

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,
Petitioner,

v.

BLACKHAWK NETWORK INC.,
Patent Owner.

IPR2024-00465
Patent 11,488,451 B2

Record of Oral Hearing
Held: April 29, 2025

Before LINDA E. HORNER, BART A. GERSTENBLITH, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

APPEARANCES:

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The above-titled matter came on for hearing on April 29, 2025,
commencing at 10:00 a.m., via video teleconference.

P R O C E E D I N G S

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JUDGE GERSTENBLITH: Hello, everyone. We're here for oral argument in IPR2024-00465, *Interactive Communications International, Incorporated v. Blackhawk Network Inc.* I'm Judge Gerstenblith and appearing with me today are Judges Horner and Peslak. Starting with Petitioner, will Counsel please enter your appearance for the record?

MR. GLASS: Thank you, and good morning. Jim Glass for Petitioner. With me on the line today is backup counsel, Quincy Lu.

JUDGE GERSTENBLITH: Great. Good morning, thank you. And for Patent Owner?

MR. HAILS: Good morning. This is Robert Hails, counsel for Patent Owner. I'm joined by co-counsel, Jason Hoffman, and on the public line, I believe, we have Jim McDonald, who is Vice President of Litigation and chief IP counsel at the client.

JUDGE GERSTENBLITH: Great. Good morning, everyone. Thank you for joining us. We set forth the procedure for today's oral hearing in our order granting the parties' request for an oral hearing, which is entered in the record as Paper 27. In that order, we indicated that each party will have 60 minutes of total argument time. We have a court reporter, who is creating a transcript of the hearing, and that transcript will constitute the official record of this hearing.

When we begin, we will start with Petitioner, who may present its case with regard to the challenged claims and grounds set forth in the Petition. Petitioner may reserve time for rebuttal. Thereafter, Patent Owner may respond to Petitioner's argument and may reserve time for surrebuttal.

1 Petitioner may then present its rebuttal followed by Patent Owner's
2 surrebuttal.

3 A few things to please keep in mind. First, it's my understanding
4 that we are not planning to discuss any information that the parties deem to
5 be confidential, but I would like to confirm that because there are some
6 materials under seal in the case. Mr. Glass, for Petitioner, can you confirm
7 for Petitioner that you do not expect to discuss any confidential information
8 today?

9 MR. GLASS: That is correct, Your Honor.

10 JUDGE GERSTENBLITH: Okay, great. And, Mr. Hails, is that
11 the same for Patent Owner?

12 MR. HAILS: That's also correct.

13 JUDGE GERSTENBLITH: Okay, great. If for any reason that
14 changes, please let us know before that happens so we can seal the room, et
15 cetera, because the hearing is open to the public, and we do have visitors and
16 a public line, so please keep that in mind.

17 Second, please be as clear as possible during your argument
18 regarding which slide or which exhibit you may be referring to so that the
19 record is clear, and we can follow along. We have electronic versions of all
20 of your demonstratives and all the documents in the record.

21 Third, please remember to keep your line on mute when it's not
22 your turn to speak so that we can minimize any background noise. Also,
23 before speaking, please pause for just a second in case there is lag in the
24 transmission so that we can hear you clearly. Importantly, if either side
25 experiences any technical issues or difficulties, please let the panel, or the IT
26 personnel, with whom you have been in touch regarding this hearing, know

1 as soon as possible, and we will make any adjustments needed. Also, when
2 it's your turn to present your opening argument, please let me know how
3 much time you would like to reserve for rebuttal, and I'm happy to remind
4 you when we reach that point.

5 I anticipate that we will take two short breaks, one after Petitioner
6 concludes its opening and another after Patent Owner concludes its opening.
7 I also wanted to explain our email response to the correspondence that was
8 sent late Friday night that we received yesterday, particularly in regard to
9 Petitioner's unopposed request to submit a new version of Exhibit 1036 that
10 omits reference to now withdrawn Exhibit 1040.

11 The panel denied the request to alter Exhibit 1036 because there
12 are citations in other papers to that exhibit, as well as 1040, that might be
13 altered if those changes were made, in terms of paragraphing, page counts,
14 or other things, and so I wanted to explain why we did not also authorize the
15 changes to that exhibit. Are there any questions about the process for today,
16 our decision regarding Exhibit 1036, or any other questions from Petitioner's
17 side, Mr. Glass?

18 MR. GLASS: I have one question on procedure, Your Honor. I've
19 been informed by the IT staff of the PTO while we were logging in that -- is
20 it correct that Your Honors will not be able to see the slides as we share
21 them on the screen?

22 JUDGE GERSTENBLITH: So we made adjustments to how we
23 are connected so that we can now -- we can see what you would share.

24 MR. GLASS: Perfect. Thank you, Your Honor. That is my only
25 question, thank you.

26 JUDGE GERSTENBLITH: Absolutely. We wanted to make sure

1 that counsel is able to have the full ability to do whatever you would
2 normally do. So, if there's something that you feel you're not able to do, we
3 would appreciate knowing that now so we can make any other adjustments.
4 But I understand what you're saying, Mr. Glass, it sounds like we resolved
5 that question.

6 MR. GLASS: Yes, Your Honor, thank you.

7 JUDGE GERSTENBLITH: Excellent. Excellent. And any
8 questions about the process today or any other questions on Patent Owner's
9 side, Mr. Hails?

10 MR. HAILS: No, Your Honor. Mr. Glass asked my question.

11 JUDGE GERSTENBLITH: Okay, great. Great. So, just as a
12 reminder, when it's not your turn to speak, please mute your line so we can
13 keep the background sound down. Everything in our hearing room here is
14 sort of amplified, so we hear you guys very, very clearly, which is fantastic,
15 but we also hear unintended noise very clearly as well.

16 And with that, Mr. Glass, I'm going to turn it over to you, and
17 when you're ready to begin, just let us know how much time you'd like to
18 reserve for rebuttal, and you may proceed.

19 MR. GLASS: Thank you, Your Honors, optimistically I'll reserve
20 20 minutes for this.

21 JUDGE GERSTENBLITH: Okay, great. Thank you very much.

22 MR. GLASS: Let me, before I begin, share my screen. Can Your
23 Honors see my screen?

24 JUDGE GERSTENBLITH: Yes, we can.

25 MR. GLASS: Perfect. All right. Give me one more moment to
26 adjust some of the windows on my screen. Thank you, again, Your Honors.

1 I'm going to jump right to the issues. I know Your Honors are prepared and
2 have read the references. I'm going to start first -- I'm on Slide 48. I'm
3 going to start first with Grounds 3 and 4.

4 The reason I'm doing this, I think as the briefing was progressed in
5 this case, it makes very clear that the disputes from those
6 (INDISCERNIBLE - TECHNICAL DIFFICULTY) --

7 JUDGE GERSTENBLITH: Mr. Glass, I apologize. Can you hold
8 on for one second? We're having a lot of feedback in the room here, and I'm
9 not sure if it's just because our volume is high or if perhaps -- I don't know if
10 there's -- this is an odd request to me, but if you could -- I don't know if
11 there's a way to lower the volume on your microphone or we will try to do it
12 on our end.

13 MR. GLASS: I do. Give me one moment, Your Honor.

14 COURT REPORTER: If I can interject, this is the court reporter.
15 I am also having issues on my end with Mr. Glass' audio, it just sounds very
16 muffled.

17 JUDGE GERSTENBLITH: Yes. Okay, great. Thank you for
18 letting me know. I was thinking the same thing.

19 MR. GLASS: Give me one moment. Let me see if I can lower the
20 volume on this. Your Honors, is that better, worse, no difference?

21 JUDGE GERSTENBLITH: That is better on our end. How about
22 for the court reporter, is that better?

23 COURT REPORTER: Yes. Yes, Your Honor, that is better, thank
24 you. Thank you, Mr. Glass.

25 MR. GLASS: All right.

26 JUDGE GERSTENBLITH: Okay, great. Let me just also add for

1 the court reporter that if that happens again, please feel free to interject and
2 pause us so we can -- we really want the record to be clear.

3 COURT REPORTER: Yes, sir. Thank you, Your Honor.

4 MR. GLASS: And, Your Honors, if you can't hear me at any
5 point, I do have back-up equipment here. I came prepared. I do have
6 headphones. I can switch, if necessary, but if this is working, I'll proceed if
7 you can hear me okay.

8 JUDGE GERSTENBLITH: Okay, great. And we'll restart the
9 time now, of course, so please start at the beginning, Mr. Glass. Thank you.

10 MR. GLASS: All right. So again, as I said, I'm jumping to Slide
11 48. I'm starting with Grounds 3 and 4. I think, as the briefing has
12 progressed here, I think it's become very clear that with respect to Grounds 3
13 and 4 there really is a very narrow dispute between the parties. Now just for
14 Your Honors' benefits, I'm sure you're aware, Grounds 3 and 4 rely on a
15 combination of Szrek and Llach, Ground 4 adds Gilmore.

16 Now, Patent Owner does not dispute that Szrek -- the combination,
17 excuse me, of Szrek, Llach, and Gilmore disclose each and every limitation
18 of the claims -- excuse me, I don't think I re-shared my screen. Give me one
19 moment. Can Your Honors see my screen?

20 JUDGE GERSTENBLITH: Yes, we can, thank you.

21 MR. GLASS: Nothing of -- nothing really pointed on the slides
22 yet, anyway. Patent Owner does not dispute that Szrek, Llach, and Gilmore
23 disclosed each and every limitation of the claims. And just to set this case
24 apart from the previous case, I'm just going to mention this once, in the 1235
25 IPR, because Szrek, Llach, and Gilmore were at issue -- and this case
26 reviews Gilmore as part of the grounds to establish one of the dependent

1 claims in generating lotto numbers at the time of purchase. That is the same
2 limitation that was at issue in the 1235. Here, there is no dispute that
3 Gilmore discloses that limitation. There's also no -- Gilmore's not the
4 subject to a motion to exclude. So while there is overlap between this case
5 and the 1235, the issues are very different. Gilmore is not really at issue in
6 this case as it was in the 1235 case.

7 The only issue that Patent Owner disputes here is that a POSITA
8 would not have modified Szrek's system to include a third-party processor.
9 Their primary argument is, ironically, they argue that Szrek is closer to the
10 claims than what we've argued, and because it's so close to the claims, a
11 person of ordinary skill in the art would never have modified Szrek to
12 include that third-party processor.

13 So, what I'd like to do -- I'm on Slide 49. What I'd like to do is
14 first, lay out what our combination is, walk through the motivations to
15 combine. I am going to also touch on their criticism of our expert because
16 that plays a large role here.

17 What is our combination? Again, on Slide 49, at a high level, we
18 have argued that a POSITA would have found it obvious to start with
19 Szrek's system, which as I've shown on -- it's on Slide 49, Szrek includes
20 point-of-sale terminal, Szrek -- that point-of-sale, that cash register terminal,
21 communicates with the back office. That is a bespoke server that is sitting in
22 the back office of Szrek. It is a one-to-one communication where the back
23 office speaks to the game provider.

24 In our combination, we maintain that back office, except -- and this
25 is critical, the back office no longer communicates with the game provider
26 for activation of tickets; instead, we use Llach's third-party transaction

1 processor. Now, there's no dispute again that Llach discloses this third-party
2 transaction processor. This is Patent Owner's Patent. This is a Blackhawk
3 patent. This is what they do, they provide these third-party services.

4 And our argument at a high level really is -- and we've argued
5 efficiency, expandability, it would give greater flexibility to the game
6 provider and to the store. But at a high level, what we're really arguing is,
7 that one of ordinary skill in the art would have understood that taking that
8 functionality, putting it into the Cloud, giving it to a third party, makes all
9 the sense in the world. The retailers, the store, the supermarket, they're
10 selling eggs and bacon and ice cream, but they're not in the business of
11 maintaining this hardware, updating the software, and contracting with
12 various lottery agencies. That's what the third-party aspect of this
13 transaction processor adds. And that's something I think is critical to the
14 combination, and that I think is lost in Patent Owner's responses.

15 I have on the bottom of Slide 49, importantly, in Szrek --

16 JUDGE GERSTENBLITH: Mr. Glass?

17 MR. GLASS: Yes, sir.

18 JUDGE GERSTENBLITH: Mr. Glass, let me just ask you a quick
19 question before we go to the bottom picture of Slide 49. The top picture that
20 you have, where does that come from, that drawing?

21 MR. GLASS: I skipped over that. That was unintentional. That
22 drawing is something we prepared for purposes of this hearing. This
23 drawing reflects what we've said in our briefs, and it reflects testimony from
24 the deposition. And I apologize, I had intended on saying that, Your Honor.

25 JUDGE GERSTENBLITH: So, that's not what's shown in Exhibit
26 2049 or Exhibit 2050?

1 MR. GLASS: If I remember it correctly, those are the exhibits that
2 were generated during Mr. Hutton's deposition.

3 JUDGE GERSTENBLITH: Correct.

4 MR. GLASS: Those are different. I am going to get to that. I'm
5 going to get -- and explain why those are different.

6 JUDGE GERSTENBLITH: Okay. So, I would like to know, at
7 some point, what testimony you're relying on and where in the papers you
8 presented the figure that we're looking at, at the top of 49?

9 MR. GLASS: This --

10 JUDGE GERSTENBLITH: In particular, the flow of the
11 communication, and the placement of the third-party processor, and the red
12 X indicating that there's no communication between the store back office
13 and the game provider.

14 MR. GLASS: Now, primarily, the first -- and answer -- I'll walk
15 through that. Primarily, this comes from Mr. Hutton's declaration. Mr.
16 Hutton stated in his declaration, first, that Llach discloses that a third-party
17 transaction processor -- I'm sorry, that the POS terminals would send
18 transaction requests to a lottery administration system via a transaction
19 processor, not via the back office, via the transaction processor. In terms of
20 where that's placed, this is at -- on Slide 50, Hutton declaration paragraph
21 180, that he -- Mr. Hutton testified -- this is also at the reply at 30 through
22 31, the Petition on 47, Mr. Hutton testified that Llach's teaching of an
23 intermediary transaction computer between Szrek's cash register and game-
24 provider system.

25 Now, we did not -- I'm being very -- trying to be very clear about
26 this. These figures on Slide 50 were not part of our papers. This was

1 something we prepared to illustrate what the combinations were.

2 JUDGE GERSTENBLITH: Okay. Where is the testimony that --
3 in that top figure on 50, Slide 50, where is the testimony that there is no
4 communication between the store back office and the game provider?

5 MR. GLASS: Well, that is the entire point of our combination.
6 And that is -- again on Slide 49, that's one example, where the POS terminal
7 sends transaction requests via the transaction processor, that's the flow. And
8 I don't think, on this particular point, I really don't think there's any dispute,
9 and I'm going to walk through -- there was some confusion during his
10 testimony -- Mr. Hutton's testimony, that I think resulted in those figures that
11 Patent Owner has used in their briefs. I will walk through that. Does that,
12 for now, answer Your Honors' question?

13 JUDGE GERSTENBLITH: I'm going to say maybe.

14 MR. GLASS: Okay. I'm going to get to it. So, I will also -- I'll
15 point out also, before I jump there, that on -- this is on Slide 54, on re-cross,
16 based on the confusion on these figures, Mr. Hutton testified that the cash
17 register is not using the store back office to do these lottery transactions. It
18 would certainly talk to the intermediary transaction computer. So again, I
19 don't think this particular point is in dispute. It's in the declaration. It is
20 exactly what he testified to at his deposition.

21 JUDGE GERSTENBLITH: So, on Slide 54, the question asks,
22 "Where are you placing --" "Are you replacing the back office?" "No, I'm
23 putting it -- if there's no store back office, you -- and the cash register is still
24 talking directly to the -- and the cash register's not using the back office to
25 do these lottery transactions, it would -- certainly could talk to the
26 intermediary transaction computer." The answer is not crystal clear that he

1 understands whether there's a back office in play or not. You see that, right,
2 in the answer to that question?

3 MR. GLASS: I think that's -- again, this point, I don't think is -- I
4 don't think this is really in dispute that our combination is replacing the
5 functionality of the back office. The back office still is there. The back
6 office is still there to do typical supermarket checks for groceries and et
7 cetera. But that's the entire point of our combination. We are taking the
8 third-party transaction processor from Llach. And as I pointed out in Slide
9 50, that the transaction computer that Llach's teaching of intermediary --
10 excuse me, the transaction requests to a lottery system via a transaction
11 processor, not via the back office. His testimony later on -- on paper, yes, it
12 looks slightly -- it's a little bit confused, but it's consistent with his statement
13 in the declaration.

14 JUDGE GERSTENBLITH: Okay. I'll also just point out that
15 Exhibit 2050, which I think was on your Slide 54 just now, it does not have
16 the red X across the communications between the store back office and the
17 game provider.

18 MR. GLASS: It does not, and I think that's where the confusion
19 came up, and that is the subject of Patent Owner's motion to exclude,
20 because allegedly he testified inconsistently. I'll get to that right now.

21 So, he would -- so, this -- on Exhibit 2050, this was put in front of
22 Mr. Hutton during his deposition. And he was asked, essentially, is this
23 your combination? And he said no. The issue is that Mr. Hails did not cross
24 out those -- did not cross out those communications. So, I think the
25 confusion here was perhaps -- I'm guessing, Mr. Hails assumed that the
26 placement of the third-party transaction computer was the issue. Mr. Hutton

1 very clearly stated, no, this does not represent my combination because -- he
2 did say here, "because there's still communications between the back office
3 and the game provider."

4 We stated this in the brief, he did clarify on that point, the location
5 the transaction computer -- that would also be obvious to place the
6 transaction processor in between the cash register and the game provider.
7 That's clearly consistent with his declaration.

8 JUDGE GERSTENBLITH: Let me just ask you another question
9 just to be -- so I understand. This 2050 was done with questioning from Mr.
10 Lu; is that right?

11 MR. GLASS: From -- I believe it was Mr. Hails that it was
12 questioning.

13 JUDGE GERSTENBLITH: So, if you can --

14 MR. GLASS: I'm sorry, excuse me, I misunderstood your
15 question. This bottom quote, where we say Mr. Hutton clarified on redirect
16 and direct, that was Mr. Lu.

17 JUDGE GERSTENBLITH: And Exhibit 2050?

18 MR. GLASS: Yes.

19 JUDGE GERSTENBLITH: When was that prepared? During
20 whose questioning of the witness was that prepared?

21 MR. GLASS: That was prepared by Mr. Hails when he was asking
22 the question on the top of Slide 52. It essentially asked, does this figure
23 represent your combination?

24 JUDGE GERSTENBLITH: Okay. So, is that -- well, I don't want
25 to take your time to go through that, but thank you for clarifying that. So,
26 Mr. -- so, the 2050 was during Mr. Hails' questioning, and 2049 was during

1 Mr. Lu's questioning when they were marked?

2 MR. GLASS: 2049 was also -- if I'm remembering the exhibit
3 correctly, 2049 was -- this figure on Slide 55, was also during Mr. Hails' --
4 excuse me, I'm sorry, that's the wrong figure. I have it down here. The
5 figure on the right, which I believe is Exhibit 2059 (sic), that was also during
6 Mr. Hails' deposition of Mr. Hutton.

7 JUDGE GERSTENBLITH: Okay, thank you very much. I
8 appreciate that. I didn't mean to take you all the way --

9 MR. GLASS: I also -- I'm sorry --

10 JUDGE GERSTENBLITH: -- I didn't mean to take you all the
11 way off of where you had started. I'm just trying to understand how these
12 diagrams were generated, who was doing the questioning, and whether the
13 exhibit numbers discussed in the depo transcript actually matched the ones
14 that were filed under.

15 MR. GLASS: That is my fault, Your Honor. I could have relied
16 on these two exhibits, but that is the case. So, these two exhibits were
17 created by Mr. Hails during his examination of Mr. Hutton.

18 I'll also point out, just to close the loop on this, if you look at
19 corrected Exhibit 2051 -- I don't have it in front of me, I can pull it up for
20 rebuttal -- 2051, starting at page 105, lines 18 through 106, line 11, Mr.
21 Hutton very clearly explained the process, and explained that in the ticket
22 activation request -- in an activation response, the existing communications,
23 those would go away. So, that's yet another -- in addition to the declaration,
24 the testimony of Llach, that's another portion where he's explained that that
25 communication between the store back office and the game provider would
26 go away.

1 JUDGE GERSTENBLITH: Okay, thank you so much.

2 MR. GLASS: So, we've gone through this. Now, again, so the
3 context here, Patent Owner's counsel put this figure in front of Mr. Hutton.
4 He testified, "No, that's not my combination." On Slide 54, I walked
5 through this. He testified consistently with the testimony I pointed out to
6 you in his declaration, that it's the cash register not using the back office, the
7 cash register that's doing the transactions.

8 Now, again, this was -- just to close the loop on this, on Slide 79,
9 counsel for Patent Owner knew that this was an issue and created -- I believe
10 it's Exhibit 2059, this figure on Slide 79 that I have up, and then he put an
11 X -- a slash -- I didn't put that mark there, he put that there. Put a slash
12 through the communications and said, "Well, does that represent your
13 combination?" He said, "Yes, because that is an accurate representation."
14 Both of these are accurate on Slide 79 if there was an X through these
15 communications. Because, as I've already pointed out -- let me go back to
16 this quote on page 49 -- on Slide 49, this is an important quote from Szrek,
17 column 3, 15 through 18. Szrek states that "The game provider -- the cash
18 register is capable of communicating with the game-provider system directly
19 or indirectly," and that's what we've attempted to convey here, that the cash
20 register can communicate with the third-party system, directly or indirectly
21 through the back office.

22 So -- geez, Your Honors, I'm suffering from allergies, so I'm just
23 trying to keep a little bit hydrated.

24 So, moving on, I think I've answered Your Honors' questions on
25 how this came about that Mr. Hutton was not testifying inconsistently. He
26 testified truthfully that that figure that Mr. Hails drew was not his

1 combination. Moving on to our motivation to combine. Now, importantly,
2 as I pointed out, we're moving this functionality to the Cloud. We've cited
3 enumerable benefits to doing that. We also point out that Szrek, itself,
4 points out that this is something that you should do, that you should use a
5 third-party transaction processor. Szrek states, "The cash register is capable
6 of communicating directly or indirectly -- with the game-provider system
7 directly or indirectly, and the game-provider system, or some other system
8 on behalf of the game-provider system. Some other system on behalf of the
9 game-provider system is a third-party transaction processor.

10 I'll explain later, Patent Owner says, well, that's talking about the
11 back office. The back office is literally the back office of the store, the store
12 back office. That back office is not part -- that's not on behalf of the game-
13 provider's system, it is on behalf -- it is owned, literally, by the store. I've
14 gone through that. I've gone through Slide 52 -- 54, I've walked through
15 already.

16 I'll now walk through our specific motivations to combine on
17 Szrek and Llach. And setting aside Patent Owner's arguments on Mr.
18 Hutton, we've laid out numerous reasons why a POSITA would have
19 modified Szrek to include Llach, in addition to Szrek's express teaching on
20 that point.

21 Now, again, as I've walked through earlier, we have the express
22 teaching. That Patent Owner simply states -- refers to the back office.
23 We've also argued, on Slide 60, that this third-party transaction processor
24 provides benefits to both the retailers and to the game providers. Because
25 you've off-loaded this to a third party, whose only purpose is to provide you
26 access from a retailer's perspective to multiple gaming providers, and from a

1 gaming provider's perspective, multiple retailers, you have opened up an
2 incredible amount of flexibility over Szrek's one-to-one disclosure. And
3 we've argued that that's one of the main benefits of the Szrek-Llach
4 combination.

5 On Slide 61 -- so, they rebut this in two ways: we say, Szrek
6 provides the opportunity for multiple retailers to activate their cards and
7 multiple game providers to provide activation services. Patent Owner
8 focuses on Szrek and says, again, ironically, that Szrek already discloses this
9 and arguing that Szrek is actually closer to the claims than we've argued.
10 And they focus on something that has nothing to do with activating tickets.
11 Patent Owner focuses on the commercial printer 140. The commercial
12 printer provides unactivated cards to a retailer, and they say these arrows
13 somehow indicate additional retailers. Well, let's just assume that's true for
14 the moment, that has nothing to do with the benefit we've cited in the
15 combination. The benefit is that you allowed multiple retailers to activate
16 their cards for a game provider. This has nothing to do with activation, this
17 has only to do with printing unactivated cards and physically delivering
18 them to retailers. So, this has absolutely nothing to do with our motivation
19 to combine.

20 On Slide 62, Patent Owner also argues, well, Szrek already
21 provides multiple gaming providers -- or it provides multiple gaming
22 products. Szrek -- and again, that sidesteps our motivation to combine. Our
23 argument is that the Szrek-Llach combination allows multiple gaming
24 providers -- excuse me, allows the retailer to have access to multiple gaming
25 providers. Szrek only discloses a single game provider. There's no
26 disclosure whatsoever in Szrek of multiple game providers. Szrek does

1 disclose different types of products that the game provider might provide but
2 only provides one game provider.

3 As I'll walk through later, Patent Owner also argues at another
4 point -- I may actually be getting to that next, that all of the connections in
5 Szrek are direct -- so-called direct connections, so that belies adding
6 additional game providers. If every time you have a new gaming provider,
7 you have to add on another connection, it would make no sense, and Szrek
8 simply does not disclose multiple gaming providers.

9 As I prefaced, in addition to arguing that there's multiple retailers
10 and multiple gaming providers, Patent Owner argues that, well, Szrek
11 provides direct communications that is faster than a network. As our expert
12 opined -- I think we all notice the internet's pretty fast, and we're not talking
13 about data dense transmissions here, we're not talking about streaming 4K
14 video. What we're talking about is sending numbers over a network to be
15 activated, that's not something that requires a tremendous amount of speed.
16 In any event, Patent Owner hasn't even suggested what type of connection
17 they're talking about in Szrek that would be faster than the internet. Szrek
18 certainly doesn't explain it. Szrek never says its connections are direct,
19 Szrek only shows a line. Direct connections -- I would imagine Patent
20 Owner's talking about USB RS232, those are in no way faster than the
21 internet, and even if they were, it would not dissuade one of ordinary skill in
22 the art from using the network and gaining all of the advantages we've
23 highlighted.

24 Now, Patent Owner further argues that our combination adds
25 complexity because it required the point-of-sales terminals to be re-
26 programmed to recognize new cards. They cited to paragraphs 13 and 19. I

1 have nothing to highlight on here because there's nothing in Llach that
2 describes re-programming the point-of-sale terminals. And even if it did, it's
3 largely irrelevant. On Slide 67, we're not relying on Llach for the point-of-
4 sale terminals, we are relying on Szrek. And Szrek expressly states that it
5 uses standard barcodes -- this is on Slide 67, it uses standard barcodes that
6 have a few well-defined areas. One of them is the manufacturer's ID,
7 another is a product ID.

8 So, Szrek, whose POS terminals we are using in our combination,
9 expressly teaches that new cards wouldn't be a problem because they use
10 standard barcodes. And by the way, even if you have a non-standard format,
11 while the standard format's preferred, this is not a problem because the
12 invention allows for that.

13 And again, this was something they raised, I believe it was only in
14 their sur-reply. If you think about it, it makes no sense that you'd have to re-
15 program Szrek's terminals, we're talking about a supermarket. Supermarkets
16 change prices and products all the time. If re-programming the POS
17 terminals, even if you had to, was such a burden, this system simply
18 wouldn't work. What more likely happens is that there's simply a central
19 database that's updated. But again, Szrek expressly states that this is not a
20 problem because you use standard UPCs, and even if you didn't, non-
21 standard UPCs are fine.

22 Two more points I think I have on this before I circle back to
23 Grounds 1 and 2. Patent Owner further argues that the combination doesn't
24 make sense, because it's too complicated because it adds an accounting
25 feature to the combination. That's not above, that's a feature. From the
26 perspective of the retailer, this is still a much simpler combination because,

1 again, the retailer does not have to have that server in the back office. The
2 retailer does not have to maintain that hardware or software and generate the
3 reports itself. It simply uses a third-party transaction processor. Same idea
4 from the gaming side, the gaming side -- so, the gaming provider simply
5 asks the third-party transaction processor to generate a report. It might be
6 more complex from the third party's transaction processor's side, but that's
7 the burden that that entity has undertaken, and it's a value-added service
8 that's given to both the retailers and the gaming providers, so it's a difference
9 without a distinction.

10 One last point, and I'm going to roll back to Grounds 1 and 2.
11 Patent Owner also stated that, well, your combination -- I'm not entirely sure
12 what they were arguing here. I think they were implying that our
13 combination would make the back office redundant, and again that's not our
14 combination, or -- and our expert expressly testified -- this is yet another
15 point, Your Honor, to what I was relaying to you before, that the cash
16 register is still going to talk to the back office for supermarket-related things.
17 So, this back office is still there, it's just not communicating with the gaming
18 provider, it's simply communicating with the point-of-sale terminal when
19 there's indirect communications.

20 Your Honors, I've walked through, I believe, all of our main
21 points --all of their points. I'm going to roll back now to Grounds 1 and 2 on
22 Slide 17, unless Your Honors have any questions on Grounds 3 and 4.

23 JUDGE GERSTENBLITH: I don't have a question on Grounds 3
24 and 4, but before you go to 1 and 2, I just wanted to ask you, you didn't file a
25 motion to exclude Patent Owner (INDISCERNIBLE) declaration
26 (INDISCERNIBLE) but to challenge in the reply whether -- I believe Mr.

1 Miller is the (INDISCERNIBLE) to be skilled in the art because of a
2 statement about having working knowledge of something that's gained
3 through a mixture of training and work experience. So, does it count --
4 training and work experience, does that count -- work experience, does that
5 count -- work on -- any type of work such as acting as an expert in other
6 proceedings that go with lottery systems?

7 MR. GLASS: Your Honor, your question was kind of interrupted
8 and a little bit garbled. I don't know if that's my end or your end. I do think
9 that I -- I think I understood. If I did understand, I think the question was,
10 does legal experience for the expert count for his experience as a person of
11 ordinary skill in the art? Have I gotten the question correct?

12 JUDGE GERSTENBLITH: Yes.

13 MR. GLASS: I don't think so, Your Honor, that's very different
14 experience. We're talking about industry experience, so -- and I had no
15 intention of addressing Mr. Miller's art, or positions on Mr. Miller, I was
16 simply going to rest on the briefs on that. Mr. Miller has experience. He has
17 a pedigree. I'm sure he's a very smart guy, he just does not have experience
18 in this area. He has no experience in lottery systems and he's giving
19 testimony on lottery systems.

20 Frankly, if I had to guess, I would imagine that's -- when we made
21 those statements in our Petition, the motion to exclude was a reaction to that
22 position. There's no dispute that Mr. Hutton is an expert. They rely on
23 alleged inconsistencies. One of them, I'm going to get through in a moment,
24 where he allegedly switched positions. So, I'm deviating from your
25 question. No, I don't think that -- I don't think that's relevant. I think the
26 relevant -- what we've agreed on is industry experience, not experience you

1 gain by looking at patents and working with attorneys, that's an entirely
2 different experience.

3 JUDGE GERSTENBLITH: And the Petitioner didn't file a motion
4 to exclude the declaration?

5 MR. GLASS: Excuse me. Yeah, I missed the front end of that
6 question, Your Honor.

7 JUDGE GERSTENBLITH: The Petitioner did not file a motion to
8 exclude Mr. Miller's declaration?

9 MR. GLASS: We did not, no, Your Honor. We are not trying to
10 exclude his testimony, we're simply arguing that the weights Your Honors
11 should give his testimony should be less than how you weighed Mr. Hutton's
12 testimony because he does, in fact, have that experience.

13 JUDGE GERSTENBLITH: I understand. And do you know --
14 you might not know the answer to this right now, but I'm curious, during the
15 break, and for Patent Owner also, whether the same level of ordinary skill in
16 the art was set for the previous proceedings that we had on the related
17 patents? Because my recollection is that Mr. Miller was Patent Owner's
18 expert for at least one of those as well, and I'm just curious to know if that's
19 the case, because I don't recall this argument being raised previously.

20 MR. GLASS: I'll double-check. I can't imagine we used a
21 different level of ordinary skill, and I don't believe -- although I'm
22 stretching -- I'm stretching my memory, I do not believe Dr. Miller was an
23 expert on the 135. I believe Patent Owner used a different expert, but I'm
24 checking on that now.

25 JUDGE GERSTENBLITH: Okay, thank you (CROSSTALK).

26 MR. GLASS: I think -- actually, Your Honor, I think -- I think I

1 may be wrong on that, but I'll check and we'll get back to you in the rebuttal.

2 JUDGE GERSTENBLITH: Great, thank you.

3 MR. GLASS: All right. So, circling back to Grounds 1 and 2, I
4 am running a little short on time so I'm going to walk through this fairly
5 quickly. And just to refresh Your Honors, Grounds 1 and 2 rely on a
6 combination Irwin alone and Irwin combined with Szrek. We've relied on
7 two mappings: the first relies on Irwin's disclosure of a passive lottery,
8 essentially a raffle. Patent Owner responds that a raffle cannot be the
9 claimed instant draw game because there's always a winner, and they rely
10 on -- they base this on an alleged -- and they call this -- it's a very bizarre
11 argument, they call this a definition from our expert's testimony. They
12 vehemently argue that they are not construing the claims here, that they're
13 relying on an express definition from Mr. Hutton. That's in their motion to
14 exclude, they characterize it as a definition. Because he's defined it that
15 way, everything else in his declaration should be ignored, even in his
16 opening declaration, even where he maps Irwin -- Irwin's raffles to the
17 claims, that should all be ignored. And also, this is the basis of their motion
18 to exclude, that his paragraphs from his supplemental declaration should be
19 excluded as well as extrinsic evidence he provided should be excluded.

20 Two points on this: this is not some -- our expert -- I'm going to
21 walk through his expert declaration in detail. He never rendered an opinion
22 that a random draw lottery excludes raffles, he never did. That was a
23 statement they took out of his background testimony -- his testimony related
24 to the background of the art, and we had -- and he applied it very clearly
25 through the rest of his declaration that raffles were random draw lotteries.

26 Second point, this is a claim construction, and we provided

1 extrinsic evidence in the reply. We cited to it, and there was evidence that
2 we replied in the supplemental declaration. It is properly responsive to their
3 claim construction argument, and there is no way we could have anticipated,
4 in the Petition, that they would have argued, especially given our expert's
5 mapping of raffles to lotteries, that we could have expected a claim
6 construction that excluded raffles from random draw lotteries.

7 I'm on Slide 18. I have the paragraph that they rely on in their
8 briefs. I'm going to walk through -- hopefully this works. I'm going to walk
9 through our expert's declaration at this point just to give Your Honors
10 context. Can Your Honors see, I have on the screen Exhibit 1003?

11 JUDGE GERSTENBLITH: We can see it, but if there's any way
12 to make it a little bit larger, that would be helpful.

13 MR. GLASS: I -- how's that?

14 JUDGE GERSTENBLITH: That's great, thank you.

15 MR. GLASS: So, Patent Owner cites to paragraph 64 in Mr.
16 Hutton's declaration. Paragraph 64 --

17 JUDGE GERSTENBLITH: Okay, hold on, Mr. Glass. Mr. Glass,
18 hold on one second. (INDISCERNIBLE) --

19 MR. GLASS: I can't hear you, Your Honor.

20 JUDGE PESLAK: (INDISCERNIBLE) The way the screen is
21 showing up (INDISCERNIBLE) -- this is (INDISCERNIBLE), if you'll just
22 tell me what page he's on in the declaration, then I can follow along.

23 MR. GLASS: Yes, I will give -- hopefully that makes it a little bit
24 better. I will give exclusive page cites. I'm on page 8 of Exhibit 1003. Can
25 I move on, Your Honors?

26 JUDGE GERSTENBLITH: Yes (INDISCERNIBLE).

1 MR. GLASS: As you see -- so, paragraph 64 is in section 3.
2 Section 3 is an overview of the '451 patent in the prior art, it is not a claim
3 construction section. I'm going to now scroll through. Starting with
4 paragraph 27, Mr. Hutton talks about early POS activation systems. He goes
5 on and on for pages, discussing background in prior art systems. He talks
6 about the expanded use of point-of-sale activation systems. And when you
7 get to paragraph 64, ultimately at page -- I'm scrolling down to it, at page 19,
8 and this is yet another subsection of his background section. Keep in mind,
9 in the motion to exclude, Patent Owner referred to this as a definition. The
10 section -- the sentence they rely on is the last sentence in paragraph 64 that
11 I'm highlighting, which states, "That the numbers on the player's tickets are
12 then compared to the randomly selected -- numbers randomly selected
13 during the draw event to determine if there was a match and thus a winning
14 ticket."

15 That, according to Patent Owner, drives the rest of the analysis out
16 the door. That, according to Patent Owner, is an express definition of
17 random draw lottery that excludes a raffle. Again, two points on this: it's
18 nothing of the sort, it is simply an example that is given in the background
19 section of his declaration.

20 He goes on -- I'm not going to walk through this because I'm
21 running out of time. He goes on, through paragraph after paragraph -- I
22 don't think there's any dispute on this, he maps the passive lottery games of
23 Irwin to the claims. So, there is no way that this could be considered an
24 express definition, especially in context of the rest of the document.

25 And, in fact, if you look at this on its face, it expressly includes
26 random draw raffle -- excuse me, raffle-style lotteries. What is a raffle? We

1 all know what it is. I get a ticket, Your Honors get a ticket, I get number
2 one, you get number two and number three, et cetera. I can say I want --
3 what numbers I want. Alternatively, those numbers get thrown into a
4 proverbial hat, those numbers are then randomly drawn from a hat and a
5 winner is declared. The only difference really between a raffle and the quick
6 pick, the instant -- the quick pick games is, in a raffle there's always a
7 winner. In quick pick there's not necessarily always a winner.

8 Now, looking at what he says here, "In a random draw lottery, a
9 player purchases a ticket for a lottery draw that takes place in the future."
10 Nothing about that sentence excludes raffles. "The player can either select
11 his or her number or the draw numbers can be randomly selected by the
12 system." Again, nothing inconsistent with a raffle, you're given a number.
13 "The numbers on the player tickets are then compared to the numbers
14 randomly selected during the draw then." Again, in a raffle, numbers are
15 randomly selected out of the proverbial hat. And then, "randomly selected
16 during the draw then to determine if there's a match and thus a winning
17 ticket."

18 I think what Patent Owner is focusing on is saying, if there is a
19 match and thus a winning ticket, that statement precludes a raffle. But what
20 this is referring to is not only a quick pick-style game but also matching
21 those numbers to the player's ticket. And if there's a match to the player's
22 ticket, that player has won. So, this sentence and this paragraph is not
23 intended, and on its face does not define the terms expressly. It certainly
24 does not override the rest of this declaration that expressly maps raffle
25 tickets to the claims. And even if you look at it with a reasonable
26 interpretation, it includes both quick pick and raffle-style games, so. And

1 again, this is the entire basis for that motion to exclude his supplementation
2 declaration and our supplemental evidence that we provided.

3 JUDGE GERSTENBLITH: Counsel, let me just ask you a quick
4 question on the exhibit -- well, I guess the testimony you just had up from
5 the declaration. I think you said it was Paragraph 164 of Exhibit 1003. It
6 sounds like the way it's being described, it's coming from the perspective
7 of -- at least in some of the sentences, starting at least in the second sentence,
8 from the perspective perhaps of a player (INDISCERNIBLE) in a random
9 draw, a player purchases a ticket, and the player can either select his or her
10 own numbers or the numbers can be drawn at random, and then the numbers
11 on the player's ticket are then compared to determine if there is a match. So,
12 if we take it from the player's perspective, then it's possible, even in the
13 raffle, that the player -- that individual player would not have a match --

14 MR. GLASS: Correct.

15 JUDGE GERSTENBLITH: So, there's nothing inconsistent in that
16 paragraph when it's understood from the player's perspective.

17 MR. GLASS: You said it better than I did. That is exactly the
18 idea I was intending to convey. And that, Your Honor, just as a correction,
19 it's paragraph 64, not 164, but that is exactly the idea I intended to convey.

20 JUDGE GERSTENBLITH: Okay, great. I do have one question
21 for you, and if you don't know the answer to this, you can come back to it in
22 your rebuttal. But I'm curious, in the Petition, in discussion of Claim 11,
23 which starts on page 36 -- and this may be better for rebuttal, I would like to
24 know if Petitioner is presenting a theory there based on Irwin's passive
25 tickets? Because as I read the discussion of Claim 11, it appears to me to be
26 limited to the hanging card embodiment of Irwin, unlike the other claims

1 where I think Petitioner has set forth both embodiments throughout.

2 MR. GLASS: I'll get back to you, Your Honor. I think on that's --
3 let me get back to you. That may be the case but let me check and I'll get
4 back to you on that.

5 JUDGE GERSTENBLITH: Thank you. I would just note that we
6 are two minutes into the rebuttal, but I know we asked a few questions, but
7 you still have 18 minutes and if necessary, we can give back a little time.

8 MR. GLASS: Thank you, Your Honor, I appreciate that. I will
9 definitely be eating -- I'm way far behind where I expected to be. I will be
10 eating some of that rebuttal time.

11 So, where was I? I was -- so, again, Your Honor, you
12 characterized paragraph 64 exactly the way I had intended to. This -- again,
13 the high point, not a definition, certainly not an expressed definition,
14 certainly doesn't exclude Patent Owner from -- if they're going to take an
15 overly narrow view of what a random-draw lottery is, to provide their basis
16 for doing so.

17 Again, what happened here is, they provided a claim construction
18 argument. There's no other way to put it. They provided a claim
19 construction argument that we properly responded to in our reply, and we
20 provided -- it was absolutely not something we could have anticipated, and
21 this happens in a lot of cases. They provided a claim construction in their
22 POR, and we responded to it. We provided declaration testimony from Mr.
23 Hutton to clarify that he was definitely speaking about random draw
24 lotteries -- excuse me, raffles as being random draw lotteries, which is
25 entirely consistent with how he mapped the claims.

26 The Patent is also -- if you look at the specification, Your Honors,

1 the Patent also describes what can be considered raffles. It describes two
2 types of lotteries: first, is instant wins, those are the scratchies; a second
3 type is the draw based lottery. So, broadly speaking, the specification is
4 describing a draw based lottery, which is a raffle. A raffle is something you
5 draw out of a hat. It goes on to state that once the event that you're betting
6 on occurs, numbers are drawn or generated. Well, if they weren't -- the
7 specification wasn't making a distinction between raffles and instant
8 tickets -- excuse me, raffles and quick pick tickets, where numbers are
9 generated, there'd be no reason to say drawn or generated, so the Patent,
10 itself, it's not a model of clarity, but the Patent itself, the '451 Patent
11 specification clearly includes draw or generated-based lottos in its definition
12 in its discussion of draw based lottery. So, this is consistent, at least --
13 again, it's not -- it's not a model of clarity, but it's at least consistent with
14 what we said in our declaration.

15 On Slide 23, we've provided two pieces of extrinsic evidence from
16 the Glossary of Lottery Terms through the South Carolina Lottery from --
17 we've also provided an excerpt from an article on (INDISCERNIBLE)
18 Lottery. I'm not going to go through that. Of course, Patent Owner is
19 moving to exclude this. This is extrinsic evidence that very clearly states
20 that a passive game is a lottery game, it's similar to a raffle.

21 Now, they argue two points, primarily on this, one, it's untimely. I
22 think I've gone through that, it's not untimely. We could not have foreseen
23 this claim construction argument. This is submitted as support for -- as
24 rebuttal, excuse me, to their claim construction argument. They argue also
25 it's hearsay. Well, as we pointed out in our reply, experts -- we all know
26 this, experts are entitled to rely on hearsay. And he's using this simply to

1 say, this confirms his opinion from his opening declaration and from his
2 supplementation declaration.

3 I'm going to very quickly go through the last two points -- so, that's
4 the lottery issue. That's the issue on whether a raffle is a lottery. Second
5 point Patent Owner argues is that in Irwin, there's no presenting and
6 selecting of tickets. And we've argued -- now, Irwin -- remember, Irwin is
7 an invention where it talks about street vendors, either in kiosks or walking
8 the streets, that have these pre-activated instant scratch offs, and there's a lot
9 of problems with that. If you're roaming the streets, there's a theft problem.
10 You have to reconcile at the end of the day, the unsold tickets. Irwin's
11 solution to that -- one of the solutions is to provide unactivated tickets. So,
12 you have scratch off tickets, you have quick pick tickets, and raffle tickets.

13 Now, in the quick pick and instant embodiments, Irwin expressly
14 shows in that figure, which is circled, that the customer's presenting an
15 instant ticket to the vendor. In the raffle embodiment, there is no -- it's
16 agnostic. Irwin doesn't say how the ticket is presented and activated. We've
17 argued it would be obvious.

18 Now, why are we saying -- this is -- excuse me, this is the figure I
19 just mentioned in Figure 19 in connection with the instant tickets. That is
20 the customer presenting the ticket to the vendor. This is barely an
21 obviousness argument. This is more an interpretation of just looking at what
22 Irwin discloses. There's no technological leap here. There's no
23 modification. We're simply saying, look at Irwin. This poor guy, he's
24 holding a printer, he's holding an activation terminal, and it looks like
25 attached to his arm are a bunch of tickets. These are quick pick, they're
26 instant tickets, they're raffle tickets. And all we're saying is, one of ordinary

1 skill in the art would understand that, in operation, if you walked up to this
2 guy and said, hey, I want a raffle ticket, what is he going to do? Is he going
3 to put down his printer, put down his scanner? Irwin says there are theft
4 issues. Or is he just going to simply extend his arm and say, here, pick one?
5 Remember, the tickets are valueless at this point. They're valueless until
6 they're activated.

7 So, I think it's pretty clear, from the disclosure of Irwin, we're not
8 saying he wouldn't put down his printer and very awkwardly look at his arm
9 and pick out the appropriate ticket and hand it to the customer. But it's
10 equally -- at least I think more so likely that he'd simply extend his arm and
11 say, here, pick one.

12 Patent Owner, continuously in their briefs, focus on this on-the-
13 spot language. And I just want to point out, they never look at the context.
14 The on-the-spot language is never used to describe the invention, it's what
15 Irwin is trying to improve upon. Traditionally, these street vendors would
16 roam with a limited inventory of instant tickets, literally conducting street
17 sales and paying small amounts on the spot. That on-the-spot language is
18 what Irwin solves. Irwin solves this by making the tickets not activated at
19 the time of purchase. They focused on that repeatedly and never explained
20 its contents. It has nothing to do with Irwin's invention. To the contrary, it's
21 exactly what Irwin is attempting to remedy.

22 Just a few more points, Your Honor. They double-down on this
23 and argue, well, Irwin discloses that it's a comparable method, the passive
24 tickets are sold according to a comparable method.

25 I'm just going to bring up Irwin -- for Your Honors' benefit, I'm at
26 Irwin Exhibit 1030, I'm at page 26 of 30, I'm on column 15, line 65. Irwin

1 does not -- when it says, "raffles are sold by a comparable method," he does
2 not relate it back to the on-the-spot prior art. He states that -- excuse me, I'm
3 on the wrong page, I'm on page 20 -- yeah, 27 of 30, column 15. "In
4 addition to instant ticket sales and lottery redemptions, the disclosed system
5 is capable of selling and printing online Pick 3 or Pick 4 tickets." He goes
6 on to explain throughout column 16 those quick pick tickets, not the on-the-
7 spot tickets. He then goes on to say, "In another embodiment, a comparable
8 method may be used." He's not referring back to column 12, where they
9 describe the on-the-spot embodiment, he's talking about this comparable
10 method, right here, at the bottom of column 15, the online tickets. So again,
11 Patent Owner is taking that disclosure completely out of context and arguing
12 that it refers back to the on-the-spot embodiment.

13 Your Honors, I have one last point I'm going to make. I don't have
14 time to really run through all of what I wanted to say on this. But with
15 respect to the plastic hanging card, Patent Owner argues that the plastic
16 hanging card is not a lottery ticket -- argues -- raises several arguments. But
17 the primary argument they raise is that, well, it's not activated, and there's no
18 express disclosure that it would be activated.

19 We had in Exhibit 1040, we've removed that -- we've removed our
20 reliance on that because Irwin, itself, includes an express disclosure, and this
21 is in our reply. Irwin includes Claim 5, and Claim 5 expressly starts out by
22 stating, "A lottery ticket that is sold by the vendor are pre-printed and
23 registered," that's activation, no dispute on that point, "at the time of sale by
24 a vendor scanning a barcode containing the unique lottery VIN." There's
25 only one thing disclosed in Irwin that has a unique lottery VIN and it's pre-
26 printed. I have this on the bottom of Slide 39, it's the plastic hanging card.

1 The plastic hanging card is pre-printed, no dispute on that, and it is the only
2 pre-printed thing in Irwin that is disclosed that has a lottery VIN.

3 This claim very clearly is referring to the only disclosure that
4 matches the claim, the plastic hanging card. And it's a lottery ticket, it's pre-
5 printed, and it's registered, it's activated. Patent Owner argues, well, no,
6 Claim 5 refers to the receipt. That is impossible, because it's requiring -- this
7 Claim requires that it's pre-printed. Receipts are not pre-printed, the exact
8 opposite, they're printed after a sale occurs, they're not printed ahead of
9 time.

10 With that, Your Honors, I have no idea how much time I have left,
11 but to the extent I have any, I will reserve that for rebuttal.

12 JUDGE GERSTENBLITH: Thank you very much. I have -- give
13 me one moment, and I'll give you the time.

14 COURT REPORTER: Your Honor, this is your court reporter.

15 JUDGE GERSTENBLITH: Yes, go ahead.

16 COURT REPORTER: I'm sorry, I just wanted to let you know
17 that you're coming in a little bit choppy on my end.

18 JUDGE GERSTENBLITH: Okay. I don't know if this is any
19 better?

20 COURT REPORTER: Yes.

21 JUDGE GERSTENBLITH: Okay, sorry about that. I stepped
22 away from the microphone. I have you with eight minutes remaining, Mr.
23 Glass. And since we asked a few questions, we'll take it back up to ten
24 minutes, okay? We'll add two more minutes on so you'll have ten minutes
25 for rebuttal.

26 Mr. Hails, before you go, we're going to take a short, five-minute

1 recess. Don't disconnect, folks. You can stop your video, you can go on
2 mute, but please don't disconnect from the Webex. It is 11:07 -- now 11:08,
3 and we will be back at 11:13. Thank you.

4 MR. GLASS: Thank you, Your Honors.

5 MR. HAILS: Thank you.

6 (Whereupon, the above-entitled matter went off the record at 11:08
7 a.m. and resumed at 11:15 a.m.)

8 JUDGE GERSTENBLITH: And we are back on the record, 11:15.
9 We will turn it over to you, Mr. Hails. How much time would you like to
10 reserve?

11 MR. HAILS: I'd like to shoot for ten minutes.

12 JUDGE GERSTENBLITH: Okay. You can start when you're
13 ready.

14 MR. HAILS: Fantastic. Okay. So, my presentation actually takes
15 things out of order from Mr. Glass. I was going to start with Grounds 1 and
16 2, but it's really the pleasure of the Board. If you'd like me to start with
17 Szrek and Llach, I can do that. Okay. And maybe we should give a high-
18 level explanation as to our issue with the evidence they presented, and then
19 we'll go into the merits -- into the details.

20 In our view, this IPR presents a situation where the Petition's
21 evidentiary support shows inconsistencies between the prior art's disclosure
22 and the Petitioner's invalidity theories. We'll walk through it. We'll explain
23 that the Petitioner's expert does not explain the bases for his opinions with
24 respect to Irwin, that this hanging card, or this passive game ticket, are
25 random draw lottery tickets under the claims. There are assertions, but
26 there's no reasoning, and under the governing case law they need to provide

1 reasoning to be given credit.

2 And you'll also see that the expert, this is Mr. Hutton, their expert,
3 provided an explanation of a random draw that's inconsistent with what is
4 being described for a hanging card or a passive game ticket. And when there
5 are these kinds of inconsistencies, in our view that means that they haven't
6 met their burden to prove invalidity by a preponderance of the evidence.

7 Similar things, there's a lot of confusion with respect to the Szrek-
8 Llach combination and Grounds 3 and 4. The expert never really provided a
9 coherent, clear explanation of his proposed modification. You'll see that --
10 and it's already been alluded to already, that he rejected one configuration
11 that we drew, working from his declaration. He said, "No, that's not my --
12 that's not the modification that I proposed." He gave a different explanation,
13 and then they were different, and when on re-direct, when the Petitioner got
14 him -- they got him to agree that everything is obvious. And so, we had to
15 walk through the materials, and I'll do my best to explain that to you,
16 because I disagree with Mr. Glass' summary as to what transpired in the
17 deposition.

18 But again, when there's no clear explanation of what's going on,
19 there's no unifying theory, an expert just says, oh, well, it's all obvious, in
20 our view, that means they have not met their burden. All right. So, let me
21 see if I can work through my share, and away we go.

22 So, if I've done this well, you should see the cover page of our
23 demonstratives; do you see that?

24 JUDGE GERSTENBLITH: Yes. Yes, I do.

25 MR. GLASS: Fantastic.

26 MR. HAILS: All right. So, on -- and actually, let's switch to the

1 meat of it. We are going to start with Mr. Hutton's declaration. In Mr.
2 Hutton's declaration, there are two theories, there's one is that in -- and we're
3 talking about Ground 1, and we're talking about the Irwin reference.
4 Paragraph 100, Mr. Hutton makes the allegation, but provides no
5 explanation that this thing called a hanging plastic card, which is in Figure
6 12, is a random draw lottery ticket under the claims.

7 So, he alleges it, and you can see that in the bottom of page 36, but
8 he does not explain why. Same thing with the passive game ticket. He
9 makes the allegation -- oh, I'm sorry, I have an issue with my share. Hold
10 on, let me re-do that. All right. I've re-done the share. Just to make sure
11 we're all on the same page, do you see -- this is Mr. Hutton's declaration and
12 his materials. Do you have that shared on your end?

13 JUDGE GERSTENBLITH: No, we are seeing the blank screen. It
14 is sharing, but it's not sharing that document.

15 MR. HAILS: All right, thank you. Let me try again. Trying to
16 share screen. All right. Well, I will do it this way.

17 JUDGE GERSTENBLITH: Okay. We do see it now.

18 MR. HAILS: Fantastic, okay. Thank you. Okay. So, we were
19 talking about the declaration of Mr. Hutton. We're talking about paragraph
20 100 on the bottom of page 36. He makes the allegation that the plastic
21 hanging card is a random draw -- a ticket for a random draw lottery, but he
22 does not explain why. And you can see the ticket here in Figure 12
23 excerpted in his declaration.

24 Moving on to paragraph 101, you can see that -- actually, he talks
25 about the pre-printed passive ticket, he doesn't quite say that it's a random
26 draw lottery ticket, he just says that it's clearly manufactured and pre-

1 printed, and he has an excerpt of Irwin's plastic card, the one taken from
2 Figure 21, and this is pages 37 through 38 of Exhibit 1003.

3 And then, in element 1(a) on their analysis, you have to receive a
4 transaction to activate it, and have it be selected in the way. And it -- again
5 says, it is the lottery ticket; for example, the plastic hanging card, this is the
6 bottom of page 38, but he doesn't explain why. And it is important to us that
7 he didn't explain why, because we have to respond to the evidence that's
8 presented.

9 Mr. Hutton has taken the position that this idea of a random draw
10 lottery ticket is a term of ordinary understanding, and he provided an
11 explanation in that paragraph 64 that's already been discussed of the
12 ordinary explanation. Lotteries have been in existence for hundreds of years
13 and here are the characteristics: "A player purchases a ticket for a lottery
14 draw that takes place in the future, you can select your own draw numbers or
15 draw numbers can be selected for you. The numbers on the player's tickets
16 are then compared to the numbers randomly selected during a draw event to
17 determine if there's a match and thus a winning ticket." That's the
18 description that he provided in his declaration.

19 In our view, this is not something that describes the hanging card.
20 The hanging card is not described as a ticket. Particularly, if you're going to
21 look at the references on a plain meaning basis, let's go to our
22 demonstratives, in Slide 10. He calls the Figure 12 -- how about now?
23 Okay. I'm on Slide 10 of our demonstratives. We put, side-by-side, the
24 plastic hanging card 200 and another instrument that is described by Irwin
25 that Irwin calls an online game ticket, that's 210. That's Figure 14 -- so,
26 Figure 14 is on the right-hand side of this demonstrative, Figure 12 is on the

1 left-hand side of this demonstrative. Irwin explains that you scan the plastic
2 hanging card and you get printed for you an online game ticket, and that's
3 discussed in our Slide 6 -- or 5, first. This is the mockup we provided in
4 briefing. You take the plastic hanging card to a merchant's POS equipment,
5 which scans the card. There's a quick pick request that goes to the lottery
6 central site. On Slide 6, it shows what the lottery central site does with it, it
7 generates quick pick numbers for the lottery ticket, it generates a serial
8 number for the lottery ticket, it sends a print command coming back, and the
9 merchant's system generates an online ticket.

10 Irwin uses the word "card" to refer to the card. He uses the word
11 "ticket" to refer to the ticket. On a plain-meaning basis, that suggests that
12 the online ticket is a lottery ticket and not the card, and that's what we had
13 explained.

14 JUDGE GERSTENBLITH: Counsel?

15 MR. HAILS: Sure.

16 JUDGE GERSTENBLITH: Counsel, what happens to the card
17 after it's scanned?

18 MR. HAILS: There is no other role disclosed anywhere in the
19 reference for that. My inference is it goes right back onto -- you can see, in
20 this example, Figure 12 shows the card clipped to, like, the front-end of a
21 greeting card display or something like that. My inference is, it goes right
22 back, and it can be picked again for use to generate another ticket. So, in my
23 view, is that there's a one-to-many relationship, meaning, one of these plastic
24 hanging cards can begat many online tickets.

25 JUDGE GERSTENBLITH: And that's because it's -- and that's
26 because it's basically making a quick pick. You're not -- the customer

1 doesn't select their own numbers, they're generated (CROSSTALK)?

2 MR. HAILS: That's part of it. In this embodiment, that's right. In
3 this embodiment, the lottery central site generates the numbers for the ticket,
4 and this does not -- and this transaction, whatever's coded into the barcode is
5 what they call a quick pick request. So, it actually -- yeah, it does go to the
6 lottery central site and says, please give me a quick pick lottery ticket. And
7 that's the thing that in Slide 6 of our demonstratives, becomes the online
8 ticket.

9 JUDGE GERSTENBLITH: Thank you.

10 MR. HAILS: There's no real dispute about this. We asked Mr.
11 Hutton at his deposition what does Figure 12 show? I've switched now to
12 Exhibit 2051 at page 52. I showed him Figure 12. What does it show? It
13 shows a pre-printed substrate. We showed him Figure 14. The thing that is
14 not analyzed in the Petition, what does Figure 14 show? Figure 14 shows a
15 printed lottery ticket, this is his answer. He provided no explanation in his
16 declaration. We asked him at his deposition what are these -- sorry, no
17 reasoning. Again, he made the allegation with respect to the first -- with the
18 card, but he did not explain why. And here, you can see that he's just kind
19 of, like, defaulting to the plain and ordinary meaning of a ticket, which
20 corresponds to Figure 14 and not Figure 12.

21 There's this idea that there's a claim construction argument here,
22 and we respectfully disagree with that characterization. I'm going to switch
23 over -- hopefully the pleadings now come up. When we explained our
24 positions in our Patent Owner's Response, we said many things. One thing
25 was that, hey, they argued without analysis that this card meets the claim
26 language, a random draw lottery ticket, but they don't explain it, and so we

1 just paste it in. You can see it here. This is starting at page 26 of Patent
2 Owner's Response. They didn't explain why. We said that the expert
3 declaration parrots these explanations, again without analysis, and that's
4 absolutely right. You won't see, and they haven't shown you where the
5 expert said, here's why this material corresponds to the claim language. We
6 explained that Irwin uses terminology like card, not ticket, and the ticket
7 actually is described as something else. And we explained that Irwin never
8 discloses that it's activated.

9 In providing this analysis, we are using his analysis -- the expert's
10 analysis, and the expert's testimony to explain that. I'll walk you through
11 that. Starting in the middle of 29 going over, we had a summary of what
12 Irwin's disclosure actually is. And then why is it not a random draw lottery
13 ticket? Because the Petitioner's expert characterized it differently. You
14 have to have numbers on the player's tickets -- or he explained, that numbers
15 on a player's tickets are then compared to numbers randomly selected during
16 the draw event to determine if there's a match. Here's his declaration --
17 here's his testimony, which I've already shown you as to why -- that Mr.
18 Hutton acknowledged that the ticket, something else is the printed lottery
19 ticket.

20 In -- here's a --

21 JUDGE HORNER: Mr. Hails?

22 MR. HAILS: Yes.

23 JUDGE HORNER: Can you explain why paragraph 64 of
24 Petitioner's expert's declaration is inconsistent with the passive lottery
25 example --

26 MR. HAILS: Sure.

1 JUDGE HORNER: -- the second embodiment?

2 MR. HAILS: Sure, absolutely. Let me -- I'm getting outsmarted,
3 as I told you, by these -- by all these PDFs. Okay. So, again, paragraph 64,
4 he describes this as something that's been in place for hundreds of years, and
5 this is a well-established understanding in the field. As relevant to the
6 passive game ticket, the numbers on the player's tickets are then compared to
7 the numbers randomly selected during the draw event to determine if there is
8 a match. Irwin has maybe one line on the operation of the passive game
9 ticket, so we asked Mr. Hutton, how does it work? What is his
10 understanding? Because he didn't provide it in the declaration. What is his
11 understanding of a passive game ticket?

12 In Exhibit 2051, you'll see that it actually starts on page 69, and my
13 case cites are going to be to the minis, not to the exhibit page. I hope that's
14 okay for you. What's your understanding of a passive game ticket? He
15 explained what it was. He described it differently than his description of a
16 random draw lottery. "A passive game is essentially a game where all the
17 tickets are printed and serialized, then they're sold, and a drawing is held to
18 determine which of those serial numbers is the winner," right? We're not
19 having a drawing of random numbers, which is what he said in page 64, that
20 a drawing to determine which of those serial numbers is the winner.

21 And I will note that in a passive game environment, Irwin discloses
22 that there are multiple different products that are described as being sold by
23 this street vendor. Let me go to the references. Mr. Glass pointed this out.
24 There are instant ticket sales and lottery redemptions, right -- lottery
25 redemptions, but there is a comparable method used to sell passive games by
26 street vendors. Drawing -- he said that, typically, the tickets are printed in

1 advance with unique identifiers and drawings are subsequently held, picking
2 the identifiers that correspond to specific prizes. So, (CROSSTALK) --

3 JUDGE GERSTENBLITH: Counsel, just let us know where you
4 are for the (CROSSTALK) --

5 MR. HAILS: Oh, yes, thank you. This is column 16 starting at
6 line 41. So, he --

7 JUDGE GERSTENBLITH: Of Irwin?

8 MR. HAILS: Of Irwin, yes.

9 JUDGE GERSTENBLITH: Of Irwin, right?

10 MR. HAILS: Yes, of Exhibit 1030. Thank you. So, again, he
11 describes them as being different. And I'm not sure they were ready for it,
12 right, because --

13 JUDGE HORNER: Going -- can we go back to paragraph 64 of
14 Exhibit 1030?

15 MR. HAILS: Absolutely.

16 JUDGE HORNER: Or, I'm sorry, 1003?

17 MR. HAILS: Yes.

18 JUDGE HORNER: Here we go. So, what is it in this description
19 that's different? I'm still trying to put my finger on is it the numbers have to
20 be randomly selected? Is that what you're focused on here?

21 MR. HAILS: He says right here, "They are compared to what? To
22 numbers randomly selected during the draw event.

23 JUDGE HORNER: So --

24 MR. HAILS: They're randomly-selected numbers."

25 JUDGE HORNER: Okay, I see your point.

26 MR. HAILS: And so, like, think about this in the real world,

1 right? All these lotteries that are being discussed, I think in our specification
2 and elsewhere, these Mega Millions and other kinds of things, the reason
3 they're different than your raffle at your county state fair is because there is
4 no winner. Mr. Glass acknowledged that in a raffle there is always a winner.
5 If you participate in a raffle, where you're the only person that has picked a
6 ticket, you're going to win. And if there are two people participating in the
7 raffle, then you got a 50/50 shot at it, and if there's a thousand people, then
8 you have a one-in-a-thousand chance.

9 In a situation where numbers are randomly selected during a draw
10 event, in a random draw lottery, Powerball, whatever, pick your commercial
11 application, there are -- you always have the same odds of winning, and
12 there often is no winner, and that's the reason that those products are able to
13 pool resources and have these newspaper headline grabbing jackpots
14 because there are no winners over time in many situations, and it can
15 accumulate, and accumulate, and accumulate. So, as a practical application,
16 the difference -- I don't know, they seem subtle to you, but it's profound in
17 this market. Okay.

18 JUDGE GERSTENBLITH: Counsel, one other question.

19 MR. HAILS: Yeah.

20 JUDGE GERSTENBLITH: Am I clear on the mic or no?

21 MR. HAILS: Yes, thank you.

22 JUDGE GERSTENBLITH: Okay, great. So, why can't we think
23 of numbers randomly selected? If we're talking about a raffle where the
24 pool of numbers is just a smaller pool. So, in other words, if I had -- say, I
25 was individually drawing numbers in a different system 0 through 9, I have
26 10 options, right, but if I already had the serial numbers for specific tickets

1 that I was drawing, I would still be drawing randomly, it's just that my pool
2 of what I can choose from is smaller. How is that not randomly selected,
3 even though the idea is I just have a smaller pool that I'm selecting from?

4 MR. HAILS: Again, I don't think it -- I guess my example of, you
5 know, you got a one-in-one shot, or you got a 50/50 shot, those kinds of
6 things, the size of the pool shows that the selections are not random. I
7 understand what you're saying about we're drawing -- again, he talks about it
8 as drawing identifiers. It's not -- I think that's inconsistent with randomly
9 selected numbers the way it is described here, and I think that this is
10 something that is well understood in this market. Again, I don't think you're
11 picking random numbers. You don't have a random chance of any one
12 number being picked because, as you say, the pool is limited, and it
13 constrains the numbers that can be selected.

14 JUDGE GERSTENBLITH: (CROSSTALK) --

15 JUDGE HORNER: Do you -- oh, sorry.

16 JUDGE GERSTENBLITH: I was just going to say, but you do
17 agree that they are randomly chosen, right? In other words, it's not a fixed
18 system. We're not suggesting that the outcome is predetermined, that I know
19 I'm going to -- that this particular ticket, out of the 100 raffle tickets sold, is
20 going to be the one. Whichever one is picked, that choice of that ticket with
21 those numbers is random.

22 MR. HAILS: I understand it is drawn from this pot, but I disagree
23 that that means that numbers are randomly selected. Because, again, if you
24 go to one lottery ticket in the pool situation, they're not randomly selected,
25 it's limited. And I think that that is -- that's what's called for here.

26 JUDGE GERSTENBLITH: Thank you.

1 MR. HAILS: Okay.

2 JUDGE HORNER: I had another follow-up to that.

3 MR. HAILS: Sure.

4 JUDGE HORNER: So you've said that random draw lotteries and
5 raffles are fundamentally different and well known in the industry, do you
6 have anything to point to in the record? It does seem to me to be a little bit
7 of a claim construction issue as to what random draw lottery means to one of
8 ordinary skill in the art. Do you have anything you can point to in the
9 record, expert testimony, or otherwise on that point?

10 MR. HAILS: I guess, I would say that we are -- I would -- this is
11 something that's been presented to us as a plain meaning thing, and our -- we
12 think the evidence shows that they are -- that the industry recognizes them as
13 being different, and Irwin is a great example. So, let me see if I can pull up
14 Irwin. I mean, Irwin's got -- I don't have these annotated and I probably
15 should have. He's got this card, he's got this ticket, he's got this passive
16 game ticket, he called -- and this, I think is recognized as a ticket, and Irwin
17 describes them as separate products, right? The quick pick ticket, when you
18 get down to the column 16 discussion, which is where the passive game
19 tickets come up, as Mr. Glass told you, that they're already talking about
20 other products that are being sold here.

21 We explained that in the record. I don't have it bookmarked here,
22 but we explained that in the pleadings that in -- when we're talking about the
23 street vendor functionality, that there are different products that are available
24 for sale, and Mr. Glass agreed with that during his opening. So, I think -- I
25 don't think this is a claim construction issue as much as what are the
26 ordinary expectations of the market, right? Because we're looking at it in a

1 plain meaning basis, and we think that this is the way it's recognized in this
2 industry.

3 JUDGE GERSTENBLITH: And, Mr. Hails, do you -- I just want
4 to make sure I understand which parts you're contesting? Because when
5 Judge Horner asked about the paragraph 64 --

6 MR. HAILS: Yep.

7 JUDGE GERSTENBLITH: -- from 1003, I understood your
8 answer to be that the random -- the number is randomly selected. Are you
9 also disputing that the passive ticket from Irwin is a lottery ticket? In other
10 words, the word lottery is my question.

11 MR. HAILS: I don't remember exactly how we did it. To me, it's
12 sort of an atomic term. So, it's not a random draw lottery. Yes, again,
13 because -- but the -- I guess the emphasis is on the way the numbers are
14 drawn. And again, this is what the expert told us. The expert told us that the
15 numbers are randomly selected during the draw event. I would note, I mean,
16 look --

17 JUDGE GERSTENBLITH: Yeah, so I'm more confused than I
18 was before I asked the question. So, I think it -- I'm just -- if you don't know
19 what the argument was, I understand that, but I'm just saying, is Patent
20 Owner arguing that a raffle is not a lottery?

21 MR. HAILS: Let me see if I can find it while we're talking. I just
22 don't want to over -- you know, misstate what we said earlier. We
23 explained, hey, there's no analysis, why, in the Petition. It would not --
24 recognized it to be a random draw lottery ticket as claimed. So, I guess we
25 did argue the four-word term here. I'm looking at the bottom of page 40,
26 and this is our Patent Owner's Response. And again, we leveraged, or we

1 explained why there are inconsistencies, right? This is a description that
2 came to us from their expert, and the tickets are entered in -- which the
3 tickets are drawn to win a designated prize, and it always yields a winner.
4 And you just heard Mr. Glass agree with that characterization.

5 So, yeah, it's not a random draw lottery ticket, it's a passive game
6 ticket, they're just different in kind. And then, again, continuing, I guess,
7 just to make sure I have a complete answer, we keep going on page 41,
8 contrasting it to a random draw lottery, which is, again, where these numbers
9 are randomly selected.

10 JUDGE GERSTENBLITH: I understand that part, but we're trying
11 to figure out which piece of this is supposedly distinguishable? Because we
12 know there's numbers, you know it's a ticket.

13 MR. HAILS: Because they're --

14 JUDGE GERSTENBLITH: We debated whether it was random --

15 MR. HAILS: (CROSSTALK) --

16 JUDGE GERSTENBLITH: -- and now I'm asking you if you're
17 also arguing that it's not a lottery?

18 MR. HAILS: Passive game ticket. Okay. Again, a drawing is
19 held -- this is -- I'm looking again at Exhibit 2051, page 70, and the
20 paragraph in the middle that begins on line 8. "A drawing is held to
21 determine which of those serial numbers is the winner," right? And I
22 understand your interest in saying, oh, that's a number and so it's a random
23 draw of numbers, but those are tickets. Those are tickets that are being
24 drawn. And so, yeah, it's not random draw lottery in that way, it's a raffle. I
25 mean, again, that's why he asked, hey, are you affiliated with a raffle? This
26 is on page 69, just -- they're different in kind, I think they're recognized that

1 way. They're recognized that way in Irwin, and Mr. Hutton recognized them
2 as being different. And that's different than, like, when we looked at Figure
3 14, and we asked them, hey, what's shown there? And that's a printed lottery
4 ticket. I've now switched to page 56 of Exhibit 2051. I think it's just
5 recognized as being qualitatively different. I don't know how better to say it.

6 JUDGE GERSTENBLITH: Well, the better way to say it is a yes
7 or no answer (CROSSTALK).

8 MR. HAILS: I think it's not -- yeah, I think they haven't shown -- I
9 guess they haven't shown it.

10 JUDGE GERSTENBLITH: Okay.

11 MR. HAILS: Again, this is their burden. This is their burden to
12 prove things by preponderance, and again there's no explanation from their
13 expert. Our view is that it's not a random draw lottery ticket as that term is
14 set forth in the pleadings, the POA.

15 JUDGE GERSTENBLITH: Okay, thank you.

16 MR. HAILS: Okay. And then, let's go and see what he said,
17 however -- like, this has a little sting for them, and so let's see what he says
18 in Exhibit 1036, which is the new declaration that he wanted to provide.
19 Now, a random draw game is a lottery game that involves a random draw,
20 right? That's not what he said in paragraph 64. I am at Exhibit 1036, the
21 discussion that begins at the top of page 2. He says, "This term includes
22 lotto-type games that has a draw that involves randomly selecting the
23 winning numbers from the set of all possible numbers." That, to us, is
24 paragraph 64. And that's what he's walking away from.

25 And now he's saying, oh, there's also another lottery game called a
26 passive lottery game that randomly picks the numbered tickets, he says it

1 right here, "randomly picks the numbered tickets," but that's different than
2 what he said in paragraph 64. He didn't say they were picking numbered
3 tickets, he said they were doing random draws of numbers. And he gives
4 you a new opinion that says, "A random draw game includes any random
5 draw-based game, including both of these two above." So, paragraphs 6
6 through 8 of this Exhibit 1036 show that he is moving away from his
7 description. He's couched it as a claim construction issue. We disagree.
8 We believe our Patent Owner's Response shows inconsistencies in his
9 presentation, in their expert's analysis, and there's no doubt in our mind, the
10 two descriptions that are at the bottom of paragraph 6 and in paragraph 7,
11 that's shifting away, and that's different than what he said before.

12 It is our view, again, as we've explained in both the motion to
13 exclude and on briefing, that the time to provide all of this explanation was
14 when the Petition came in, right? You're not allowed to belatedly provide
15 evidence that's part of your prima facie case. We think that is exactly this.
16 You're not allowed to go in new directions. You know, he's not saying, let
17 me show you how a passive lottery game involves selecting the winning
18 numbers from the set of all possible numbers, and he's not showing you how
19 it relates to paragraph 64. He's saying, a passive lottery game randomly
20 picks the numbered tickets. And that's different. That's different than in
21 paragraph 64, and it's -- if this is his opinion, it should have been presented
22 far earlier.

23 While we're on this topic, I'll say that Mr. Glass understated our
24 objection to Exhibit 1038. You will see that Exhibit 1038 is dated in 2025.
25 It is the wrong date for any kind of obviousness and analysis for a patent that
26 goes back to 2015, and it just -- it should not be included. So, the other

1 objectives that Mr. Glass identified are correct, but he missed this one.

2 Okay. And so, at a high level, that's the big issue with respect to
3 Ground 1 and these two different things. They didn't explain things. Mr.
4 Hutton's analysis contradicts his description of random draw lotteries in that
5 paragraph 64, and he's changing it now that he understands that that analysis
6 has ramifications.

7 Are there any other questions about this? I can switch to Szrek and
8 Llach, but I want to make sure that I've answered your questions.

9 JUDGE GERSTENBLITH: I think you can switch, thank you.

10 MR. HAILS: All right. So, we're going to go back to Szrek and
11 Llach. And Mr. Glass said that there was confusion as to how the
12 combination would occur, and he was not wrong. He sort of understated it.
13 Let's go to -- let's do a little bit of just setting the stage, and then I'll walk
14 you through the substance.

15 What happened was, while we we're talking about it, I did ask him,
16 hey, I want to look at what's in your paragraph 180. Maybe I should show
17 that first. In Mr. Hutton's declaration, at paragraph 180, he proposed a
18 modification to modify Szrek to incorporate Llach's teachings of an
19 intermediary transaction computer, where? Between Szrek's cash register
20 and the game-provider system, as well as encryption, which is not at issue
21 for right now. Okay. And I said, okay, I'd like to understand how that
22 works. So, if I put an intermediary transaction computer, and I connect it to
23 the cash register, and I connect it to the game provider, is that what you
24 meant? And he said, no. This Exhibit 1050 was -- I was doing it on the fly,
25 and I developed graphical representation --

26 JUDGE GERSTENBLITH: I don't mean to -- Counsel, I don't

1 mean to interrupt you, 2050.

2 MR. HAILS: 2050, excuse me. Yes, thank you. 2050 did not
3 exist at the time. We just had kind of a working document open, and he
4 said, no, that's not what it was all about. And I asked, how would you
5 modify this drawing? And then we came up with what ultimately became
6 2049. So, in questioning, 2049 precedes this other one in questioning. And
7 so we walked through it, and we explained various things, and then I passed
8 the witness to Petitioner's counsel. Petitioner's counsel said --

9 JUDGE GERSTENBLITH: Counsel, hang on for one second, I
10 just want to make sure I understand this. 2050 was created first --

11 MR. HAILS: No. Oh, yeah, I'm sorry --

12 JUDGE GERSTENBLITH: -- in the sequence of doing the
13 deposition?

14 MR. HAILS: Correct. There is no copy of what we discussed
15 first, that's the issue. So, we had something that's very much like it, and I
16 did get him to confirm ultimately that 2050 is what we were discussing
17 before, but we did not keep the working document that we had generated at
18 the beginning of the questioning.

19 JUDGE GERSTENBLITH: Okay.

20 MR. HAILS: And so, when Mr. Hutton said -- when I asked him,
21 how would you modify the drawing, he gave me a description, and that copy
22 went into Exhibit 2049, and that's what you see here on this Slide 28 of our
23 demonstratives on the right-hand side. After re-direct from Petitioner's
24 counsel, there was a switcharoo, and I had to explore what was going on,
25 and so we had to rebuild the first thing that we had generated, and that had to
26 become 2050. So there's a variant of 2050 that we don't have a copy of,

1 there is 2049 which we do have a copy of, that's here in this demonstrative,
2 and then there's 2050, which happened on, I guess, re-cross, and that
3 happened, and that is something that we saved and we have a copy of. So,
4 this is -- so, the text -- this Exhibit 2050 didn't exist at the time, but Mr.
5 Hutton has confirmed that we're talking about the same thing.

6 The reason there was this switcharoo -- I'm sorry, is that good for
7 you?

8 JUDGE GERSTENBLITH: Yes, thank you.

9 MR. HAILS: Okay. The reason there's a switcharoo is on re-
10 direct, Mr. Lu, Petitioner's counsel, said, hey, you recall talking about how it
11 would be obvious to place the transaction processor between the back office
12 and the game provider? Would it also be obvious to place the transaction
13 processor in between the cash register and the game provider? And he said,
14 yes. And so, he had rejected this thing that ultimately became 2050, and
15 then he said, yes, that'd be fine. And so, now on re-cross, we have to go
16 through and figure out exactly what is it he's talking about. And one of our
17 problems is, we don't know exactly what he's talking about. He's testifying
18 all over the place and he has no real meaningful description.

19 So, let's -- if I can, I'm going to try to walk you through some of
20 this. So, this is the very beginning, page 103. We showed him paragraph
21 180. "Do you see that rationale?" "Yeah." "You say you're going to add an
22 intermediary transaction computer to the system; is that right?" "Yes."

23 On page 104, here's where I generated the thing we no longer have.
24 "If I put a box here, and I put these things, is that's what's represented in
25 paragraph 180?" He says, "No." "How would you modify the drawing?"
26 And that's -- and he started some description that became Exhibit 2049. I

1 asked him about communication flow. So, there is some discussion of
2 arrows -- "I'd like to put an arrow to show communication flow," and the
3 arrows that are added in 2049 are there. "Hey, I'd like to show" -- I'm on
4 page 107 and over into 109 of the Exhibit 2051, "I'd like to make sure I
5 understand the communication flow. Am I correct that the flow from the
6 store back office through the intermediary transaction computer" -- let me
7 see if I can do this in a split screen. Okay. What I have in the split screen is
8 our demonstrative 30, and I'm showing only the Exhibit 2049 part, which is
9 his modification. And then, on the left-hand side of the screen share, I have
10 excerpts from Exhibit 2051, pages 108 to 109. "Am I correct that in the
11 flow from the store back office, the dataflow that carries the ticket activation
12 request is carrying the activation request in the original Figure 2?" "Yes."
13 So, there's a ticket activation request that was X'd out, and that ticket
14 activation request now goes to the intermediary computer.

15 Also, the return. This is 108 to 109, I think it was called an
16 activation response, that's the thing that's coming back from the game
17 provider. Let me see. Mr. Lu asked his questions, and so now we have to
18 go to re-direct. And I -- now, we had -- I'm still -- we still have not yet built
19 Exhibit 2050, but we're -- I was trying to go back and understand what was
20 wrong. So, I asked you, "If that modification that we discussed earlier was
21 the modification you envisioned in 180?" You said, "No," but you told
22 me -- and then you said, "because the diagram has the store back office in
23 it." I was responding to your question about this diagram, how the
24 modification would apply to the diagram. "If you erase the store back
25 office, then your original configuration would be correct.

26 Mr. Glass told you, in his presentation, that you had to get rid of

1 these arrows that are shown in Slide 30 that are X'd out in red. That is not
2 correct. He said, "You had to get rid of the store back office, and you can
3 see that right here on page 121 of Exhibit 2051. I said, "With that
4 modification, does that mean you're replacing the store back office?" He
5 said, "No, what it means is, the cash register" -- I think you had talked about
6 this with Mr. Glass -- "the cash register is not using the store back office to
7 do these lottery transactions, it certainly would talk to the intermediary
8 transaction computer." This contradicts his explanation that in pages 108
9 and 109, "The flow from the store back office is still carried from the store
10 back office to the intermediary transaction computer and back to the game
11 provider," the discussion he put in 108 and 109. "Now, we have to erase the
12 store back office. And now, the cash register talks directly to the
13 intermediary transaction computer." There's no direct connection in his
14 2049, the one that he said represented his system.

15 And then -- no, that's the same thing. Let me see if there's another
16 one. Oh, page 123. Again, now we've kind of created the new exhibit. "Do
17 you see that?" He said, "Yes." "That's what we discussed before, right, in
18 page 123?" He says, "Yes, that's what we discussed before." So that's why
19 we're saying the 2050 does represent the questioning at the beginning of the
20 deposition. "And you said this was wrong?" And he said, "This was wrong
21 because there's a store back office in the diagram. The store back office has
22 to go away."

23 And then he started all sorts of rationalizations. He said, "Oh,
24 well, in paragraph 180, a person would understand that I was talking about a
25 person of ordinary skill." Now we need a person of ordinary skill to
26 interpret his declaration. We understand that was talking about a point of

1 sale, and a point of sale could be the cash register, plus the store back office
2 or just the cash register. So, he's just all over the place, and he's
3 rationalizing things throughout his discussion, and that's the reason we say
4 we can't get a bead on this because he says everything. He says things that
5 are inconsistent with each other. You got to put the intermediary transaction
6 computer between the store back office and the game provider, but you also
7 have to erase the store back office.

8 And then, at the very, very end, we had surrendered the witness,
9 and this is Mr. Lu, and he says, "Oh, on the diagram in 2050," -- let me go to
10 2050 -- in 2050, now I'm showing in the split screen our demonstrative at
11 Slide 29, and then, Exhibit 2051 at 128 to 129, you know, "The intermediary
12 computer is directly between cash register and game provider." "Does the
13 cash register still communicate with the back office to perform whatever
14 function is necessary?" He says, "Yes, but again" -- he says, "Now it's
15 erased." And so, it's just sort of all over the place.

16 These inconsistencies mean, to us, you should not be giving Mr.
17 Hutton's testimony or declaration any weight. He's just all over the place.
18 Things need to be erased. Things are there. Things that are erased carry
19 data. It's just not clear, and it is -- yeah, and it should not be given any
20 weight and analysis.

21 In terms of the modification and all of the reasons to combine, and
22 then the other kinds of things, we went step by step through the Petition and
23 provided our rebuttal. There's a lot of things you won't see in the Petition.
24 You won't see, hey, we're talking about moving things to the cloud, which is
25 what Mr. Glass said with respect to Slide 49 of his presentation. Mr. Glass
26 did say, it's not -- when he was discussing Slide 54, "It's not entirely clear

1 that the back office is in" -- or, sorry, actually, I think it came from one of
2 the panelists. "It's not clear that the back office is in play." That's a
3 thousand percent correct because he says it needs to be erased certain times,
4 and other times it needs -- he says, "It's there performing work." Mr. Glass
5 said, "There was -- confusion arose because when I created my drawing, I
6 didn't cross out the arrows." You've seen the testimony where he says, "The
7 reason it's wrong is because the back office still needs to be there, and it
8 needs to be erased." So, it's just -- again, it's just kind of all over the place.

9 With respect to the idea that the centralization of things is
10 something that Llach would add -- again, I'm going through the Petition. Let
11 me see if I can get to the Petition. "The Petition's motivation to combine,"
12 I'm looking at the Petition at page 47, this section 1, -- "It would expand the
13 system allowing it -- Szrek system allowing it to have a centralized system
14 for activating lottery tickets." Szrek has that, right? Szrek is -- where is my
15 Szrek? I'm on Slide 15 of our demonstratives. The game provider system
16 that we've highlighted in red activates tickets. Szrek says so expressly, says
17 so in column 3. They say that we're pointing to the commercial printer,
18 that's wrong. In Slide 16, we show that the commercial printer prints tickets
19 in volume and then they are distributed to retailers, including the store 110,
20 but it is the game provider and not the commercial printer that activates
21 tickets. That's at column 3, line 46 through 49 of Szrek.

22 They say that a centralized intermediary allows for support of
23 different game providers, such as different lottery companies. Szrek already
24 discloses a system where different -- his cash register and his store system
25 can communicate with other service providers, I guess for lack of a better
26 word.

1 If you go to Exhibit 1005, and you look at column 2, line 48 or so,
2 he talks about phone card registration. And it happens directly from the cash
3 register or indirectly via the store back office.

4 If you -- the bulk of Szrek's discussion is for these quick pick
5 cards, or cards where customers can buy individual -- their numbers -- select
6 their numbers themselves. But in column 7, he also talks about Szrek's
7 system being able to activate instant tickets. So, this is not a reason to look
8 to Llach. I mean, Szrek discloses a comprehensive, well-designed system.

9 JUDGE GERSTENBLITH: Counsel, so what -- are you saying
10 that the phone cards and the other types of lottery, that's the Szrek teaching
11 other game providers?

12 MR. HAILS: Yes.

13 JUDGE GERSTENBLITH: Is that (CROSSTALK) --

14 MR. HAILS: Other products (CROSSTALK) --

15 JUDGE GERSTENBLITH: (CROSSTALK) --

16 MR. HAILS: That's right. That the system is a robust system and
17 natively provides these kinds of capabilities. I guess one thing I didn't --
18 maybe it's worth mentioning is, the reason that Llach describes the system
19 that she has, is that the store-valued transaction computer -- now, I'm at
20 Slide 20 of our demonstratives, in Llach, Llach also describes that the point-
21 of-sale systems are pretty smart and they can handle these kinds of things,
22 right? And that makes sense, even to a lay person, right? If you've been
23 going to the grocery stores, you know that the cash registers can handle
24 credit cards, they can handle checks, they can handle debit cards, they can
25 handle all sorts of instruments. The reason that Llach proposes her system is
26 because Llach recognizes that the market for gift cards is quite congested,

1 and it's hard for anybody to stand out.

2 And what would be really cool is, to have a program where, if you
3 buy a card for \$25.00 maybe we'll give you a \$30.00 face value for it. And
4 so, you have a point-of-sale system that processes gift cards or whatever
5 kind of merchandise, and you have card-issuer authorization systems that
6 activate tickets. But it's the person in the middle that asks, is this particular
7 transaction, does it merit a value add, and let's do those kinds -- if so, let's
8 actually modify transactions as they go through to increase. So, you bought
9 for \$25.00, the point of sale is going to charge you \$25.00, by the time it
10 gets to the card-issuer's authorization system, it's \$30.00. How did that
11 modification happen? That modification happened in the middle. None of
12 this discussion is being used, right? They're just like, oh, it would have been
13 good to use a transaction computer to talk to banks or to talk to other
14 financial providers, but point-of-sale systems -- Llach discloses it, and I
15 think it's well understood, already have that capability. That's not a reason
16 to go to a transaction computer and to this architecture. Point-of-sale
17 systems are -- again, are robust.

18 And so, you're a person of ordinary skill, are you going to go --
19 let's go back to -- oops, let's go to 2050, which apparently is his
20 combination. Where's my 2050? So, in -- sorry, 2049. Let's go to -- we're
21 at Slide 28 of my demonstratives, we're looking at the excerpt of Exhibit
22 2049. "We're going to perform -- provide an intermediary transaction
23 computer," according to Mr. Hutton, "in between these two elements, the
24 store back office and the game element -- the game provider." So, now we
25 have -- we took a three-party system: the cash register, the store back office,
26 and the game provider, and we turned it into a four-party system. And we

1 turned it into a four-party system, apparently, so we can talk to banks, but
2 again, the cash register already can talk to banks, and to us, that's not a
3 meaningful reason to do it.

4 Mr. Hutton explained -- this is Mr. Hutton, right, not our expert,
5 Mr. Hutton explained, that when you run these kinds of system, you have
6 auditing everywhere. So, the cash register has to create, basically, a trail of
7 all the transactions that it creates. The store back office has to create a trail.
8 And now that you've added an intermediary transaction computer, now you
9 have to have another party add this kind of stuff.

10 We've given you a case where people have rejected arguments that
11 a person of ordinary skill is going to be motivated to add functionality that is
12 already possessed by its system, and we think this is that kind of case. We
13 are not -- we're not doing anything meaningful. And the reason that people
14 of skill would look to Llach is because of this value add, and that's
15 something they ignore. That's not a basis for their motivation. Okay.

16 JUDGE GERSTENBLITH: I just want you to know you have --
17 oh, go ahead, Judge Peslak, sorry.

18 JUDGE PESLAK: Looking at the right-hand side of Slide 28 --

19 MR. HAILS: Yes.

20 JUDGE PESLAK: -- isn't one of the reasons Petitioner is
21 proposing a combination is because it would allow the system to
22 communicate with multiple game providers? Where is that disclosed in
23 Szrek that the system can communicate with multiple game providers?

24 MR. HAILS: We think that that's the inference to be drawn from
25 the discussion that -- that the prelude discussion in Szrek about the phone
26 providers, right? We already have a system that can talk to a phone service

1 provider. We already have -- it describes, just generally, that stores -- I'm
2 looking at -- I should put this in, it's at -- I'm at Exhibit 1005. There's an
3 excerpt at column 2. I guess, the paragraph that begins on page 36, he
4 describes that stores sell merchandise at the cash register requiring
5 activation. And he gives, as an example, right? He doesn't -- it is not
6 limited, but as an example, phone cards won't work unless they're sold and
7 activated, and he talks to -- the cash register talks to the phone registration
8 service provider either directly or indirectly via the store back office.

9 And now, we've got -- now we've got it for lottery tickets. We
10 think that's the inference to be drawn from this description. There's no idea
11 that there's a one-to-one kind of relationship between these things. I think
12 the inference to be taken from Szrek's disclosure is that the store back office,
13 which is the thing that's doing the indirect communication, that's the element
14 of description that Petitioner has seized upon, manages that, just talks to
15 whomever needs to be talked to.

16 JUDGE PESLAK: Okay, thank you.

17 MR. HAILS: Okay.

18 JUDGE HORNER: Can you -- in that paragraph you were just
19 looking at in Exhibit 1005 on column 2, where they're talking about the
20 phone cards --

21 MR. HAILS: Mm-hmm.

22 JUDGE HORNER: -- 36 to 53, the last part there. In two places,
23 it talks about that, "The sale of the card will be registered, an authorization
24 request, including phone card identifier, would be sent to the card issuer or
25 his agent." What do you understand the "or his agent" to be referring to?

26 MR. HAILS: I should make that -- I believe that that is a -- that's a

1 reference to the entity that is charged with managing the cards; meaning, if I
2 buy a phone card -- I guess, if there's a Verizon card, right, I'm not -- I'm
3 sure that Verizon could contract with somebody to actually activate the
4 cards. It doesn't have to necessarily be at Verizon. So, it is -- I don't think
5 it's a relay to somebody else, right? You're communicating with one of the
6 two in this discussion. I now see the statement, line 40.

7 JUDGE HORNER: So, would that be a third-party transaction
8 processor?

9 MR. HAILS: No, I think that would be a third-party, like, game
10 provider, right? It's the end point; it's not the middle point. Let's see if I can
11 show that in the context of Szrek. So, I've got Slide 17 of our
12 demonstratives up. We've got the cash register in blue, we've got the store
13 back office in green, and we've got the game provider in red. If you talk
14 about the phone provider, or its agent, that goes in the red box. That's the
15 person who is activating the card.

16 JUDGE GERSTENBLITH: Counsel, I just want you to know that
17 we are four minutes into the rebuttal time, which you had reserved ten --

18 MR. HAILS: Yes.

19 JUDGE GERSTENBLITH: -- and I was giving back two, so you
20 have eight remaining.

21 MR. HAILS: Okay. A couple other things to note is: you had
22 asked about the level of skill in the art in the 135 IPR proceedings. Dr.
23 Miller, our expert, was our expert in that IPR. You had credited his
24 testimony in that final written decision. For whatever it's worth, do I have
25 it? I was able to pull it up, that's on page -- where is it, come on. Yeah, here
26 we go, page 52 of your final written decision in the IPR 2023-01235. You

1 had also had a question on the level of skill and whether the same definition
2 was applied, and it was.

3 There are a couple of other kinds of things. They pointed to this
4 Claim 5 in their discussion of Slide 39. Claim 5 talks about things being
5 pre-printed for a future drawing. It's not pre-printed at the time of sale, and
6 so that, to us, has no value.

7 And again, I would ask you -- I would encourage you to watch --
8 compare the arguments that are being made today against the arguments that
9 are being made in paper because there are characterizations like, oh, stores
10 don't want to handle this and stores don't want to handle that, none of that
11 stuff is in the briefing. None of that stuff is about, like, how authorization
12 providers don't want to do X or Y. We responded point by point to the
13 rationales that were provided in the Petition, and we think we should be
14 talking about those and only those.

15 All right. So, I think I will stop here unless you have any other
16 questions.

17 JUDGE GERSTENBLITH: We don't, so we're going to stop.

18 MR. HAILS: Okay.

19 JUDGE GERSTENBLITH: We'll pause for a five-minute break.

20 Let's see, so you went six minutes in so you have six minutes left for Mr.
21 Hails and ten minutes left for -- sorry, Mr. Glass, and we'll be back at 12:16.

22 MR. HAILS: Okay.

23 JUDGE GERSTENBLITH: Thank you.

24 (Whereupon, the above-entitled matter went off the record at 12:11
25 p.m. and resumed at 12:18 p.m.)

26 JUDGE GERSTENBLITH: Okay, Mr. Glass, are you there?

1 MR. GLASS: I am here, Your Honor.

2 JUDGE GERSTENBLITH: Okay, great. I'm going to turn it back
3 over to you. You have ten minutes for a rebuttal.

4 MR. GLASS: All right. Give me one moment, I'm going to share
5 my screen again. I'm going to start off where they left off with Szrek. And I
6 wrote this down as I heard it. I was frankly shocked when I heard it. Patent
7 Owner argued that -- in response to your questions on where -- Your Honors
8 asked a very pointed question: where does Szrek disclose multiple game
9 providers? Counsel did not respond directly. He stated, "There is an
10 inference to be drawn from Szrek." That is the epitome of ironies. We're
11 the ones that are arguing obviousness. They are arguing not that Szrek
12 expressly discloses multiple gaming providers, they're arguing that one of
13 ordinary skill in the art reading Szrek would understand that it discloses
14 multiple gaming providers. Well, that sounds a heck of a lot like what we're
15 arguing the combinations. Why are we even discussing the combinations?
16 Szrek, alone, renders the claims obvious. That's, of course, not our position.

17 But if you look at Szrek, the honest answer to Your Honors --

18 JUDGE GERSTENBLITH: Counsel? Counsel?

19 MR. GLASS: Excuse me.

20 JUDGE GERSTENBLITH: Mr. Glass, isn't it because it's not a
21 third party? Isn't that the issue with third party versus not third party?

22 MR. GLASS: I was being slightly sarcastic, Your Honor. I'll
23 withdraw that. The point is, Szrek does not disclose multiple gaming
24 providers. Szrek discloses, very clearly in Figure 1, that there's a single
25 game provider. It's hard for me to show the lack of disclosure, but the only
26 thing Counsel pointed to was column 2, lines 36 through 54 -- 53, there is no

1 disclosure in multiple gaming providers. There's disclosure of different
2 products that the gaming provider may provide. There is no disclosure of
3 multiple gaming providers. And that is our -- one of the many motivations --
4 the benefits of using this third-party transaction processor because it gives
5 the retailer -- instead of having the only thing disclosed in Szrek, this one-to-
6 one correspondence, it provides the retailer the ability to use multiple -- have
7 access to multiple game providers simply by contracting with one third
8 party.

9 And remember, again, in their -- they argued, not us. They argued
10 that these lines, in Szrek, these single lines, these are direct connections. So,
11 on the one hand, they're arguing, well, yes, Szrek uses direct connections,
12 but on the other hand it's flexible enough to include multiple gaming
13 providers, then explained how or what those direct connections are, and they
14 certainly haven't pointed to a single place in Szrek where there are -- there's
15 disclosure of multiple game providers.

16 What they also haven't explained -- Your Honors, actually before I
17 get to this, I'll point out --

18 JUDGE HORNER: Mr. Glass, before you move on, can I ask one
19 question? So, I'm looking at the Petition on page 47, where you're talking
20 about the rationale to combine Szrek and Llach. And I see a sentence
21 towards the bottom of the page that starts, "Moreover, the centralized
22 intermediary allows for support for different game providers such as
23 different lottery companies."

24 MR. GLASS: Mm-hmm.

25 JUDGE HORNER: Doesn't Szrek allow for that using direct
26 connection? So, I guess my question is, what is Llach adding to that?

1 MR. GLASS: Well, these direct connections -- I mean, you
2 could -- so, what Szrek -- again, and this is going to what Counsel said, you
3 would have to build an inference. There is no disclosure. There's no
4 disclosure in Szrek of having those multiple systems. What Counsel's
5 arguing, and what -- and to Your Honors' point, would it have been obvious
6 to one of ordinary skill in the art, looking at Szrek, to include multiple
7 gaming providers? And the answer to that is, yes, that's why we bring in
8 Llach.

9 I suppose to Counsel's point, we could have said that we could start
10 with Szrek alone and add a third party to access multiple gaming providers.
11 But Szrek, on its own, Szrek's disclosure does not disclose those gaming -- it
12 does not disclose the centralized --

13 JUDGE HORNER: (CROSSTALK) --

14 MR. GLASS: -- I'm sorry, Your Honor.

15 JUDGE HORNER: Well, what I'm asking is, why do we need a
16 third party to access multiple gaming providers? What does a third party
17 add and where is that described in your Petition? What the third party
18 (CROSSTALK)?

19 MR. GLASS: That is -- I understand the question, Your Honor.
20 That is the point of the centralized third party. The problem is, in Szrek,
21 each -- this is not -- this is not a store back office -- this is not a centralized
22 party transaction processor, it is a store back office. It is the antithesis of a
23 centralized system. It is a -- that is a back office -- it is a computer in every
24 single back office. So, this is a situation where you have a supermarket that
25 has a back office with a server that communicates with a gaming provider
26 system. So, we argue that the centralized portion, that is the third party.

1 We're not suggesting that a supermarket is going to be in any way motivated
2 to own its own centralized system, that's something the third party would do,
3 and that's what's disclosed by Llach. Does that answer your question, Your
4 Honor?

5 JUDGE HORNER: I guess the rationale you're giving is -- is it the
6 following sentence on page 47? "This would reduce implementation costs."
7 Is that --

8 MR. GLASS: That's -- and thank you, Your Honor, for providing
9 that. That is -- that's what -- and Counsel said that I'm coming up with
10 arguments that were not raised in the Petition, and that's the point. When
11 you push something to a third party, you're pushing off functionality that the
12 supermarket doesn't want to do. It is a lower cost, it allows a third party to
13 handle those details, that's the motivation. To do something that the
14 supermarket wants to provide those gaming tickets, when it pushes that
15 responsibility of contracting and dealing with the mechanics of that to a third
16 party.

17 What Counsel did not address -- I didn't hear it -- was express --
18 Your Honor pointed to column 2, describing the phone card or his agent. An
19 agent is a third party acting on behalf of someone else. We all know that.
20 Counsel also did not address the statement in Szrek that, "The cash register
21 can communicate indirectly or directly with the game-provider system or
22 some other system on behalf of the game provider." This is express
23 teaching. Go out and use someone, you don't have to do it yourself, go out
24 and use someone on behalf of the gaming provider. There's no discussion of
25 that whatsoever.

26 Again, Counsel's argument is an obviousness argument, which I

1 don't think I've ever been in this position before. They're saying, no, it is an
2 inference from Szrek, that all of this disclosure they're relying on is
3 disclosed in Szrek. That's an obvious argument, but it's not. There's no
4 disclosure in Szrek, and Counsel conceded this indirect disclosure in Szrek
5 of multiple gaming providers.

6 Very briefly, I'll go -- I want to go through this and the raffle issue.
7 Very briefly, just looking at the testimony -- I don't have time to go through
8 the entire thing. I'll just point out, Patent Owner said, well, I -- he threw up
9 his hands, "I have no idea what Mr. Hutton was discussing." And he said --
10 this is at page 120, 121, "In your original figure, if you got rid of the back
11 office, then it'd be correct." Yes, it would be correct because then the cash
12 register would be communicating. The only communications that would be
13 occurring with the game provider would be from the third party. He asked a
14 clarification question. And we all know how depositions go. They're
15 iterative and they're clarifications. And he asked, "So, in your modification,
16 are you replacing the back office with the intermediary?" He said, "No." He
17 could not be clearer. He said, "No, I am just putting in" -- and he goes on to
18 say, "the cash register is still talking directly to -- and the cash register is not
19 using the store back office to do these lottery transactions."

20 So, I don't have time to walk through the entirety of the transcript,
21 but the one thing that's clear, Counsel said, "Well, he's erasing the back
22 office," but that was clarified immediately, right after, with his next
23 question.

24 I am going to address the issue of the raffle tickets. Again,
25 Counsel is making a claim construction argument. I wrote down a few
26 things they said. First, they said, well, it's not our burden to explain why

1 they're wrong. Yes, it is in this case. This is claim construction. It is, of
2 course, our burden to prove invalidity. They have raised a claim
3 construction position in their Response, it is their burden to justify that. I've
4 walked through paragraph 64 of our expert's declaration in detail. I don't
5 have time to do it again. That was not an expressed definition. Their
6 argument is, well, we have an expressed definition in paragraph 64, we don't
7 have to justify it, and therefore everything that's responsive to our claim
8 construction should be excluded. No, our expert never defined the term in
9 the way they said. They rely on that simply to avoid their burden to justify
10 their claim construction. They --

11 JUDGE GERSTENBLITH: Counsel, you're at your time, so I just
12 wanted to make sure you were able to answer my question about Claim 11
13 and whether it's in the Petition, whether there's any discussion of the passive
14 ticket from Irwin about Claim 11?

15 MR. GLASS: In the Petition, the Claim 11 is -- expressly states
16 that it's the -- not the passive ticket. Did I get that right? It's -- you are
17 correct -- you were correct in your analysis. We did mention --

18 JUDGE GERSTENBLITH: Okay.

19 MR. GLASS: -- this in reply that it would be both, but in the
20 Petition it was limited. I just -- if I could have one more minute, I'd just like
21 to point out, just on this notion of the raffle, counsel said that -- he said that
22 they're recognized -- a raffle is recognized as different. I wrote this down.
23 It's just recognized as qualitatively different. The point is, in a raffle there is
24 a random draw. This is the only example he could come up with, a raffle
25 isn't a random draw, is where you have one ticket in the hat and you're
26 pulling it out. That's not a random draw, that's a sheet. That's -- no one

1 would ever consider that a game to begin with. A raffle, of course, is
2 multiple tickets. They're making a claim construction argument. Counsel
3 could not justify it. He danced around the question in any way he could, but
4 the reality is, they are making a claim construction. They are attempting to
5 limit this and exclude raffles with zero justification and zero analysis.

6 With that, Your Honor, I thank you for the extra 30 seconds on
7 that. Unless you have any questions, I have nothing further.

8 JUDGE GERSTENBLITH: Any other questions from this panel?
9 Okay. Thank you very much, Mr. Glass. Mr. Hails, we're going to come
10 over to you, and we added two minutes additional so you have eight minutes
11 for your rebuttal.

12 MR. HAILS: Fantastic. All right, let's see if I get outsmarted by
13 the share again. How we doing on the share? Do we see Petitioner's
14 demonstratives?

15 JUDGE GERSTENBLITH: Yes, we do.

16 MR. HAILS: Fantastic, okay. Slide 49, right? They were talking
17 about this system working on behalf of the game-provider system. Do you
18 know what that system does? That system authorizes the transactions, right?
19 That is -- again, the red box that we had shown in our prior demonstratives,
20 we're not talking about a middleman, we're not talking about any kind of
21 other thing, we're talking about the game-provider system, or somebody
22 working on behalf of the game-provider system, authorizing the cash
23 register's lottery transactions. I think that dovetails with the Verizon
24 example I gave on my original presentation. We are not talking about a
25 proxy for the store back office or a proxy for a transaction processor.

26 The erased stuff that we talked -- that he showed -- he was

1 referring -- I don't know if it makes sense, timewise to bring it up, he was --
2 well, let's do it. He was pointing to page 121 of Exhibit 1025 saying, he
3 somehow clarified this. Hey, he's going to erase it, but he somehow clarified
4 this. You will see that -- if you keep going in this deposition, down to page
5 123, he doubles down. He says, again, "What was wrong with it? It's
6 because there's a store back office in the diagram." So, it's not like he
7 clarified anything. He still hung onto his theory that -- again, shown here at
8 page 128 of 2051 beginning at line 8 that, "It was wrong because the store
9 back office needed to go."

10 This idea about multiple game providers and whatnot, I think it
11 makes sense -- I'm going to go to our demonstratives at Slide 18. And first,
12 I'm going to -- actually, let me go to the -- shoot -- let me bring the
13 references over, we'll go to Szrek, we'll go to column 2 and the phone card
14 example. In the phone card example, what happens is, a cash register can
15 send something directly to the service provider or it can send things
16 indirectly via the store back office. The store back office is the thing that
17 wakes up and says, oh, I got to talk to my phone registration activator to do
18 things.

19 When we look at our demonstratives, Slide 18, we're again talking
20 about the green box. This dovetails with Szrek's description of how we're
21 going to activate lottery tickets. It's the same kind of thing, the register
22 sends a request for sales information, and the store back office transforms
23 that request into a ticket activation request. That's kind of -- let's see, that
24 transform language, does it use -- I'm not sure it uses it for the phone card
25 example, but it definitely uses it in column 4 beginning at line 56 of Exhibit
26 1005. "The request is usually transformed into an activation request by the

1 store, or back office, which is then sent to the game provider." So, this is not
2 much of an inference, you know, to talk about how it could be used with
3 multiple different entities. The store back office is smart enough to talk to a
4 phone activator. The store back office is smart enough to talk to the game
5 provider 250. The store back office is the thing that's programmed to
6 recognize these kinds of special situations and activate product merchandise,
7 which is the way that Szrek describes things in column 2. There is no need
8 for a third-party system.

9 The other thing that I would mention is, that in the discussion on
10 column 2, down at, around line 51 or so, it describes that the store back
11 office can be connected to a store chain network. And that dovetails with
12 Mr. Glass' explanation that the store chain, when it updates product
13 information and other kinds of things, pushes things down to the site
14 locations. That's what they're doing. They're like, if you're talking about a
15 Best Buy situation, where it's a mega retailer, and we're going to individual
16 locations, it's pushing things down. That's a further reason why the store
17 back-office element is important in these circumstances, and why it's natural
18 to program those kinds of things to handle new product information, whether
19 it's the second game provider or other kinds of merchandise. Okay.

20 JUDGE PESLAK: Mr. Hails?

21 MR. HAILS: Yes, sir.

22 JUDGE PESLAK: Where exactly were you just reading from in --

23 MR. HAILS: Sure, this is all --

24 JUDGE PESLAK: -- (CROSSTALK)?

25 MR. HAILS: Yes. Let's -- let me -- let me clarify that record. So,
26 when we're talking about the store back office and how it's connected to the

1 store chain network, we're looking at column 2, and this is the paragraph -- it
2 begins at page 36 down through -- let's call it 53. And I also cited to another
3 portion, which talks about the transformation being performed by the store
4 back office in the context of a lottery ticket, and that is column 4. Let me
5 double-check that. Yep, that's column 4, and that's the paragraph that begins
6 at line 56. Oh, yes, in Exhibit 1005.

7 Okay. I think that's what I wanted to cover. Are there any
8 questions?

9 JUDGE GERSTENBLITH: Any other questions? No? Thank
10 you very much, Mr. Hails, and thank you, all for doing this. We have taken
11 your arguments under advisement, and we are adjourned. I hope you all
12 have a very good rest of the spring. It looks nice outside today over here.
13 Enjoy your summer, and hopefully we'll have a decision for you in a few
14 weeks. Thank you.

15 MR. HAILS: You as well, thank you.

16 MR. GLASS: Thank you, Your Honors.

17 (Whereupon, the above-titled matter went off the record at 12:35
18 p.m.)

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