal Understanding” section from my first declaration.

## **II. CLAIM CONSTRUCTION OF “RANDOM DRAW”**

5. I have been asked to opine on the plain meaning of “random draw” in the context of the claims and specification as understood by a POSITA.

6. In my opinion, the term “random draw” has an ordinary and customary meaning used by ordinary artisans within the field of lottery systems.

Both the word “random” and the word “draw” have well-understood meanings within the field. A “random draw” game is a lottery game that involves a random draw. This would include “lotto-type” games that are common in the United States, such as Lotto or Powerball, where customers pick (or have a computer pick for them, *i.e.* “quick pick”) a series of numbers, and the draw involves randomly selecting the winning numbers from the set of all possible numbers. As a result, it is possible, and often the case, that nobody had picked the selected winning numbers.

7. There is another type of lottery game called a “passive” lottery game. This is where customers purchase tickets (which could have numbers on them), and a later draw randomly picks the numbered tickets that are winners, assigning them prizes. This is also known as a “raffle.” Such games were more common in the past, though in some areas of the world, they are still very popular. One of the largest “passive” lottery games is Spain’s National Lottery.

8. Thus, in my opinion, a “random draw” game includes any random draw-based game, including both lotto-type games and passive games.

9. The ’451 patent’s claims, specification, and prosecution history support this understanding of a “random draw.” Nothing about the claims requires that a “random draw” game be limited to lotto-type games with randomly-selected numbers that do not always result in a winner.

10. In my opinion, the specification is quite clear about this. The '451 patent states that “[b]roadly there are two types of lotteries”: (1) “instant win lotteries” and (2) “**draw**-based lotter[ies] or ‘online’ lotter[ies], where a player makes a wager on a subsequently occurring event,” *i.e.* a **draw**. Ex. 1001, 1:26-33. An “instant win lottery” includes scratch-off tickets, and winners are “instantly” known and do not require any activation by a central system during customer purchase. *Id.*, 1:28-31. Thus, no drawing takes place. Thus, the distinction between the two types of lotteries is based on whether there is a draw or not. And the '451 patent clearly states it is directed to “draw based lottery tickets” not “instant win lotteries.” *Id.*, 1:18-21.

11. A passive game like a raffle meets the specification’s definition of a “draw-based lottery” because a player makes a wager on a subsequent draw. Patent Owner’s expert, Dr. Miller, agrees that passive games have a draw. Ex. 2052, ¶124. And I understand that Dr. Miller would agree that passive games are not instant lottery games. Ex. 1037, 45:7-10 (“A passive lottery game is also not an instant lottery game.”). Thus, between the “two types of lotteries” mentioned by the '451 patent, there is no question that passive games are “draw-based lotteries” and not “instant win lotteries.”

12. The specification provides two examples of draw-based games, one directed to a passive game and one directed to a lotto-type game. Specifically, the

specification describes one game where “the numbers are drawn ... by the lottery organization” and another game where the numbers are instead “generated.” Ex. 1001, 1:37-41. Passive games often involve a computer randomly drawing a number from a pool of eligible numbered tickets. By contrast, lotto-based games involve a computer randomly generating numbers.

13. My review of the prosecution history further cements that what I discussed above is the proper meaning of “random draw.” During prosecution, the applicant argued that a reference called Sandvick was limited to “instant-winner lottery games,” which the applicant distinguished from the patent’s “claimed draw-based games.” Ex. 1002, 660. This is the same distinction made in the patent. The applicant then went on to describe that “the present claims are specifically drawn to ***non-instant winner games and methods, i.e., ‘random-draw’*** games and methods.” *Id.*, 662. Thus, the applicant described “random draw” games as any non-instant winner game, since a non-instant game would require the use of a subsequent draw (otherwise they would be “instant”). This description of “random draw” games by the applicant certainly includes passive games like raffles.

14. I also note that I have found several references that support that the ordinary understanding of “random draw” includes passive games. The South Carolina Lottery has a website that provides a “Glossary of Lottery Terms.” Ex. 1038. That website defines a “[p]assive game” as a “***lottery game*** similar to a

**raffle** where a player buys a ticket with preprinted numbers” and “[t]he lottery later **randomly draws** numbers that are compared to the players’ tickets to determine the outcomes.” *Id.* This glossary makes the same distinction between the “randomly draw[n] numbers” of a raffle, versus the “randomly selected” numbers of a lotto-type game. *Id.* (defining “Lotto” as a game where “numbers are randomly selected by the lottery”).

15. Another famous example of a passive game is Spain’s National Lottery, which has been running for over two centuries and is one of the largest passive lottery games in the world. One paper from 2013 describes the yearly Christmas draw where “winning tickets are selected using two huge lottery wheels,” where “[t]ickets are **randomly drawn** with one wheel while a second wheel gives the value of the prize to be awarded.” Ex. 1039, 14. Both this and the South Carolina Lottery glossary establish that passive games involve randomly drawn numbers/tickets, and are therefore a random draw game.

16. I understand that Patent Owner appears to contend that a passive game is not even a “lottery game.” I disagree with that argument. I note that Dr. Miller himself admitted passive games are “lottery game[s].” Ex. 1037, 45:7-10 (“A passive lottery game is also not an instant lottery game.”). Moreover, the specification itself (as well as applicant during prosecution) only draws a distinction between whether a game requires a subsequent draw or not, which a

passive game clearly does require. Ex. 1002, 661. Both the extrinsic references I cited above refer to passive games as lottery games. Moreover, the Irwin reference describes passive games as a lottery game. Ex. 1030, 16:41-46 (“In yet another embodiment, a comparable method can be used to sell passive game tickets by street vendors. ... Unsold tickets for a particular drawing must be returned to the *lottery*”); 17:30-31 (describing Figure 22’s sale of a passive ticket as depicting a “typical lottery transaction”).

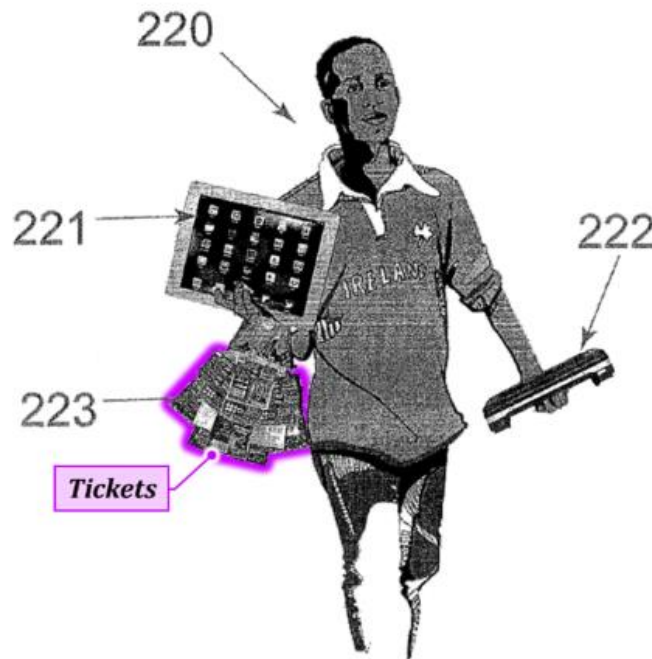
17. Thus, in my opinion, “random draw” lottery games include any draw-based lottery games, such as passive games like raffles.

### **III. IRWIN’S PRE-PRINTED PASSIVE TICKETS ARE SELECTED AND PRESENTED BY THE CUSTOMER PRIOR TO CHECK-OUT**

18. In my opinion, Irwin discloses and renders obvious that its pre-printed passive tickets are selected and presented by the customer to the clerk prior to check-out. I first note that the ’451 patent itself describes that the “checkout process” begins when “the pre-printed ticket is scanned by the cashier.” Ex. 1001, 4:24-26. Thus, anything that occurs prior to scanning is prior to check-out.

19. In my opinion, Irwin discloses that the customer selects and presents pre-printed passive tickets. I note that allowing a customer to select and present the substrate of their choice was, as is quite self-evident, well-known by the earliest filing date of the ’451 patent. In fact, Dr. Miller had developed a localized

gift card activation system in the early 2000s where the customer selected and presented a gift card. Ex. 1037, 26:7-17. I also note that the street vendor depicted in Figure 16 in Irwin would appear to have difficulty handling the passive tickets himself, because his hands are occupied.



***Irwin (EX1030), FIG. 16 (annotated)***

20. Thus, consistent with my original declaration, it is my opinion that it would have been desirable and obvious to allow a customer to select and present the ticket prior to check-out. This would allow a customer to select which product they want and free the vendor to do other tasks.

#### IV. IRWIN'S QUICK-PICK CARD IS A LOTTERY TICKET

21. In my opinion, Irwin's quick-pick card is a lottery ticket under its plain meaning.

22. The plain meaning of lottery ticket is any substrate that is used to allow a customer to play and redeem a lottery game. Irwin's quick-pick card meets this definition. Irwin describes the card as a "quick-pick card," which is "a quick-pick for a given on-line game," *i.e. lottery games*. Ex. 1030, 9:51-56.

23. Consistent with its plain meaning, Irwin also describes its quick-pick card as a "lottery ticket." The published application version of Irwin (Exhibit 1040), as well as Irwin itself, has a claim that says "**lottery tickets** sold by the vendor are **preprinted and registered** at the time of sale for a future drawing by the vendor scanning an **interchange compatible barcode** containing the BIN." Ex. 1040, cl. 7; Ex. 1030, cl. 5. But the only description in Irwin of a pre-printed substrate containing an "interchange compatible barcode" is Irwin's quick-pick card. Thus, this claim embodies Irwin's quick-pick card, which the claim describes as a "lottery ticket."

24. I also note that Irwin states it is directed to "processing of lottery ... tickets." Ex. 1030, Abstract. For the quick-pick card, because the resulting "on-line ticket" is not created until after check-out processing has completed, the only "processing" that occurs is of the quick-pick card. Ex. 1030, 10:5-13 ("The

lottery's central site ... would then decode the quick-pick request ... and transmit a print command documenting the quick-pick and the assigned serial number to be printed on the merchant's printer"). Thus, the Abstract describes the quick-pick card as a "lottery ticket."

25. I understand that Patent Owner argues that Irwin's quick-pick card is not activated because after it is scanned it "has no other role in Irwin's system." I disagree. The published application version of Irwin has a claim that says "sale or **redemption** of lottery tickets ... is initiated by the vendor **scanning a card** having a barcode." Ex. 1040, cl. 13. Thus, the quick-pick card is still used for redeeming a winning on-line ticket. So Irwin describes the quick-pick card as being activated for this purpose.

26. I note that during prosecution, the applicant distinguished the Gilmore reference. In Gilmore, it uses a "dummy token" which is used to print an on-line ticket. Ex. 1029, ¶51. Notably, Gilmore states that this "dummy token" is "discarded" after it is scanned. *Id.*, ¶54.

## V. **IRWIN DISCLOSES AND RENDERS OBVIOUS SENDING THE LOTTERY NUMBERS**

27. Claims 11 and 12 require that the lottery administration system receives lottery numbers, either generated at the time the ticket is purchased (claim 11) or generated before the ticket is purchased (claim 12).

28. In my opinion, for Irwin's two embodiments, the "passive ticket" and the "quick-pick card," Irwin teaches or renders obvious sending the lottery numbers to the lottery central site. For claim 11, where I opined that it would be obvious to generate the lottery numbers at the POS, I note that Irwin discloses that the lottery central site transmits the lottery numbers to the POS for printing and must also record the numbers in order to determine whether a ticket is a winner. Ex. 1030, 10:5-12. Thus, a POSITA would understand that the lottery numbers are transmitted.

29. As I mentioned in my original declaration, it would have been obvious to have the POS terminal generate lottery numbers because this allows for the distribution of processing. This would provide the benefit of distributing processing costs, such as energy consumption between all the retailers, instead of the lottery central site performing all of the random number generating.

**VI. A POSITA WOULD BE MOTIVATED TO COMBINE SZREK AND LLACH**

30. I note that, as held by the Board in the PGR proceeding, Szrek discloses nearly all of the limitations, including a transaction processor. However, Szrek does not expressly disclose a third-party transaction processor. I opined that Llach discloses such a third-party transaction processor and that they would be

obvious to combine. I understand that Patent Owner does not dispute that Llach teaches a third-party transaction processor.

31. Patent Owner and Dr. Miller do not disagree with me that Llach's teachings provided well-known benefits. Instead, Patent Owner argues that these benefits were already present in Szrek's system. I disagree with Patent Owner.

32. First, Patent Owner argues that Szrek already has a centralized system for activating lottery tickets" which "are distributed to different retailers and retail locations." POR 55-56. Patent Owner relies on Figure 1, where it shows multiple arrows proceeding from the commercial printer. However, Szrek does not ***expressly*** state that its game provider supports different retailers in different locations, or that there is only one game provider serving all retailers. Llach, by contrast, does expressly provide such centralization (which Patent Owner does not dispute is beneficial), and so fills in this missing detail, which would have been obvious to incorporate into Szrek.

33. Second, Patent Owner argues that Szrek can activate different products such as phone cards, random draw lottery tickets, and instant win lottery tickets. However, Szrek's disclosure only discloses communication with one game provider, and Szrek provides no teaching about how to use multiple game providers. But as I opined in my opening declaration, the combination would allow Szrek's system to support multiple game providers. This would allow

Szrek's system to easily add or remove game providers and support for their lottery products. This would very significantly reduce implementation costs because the adding and removal of game providers for *all* retailers could be performed centrally, rather than requiring changes to every single retailer (which could be hundreds or thousands).

34. Third, Patent Owner argues that Szrek's back office provides communication with "other entities that may provide useful services," such as processing financial instruments. But Patent Owner does not address the problem that Szrek does not provide any disclosure that its back office processes gift cards. In fact, a back office alone installed on the premises of the retailer would not be able to activate a different vendor's gift card, such as a VISA gift card. Such cards have no value until value is added through the activation process. Thus, an activation network, such as the one described in Llach, is necessary to activate a VISA gift card in order to interact with VISA financial services to add value to the card. And it would be obvious to include that in Szrek.

35. Similarly, I disagree with Patent Owner's argument that Szrek discloses the capability of communicating with a number of gift card vendors. Again, it is not possible for Szrek's back office to alone activate the "many types of stored value cards offered by numerous card issuers." Ex. 1006, ¶3. In order to activate a card issued by a company that is not the retailer, the retailer's systems

would need to communicate with the card issuer in order to confirm payment and load value onto the gift card. Llach teaches precisely that through the use of a third-party processor.

36. I also note that Szrek itself contemplates the use of an intermediary between its POS terminal and game provider, namely that the POS can communicate “indirectly” with the game provider, such as through a “system on behalf of game provider system.” Ex. 1005, 3:15-18. Szrek provides the implementation details for this intermediary, and would have been obvious to include for the reasons I gave in my first declaration.

37. It is also my opinion that the combination would not lead to disadvantages or increase complexity. I understand that Patent Owner believes adding another component “only adds delay, reduces efficiency, and creates implementation complexities by converting a simple, direct communication exchange into an exchange that traverses multiple systems.” POR 52. In my opinion, that is not generally true given the speed at which computers and networks operated in 2015. Moreover, a centralized intermediary greatly reduces complexity and implementation costs because adding or removing supported game providers or activation of additional products could be performed at one central location rather than at hundreds of different retailers.

38. I also note that I testified that the combination would not remove the back office or any of its functionality, but that the POS terminals could continue to communicate with the back office as originally disclosed by Szrek. The addition of a third-party processor as an intermediary does not change the back office's capabilities.

39. Finally, I understand that with respect to Szrek's audit processing, Patent Owner argues there would be additional complexity because the third-party transaction processor would perform its own accounting. In my opinion, there is no specific need for the transaction processor to perform its own accounting. Moreover, even if the transaction processor performs its own accounting, that would not pose any disadvantage. I note that Llach in fact teaches this is desirable, since its transaction computer records "transaction log 170 [which] contains information about each transaction performed by stored value card transaction computer 150 and may be utilized by the reconciliation component 155 when reconciling accounts belonging to various vendors, merchants, card issuers and the stored value card transaction system administrator." Ex. 1006, ¶27. While this teaching is not necessary to include in the Szrek-Llach combination, it would provide another reason to combine Szrek and Llach.

**VII. CONCLUSION**

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

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

Executed: February 4, 2025

A handwritten signature in black ink, appearing to read 'Michael Hutton', with a long horizontal line extending to the right.

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Michael Hutton