

***Interactive Communications Int'l, Inc. v.
Blackhawk Network Inc.***

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

Petitioner's Demonstratives

Hearing: April 29, 2025

Summary: Grounds

Ground	Claim(s) challenged
1. Irwin	1-9, 11-24
2. Irwin, Szrek	10
3. Szrek, Llach	1-10, 11-24
4. Szrek, Llach, Gilmore	11

Summary: Disputed Issues (Grounds 1 and 2)

- **Grounds 1 and 2 disputed issues:**
 - **“random draw” tickets** (1[pre]) (Irwin, “passive” ticket embodiment):
 - PO’s construction excluding “passive” games not based on plain meaning or intrinsic evidence
 - Plain meaning of “random draw” includes “passive” games where eligible numbers are randomly drawn
 - Intrinsic and extrinsic evidence supports this plain meaning
 - **Tickets “selected/presented” by customer** (1[a]) (Irwin, “passive” ticket embodiment):
 - Irwin’s street vendor sells tickets with check-out process, not “on the spot”
 - Obvious for customer to select and present passive ticket
 - **“lottery ticket”** (1[pre]) (Irwin, “quick-pick card” embodiment):
 - Irwin’s describes its “quick-pick card” as a “lottery ticket”
 - Irwin activates and registers “quick-pick card”
 - **Providing “lottery numbers”** (claims 11 and 12) (Irwin, all embodiments):
 - Petition argued obvious to generate lottery numbers at retailer POS
 - PO only disputes one of two motivations

Summary: Disputed Issues (Grounds 3 and 4)

- **Grounds 3 and 4 disputed issues:**
 - *Motivation to Combine* (Llach and Szrek):
 - A POSITA would have combined Szrek's lottery activation system with Llach's central, third-party processor which:
 - Provides support for activating multiple products from multiple lottery providers through a single intermediary
 - Allows game providers to provide activation services to multiple retailers
 - PO does not dispute Llach's benefits, but argues Szrek already had them, improperly relying on POSITA's knowledge and Llach itself
 - PO argues combination is less efficient, but centralization increases efficiency and the other benefits overcome any decrease in efficiency

'451 Patent Overview

'451 Patent Overview

- Prior Art:

“Tickets for draw based lotteries are typically printed at the time of purchase on special ticket paper by a printing device approved by the lottery administering body. ...

Typically, the printing device is attached to a single lottery terminal operated by the lottery organization. Although 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. Here, the majority of customers complete their shopping and pay through any one of many checkout lanes. A second stop and purchase is required at the lottery terminal location in order to purchase the lottery draw ticket. This is extremely inconvenient for most customers who simply bypass the lottery counter.”

Ex. 1001 (451 Patent) at 1:42-63; Pet. 4

'451 Patent Overview

- Purported Solution:

“A system is described further herein that provides the ability to include online lottery tickets that can be placed in a customer's shopping cart and paid for during the normal checkout process **without the use of specialized hardware** such as lottery terminals, ticket printers or customized devices at the point of purchase for the purpose of producing the lottery ticket. ... [T]he systems and methods allow the online lottery ticket to be **displayed and purchased as a common in-store product** making the purchase of an online ticket common practice for the customer and the retailer.”

Ex. 1001 (451 Patent) at 2:52-3:3; POR 4

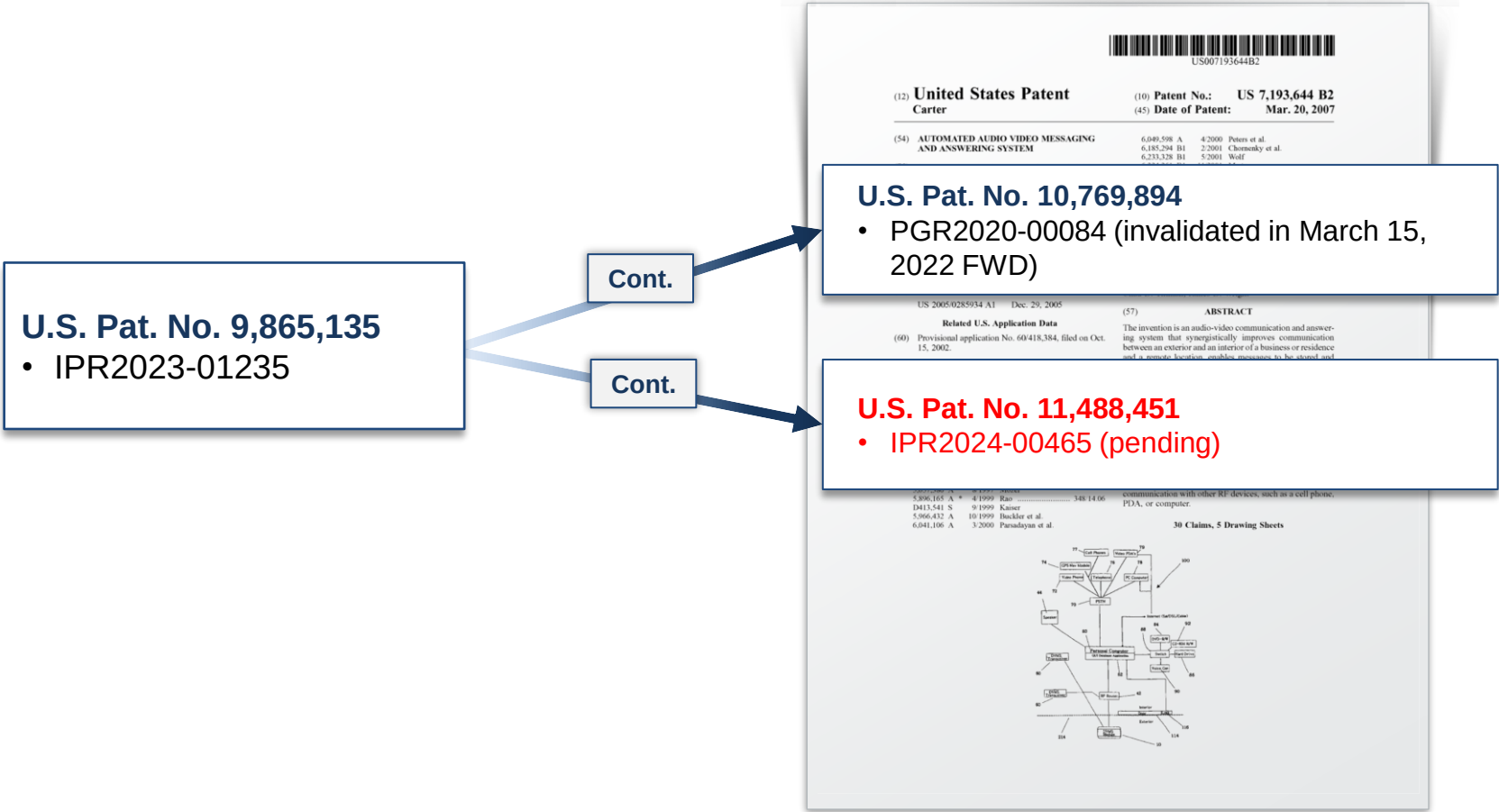
'451 Patent Overview

- '451 Patent, Claim 1:

1. A method for providing a manufactured, pre-printed, random draw lottery ticket comprising:

- (a) receiving, by a third-party transaction processor, a transaction request from a retailer point of sale (POS) to activate the manufactured, pre-printed, random draw lottery ticket, wherein the manufactured, pre-printed, random draw lottery ticket is selected by a customer prior to initiation of a check-out process and is presented by the customer for activation during the check-out process, wherein the third-party transaction processor receives transaction requests from a plurality of different retailers;
- (b) providing, via a first secured communication, by the third-party transaction processor, 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, via a second secured communication, by the third-party transaction processor, from the lottery administration system, indication that draw information has been associated with the manufactured, pre-printed, random draw lottery ticket.

'451 Patent Overview: Patent Family



Summary of Prior Art

Summary of Prior Art: Irwin (Ex. 1030)

- Irwin:

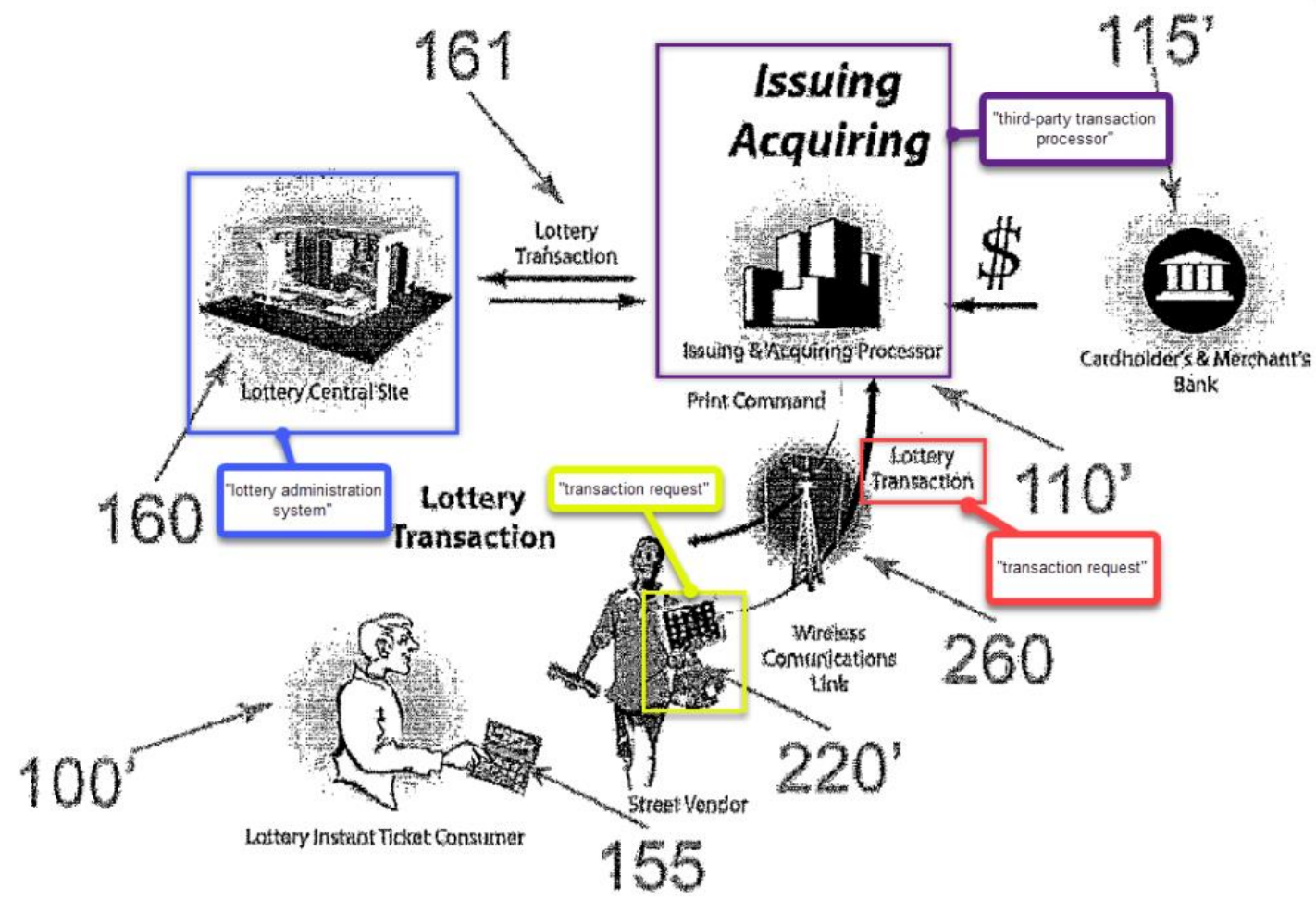


FIG 22

Summary of Prior Art: Irwin (Ex. 1030)

- Irwin:



FIG 21

Summary of Prior Art: Szrek (Ex. 1005)

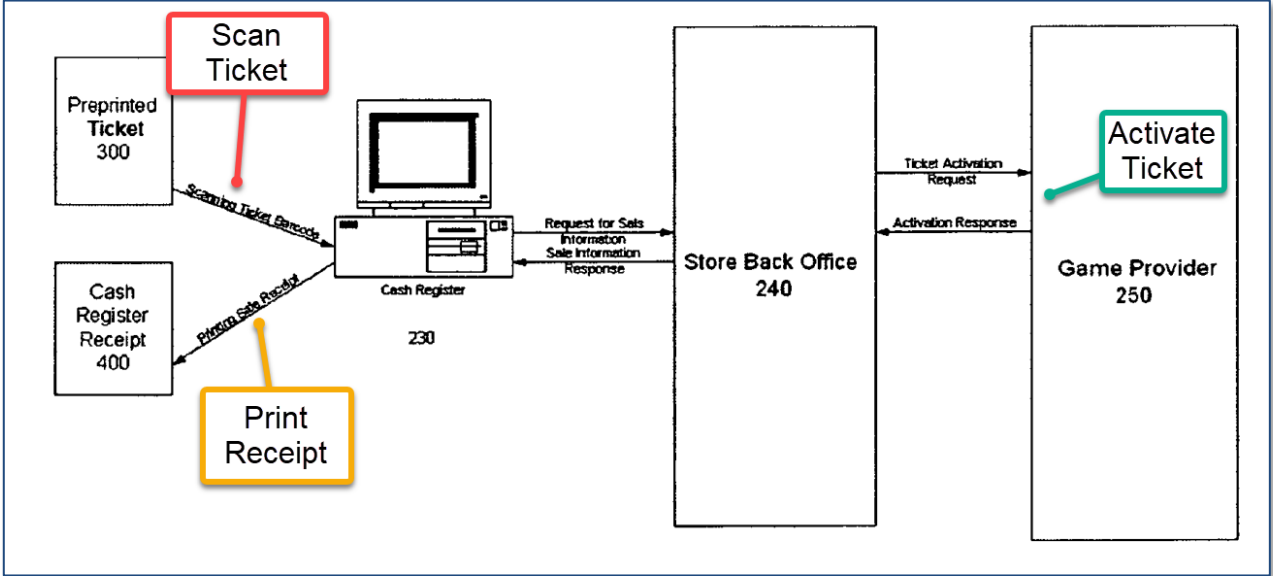
- Szrek:

“The goal of the present invention 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. ... Availability of lottery sales in every supermarket lane is very attractive to consumers. Ideally one would want to allow for sales in lanes w/o any additional lottery equipment required in lane and with minimal additional overall cost.”

“In accordance with the novel method of the present invention, 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 by a commercial printer capable of printing lottery tickets ...).”

Ex. 1005 (Szrek) at 1:16-19, 1:33-36, 3:22-28; Pet. 51, 57

Summary of Prior Art: Szrek (Ex. 1005)



Ex. 1005 (Szrek) at Fig. 2; Pet. 51-54

Summary of Prior Art: Llach (Ex. 1006)

“In one embodiment a stored value card transaction processor receives an activation or redemption request for a stored value card from a point of sale terminal. The activation or redemption request comprises at least one of a card identification, ... The processor then transmits the modified request to the card issuer authorization system and receives a response which is forwarded to the point of sale terminal.”

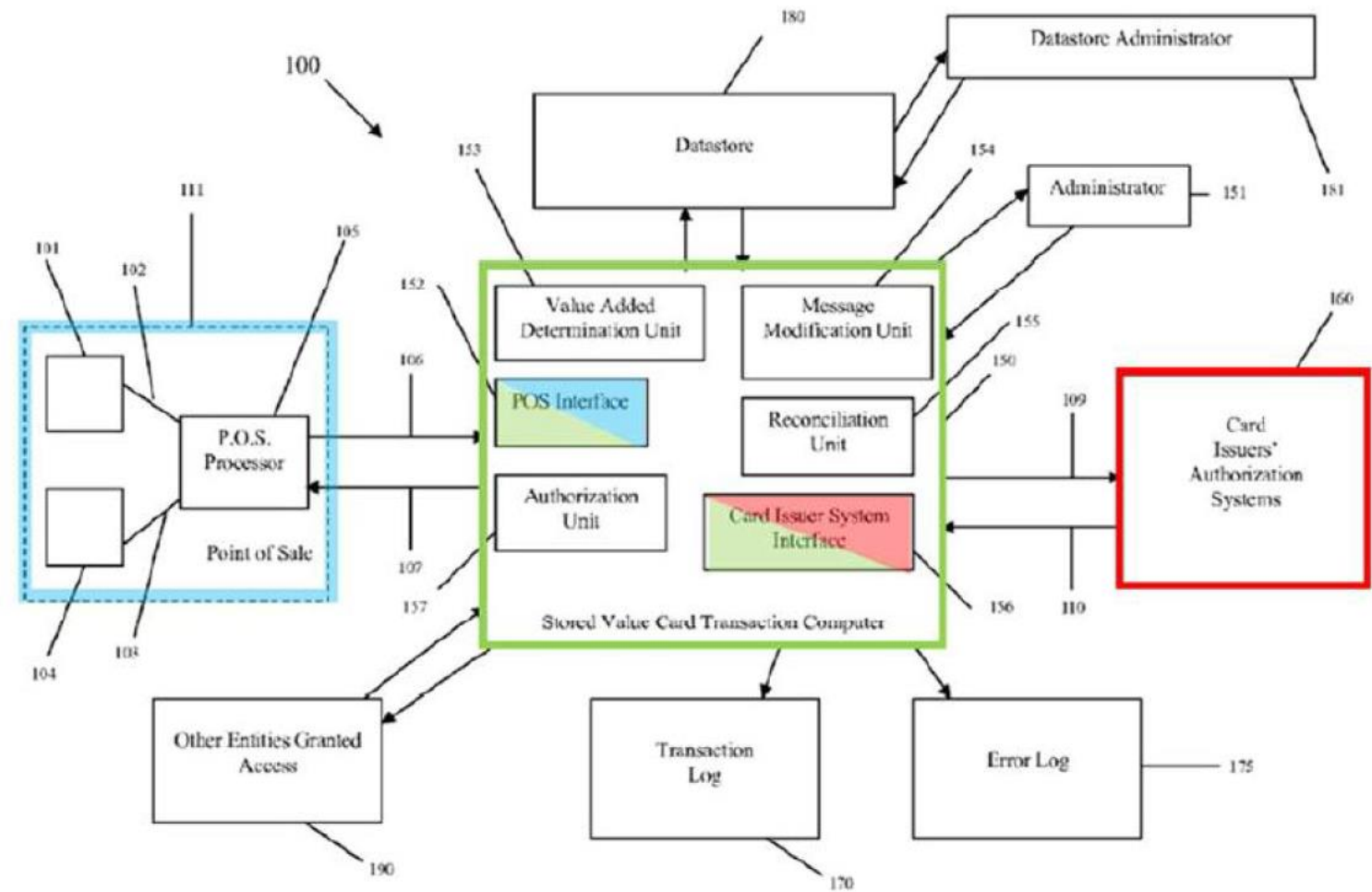


Figure 1

Ex. 1006 (Llach) at Abstract; Fig. 1; Pet. 53

**Ground 1: Irwin's passive ticket is a "random draw" ticket
(Claim 1)**

Ground 1/Claim 1: “random draw”

- PO’s construction of “random draw”: “numbers are randomly selected during the draw event and compared to numbers on a player’s ticket”
 - **Excludes** “passive” (raffle) draw games *POR 40-41*
 - **Excludes** drawings that “always yield a winner” *POR 40-41*
 - **Excludes** “draw-based games generally” *Surreply 14*
- PO’s construction is **incorrect**:
 - PO does not argue “ordinary meaning”
 - PO does not argue lexicography or disclaimer
 - PO does not cite to any intrinsic evidence
- PO’s construction is **inconsistent with** the specification, prosecution history, and extrinsic evidence

Ground 1/Claim 1: “random draw”

- **PO:** argues that it applies Mr. Hutton’s “definition” of “random draw” *POR 41; Surreply 14-15*

“In a random draw lottery, by contrast, “numbers [are] randomly selected during the draw event” and compared to numbers on a player’s ticket. EX1003 ¶ 64. Because numbers are randomly selected during a draw event, it often occurs that there is no match between the randomly-elected numbers and the numbers on the eligible lottery tickets, and, thus, the draw yields no top prize winner.”

POR 41

- **Mr: Hutton:**

3. Sale of Lottery Tickets Through Retailers’ Existing POS Systems

64. Lotteries have been in existence for hundreds of years and can take a number of different forms. In a random draw lottery, a player purchases a ticket for a lottery draw event that takes place in the future. Ex. 1001. The player can either select his or her own draw numbers or the draw numbers can be randomly selected by the system. The numbers on the player’s tickets are then compared to the numbers randomly selected during the draw event to determine if there is a match and thus a winning ticket.

Ex. 1003 (Hutton Decl.) at ¶64; Pet. 4

Ground 1/Claim 1: “random draw”

- *Mr. Hutton:*

“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.”

Ex. 1036 (Supp. Hutton Decl.) at ¶7; Reply 11

“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.”

Ex. 1036 (Supp. Hutton Decl.) at ¶12; Reply 12

Ground 1/Claim 1: “random draw”

- **Specification:** consistent with plain meaning of “random draw”

“Broadly there are two types of lotteries. The first is instant win lotteries where a printed ticket provides all of the lottery information. These tickets typically have a play area covered by scratch off material. The tickets can be purchased from a retailer, and the scratch off material removed to reveal whether the ticket is a winner. A second type of lottery is a draw-based lottery or “online” lottery, where a player makes a wager on a subsequently occurring event. For example, a player may guess at numbers that will be drawn. The selected numbers, or randomly selected numbers if the player does not have a preference for the numbers, are printed on a ticket and provided to the player. Once the event occurs, for example the numbers are drawn or generated by the lottery organization, the ticket may be a winner depending on if one or more of the selected numbers were drawn or generated.”

Ex. 1001 (451 patent) at 1:31-33; Reply 11

Ground 1/Claim 1: “random draw”

- ***PO’s expert:***

“Irwin discloses that passive game tickets are entered in a drawing from which tickets are drawn for prizes:

In yet another embodiment, a comparable method can be used to sell passive game tickets by street vendors. Traditionally these tickets are printed in advance with unique identifiers—e.g., numbers. Drawings are subsequently held picking the identifiers that correspond to specific prizes.

EX1030 col. 16:41-45. The passive game is akin to a raffle. Irwin discloses that passive game tickets can be either printed in real time or preprinted. See EX1030 col. 16:58-64 (tickets 224 printed in real time), 16:65-17:17 (preprinted tickets 224’).”

Ground 1/Claim 1: “random draw”

- PO’s construction inconsistent with the prosecution history:

“Because *Sandvick* specifically limits its disclosure to ‘instant-winner’ games and methods, see *Sandvick* at col. 1, lines 10-11, and because the present claims are specifically drawn to **non-instant winner games** and methods, i.e., ‘**random-draw**’ games and methods, a person of ordinary skill in the art would not understand *Sandvick* to anticipate the instantly claimed ‘random draw’ related methods.”

Ex. 1002 (Prosecution History) at 662; Reply 12

Ground 1/Claim 1: “random draw”

- PO’s construction inconsistent with the extrinsic evidence:

Glossary of Lottery Terms

Passive game: A lottery game similar to a raffle where a player buys a ticket with preprinted numbers. The lottery later randomly draws numbers that are compared to the players' tickets to determine the outcomes.

Quick pick: A method for playing numbers or online games where players choose to have a computer randomly select their numbers rather than picking the numbers themselves.

Roller: An event that occurs when an online game jackpot is not won. The jackpot thus "rolls over" to the next drawing, resulting in a higher jackpot for that drawing.

Scratch-off game: See "Scratch-off game."

Straight bet: A form of betting on a numbers game where the player attempts to match both the numbers drawn and the order in which they are selected. For example, if the numbers "1,2,3" are selected in a three-digit game, a ticket bearing "1,2,3" will win but a ticket bearing "2,1,3" will not. (See "box bet.")

Terminal: A computerized device located at a lottery retailer that is used to sell online games and to validate winning tickets of online and Scratch-off games. Terminals are connected to a lottery's central computers by phone line.

3-digit game: A numbers game in which three digits between 0 and 9 are selected. Numbers may be repeated.

FREQUENTLY ASKED QUESTIONS (/FAQ)

Player FAQs (/FAQ)
Player Protection FAQs (/FAQ/PlayerProtection)
Vendor FAQs (/FAQ/Vendor)
Education FAQs (/FAQ/Education)
Glossary of Terms (/FAQ/Glossary)

“Passive game: a **lottery game** similar to a raffle where a player buys a ticket with preprinted numbers. The lottery later **randomly draws numbers** that are compared to the players’ tickets to determine the outcomes.”

Ex. 1038 (South Carolina Lottery Glossary of Terms) at 2; Reply 13

Ground 1/Claim 1: “random draw”

- PO’s construction inconsistent with the extrinsic evidence:

A NEW LEGISLATIVE FRAMEWORK FOR

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UNLV GAMING LAW JOURNAL

[Vol. 4:11]

stages (*Klassen*), lasting for months.²⁸ Such lotteries were already a common means of raising revenue in central Europe,²⁹ and in Spain they were established as a state monopoly to generate public revenue to support charities – the profits originally aided patients in the town hospital.³⁰ The *Cádiz Cortes*, apparently following the Mexican practice, adapted the *Klassenlotterie* system³¹ to the National Lottery in a simpler way, by using a prompter running in a single *Klass*.³² In that system, prizes were awarded only once, but new drawings could be held more frequently.³³ The amount of the prizes to be awarded continued to be published in advance, so it was vital to sell the proper number of tickets before each drawing.³⁴ The current National Lottery evolved from this successful experiment.³⁵ The Lottery is still considered to be a powerful and emblematic symbol of national cohesion (particularly Christmas lotteries).³⁶ Traditional printed lottery tickets are even regarded as cultural heritage items.³⁷

Nevertheless, since 1812, national legislative bodies have rarely displayed an interest in the lottery.³⁸ Over time, laws regulating the lottery became clouded by regulations such as the 1949 Decree, which approved the General Instruction on Lotteries^{39,40} and the 1964 Decree, which organized the National

The Spanish since December 2 Act.³ The Act's of preserve Spanish Integrity of Online to bring forward

After conclusion passed the 0 supposed to only piece of legislative

²⁸ Alejandra Boto is she received a B.S. worked as a legal revisions to the gant dedicated to French Derecho Administrativo

²⁹ Jose Javier López 509, 514 (1996).

³⁰ All Spanish legisla the National Official databases, <http://www> of laws and decrees, and European levels

ANDRÉS ALVIZ, COI

³¹ See Melillas de la (B.O.E. 2007, 22440-2007-22440) contain

³² *Id.*

³³ See generally Res (2008), available at <http://www.boc.es/boc/contenidos/contenidos.htm?orden=200808>

³⁴ Society of Inform 22440) (Spain), *envi*

³⁵ Ley de Regulación ble at <http://www.boc.es/boc/contenidos/contenidos.htm?orden=200808>

³⁶ *Id.* at 1.

“In this extraordinary Christmas draw, winning tickets are selected using two huge lottery wheels. Tickets are randomly drawn with one wheel while a second wheel gives the value of the prize to be awarded. It is a tradition for Spaniards to follow the draw on December 22nd and to share tickets among friends, colleagues, families, etc.”

Ex. 1039 (Spain Lottery Paper) at 4 n.36; Reply 13

Ground 1/Claim 1: “random draw”

- **PO:** “passive game tickets” are not “lottery tickets” *Surreply 13-14*

- **Irwin:**

“In yet another embodiment, a comparable method can be used to sell **passive game tickets** by street vendors. Traditionally these tickets are printed in advance with unique identifiers—e.g., numbers. Drawings are subsequently held picking the identifiers that correspond to specific prizes. Unsold tickets for a particular drawing must be **returned to the lottery** in advance of the drawing requiring up to a two-day delay between the cutoff of games sales and the drawing to ensure all unsold tickets are accounted for.”

Ex. 1030 (Irwin) at 16:41-49; Reply 14

- **PO’s Expert:**

“A **passive lottery game** is also not an instant lottery game.”

Ex. 1037 (Collins Tr.) at 45:7-10; Reply 12

**Ground 1: Irwin's passive ticket is "selected" and
"presented" by the customer via a "checkout process"
(Claim 1)**

Ground 1/Claim 1: “selected” and “presented”

- **PO:** Irwin’s passive ticket is not “selected” and “presented” – they are sold “on the spot” without a check-out process *POR 42-43*
- **Incorrect:**
 - Vendor sells different ticket types (instant, on-line, passive) and obvious to allow customer to select and present the ticket
 - “on the spot” sales refer to **instant** tickets, not passive tickets
 - Passive tickets are required to be scanned and activated, and therefore have a “check-out process”

Ground 1/Claim 1: “selected” and “presented”

- Irwin is agnostic as to how the passive ticket is selected
- A POSITA would have found it obvious that customer *selects* and *presents* to street vendor:
 - Allows customer to choose which ticket to purchase
 - Vendor may have many types of tickets

“A POSITA would also find it obvious that the street vendor could allow a customer to select and present the preprinted passive tickets, because that would allow the customer to choose which ticket to purchase, especially when the vendor may have different types of lottery tickets for sale.”

Ex. 1003 (Hutton Decl.) at ¶104; Pet. 16

Ground 1/Claim 1: “selected” and “presented”

- ***PO’s expert:***

“We created a point-of-sale system that allowed customers to buy gift cards from a company. So a customer would come in, say that they wanted a gift card with \$20 on it. The point-of-sale system would allow them to select that the purchase was for a gift card. They would grab a card, a plastic gift card, swipe it through a magnetic strip reader. Then they would accept payment from the customer for the amount that they wanted. And that card, then, would be given to the customer and be loaded with that amount.”

Ex. 1037 (Miller Tr.) at 26:7-17; Reply 16

Ground 1/Claim 1: “selected” and “presented”

- Surreply:**

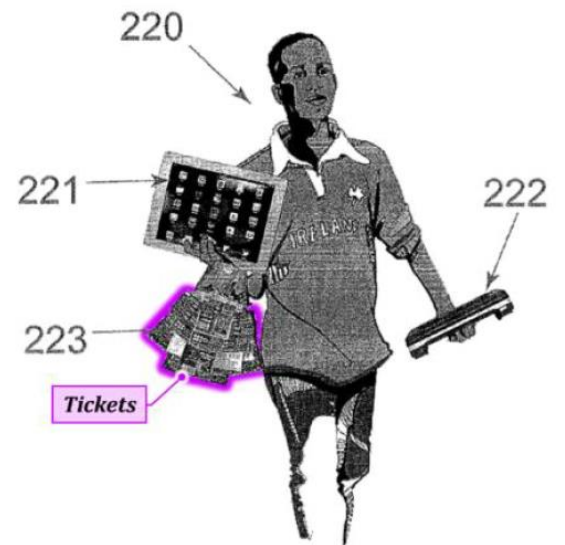
“Again, it is far more reasonable to expect that, for a passive game ticket, a customer would interact with the street vendor to request purchase of a game ticket, and the vendor would distribute the next ticket in order.”

Surreply 19

- Irwin:**

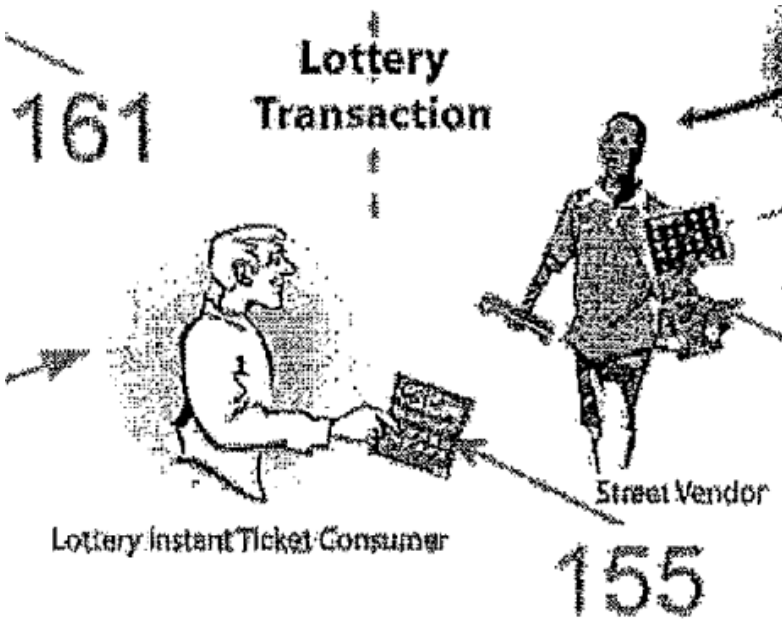
“I also note that the street vendor depicted in Figure 16 in Irwin would appear to have difficulty handling the passive tickets himself, because his hands are occupied.”

Ex. 1036 (Supp. Hutton Decl.) at ¶19; Reply 17



Irwin (EX1030), FIG. 16 (annotated)

Ex. 1030 (Irwin) at Fig. 16 (annotated by PO); Reply 17



Ex. 1030 (Irwin) at Fig. 19; Pet. 18

Ground 1/Claim 1: “selected” and “presented”

- **PO:** passive tickets are sold “on the spot” therefore not “selected” or “presented” *POR 41-42*
- **Irwin:**

“In addition to brick and mortar merchant locations, the notion of sans custom hardware lottery or contest operations can be expanded to street vendors. While unusual in the United States, street vendors are a common sight in developing countries creating sales without the need for an established lottery infrastructure using brick and mortar locations. Traditionally, these street vendors would roam with a limited inventory of instant tickets literally conducting street sales and paying small prizes on the spot. The typical lack of connectivity to a lottery central site forces the street vendor to reconcile at the end of the day, matching unsold inventory and claimed tickets with the amount of cash reserves at the end of the day. This lack of connectivity and the need to carry potentially large amounts of cash have created security problems for the street vendor.”

Ex. 1030 (Irwin.) at 12:44-58; Reply 15

Ground 1/Claim 1: “selected” and “presented”

- ***Surreply***: Irwin’s passive tickets are sold by a “comparable method” as instant tickets “on the spot.” *Surreply 18*

- ***Irwin***:

“Returning to the street vendor 220 of FIG. 16. In addition to instant ticket sales and lottery redemptions, the disclosed system is also capable of selling and printing on-line (e.g., Pick 3, Pick 4, etc.) tickets. When selling on-line tickets the street vendor 220 would either type either the specific wager or quick pick request into the touch screen of the portable tablet computer/communications device 221 or possibly utilize the built-in camera to scan a bet slip. In any case, the on-line sale would be paid for either by cash or (as previously discussed) via debit or possibly credit card. Once the transaction was tendered, the on-line ticket request would be transmitted to the lottery central site, the transaction logged on the central site database, with a print ticket data packet returned to portable tablet computer/communications device 221, which is then physically printed on the street vendor's 220 portable printer 222.”

Ground 1/Claim 1: “selected” and “presented”

- ***Surreply***: Irwin’s passive tickets are sold by a “comparable method” as instant tickets “on the spot.” *Surreply 18*

- ***Irwin***:

“In yet another embodiment, a comparable method can be used to sell passive game tickets by street vendors. Traditionally these tickets are printed in advance with unique identifiers—e.g., numbers. Drawings are subsequently held picking the identifiers that correspond to specific prizes. Unsold tickets for a particular drawing must be returned to the lottery in advance of the drawing requiring up to a two-day delay between the cutoff of games sales and the drawing to ensure all unsold tickets are accounted for. Often there is confusion in the return system leaving open questions as to which tickets have been sold and which are being returned. Additionally, there is also paper waste with the return of unsold tickets. The mechanism described above for the sale of on-line tickets can be adapted for passive game tickets to eliminate paper waste, returns, for drawings, and fraud while establishing a clear record of sales and 100% inventory control via the central system.”

Ground 1/Claim 1: “selected” and “presented”

- **PO:** Irwin discloses no check-out process for passive tickets *POR 42-43*
- **Irwin:**

“[P]reprinted passive tickets 224’ (FIG. 20) could still be sold through street vendors with the ticket's serial number 225’ and 226’ (barcoded embodiment of serial number) **scanned and recorded** in a central site database at the time of sale.”

Ex. 1030 (Irwin) at 16:65-17:2; Reply 16

Ground 1/Claim 1: “selected” and “presented”

- ***Surreply***: Limits the claims to the specification

“Again, **the claims recite** that random draw lottery tickets are “selected by a customer prior to initiation of a check-out process and [] presented by the customer for activation during the check-out process” to allow a customer to “select a lottery product at any time **with no additional interaction** with a lottery retailer and drop the pre-printed lottery ticket(s) into their shopping cart.” EX1001 col. 4:21-24 (emphasis added).”

Surreply 19

- ***The claims***:

“wherein the manufactured, pre-printed, random draw lottery ticket is selected by a customer prior to initiation of a check-out process and is presented by the customer for activation during the check-out process,”

Ex. 1001 (451 patent) at cl. 1

Ground 1: Irwin's quick-pick card is a "lottery ticket" (Claim 1)

Ground 1/Claim 1: quick-pick card is “lottery ticket”

- PO argues Irwin’s quick-pick card is not a “lottery ticket” *POR 26-38*
 - The card isn’t activated, it is used to create a lottery ticket
 - Irwin discloses no use for the card after it is scanned
- PO is **incorrect**:
 - Irwin’s card is activated because it is processed and registered
 - Irwin describes the card as a “lottery ticket”

Ground 1/Claim 1: quick-pick card is “lottery ticket”

- Plain meaning of “lottery ticket”:

“The plain meaning of lottery ticket is any substrate that is used to allow a customer to play and redeem a lottery game.”

Ex. 1036 (Supp. Hutton Decl.) at ¶22; Reply 20

- Irwin’s quick-pick card allows a customer to play a quick-pick:

“For quick-pick (i.e., numbers automatically selected for the consumer) purchases of on-line tickets, the consumer would either take a plastic hanging card 200 (FIG. 12) with a quick-pick coded interchange compatible barcode 201 to the merchant or simply ask the merchant for a quick-pick for a given on-line game (e.g., Pick 3, Pick 4, Powerball, Mega Millions, etc.)”

Ex. 1030 (Irwin) at 9:51-56; Reply 19

Ground 1/Claim 1: quick-pick card is “lottery ticket”

- Irwin describes the quick-pick card as a “lottery ticket”:

“Irwin itself, recites a claim where “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.” The only embodiment in Irwin that is preprinted and has an “interchange compatible barcode” is the quick-pick card.”

5. The method of claim 1, wherein the lottery tickets sold by the vendor are preprinted and registered at the time of sale for a future drawing by the vendor scanning a barcode containing the unique lottery BIN.

Ex. 1030 (Irwin) at cl. 5; Reply 19

Reply 9

- Irwin’s only embodiment that is **preprinted** and has **BIN** is the quick-pick card:

“[T]he consumer would either take a plastic hanging card 200 (FIG. 12) with a quick-pick coded interchange compatible barcode 201 to the merchant ... In either case, the interchange compatible barcode 201 will be configured to be compatible with the proxy data normally passed over the debit or credit interchange 120 with the lottery BIN 206 (FIG. 13) concatenated to a data blob (207) containing the quick-pick request data forming the whole proxy data 205.”

Ex. 1030 (Irwin) at 10:5-13; Reply 19

Ground 1/Claim 1: quick-pick card is “lottery ticket”

- Irwin describes the quick-pick card as a “lottery ticket”:

“Logistics methods for portable, mobile processing of lottery and contest tickets”

Ex. 1030 (Irwin) at Title; Reply 19

- In quick-pick embodiment, only hanging plastic quick pick card is processed:

“The lottery's central site or complementary gaming system would then decode the quick-pick request, use a random number generator to generate a pseudorandom quick-pick, log the quick-pick transaction with a generated serial number on its database, and transmit a print command documenting the quick-pick and the assigned serial number to be printed on the merchant's printer at his or her location 105 and recorded at the central site at a later time if a complementary gaming system is used.”

Ex. 1030 (Irwin) at 10:5-13; Reply 19

**Ground 1: Irwin renders obvious providing “lottery numbers”
(Claims 11 and 12)**

Ground 1/Claims 11 and 12: providing “lottery numbers”

- **Claims 11 & 12:**

11. The method of claim 1, wherein the information provided to the lottery administration system includes one or more randomly determined lottery numbers generated at the time the manufactured, pre-printed, random draw lottery ticket is purchased at the retailer POS.

12. The method of claim 1, wherein the information provided to the lottery administration system includes one or more randomly determined lottery numbers associated with the manufactured, pre-printed, random draw lottery ticket prior to the time the manufactured, pre-printed lottery ticket is purchased at the retailer POS.

- **PO:** Irwin does not disclose providing “lottery numbers” to the server

- **Incorrect:**

- Claim 11: obvious to generate lottery numbers at the POS, which would then be provided to the server
- Claim 12: Irwin’s tickets have “unique identifiers” which lottery numbers and are transmitted
- Does not address these claims in surreply

Ground 1/Claims 11 and 12: providing “lottery numbers”

- **Claim 11**: obvious to generate lottery number at retailer POS

“[I]t would have been obvious to a POSITA to generate the numbers on the retailer POS instead of the lottery central site. A POSITA would be motivated to do this because it would distribute the task of number generation to the numerous retailer POS systems instead of using precious computing resources at the central site. Moreover, generating the numbers at the retailer POS would allow for a customer to confirm the randomly-generated numbers, or ask the system to provide a different set of randomly-generated numbers, thereby increasing customer satisfaction. Finally, because on-line lotteries allow for customers to choose their own lottery numbers, such lotteries can have multiple winners—there is no need for the retailer POS systems to worry about providing duplicate lottery numbers.”

Ex. 1003 (Hutton Decl.) at ¶154; Pet. 37

Ground 1/Claims 11 and 12: providing “lottery numbers”

- **PO:** game provider already generates numbers and is not “resource-constrained” *POR 48*

- **Mr. Hutton:**

“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.”

Ex. 1036 (Hutton Supp. Decl.) at ¶29; Reply 21-22

Ground 1/Claims 11 and 12: providing “lottery numbers”

- *Mr. Hutton:*

“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.”

Ex. 1036 (Hutton Supp. Decl.) at ¶28; Reply 21

Ground 1/Claims 11 and 12: providing “lottery numbers”

- **Claim 12:** Irwin transmits “unique identifiers” (i.e. lottery numbers) to the lottery central site

“In yet another embodiment, a comparable method can be used to sell passive game tickets by street vendors. Traditionally these tickets are printed in advance with unique identifiers—e.g., numbers.”

Ex. 1030 (Irwin) at 16:41-44; Pet. 37

“[P]reprinted passive tickets 224’ (FIG. 20) could still be sold through street vendors with the ticket's serial number 225’ and 226’ (barcoded embodiment of serial number) scanned and recorded in a central site database at the time of sale.”

Ex. 1030 (Irwin) at 16:65-17:2; Pet. 38

- Neither POR or Surreply addresses transmission of “unique identifiers”

Ground 3: Motivation to Combine Szrek and Llach

Ground 3: Motivation to combine Szrek and Llach

- PO **does not dispute** that Szrek and Llach disclose **each and every** limitation of the claims.
- **PO:** no motivation to modify Szrek to include Llach's third-party transaction processor *POR 49-61*
 - Szrek already discloses Llach's improvements via the back office
 - Adding another system would add delay and complexity
- **Incorrect:**
 - A POSITA would have modified Szrek to include Llach's third-party transaction processor for its added flexibility; ability simultaneously support multiple gaming providers and retailers through a 3rd party processor *Pet. 47 et seq.*
 - PO misinterprets Szrek – its back office is not a “third party” and provides none of Llach's advantages

Ground 3: Summary of Petition's Combination

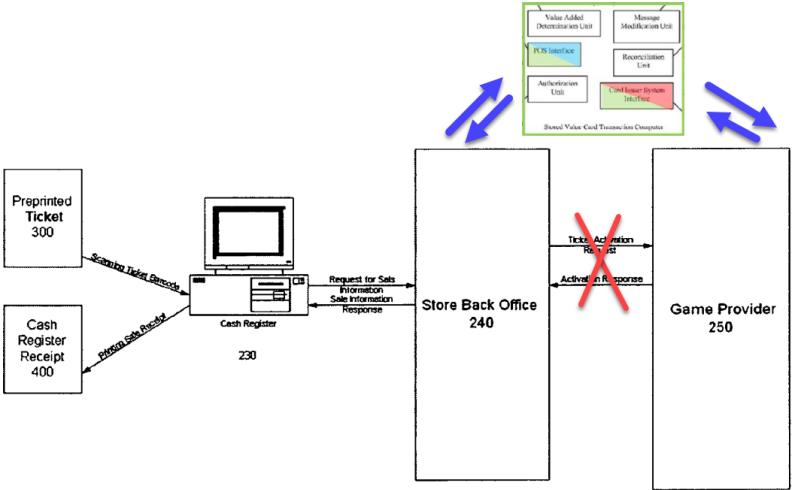
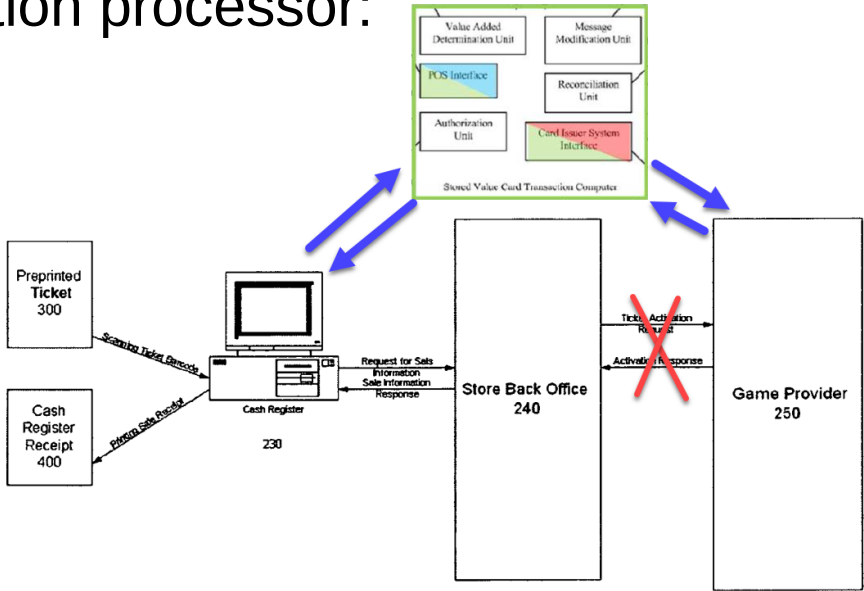
- Szrek's system modified to include Llach's 3rd party transaction processor:

“As the Board held in PGR2020-00084, Szrek discloses or renders obvious POS terminals that send transaction requests to a lottery administration system via a transaction processor. . . . Llach discloses a third-party transaction processor and it would have been obvious to combine Szrek with Llach.”

Ex. 1003 (Hutton Decl.) at ¶179; Pet. 47

“[T]he cash register is capable of communicating with the game provider system (directly or indirectly) and the game provider system (or some other system on behalf of game provider system) is authorizing cash register's lottery transactions.”

Ex. 1005 (Szrek) at 3:15-18; Reply 27



Reply 30-31

Ground 3: Summary of Petition's Combination

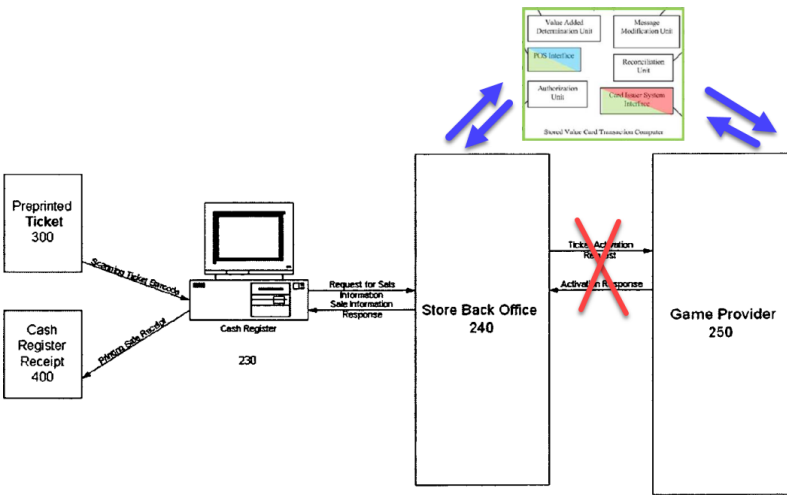
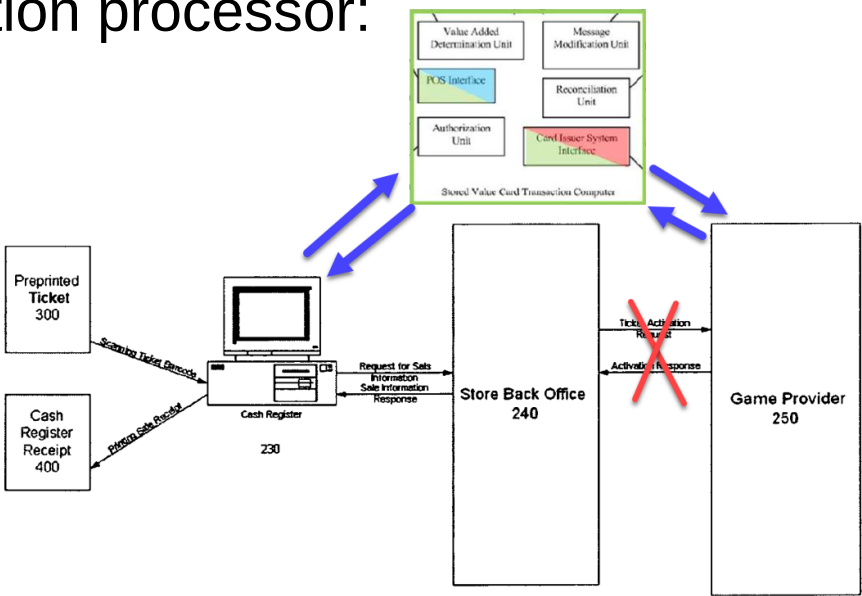
- Szrek's system modified to include Llach's 3rd party transaction processor:

“In my opinion, a POSITA would have found it obvious to modify Szrek's system for activating lottery tickets to incorporate Llach's teachings of an intermediary transaction computer between Szrek's cash register and game provider system, as well as Llach's encryption and use of VPN for communications to and from the transaction computer.

Ex. 1003 (Hutton Decl.) at ¶180; Pet. 47; Reply 30-31

“Szrek discloses that the transaction request sent to the game provider (via the third-party transaction processor in the Szrek-Llach combination) includes the ticket identifier (i.e. unique identification information) obtained from the lottery ticket's barcode.”

Ex. 1003 (Hutton Decl.) at ¶202; Pet. 55



Reply 30-31

Ground 3: Summary of Petition's Combination

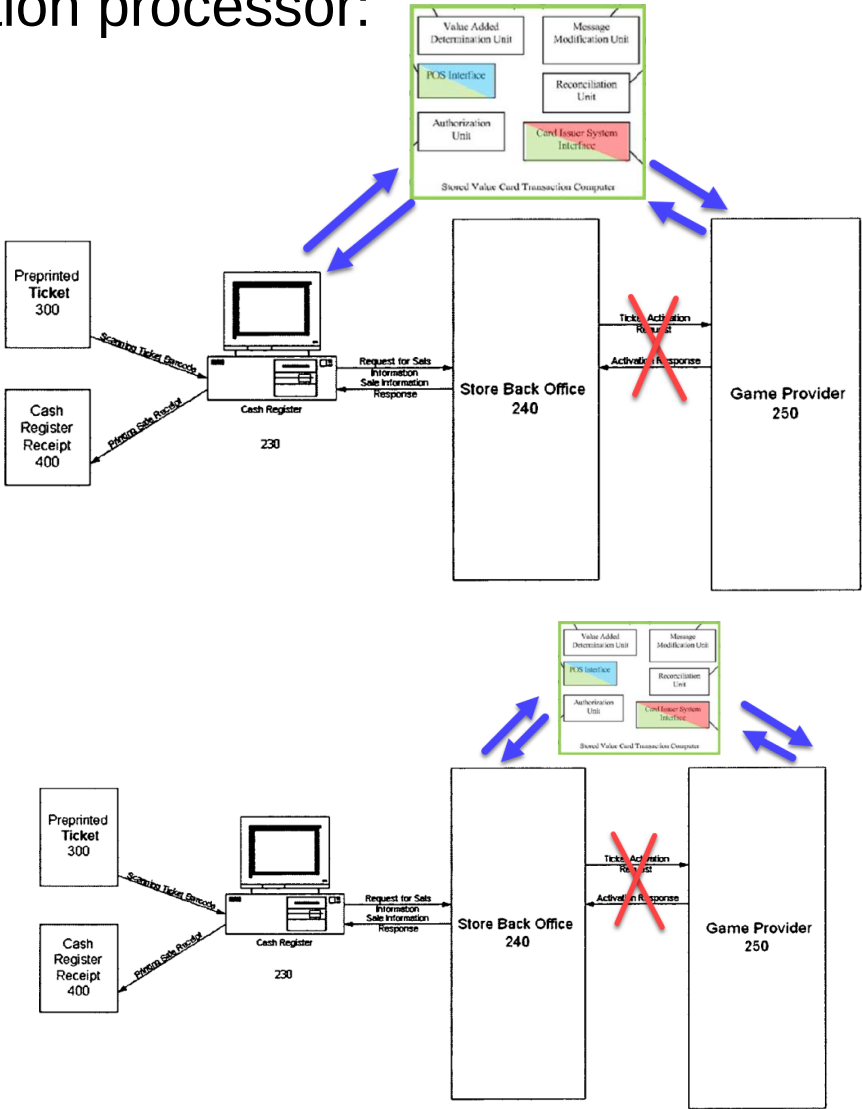
- Szrek's system modified to include Llach's 3rd party transaction processor:

“Q. Am I correct that -- that in the flow from the store back office through the intermediary transaction computer, and, then, to the game provider, that data flow is carrying the Ticket Activation Request that is in Szrek's original Figure 2?
A. Correct.”

Corrected Ex. 2051 (Hutton Tr.) at 108:12-18; POR 24

“Q. In Figure -- the -- the modified Figure 2 that we have, we have a -- an arrow extending from the game provider to the intermediary transaction computer, and, then, a second arrow extending from the intermediary transaction computer to the store back office. ... [I]n that data flow, was it carrying the Activation Response that's in Szrek's original Figure 2?
A. Yes, it is.”

Corrected Ex. 2051 (Hutton Tr.) at 108:21-109:7; POR 24



Reply 30-31

Ground 3: Summary of Petition's Combination

- PO:** Mr. Hutton repudiated Petition's combination *POR 60-61*

“Q. So if I add a box, call it a transaction computer, and I put it with arrows connecting the cash register to the game provider, does that accurately represent the modification that would be performed to Szrek's system, that's represented in paragraph 180?

A. No.”

Corrected Ex. 2051 (Hutton Tr.) at 104:3-12; POR 23

- Mr. Hutton clarified on redirect:

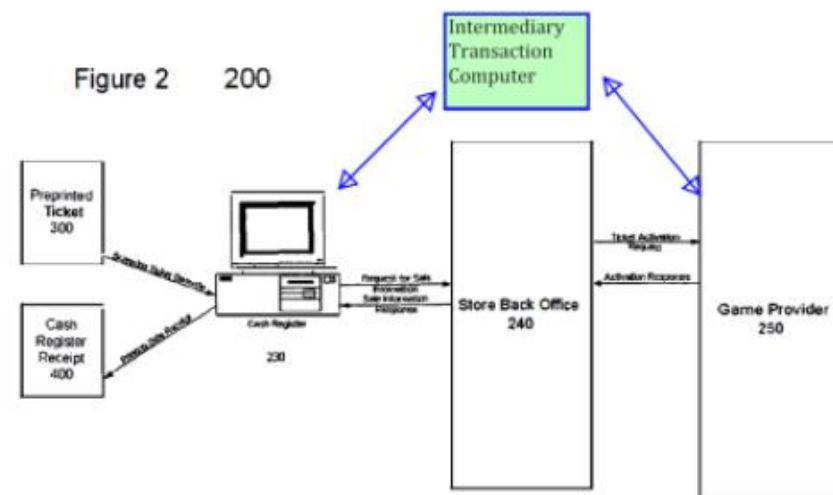
Q. So do you recall before the break testifying that it would be obvious to place Llach's transaction processor between Szrek's back office and the game provider?

A. I recall that, yes.

Q. Would it also be obvious to place a transaction processor in-between the cash register and the game provider?

A. Yes, it would.

Corrected Ex. 2051 (Hutton Tr.) at 113:16-24; POR 24



Szrek (EX2050), FIG. 2
(first annotation developed during expert deposition)

Ground 3: Summary of Petition's Combination

- Mr. Hutton explained on recross:

“Q. And [Exhibit 2050 is] what we discussed before, right?

A. Correct.

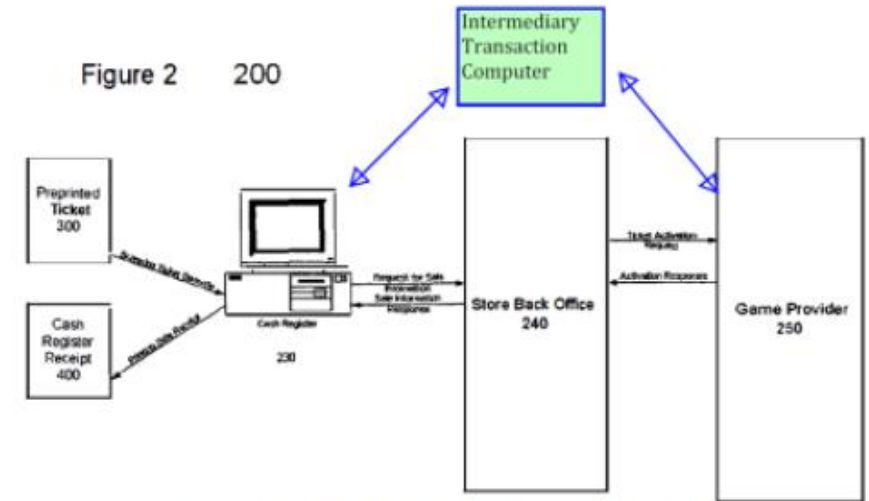
Q. And you said this was wrong?

A. Because there's a store back office in the diagram.

Q. Okay.

A. So in -- in [Paragraph] 180, a person of ordinary skill would understand that I was talking about between the Point Of Sale and the lottery transaction system. And the Point Of Sale could be interpreted as being the cash register, plus the store back office, or just the cash register. So both of those embodiments that we drew are consistent with what I wrote there, in my opinion.”

Corrected Ex. 2051 (Hutton Tr.) at 123:8-124:1; POR 25



Szrek (EX2050), FIG. 2
(first annotation developed during expert deposition)

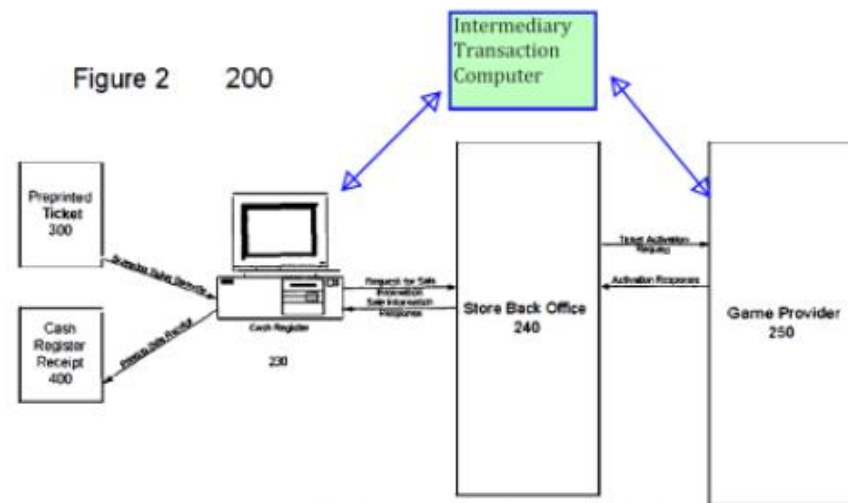
Ground 3: Summary of Petition's Combination

- Mr. Hutton explained on recross:

“Q. So with that modification, are you replacing the store back office with the intermediary transaction computer?”

A. No. I am just putting in the -- if there's no store back office, you -- and the cash register's -- and the cash register is still talking directly to the -- and the cash register's not using the store back office to do these lottery transactions, it would -- certainly could talk to the intermediary transaction computer.”

Corrected Ex. 2051 (Hutton Tr.) at 121:6-16; POR 25



Szrek (EX2050), FIG. 2
(first annotation developed during expert deposition)

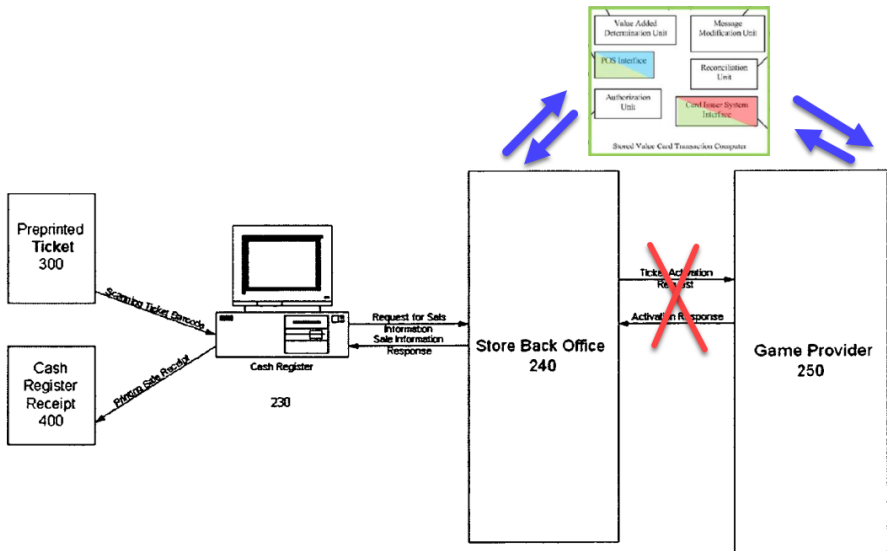
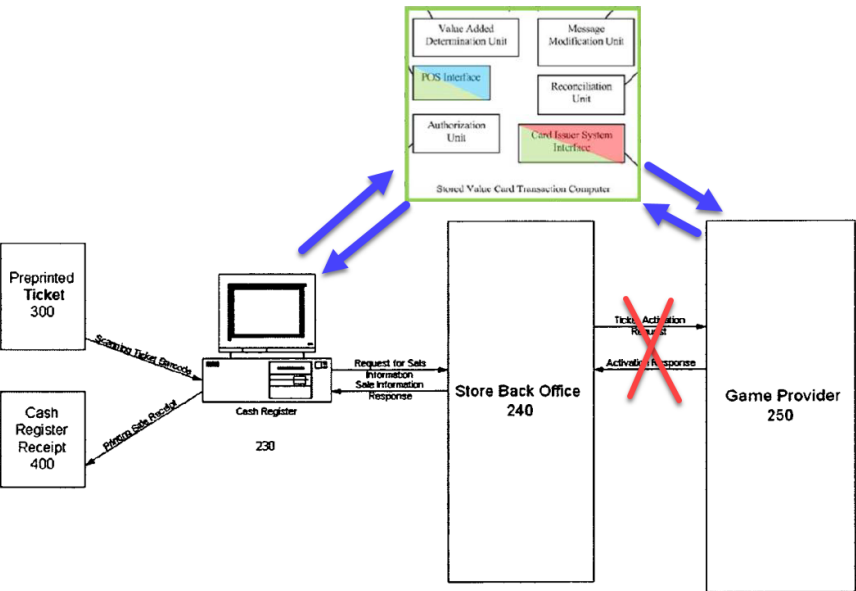
Reply 30-31

Ground 3: Motivation to combine Szrek and Llach

- A POSITA would have modified Szrek to include Llach’s 3rd party transaction processor because it provides **implementation details** to Szrek *Pet. 48, Reply 27*
- **Szrek:**

“[T]he cash register is capable of communicating with the game provider system (directly or indirectly) and the game provider system (or some other system on behalf of game provider system) is authorizing cash register's lottery transactions.”

Ex. 1005 (Szrek) at 3:15-18; Reply 27



Ground 3: Motivation to combine Szrek and Llach

- A POSITA would have modified Szrek to include Llach's 3rd party transaction processor because it provides **implementation details** to Szrek *Pet. 48, Reply 27*
- **Llach:**

“As depicted in FIG. 1, the stored value card transaction computer 150 is configured to: (a) form a secure connection with the card vendor (e.g., via the point of sale component 111), the card issuers' authorization systems 160, and any other entities 190 authorized to access the stored value card transaction computer 150 by the stored value card transaction computer administrator 151; (b) to communicate with card issuers' authorization systems 160 to request and receive activation or deactivation of stored value cards as well as receive value added information for stored-value cards that are eligible for incentives; (c) to communicate with card issuers' authorization systems 160 to redeem all or a portion of the value, services, or products associated with the stored-value card; (d) generate and maintain a transaction log 170 of all activities performed; (e) generate and maintain an error log 175 of all activities unsuccessfully completed and reasons therefor; (f) communicate to the card vendor (e.g., via the POS component 111) the activation or deactivation of the stored value card and any information concomitant with the activation or deactivation of individual stored value card, i.e. the communication of PINS associated with activated stored value cards; and (g) communicate to the card vendor (e.g., via the POS component 111) any reasons why requested transactions cannot not be completed.”

Ex. 1006 (Llach) at ¶23; Pet. 54, POR 16

Ground 3: Motivation to combine Szrek and Llach

- ***Mr. Hutton (discussing Irwin's 3rd party transaction processor):***

“Q. Okay. And, then, in the center 14 there's a cloud given the number "120," and it called an "interchange." What kind of equipment does the interchange represent?

A. The interchange represents commun -- lots of communication -- communication networks, and data centers containing comp- -- you know, computer equipment of the state of the art that the data center was built at. So, again, it would be a network of data centers connected together with a -- with a network.”

Corrected Ex. 2051 (Hutton Tr.) at 38:13-39:2; Reply 7

Ground 3: Motivation to combine Szrek and Llach

- ***Mr. Hutton:***

“In order to become a lottery retailer in almost any jurisdiction in the United States, there's -- there's a long application process and background checks and site visits and various vetting processes that go on, and there's an application process.

And the lottery system -- the lottery administration system separate from the lottery online gaming system takes care of that stuff, so that it was a system for onboarding retailers, managing retailers, handling their banking information, sweeping their bank accounts, if they were -- lottery retailers are required to have a dedicated bank account for lottery sales.”

Corrected Ex. 2051 (Hutton Tr.) at 33:3-18; Reply 7

Ground 3: Motivation to combine Szrek and Llach

- A POSITA would have modified Szrek to include Llach's 3rd party transaction processor because it provides **implementation details** to Szrek *Pet. 48, Reply 27*
- **Szrek:**

“[T]he cash register is capable of communicating with the game provider system (directly or indirectly) and the game provider system (or some other system on behalf of game provider system) is authorizing cash register's lottery transactions.”
- **Surreply:**

Ex. 1005 (Szrek) at 3:15-18; Reply 27

“The Reply's argument (p. 27), that “Szrek's teaching that the POS and game provider system communicate ‘indirectly’ via an intermediary,” does not suggest obviousness, it proves Patent Owner's point. In Szrek, the indirect communication passes through the back office (EX1005 col. 2:50, 4:22-25); the back office interprets barcode scans and issues activation requests to a game provider.”

Surreply 24-25

Ground 3: Motivation to combine Szrek and Llach

- Llach's 3rd party transaction processor allows **multiple retailers** to activate cards for **multiple game providers** *Pet. 47-48*

“A POSITA would be motivated to do this because it would allow Szrek's system to have a centralized system for activating lottery tickets from different retailers and different locations, thereby allowing the system to be easily and cheaply extended. Moreover, a centralized intermediary allows for support for different game providers, such as different lottery companies. This would reduce implementation costs.”

Ex. 1003 (Hutton Decl.) at ¶181; Pet. 47

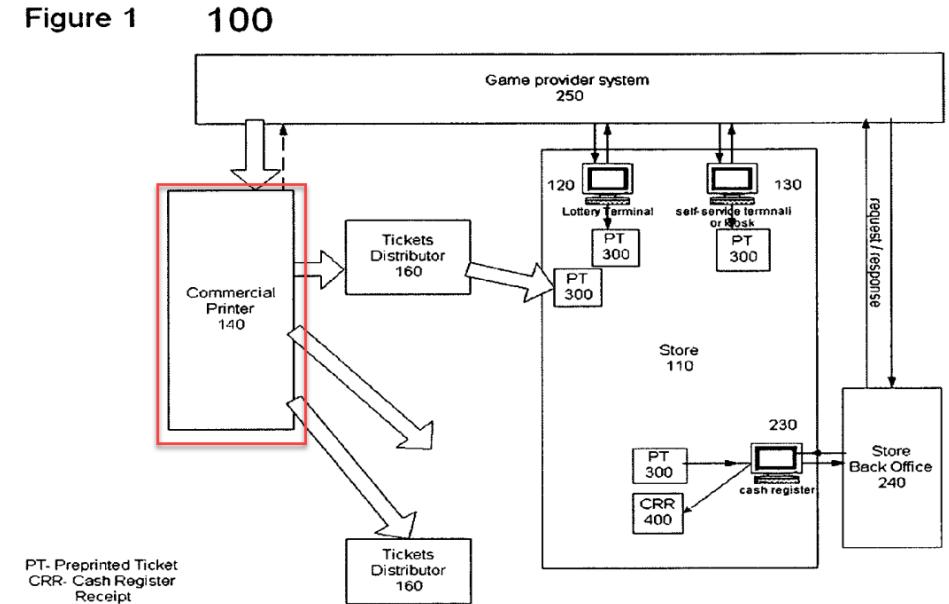
Ground 3: Motivation to combine Szrek and Llach

- **PO:** Szrek supports multiple retailers *POR 56-57*
- **Szrek:**

“Preprinted tickets (PT) 300 is preferably preprinted by a commercial printer 140 or in the lottery kiosk 130, self service terminal 130 or regular lottery terminals 120.

“A lottery player may choose his own selection and have it printed at the kiosk 130 or self-service terminal 130, or he may pick up a ticket 300 printed by the commercial printer 140.”

Ex. 1005 (Szrek) at 5:57-60, 6:24-27; Reply 24



1[a]: receiving, by a third-party transaction processor, a transaction request from a retailer point of sale (POS) to activate the manufactured, pre-printed, random draw lottery ticket, ... wherein the third-party transaction processor receives transaction requests from a plurality of different retailers

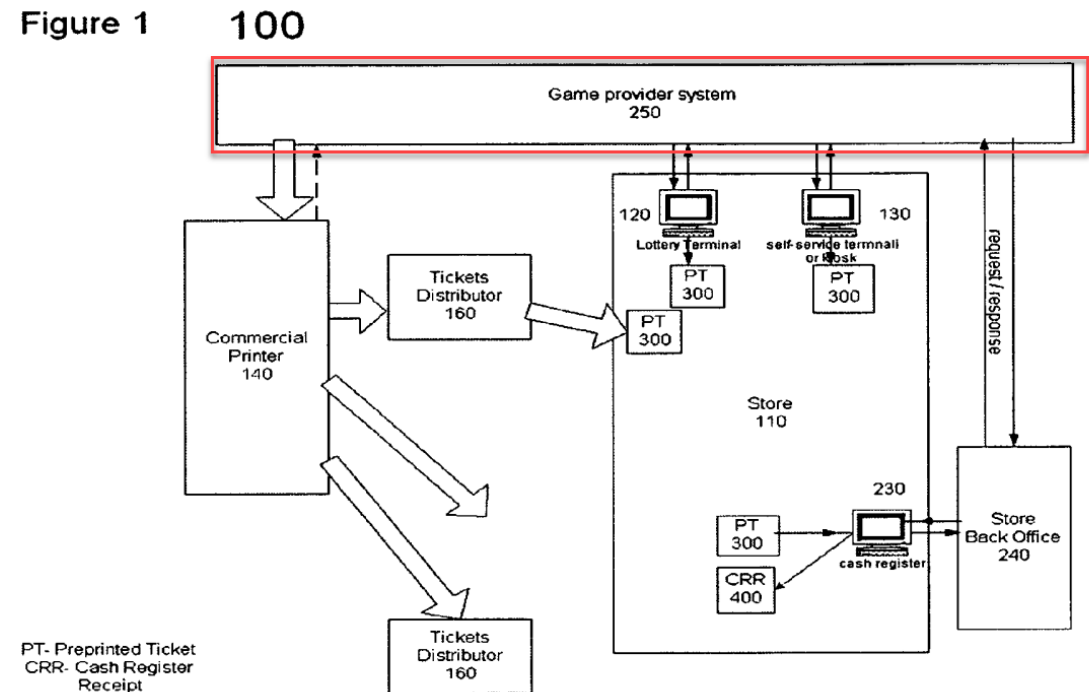
Ground 3: Motivation to combine Szrek and Llach

- **PO:** Szrek discloses activation for different products *POR 57, Surreply 22-23*
- **Szrek:**

“All tickets are “preloaded” in the game provider's system, and during ticket activation, the game provider system merely recognizes from the ticket identifier what transaction is activated (e.g. lotto, 6 specific boards known to the system and the player).”

Ex. 1005 (Szrek) at 3:46-50; Pet. 55

Figure 1



Ground 3: Motivation to combine Szrek and Llach

- Llach's 3rd party transaction processor allows **greater flexibility** :

“In addition, Llach discloses a number of features that its transaction computer can perform that would be desirable to a POSITA, including (1) the ability to communicate “with individual card issuers’ authorization systems 160 to effectuate activation or deactivation of the transaction cards” (Ex. 1006, [0030]), (2) the ability to communicate with “other entities” that may provide useful services, such as “third party payment management systems, third party audit systems, card issuer, affiliated entities, card vendor affiliated entities, redeeming merchants or redeeming merchant affiliated entities, financial institutions, such as banks and credit unions, or any other entity provided access by the stored value card transaction computer administrator.”

Ex. 1003 (Hutton Decl.) at ¶181; Pet. 47

- PO cites to **Llach** to interpret **Szrek**: POR 58.

“Llach confirms that point of sale systems possess many of the capabilities that the Petition alleges would be expanded by use of Llach’s techniques.”

Ground 3: Motivation to combine Szrek and Llach

- **PO:** Szrek's "direct communication" is faster than a network *POR 52, Surreply 21-22*
- **Mr. Hutton:**

"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."

Ex. 1036 (Hutton Suppl. Decl.) at ¶37; Reply 29

Ground 3: Motivation to combine Szrek and Llach

- ***Surreply***: the combination adds complexity because Llach discloses that each POS equipment must be configured to recognize new cards *Surreply 22 (citing Llach ¶13, 19)*
- ***Llach***:

[0013] “Consumer use of stored value cards typically involves a card vendor, a redeeming merchant, and a card issuer. In various embodiments, the card vendor, redeeming merchant and card issuer may be the same, different, or related entities. The point of sale where stored value cards are purchased and activated may be referred to as the card vendor or simply vendor. An entity that will accept a stored value card for business transactions, for example as tender for a purchase, may be referred to as a redeeming merchant. An entity that provides the financial backing and/or payment processing accessed via the stored value card may be referred to as the card issuer or simply issuer.”

[0019] “As can be seen in FIG. 1, at the point of sale component 111 (typically located at a vendor and/or redeeming merchant), the card identifier on the stored value card is interpreted 102 by a point of sale interpretation component 101 (e.g., a card reader). The point of sale interpretation component 101 can comprise a human, a bar code scanner, magnetic strip reader, optical character recognition device, or other device configured to interpret the data encoded in the card identifier on the stored value card.”

Ex. 1007 (Llach) at ¶¶13, 19; Surreply 22

Ground 3: Motivation to combine Szrek and Llach

- ***Surreply***: the combination adds complexity because Llach discloses that each POS equipment must be configured to recognize new cards *Surreply 22 (citing Llach ¶13, 19)*
- ***Llach***:

“The point of sale interpretation component 101 communicates the card identifier to the point of sale processing component 105. The point of sale transaction component 104 communicates the request for activation or deactivation of the card identifier interpreted by the point of sale interpretation component 101 to the point of sale processing component 105. The point of sale processing component 105 communicates 106 with the stored value card transaction computer 150 (e.g., transmits a message requesting card activation, deactivation or redemption).

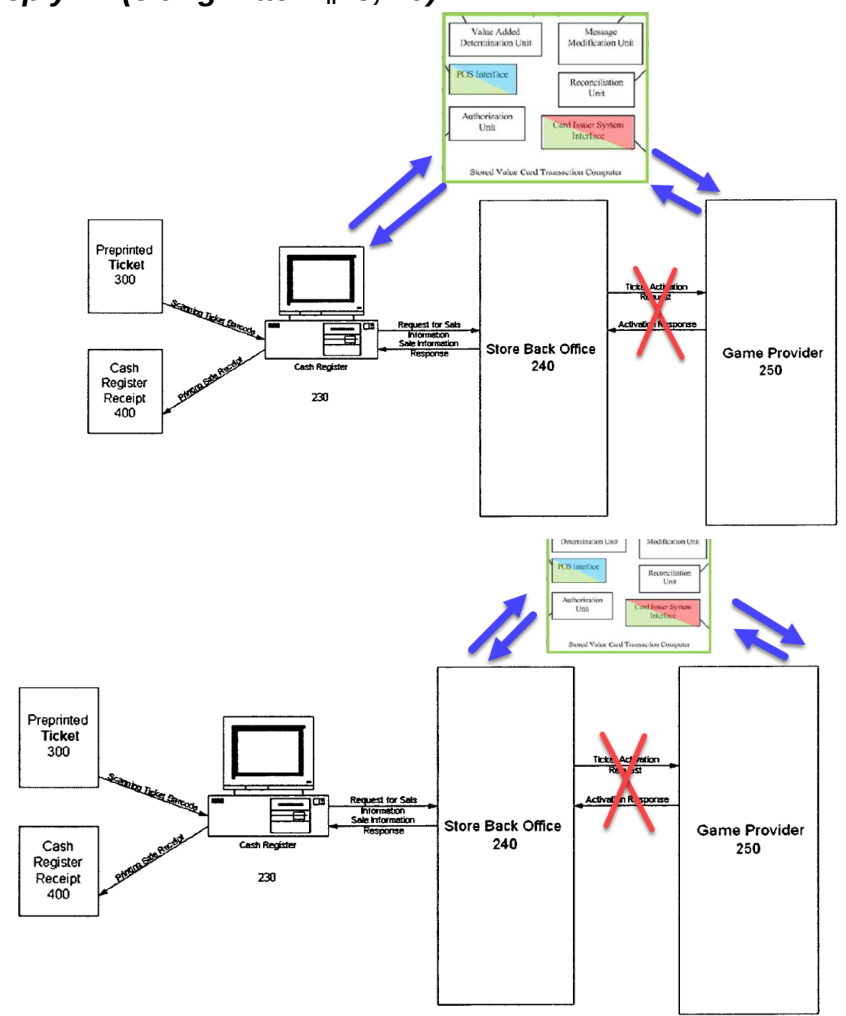
Ex. 1007 (Llach) at ¶21; Surreply 24

Ground 3: Motivation to combine Szrek and Llach

- **Surreply:** the combination adds complexity because Llach discloses that each POS equipment must be configured to recognize new cards *Surreply 22 (citing Llach ¶13, 19)*
- **Szrek:**

“The information in the barcode should contain a ticket identifier. It may contain other information such as lottery product code, ticket price or other data. Standard barcodes, such as UPC, have usually a few well defined areas. One of them is manufacturer's ID and another is product ID. The invention allows for using non-standard format of the standardized barcode as long as this format could be easily understood by the cash registers, however standard format is preferred.”

“Each ticket 300 preferably has a barcode 310 that could be scanned on the cash register, with information allowing identifying this barcode as lottery ticket 300 and uniquely identifying the ticket 330. In a preferred embodiment, barcode 310 is one of the supported standard barcodes. The fixed part of the barcode should indicate the product type; the variable part of the barcode should contain ticket identifier 330.



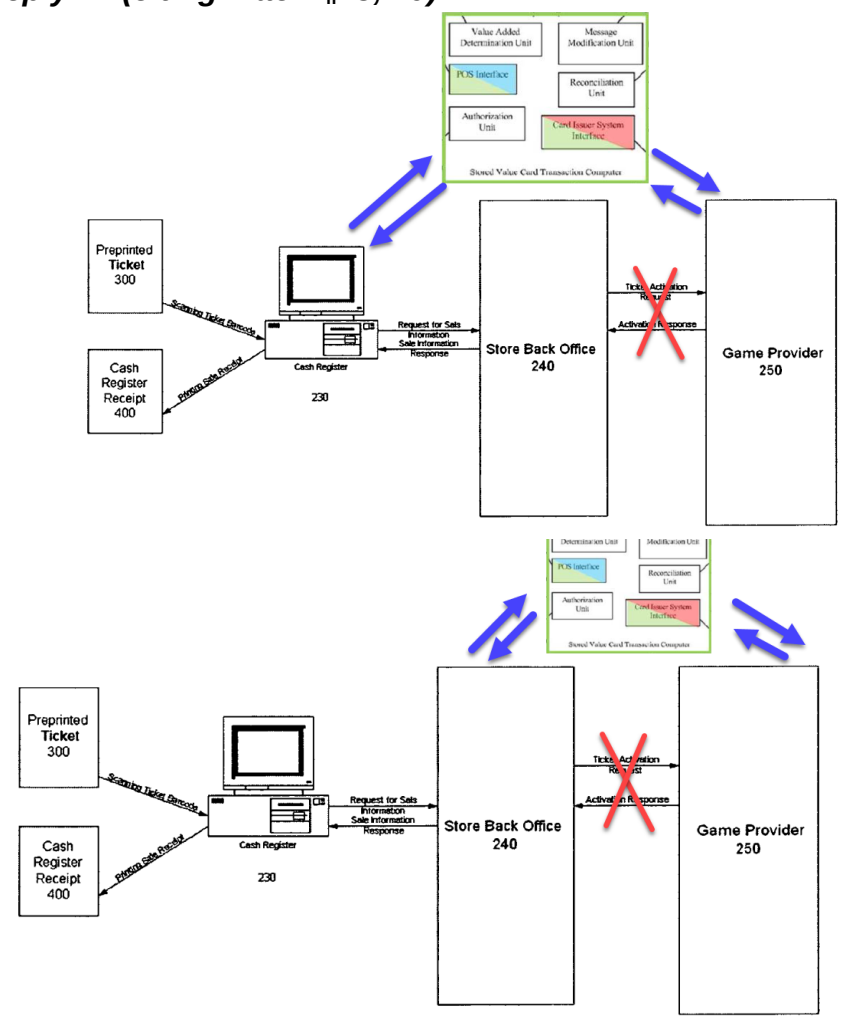
Ex. 1005 (Szrek) at 4:44-51, 6:7-13; Pet. 59, 59

Ground 3: Motivation to combine Szrek and Llach

- **Surreply**: the combination adds complexity because Llach discloses that each POS equipment must be configured to recognize new cards *Surreply 22 (citing Llach ¶13, 19)*
- **Szrek**:

“After the barcode information has been scanned, cash register originates a transaction to the game provider requesting ticket activation. This is usually done by requesting the product type and price. This request is usually transformed into an activation request by the store back office software. The request is then sent to the game provider, who authorizes the activation and sends back lottery product description, price, and activation receipt identifier, usually with some security code.”

“The ticket of the present invention does not have a play value unless it is activated. This activation could be done on the cash register by scanning ticket bar code or entering the ticket identifier manually. After the ticket identifier is obtained, an authorization request is sent to the game provider either directly from the cash register or indirectly via the store “back office”.”



Ex. 1005 (Szrek) at 4:56-64, 4:19-25; POR 49; Pet. 4

Ground 3: Motivation to combine Szrek and Llach

- **PO:** the combination would increase complexity because it adds an additional accounting at the third-party transaction processor *POR 55*
- **Llach:**

“The information contained in the transaction log 170 may be used to generate reconciliation reports, settlement reports, payment reports, audit reports, or other forms of information aggregation for the benefit of, use by, or for provision to, the stored value card transaction administrator 151, the datastore administrator 181, card vendors, card issuers, card issuers' authorization systems 160, redeeming merchants, or other interested parties. For example, the transaction log 170 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 (Llach) at ¶27; Reply 32

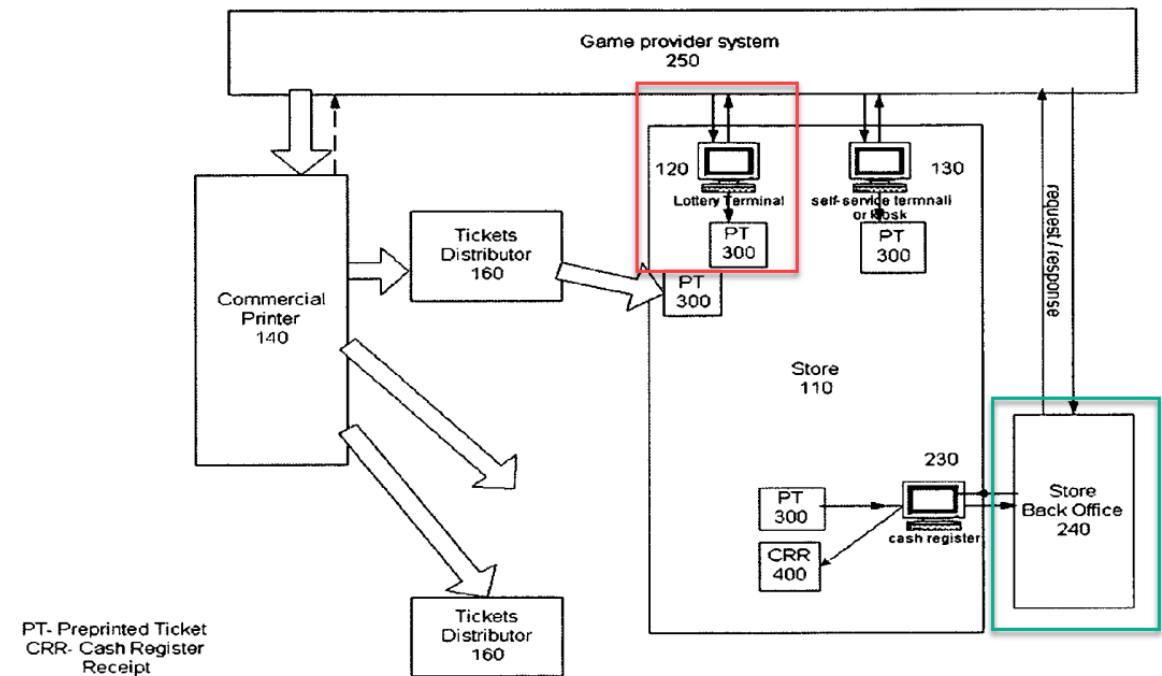
Ground 3: Motivation to combine Szrek and Llach

- **PO:** Back office necessary to identify products after scanning *POR 53; Surreply 26-27*
- PO mischaracterizes the combination:

“Q. Does the cash register still communicate with the back office to perform whatever function’s necessary by the back office?
A. Yes.”

Corrected Ex. 2051 (Hutton Tr.) at 128:21-129:8; Reply 30

Figure 1 100



Ground 3: Motivation to combine Szrek and Llach

- **PO:** Petitioner does not leverage Llach's novelty of adding stored value *POR 60*
- **Petition:**

“[A] POSITA would understand that the proposed combination would simply be the application of **Llach's known techniques** for using a transaction computer to activate substrates to Szrek's known system.”

Ex. 1003 (Hutton Decl.) at ¶184; Pet. 49

Ground 4: Szrek and Llach in Further View of Gilmore Renders Obvious Claim 11

Ground 4: Gilmore Discloses Generating Numbers at POS

- ***Gilmore:***

“Returning now again to step 54, where using a token for an on-line lottery game, the process proceeds to step 64 which generates a quick-pick transaction and sends the transaction data or request to the off-site lottery computer 28 (FIG. 1) performing one of the two separate subroutines illustrated in FIGS. 6A and 6B. The type of on-line lottery game described for use with the tokens of the system is a “quick-pick” game in which the lottery system or off-site host computer generates a series of random lottery game play numbers for the game player, and then forwards the lottery play numbers to the ticket printer located at the POS terminal.

Ex. 1029 (Gilmore) at ¶63; Pet. 69

Ground 4: Motivation to Combine Szrek, Llach, and Gilmore

- *Mr. Hutton:*

“It would have been obvious to a POSA incorporate the generation of “quick picks” at the time of purchase into the system of Szrek, specifically by generating the quick pick numbers at the cash register, or in the Szrek-Llach combination, at the Transaction Computer, and include the numbers in the activation request to the game provider, such that the numbers would be associated with the ticket as taught by Gilmore. A POSITA would have been motivated to make the modification 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.”

Ex. 1003 (Hutton Decl.) at ¶257; Pet. 69-70

Dr. Miller is not a POSITA

Dr. Miller is not a POSITA

- Agreed definition of a POSITA:

“[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”

Pet. 2-3; POR 19

- Dr. Miller has no experience with lottery systems (Ex. 2053; Ex. 1037, 7:17-20:21)
- Dr. Miller has minimal experience with POS activation systems

“Q. My question was about distribution networks. Do you have any familiarity with those, with respect to gift cards?

A. As I said, I have familiarity with how gift cards work. In preparation for today, I didn’t specifically look into distribution networks related to gift cards, though.”

Ex. 1037 (Miller Tr.) 24:23-25:8

- Dr. Miller was not aware that PO operates one of the largest gift card activation networks

“Q. Are you aware of the fact that Blackhawk provides a distribution network for gift cards?
A. I don’t now that.”

Ex. 1037 (Miller Tr.) at 24:17-20

Mr. Hutton's Testimony is Entitled to Due Weight

Mr. Hutton's Testimony Entitled to Due Weight

- Agreed definition of a POSITA:

“[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”

Pet. 2-3; POR 19

- Mr. Hutton is a POSITA:

“I have been involved in the development of large scale Lottery point of sale systems from the time the technology was in its infancy in the late 1970s up to and including the Internet based systems being deployed today. I have contributed to the design, development, and deployment of dozens of lottery systems for public sector gaming operators around the world.”

Ex. 1003 (Hutton Decl.) at ¶¶4-10; Reply 6

Mr. Hutton's Testimony Entitled to Due Weight

- **POR:** Mr. Hutton erroneously testified about counsel's figures drawn during the deposition *POR 22-25*
- **Mr. Hutton:**

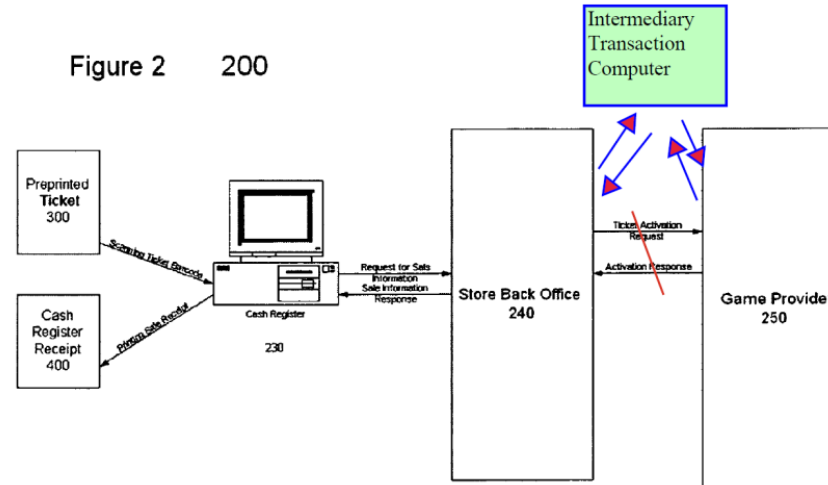
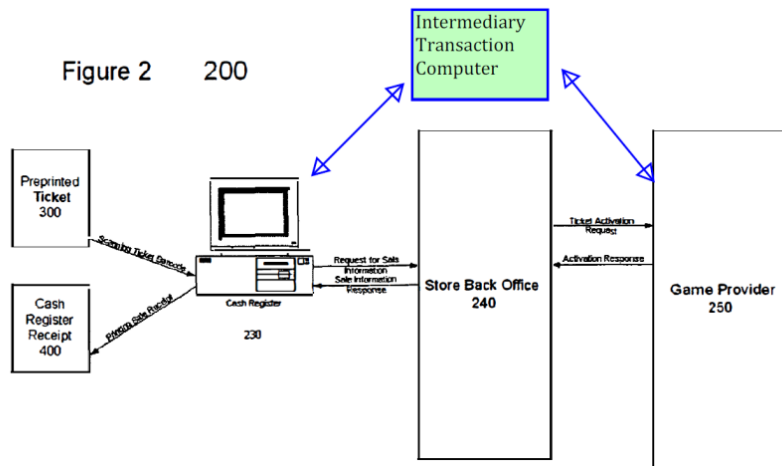
“Q. So do you recall before the break testifying that it would be obvious to place Llach's transaction processor between Szrek's back office and the game provider?

A. I recall that, yes.

Q. Would it also be obvious to place a transaction processor in-between the cash register and the game provider?

A. Yes, it would.”

Corrected Ex. 2051 (Hutton Tr.) at 113:16-24; POR 24



Mr. Hutton's Testimony Entitled to Due Weight

- **POR:** Mr. Hutton is wrong that Irwin renders obvious claim 1 or that it would be obvious to combine Szrek and Llach *POR 20-22*
- PO is wrong on the substance
- Mere disagreements are not a proper basis to strike expert testimony

Motion to Exclude

Motion to Exclude

Exhibit	Description	Relevance
Exhibit 1036	Supplemental Declaration of Mr. Hutton	Opinions responsive to POR
Exhibit 1038	Glossary of Lottery Terms	Extrinsic evidence of “random draw”
Exhibit 1039	New Legislative Framework for Online Gaming in Spain	Extrinsic evidence of “random draw”



“[W]here a patent owner in an IPR first proposes a claim construction in a patent owner response, a petitioner must be given the opportunity in its reply to argue and present evidence of anticipation or obviousness under the new construction, at least where it relies on the same embodiments for each invalidity ground as were relied on in the petition.”

Axonics, Inc. v. Medtronic, Inc., 75 F.4th 1374, 1384 (Fed. Cir. 2023); Pet. MTE Opp. at 1

Motion to Exclude: Ex. 1036, ¶¶ 5-17, Ex. 1038, Ex. 1039

- ***POR's interpretation of "random draw" relied on (incorrectly interpreted) extrinsic evidence:***

"In a random draw lottery, by contrast, "numbers [are] randomly selected during the draw event" and compared to numbers on a player's ticket. EX1003 ¶ 64. Because numbers are randomly selected during a draw event, it often occurs that there is no match between the randomly-elected numbers and the numbers on the eligible lottery tickets, and, thus, the draw yields no top prize winner."

POR 41

- ***Incorrect:***
 - The POR incorrectly interpreted a non-definitional ***example*** of a random draw from Mr. Hutton's ***background section***.
 - Dr. Hutton testified in reply that his opening declaration was consistent with his understanding of the plain meaning of "random draw" *Reply 11*
 - PO's relied on extrinsic evidence (Exhibits 1038 and 1039) to rebut the incorrect claim construction *Reply 13*

Motion to Exclude: Ex. 1036, ¶¶ 5-17

- Exhibit 1036 (Hutton Supplemental Declaration) ¶¶5-17 are not new evidence, and properly respond to the POR
- ***MTE Reply***: Not a claim construction dispute, merely applied Mr. Hutton’s “plain-meaning” description from his declaration *MTE Reply 2*
- ***Incorrect***: Dr. Hutton provided a ***non-definitional example*** of a “random draw” in his ***background section***:

3. Sale of Lottery Tickets Through Retailers’ Existing POS Systems

64. Lotteries have been in existence for hundreds of years and can take a number of different forms. In a random draw lottery, a player purchases a ticket for a lottery draw event that takes place in the future. Ex. 1001. The player can either select his or her own draw numbers or the draw numbers can be randomly selected by the system. The numbers on the player’s tickets are then compared to the numbers randomly selected during the draw event to determine if there is a match and thus a winning ticket.

Ex. 1003 (Hutton Decl.) at ¶64; Pet. 4

Motion to Exclude: Ex. 1036, ¶¶ 5-17

- Exhibit 1036 (Hutton Supplemental Declaration) ¶¶5-17 are not new evidence, and properly respond to the POR
- **MTE / Reply:** Mr. Hutton's declaration is "new" because it is inconsistent with Mr. Hutton's "plain-meaning" description *MTE 3-4 / MTE Reply 2-5*

- **Mr. Hutton:**

"To the extent the preamble is limiting, in my opinion, Irwin discloses this limitation [manufactured, pre-printed, random draw lottery ticket]. ... Irwin also discloses "preprinted passive tickets 224' (FIG. 20) ... sold through street vendors" that are "registered as sold on the central site." *Id.*, 16:65-17:2. Figure 21 depicts an example of "a preprinted passive ticket," which is clearly manufactured and preprinted."

Ex. 1003 (Hutton Decl.) at ¶¶99-101; Pet. 13-15

"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. ... 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."."

Ex. 1036 (Supp. Hutton Decl.) at ¶7; Reply 10

Motion to Exclude: Exs. 1038 and 1039

- Exs. 1038 and 1039 are not new evidence, and properly respond to the POR:

“Passive game: a **lottery game** similar to a raffle where a player buys a ticket with preprinted numbers. The lottery later **randomly draws numbers** that are compared to the players’ tickets to determine the outcomes.”

Ex. 1038 (South Carolina Lottery Glossary of Terms) at 2; Reply 13

³⁶ In this extraordinary Christmas draw, winning tickets are selected using two huge lottery wheels. Tickets are randomly drawn with one wheel while a second wheel gives the value of the prize to be awarded. It is a tradition for Spaniards to follow the draw on December 22nd and to share tickets among friends, colleagues, families, etc. GARVÍA, *supra* note 32.

Ex. 1039 (Spain Lottery Paper) at 4 n.36; Reply 13

Motion to Exclude: Exs. 1038 and 1039

- ***MTE Reply***: This evidence is inconsistent with Mr. Hutton’s “plain-meaning description” *MTE Reply* 2-5

- ***Incorrect***:

“Lotteries have been in existence for hundreds of years and can take a number of different forms. In a random draw lottery, a player purchases a ticket for a lottery draw event that takes place in the future. Ex. 1001. The player can either select his or her own draw numbers or the draw numbers can be randomly selected by the system. The numbers on the player’s tickets are then compared to the numbers randomly selected during the draw event to determine if there is a match and thus a winning ticket.”

Ex. 1003 (Hutton Decl.) at ¶¶64; Pet. 4

“To the extent the preamble is limiting, in my opinion, Irwin discloses this limitation [manufactured, pre-printed, random draw lottery ticket]. ... Irwin also discloses “preprinted passive tickets 224’ (FIG. 20) ... sold through street vendors” that are “registered as sold on the central site.” *Id.*, 16:65-17:2. Figure 21 depicts an example of “a preprinted passive ticket,” which is clearly manufactured and preprinted.”

Ex. 1003 (Hutton Decl.) at ¶¶99-101; Pet. 13-15

Motion to Exclude: Ex. 1036, ¶¶ 21-26

- Exhibit 1036 (Hutton Supplemental Declaration) ¶¶21-26 is not new evidence, and properly responds to the POR:

“Irwin does not teach or suggest that the plastic hanging card 200 is a lottery ticket. Irwin describes it only as a “card,” one that is used to create a separate item, an “on-line ticket” 210.”

POR 28

- MTE / Reply:** Mr. Hutton’s declaration is “new” because it is inconsistent with Mr. Hutton’s “plain-meaning” description *MTE 3-4 / MTE Reply 2-5*

- Incorrect:**

“Irwin further discloses an embodiment where, “[f]or quick-pick ... purchases of on-line tickets,” a merchant displays “a plastic hanging card 200” that is manufactured and pre-printed “with a quick-pick coded interchange compatible barcode 201” for selection and purchase by a customer. Ex. 1030, 9:50-56. These cards are tickets for a random draw lottery that supports “quick-pick (i.e., numbers automatically selected for the consumer), such as “Pick 3, Pick 4, Powerball, Mega Millions””

Ex. 1003 (Hutton Decl.) at ¶100; Pet. 13

“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.” But the only description in Irwin of a pre-printed substrate containing an “interchange compatible barcode” is Irwin’s quick-pick card.”

Ex. 1036 (Hutton Supp. Decl.) at ¶23; Reply 19

Motion to Exclude: Evidence to address claim construction is proper

- The exhibits are responsive to PO's new claim construction:



“Barring argument and evidence in a reply directed to a new claim construction proposed by the patent owner would *create opportunities for sandbagging by the patent owner* in order to create an estoppel. ...

[W]here a patent owner in an IPR first proposes a claim construction in a patent owner response, a petitioner must be given the opportunity in its reply to argue and present evidence of anticipation or obviousness under the new construction, at least where it relies on the same embodiments for each invalidity ground as were relied on in the petition.”

Axonics, Inc. v. Medtronic, Inc., 75 F.4th 1374, 1384 (Fed. Cir. 2023); Pet. MTE Opp. at 1

- **Pre-institution:** Petitioner proposed PAOM for all terms; PO agreed
- **PO's Post-institution Argument:** POR proposed new construction for “measured input”
- **Alleged New Argument:** Reply cited to new disclosures in the references to meet new construction
- **Board Ruling:** Board adopted PO's construction and refused to consider “what amounts to a new ground not set forth in the Petition,” saying Petitioner could have anticipated new construction
- **Federal Circuit:** *Vacated*, with instructions to consider Petitioner's arguments and evidence

Motion to Exclude: Evidence to address claim construction is proper

- The exhibits are responsive to PO's new claim construction:



“[T]he APA required the Board to give [Petitioner] adequate notice and **an opportunity to respond under the new construction** first proposed in [the] patent owner response. ...

[T]he Board, in considering [Petitioner's] reply arguments, did not deprive the patent owner of notice and an opportunity to respond.”

Parkervision v. Vidal, 88 F.4th 969, 979-80 (Fed. Cir. 2023); Pet. MTE Opp. at 1

- **Pre-institution:** Neither party proposed any construction
- **PO's Post-institution Argument:** POR proposed new construction of “storage element” based on a reference incorporated in the challenged patent
- **Alleged New Argument:** Reply argued the incorporated reference had a different definition for “storage element,” and presented new arguments and evidence to meet Petitioner's construction
- **Board Ruling:** Board adopted Petitioner's construction, and adopted Petitioner's Reply arguments
- **Federal Circuit:** *Affirmed*

Motion to Exclude: Evidence to address claim construction is proper

- The exhibits are responsive to PO's new claim construction:



“Ericsson’s Petition describes how one of skill in the art would be familiar with the concepts of interleaving. ... The portions of the Reply the Board declined to consider **expressly follow from these contentions raised in the Petition**. ... The [Board’s] error was exacerbated by the fact that the significance of interleaving arose after the Petition was filed.”

Ericsson, Inc. v. Intellectual Ventures LLC, 901 F.3d 1374, (Fed. Cir. 2023); Pet. MTE Opp. at 1

- **Pre-institution:** Parties did not construe “encoding” prior to institution
- **PO’s Post-institution Argument:** POR proposed new construction for “encoding” to require packet “interleaving”
- **Alleged New Argument:** Reply argued that packet “interleaving” was well-known and not substantially different from prior art
- **Board Ruling:** Board agreed with PO’s construction, but also that “interleaving” was well-known, but declined to consider Petitioner’s argument
- **Federal Circuit:** ***Vacated***, with instructions to consider Petitioner’s arguments and evidence