

Petitioner's Opposition to Request for Director Review
U.S. Patent No. 11,488,451

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,

Petitioner,

v.

BLACKHAWK NETWORK INC.,

Patent Owner.

Case No. IPR2024-00465

U.S. Patent No. 11,488,451

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW**

I. INTRODUCTION

Having lost before the Board, Patent Owner now seeks to undo the Board's Final Written Decision, including the Board's discretion to determine credibility and assign proper weight to expert testimony. Patent Owner makes this request (Paper 37, "Request") not by disputing that Petitioner's combination of Szrek and Llach meet each and every limitation of the challenged claims or disputing that a POSITA would have a motivation to combine said references. Instead, Patent Owner argues the Board erred in failing to strike the entirety of Petitioner's expert testimony because of an alleged mistake he made during his deposition that he subsequently clarified on redirect. Yet Patent Owner does not even explain how the alleged mistake was material in any way to the Board's conclusion, instead resorting to mischaracterizations of both Mr. Hutton's testimony and the Board's decision. The Director should deny Patent Owner's Request.

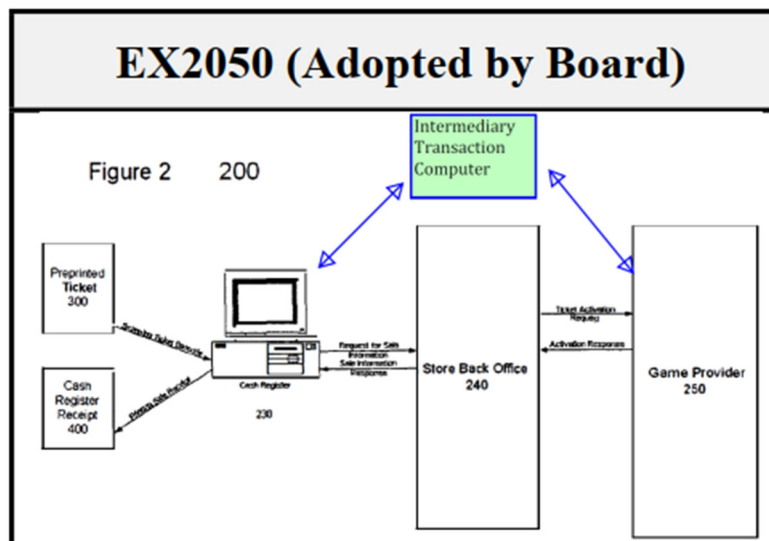
II. FACTUAL BACKGROUND

Patent Owner's recitation of Mr. Hutton's testimony is replete with mischaracterizations. Petitioner provides the following summary for the benefit of the Director, but notes that Mr. Hutton's deposition testimony itself provides the source of truth.

Petitioner's expert is Mike Hutton who, unlike Patent Owner's expert (*see* Paper 20, 6-7), is a seasoned expert in the field of lottery systems, having designed

lottery systems for various local and foreign governments for over forty years. Ex. 1003, ¶¶3-10; Ex. 2051,¹ 13:19-36:13.

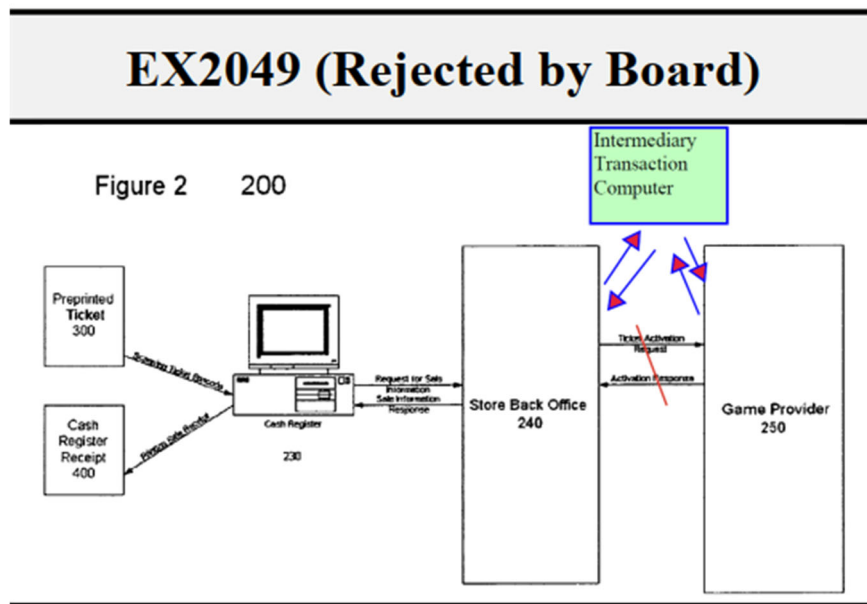
In his declaration submitted in support of the Petition, Mr. Hutton proposed a combination where Llach's "intermediary transaction computer [is] between Szrek's cash register and game provider system." Ex. 1003, ¶180. He further proposed that lottery activation requests and responses go through the intermediary. *Id.*, ¶¶199-200. Exhibit 2050, created by Patent Owner's counsel on-the-fly during Mr. Hutton's deposition, has an intermediary transaction computer between the cash register and game provider system.



Following institution of the IPR, Patent Owner's counsel deposed Mr. Hutton. After several hours of questioning, Patent Owner's counsel began remotely

¹ Petitioner cites to the corrected version of Exhibit 2051.

annotating Szrek's Figure 2 over the Zoom call as shown in Exhibit 2050. Mr. Hutton testified that Exhibit 2050 did not represent his proposed obviousness combination. Ex. 2051, 104:3-104:12. He instead directed Patent Owner's counsel to draw Exhibit 2049, where the intermediary transaction computer is directly between the back office and game provider—however, at no point did he say that the intermediary “must” be there (Request 2). *Id.*, 104:14-109:8. Of note, he testified that Figure 2's lottery transactions between the back office and the game provider “go away” and are replaced with communications with the transaction computer, as reflected in the red cross-off. *Id.*



On redirect, Petitioner's counsel conducted a very short examination. Of relevance were the following questions:

Q. Mr. Hutton, can you turn to the Szrek Patent at Column 3, starting on Line 14? ... So does this passage say that the cash

register can communicate directly with the game provider system?

A. Yes, it does.

Q. In that embodiment, does the cash register need to communicate with the back office to activate a preprinted lottery ticket?

A. Not in that embodiment.

...

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

A. I recall that, yes.

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

A. Yes, it would.

Id., 112:2-113:24.

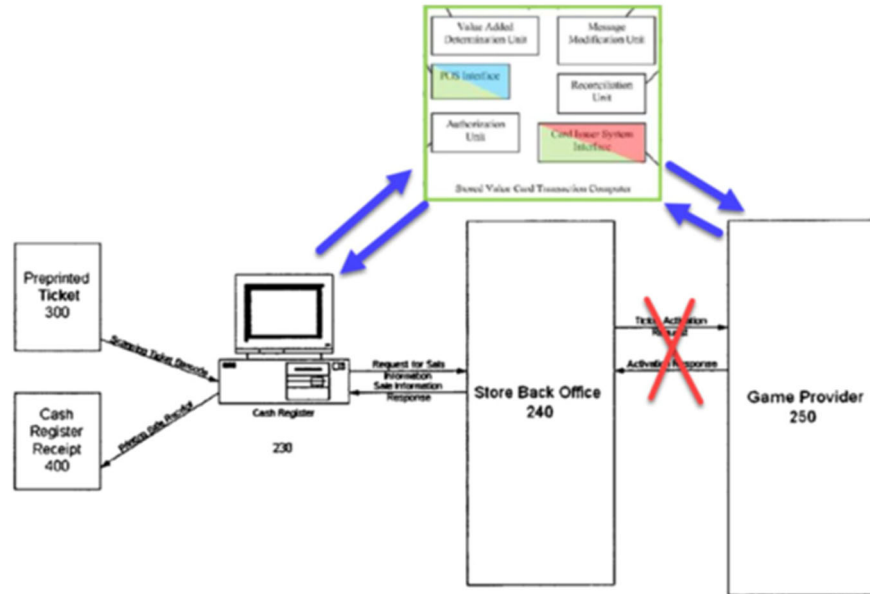
Mr. Hutton's testimony thus made two things clear. *First*, that his proposed combination includes placing Llach's transaction processor either directly between the back office and game provider (as depicted in Exhibit 2049) or directly between the cash register and game provider (as depicted in Exhibit 2050). *Second*, that in either configuration, Figure 2's lottery transactions between the back office and the game provider no longer exist. Importantly, Exhibit 2050 is ***not*** an accurate reflection of his combination because those lottery transactions still exist despite his

testimony that the cash register does not “communicate with the back office to activate a preprinted lottery ticket.” Ex. 2051, 112:21-113:1.

On re-cross, Mr. Hutton was asked why he testified that Exhibit 2050 did not reflect his proposed combination. Ex. 2051, 119:18-121:16. Mr. Hutton responded that Exhibit 2050 “has the store back office in it” and that “[i]f you erase the store back office,” the diagram would be correct. *Id.*, 120:23-121:4; *see also* 123:11-12 (“Q. And you said this was wrong? A. Because there’s a store back office in the diagram.”). He immediately clarified that the store back office could still remain, but “the cash register’s not using the store back office to do these lottery transactions,” instead it “talk[s] to the intermediary transaction computer.” *Id.*, 120:23-121:16; *see also* 128:21-129:8 (testifying that the back office could still perform other necessary functions). Although not the model of clarity, Mr. Hutton testified that his issue with Exhibit 2050 was that it still showed lottery transactions between the back office and game provider, instead of exclusively using the intermediary for lottery transactions.

Mr. Hutton also explained on recross why he considered Exhibit 2049 (where the intermediary is between the back office and game provider) as consistent with Paragraph 180 of his declaration. Ex. 2051, 123:15-1217:19. He explained that his use of the word “cash register” could be understood to include both the POS terminal and the back office. *Id.*

Consistent with Mr. Hutton's testimony, Petitioner introduced the following annotated figure at the oral hearing:



Paper 34, slide 49. This figure is substantively identical to Exhibit 2050 except that it makes clear that the lottery transactions between the back office and game provider no longer exist, as Mr. Hutton testified. Paper 35, 11:14-24 (cash registers “send transaction requests to a lottery administration system via a transaction processor, not via the back office”); 12:16-17 (“Mr. Hutton testified that the cash register is not using the store back office to do these lottery transactions.”).

In its Final Written Decision, the Board carefully scrutinized Mr. Hutton's testimony and Patent Owner's criticism of such and made determinations as to Mr. Hutton's credibility and consistency. The Board correctly noted that “Exhibit 2050 illustrates the following embodiment showing the placement of the third-party

transaction processor” between the cash register and game provider. FWD 28. The Board further correctly noted that, “[a]lthough not as clear as it could have been, Mr. Hutton’s testimony regarding the communication channel for the ticket activation request and activation response indicate that the communication is no longer between the store back office and the game provider; rather, the communication of that request and response is between the cash register and game provider.” FWD 29 (citing Ex. 2051, 119:18-121:16). And the Board correctly noted that “Mr. Hutton confirmed that Exhibit 2050 reflects one arrangement of the combination” with respect to “where one would place Llach’s intermediary transaction computer.” FWD 32 n.16.

Based on this testimony, the Board found credible Mr. Hutton’s testimony regarding Exhibit 2050 and his proposed combination for Szrek and Llach. FWD 29-30. However, the Board did not agree with Mr. Hutton’s testimony that Exhibit 2049 is consistent with his proposed combination, finding not credible his explanation that a POSITA would understand “cash register” includes both point of sale and back office. FWD 32. The Board therefore declined to consider the combination shown in Exhibit 2049. *Id.*

III. THE BOARD DID NOT ABUSE ITS DISCRETION

Patent Owner argues that the Board abused its discretion in partially crediting Mr. Hutton’s testimony, arguing that his testimony was filled with contradictions and

inconsistencies. But this argument is predicated on significant mischaracterizations of Mr. Hutton's testimony. His testimony was not inconsistent, the Board properly understood what he was saying, and the Board did not abuse its discretion in partially crediting his testimony.

First, Patent Owner argues that "Mr. Hutton gave contradictory reasons why EX2050 was incorrect," because he stated that "the back office needed to be 'erased'" and yet "confirmed that activation requests flow from the cash register to the store back office and, further, to the intermediate transaction computer and the game provider." Request 7 (citing Ex. 2051, 12:14-121:4, 104:14-106:4), 8 (describing these positions as "irreconcilable"). But Mr. Hutton's statements concern *different, alternative* configurations. In particular, the former is about Exhibit 2050, whereas the latter is about Exhibit 2049. In Exhibit 2049, the intermediary is between the back office and game provider—so of course lottery transactions go through the back office in that embodiment. But for Exhibit 2050, where the intermediary is placed between the cash register and game provider, Mr. Hutton consistently testified that the back office has no role in lottery transactions and hence should be deleted from the diagram.

Mr. Hutton's positions are not, as Patent Owner repeatedly insists, contradictory. *See* Request 9 (arguing that Mr. Hutton contradicted himself when he said Exhibit 2049 uses a back office for lottery transactions, but Exhibit 2050

should not). Again, Exhibits 2049 and 2050 are *different, alternative configurations* of the placement of the intermediary transaction computer. There was nothing contradictory in Mr. Hutton's testimony that in Exhibit 2049, the back office is part of the flow for lottery transactions, whereas in Exhibit 2050, it is not. The Board did not credit any "contradictions"—for there were none—and Patent Owner's attempt to obfuscate the obvious differences between Exhibits 2049 and 2050 should be rejected.

Second, Patent Owner argues that "Mr. Hutton testified that EX2050 *does not* represent his declaration's modification of Szrek, and, yet, somehow it *does*." Request 7; *see also* 8. This is a gross simplification of Mr. Hutton's testimony. He testified that Exhibit 2050 represents his proposed combination if the back office were removed, or alternatively if the lottery transactions between the back office and game provider were removed. However, he was clear that agreed with the placement of the intermediary between the cash register and game provider. Patent Owner is simply incorrect that Mr. Hutton's testimony "cannot be reconciled." Request 8.

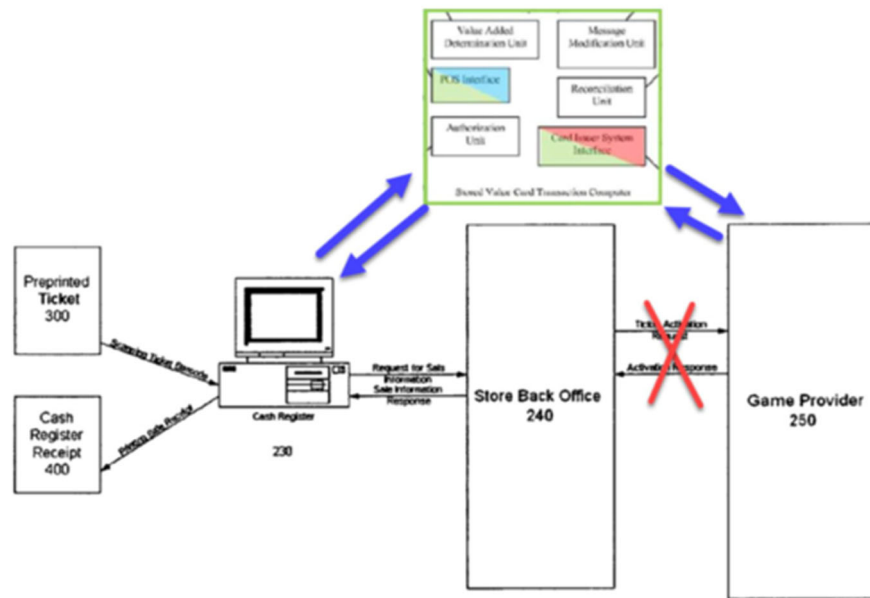
Third, Patent Owner argues that the Board erred in holding that "EX2050 reflects one arrangement" of Mr. Hutton's proposed combination, because the Board also found he lacked credibility when equating the "cash register" with both the point of sale and back office. Request 9-10. Once again, Patent Owner conflates testimony regarding Exhibit 2050 with testimony regarding Exhibit 2049. As

discussed above, in his declaration, Mr. Hutton proposed placing Llach's "intermediary ... between Szrek's cash register and game provider system." Ex. 1003, ¶180. What the Board found lacking credibility was Mr. Hutton's explanation as to why **Exhibit 2049** (with its intermediary placed between the back office and game provider) is consistent with his proposal—the Board did not agree that a POSITA would understand the cash register to include the back office. FWD 32. But with respect to Exhibit 2050, where the intermediary is placed between the cash register and back office, there can be no dispute that this configuration clearly places Llach's "intermediary ... between Szrek's cash register and game provider system." Ex. 1003, ¶180.

Patent Owner argues that Mr. Hutton's testimony was with respect to Exhibit 2050, **not** Exhibit 2049. Request 10-11. Patent Owner once again mischaracterizes Mr. Hutton's testimony, which was that "Point Of Sale could be interpreted as being the cash register **plus** the store back office, or **just** the cash register" making "both of those embodiments [Exhibits 2049 and 2050] consistent with what I wrote" in his declaration. Ex. 2051, 123:15-124:1. It was this testimony, Mr. Hutton's attempt to explain how Exhibit 2049 was "consistent with what I wrote," that the Board did not find credible. FWD 31-32. That this testimony occurred after Patent Owner's counsel had redrawn Exhibit 2050 does not undo the fact that Mr. Hutton was

testifying about “both ... embodiments,” not just Exhibit 2050. Ex. 2051, 123:15-124:1.

Fourth, Patent Owner criticizes Petitioner's “third mockup” of Szrek, which Petitioner concedes is “akin to the EX2050 configuration” except that the lottery transactions between the back office and game provider are removed. Request 11-12.



As an initial matter, the Board did not rely on this demonstrative in its final decision. Moreover, as explained above, this demonstrative reflects Mr. Hutton's consistent testimony that the back office has no role with respect to lottery transactions. Ex. 2051, 120:23-121:16 (“[T]he cash register's not using the store back office to do these lottery transactions.”). Mr. Hutton did not “repeatedly reject[]” this configuration. Request 11-12. His testimony that the Exhibit 2049

configuration uses a back office in no way contradicts his testimony about the Exhibit 2050 configuration.

Finally, Patent Owner argues that Mr. Hutton's testimony with respect to Grounds 1 and 2 "was inconsistent on multiple fronts." The Board did not rule on Grounds 1 and 2 and thus had no occasion to decide on this issue—this is therefore not a basis for the Director to provide any review. Patent Owner's speculation that the Board "implicitly acknowledged" such alleged consistencies "by declining to rule on Grounds 1 and 2" is completely baseless. Request 12.

In any case, Mr. Hutton's testimony was not inconsistent. Patent Owner claims Mr. Hutton gave "two competing definitions" of "random draw lottery ticket." Request 12-13. He did not. In his opening declaration, he testified in the ***Background*** section that "[i]n a random draw lottery, a player purchases a ticket for a lottery draw event that takes place in the future." Ex. 1003, ¶64. He then went on to describe how the numbers on a player's ticket are compared to randomly selected numbers. *Id.* As an initial matter, nothing about testimony is definitional—it is simply an exemplary, introductory description of lotteries. Moreover, this description would include passive games (*e.g.* raffles)—and the weight of the evidence is that passive games are considered to be random draw lotteries. Ex. 1038 ("Passive game: a ***lottery game*** similar to a raffle where a player buys a ticket with

preprinted numbers. The lottery later *randomly draws* numbers that are compared to the players' tickets to determine the outcomes.”).

IV. THE DIRECTOR SHOULD NOT REVERSE THE BOARD'S FINDINGS

Patent Owner argues that the Board erred in finding a motivation to combine, as it relied on Mr. Hutton's testimony. Request 14-15. The Board's decision to partially rely on Mr. Hutton's testimony was correct, and Patent Owner's assertions otherwise rely on mischaracterizations and misinterpretations of the evidence. Moreover, Patent Owner's argument underscores how its request to exclude *all* of Mr. Hutton's testimony is not at all commensurate with the supposed inconsistencies in his testimony about Exhibit 2050.

Patent Owner does not find fault in its Request with anything Mr. Hutton testified about a motivation to combine Szrek and Llach. Patent Owner also does not dispute (and did not dispute below) that the combination of Szrek and Llach reads on each and every limitation of the challenged combinations.

Instead, Patent Owner finds fault with Mr. Hutton's testimony about whether Exhibit 2050 reflects his proposed combination or not. Yet there is no dispute that Mr. Hutton proposed a combination where Llach's "intermediary transaction computer [is] between Szrek's cash register and game provider system" (Ex. 1003, ¶180), and there is no dispute that Exhibit 2050 depicts Llach's intermediary between Szrek's cash register and game provider. Even if the Board had

(unjustifiably) stricken all of Mr. Hutton's testimony about Exhibit 2050, his testimony regarding a motivation to combine the two references would not be affected, and the fact that his combination reads on each limitation would remain undisputed.

In addition, it is black letter law that "[t]he PTAB [i]s entitled to weigh the credibility of the witnesses" and that "[d]etermining the weight and credibility of the evidence is the *special province* of the trier of fact." *Elbit Systems of America, LLC v. Thales visionix, Inc.*, 881 F.3d 1354, 1358 (Fed. Cir. 2018). The Director, sitting as a reviewing body, should be wary of second guessing the Board's credibility determinations, especially where, as here, the Board carefully reviewed and analyzed Mr. Hutton's testimony.

V. CONCLUSION

For these reasons, the Director should deny Patent Owner's Request for Director Review.

Date: August 21, 2025

Respectfully submitted,

By: /s/ James M. Glass

James M. Glass

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 21, 2025, true and correct copies of the foregoing document and supporting materials were served in its entirety on the Patent Owner at the following email addresses:

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Date: August 21, 2025

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