



Petitioner's Demonstratives

Activision Blizzard, Inc. v. Milestone Entertainment, LLC.
June 23, 2026

IPR2025-00708

U.S. Patent No. 8,529,336

IPR2025-00712

U.S. Patent No. 11,393,279

Agenda

Overview

The '336 and '279 Patents

State of the Art

Asserted Prior Art

Disputed Issues

Walker is Prior Art

Kelly683 Renders Obvious the Challenged Claims

Overview

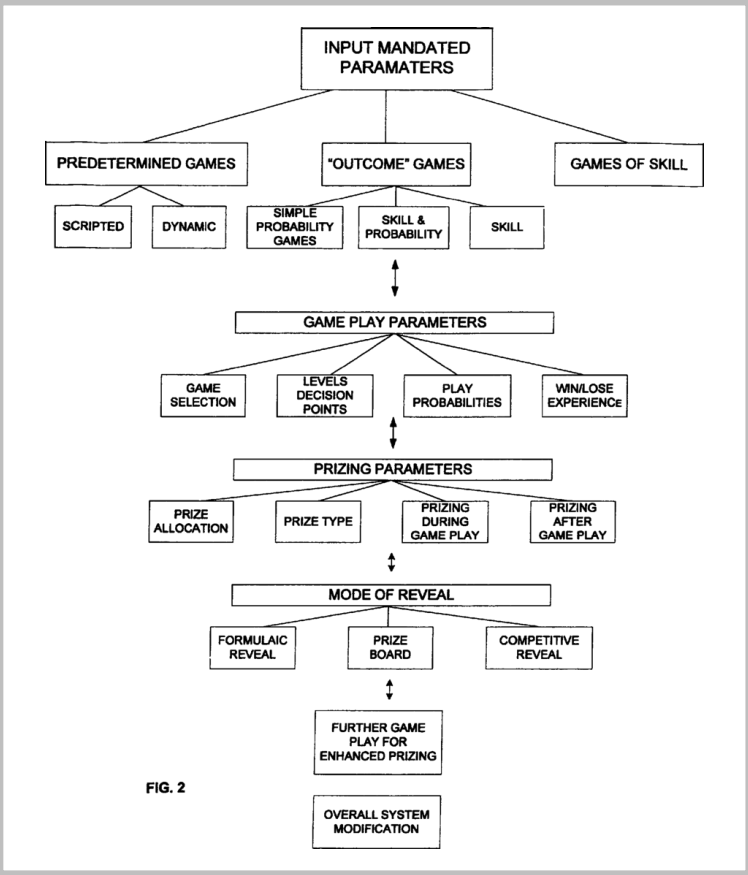
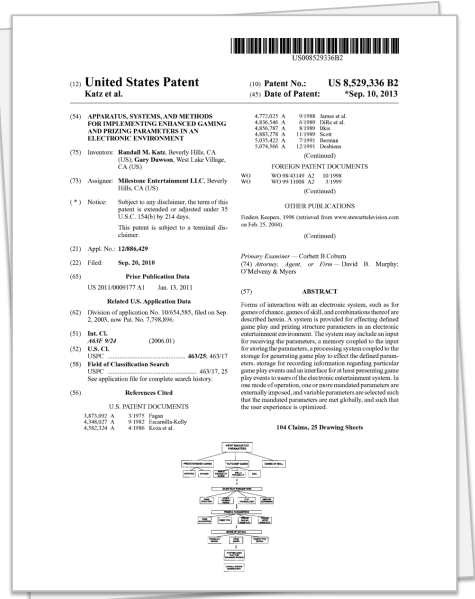
The '336 and '279 Patents

The Purported Invention

Systems and methods that “permit greatly enhanced flexibility in game play and the prizing experience for a player, while globally achieving the mandated parameters.”

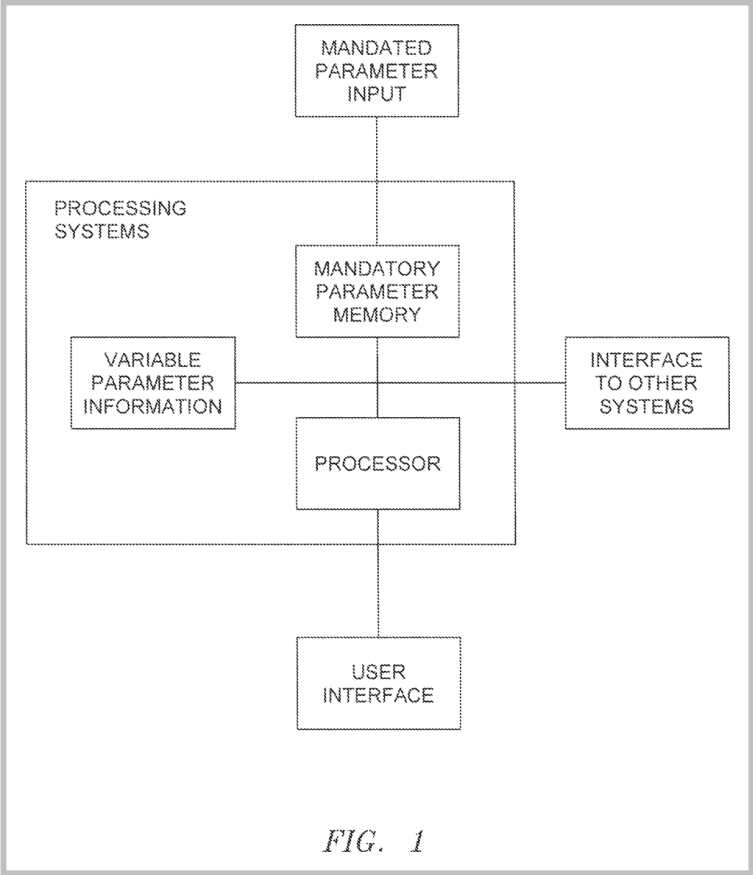
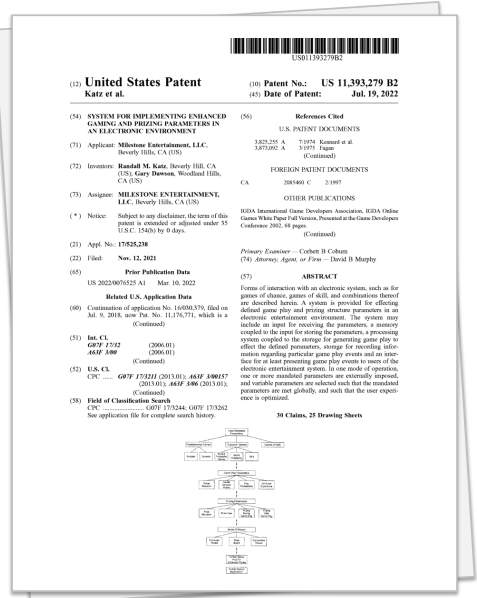
*'279 Pet., 6 (citing '279 EX1001, 5:29-37);
'336 Pet., 6 (citing '336 EX1001, 5:29-37)*

The '336 Patent



'336 EX1001, Fig. 2

The '279 Patent



'279 EX1001,
Fig. 1

'336 Patent

1. A method for electronic interaction with users of the system through a series of interactions, comprising the steps of:

- receiving mandated parameters, the mandated parameters being those which must be achieved by the system as a whole,
- storing in a memory coupled to the input at least the mandated parameters,
- processing in a processing system coupled to the memory for implementing the mandated parameters by utilizing variable parameters, the processing system utilizing the variable parameters to achieve the mandated parameters,
- storing information regarding particular game play events as determined by the processor,
- generating presentations for at least displaying game play events,
- performing game analytics on the game play events, and
- varying the displays presented to the user to achieve the mandated parameters.

'336 EX1001, Claim 1

'279 Patent

1. A system for dynamically varying game play parameters in an electronic environment, over a communications network between multiple users of the system at multiple locations and a remote location including a play engine, the users utilizing communication devices, the communication devices having input capability and generate an output corresponding to the input, comprising:

- a processor,
- memory to:
 - store mandated and programmable variable parameters for use in the course of game play,
 - wherein, the mandated parameters represent parameters which must be achieved by the system as a whole, and the programmable variable parameters represent parameters characterizing at least one of:
 - a game structure and a prizing structure,
 - record game play information regarding particular game play events, and
 - store player's club information, including at least
 - (i) player identification information, and
 - (ii) the amount of player points,
- a play engine coupled to the memory and operating with the processor to:

- implement a first set of programmable variable parameters to provide a first game play experience, modify one or more programmable variable parameters to provide a second set of programmable variable parameters providing a second game play experience, wherein the first game play experience differs from the second game play experience, and utilize the first and second programmable variable parameter sets to achieve the mandated parameters through at least the first and second game play experiences,
- a decision engine coupled to the memory and operating with the processor to:
 - (i) analyze game play as a function of the recorded information regarding particular game play events, and
 - (ii) determine the selection of the first or second programmable variable parameter sets utilizing the recorded game play information with predefined criteria including at least one of: a game structure and a prizing structure,
- a display system for displaying at least the player club points, and
- a system input for receiving player input.

'279 EX1001, Claim 1

State of the Art

Networked Gaming Systems Have Been Around Since the 1980s

Gaming systems have included progressive systems in which the machines are linked together so that, in addition to the normal games played on the gaming machines, players can compete for an additional prize. One type of progressive gaming system is described, for example, in U.S. Pat. No. 4,837,728, issued Jun. 6, 1989, and assigned to International Game Technology.

EX1015, 7 ('076, 1:13-16)

'279 Pet., 5; '336 Pet., 5; '279 EX1003, ¶¶28-29; '336 EX1003, ¶¶28-29

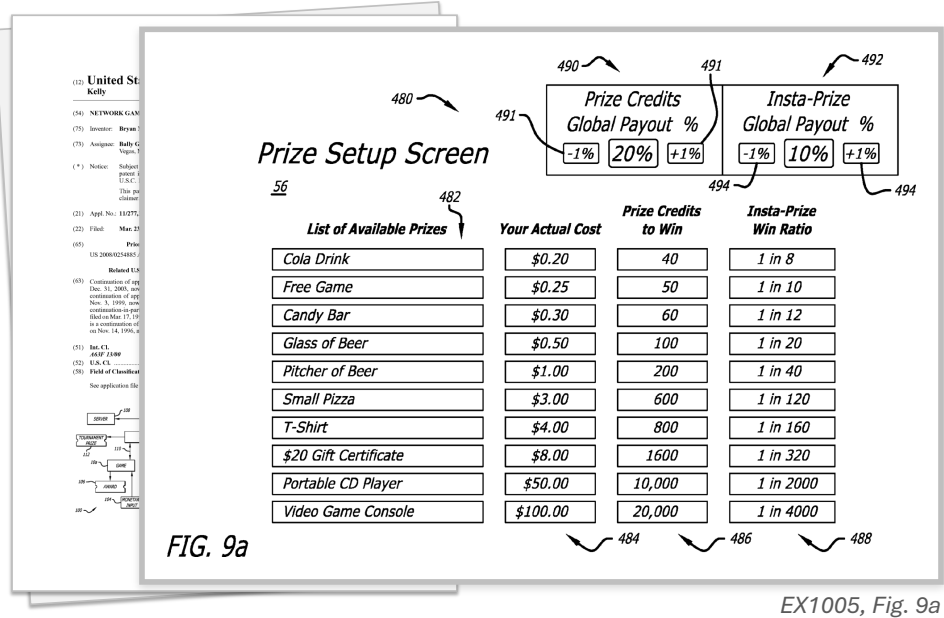
Virtual Money Is Equivalent to Promotions, Points, and Cashless Gaming

tracking systems with virtual money. Virtual money could take the form of promotions, points, and cashless gaming. Such features often permitted players to transfer credits between a gaming machine and an account on a host computer

goals. The objective of such systems was to encourage the players to play more due to the perception of big wins, or wager the virtual money and ultimately real money as well.

Asserted Prior Art

Kelly683 Discloses a Networked Gaming System That Adjusts the Game and Prizing Structure Based on Various Parameters



In another aspect of the present invention, the redemption system provides an operator the ability to adjust prizes and determine the desired prize costs and win ratios. A prize table is displayed on a game apparatus or other computer system.

EX1005, 5:4-6

tion system. This system and method allow a prize provider to individually tailor the variables influencing the play of games, awarding of prize credits, and redemption of prizes to suit the unique profile of each particular user playing on the network gaming system. With this system, the prize provider is able to optimize user enjoyment of the network gaming system; help better retain current users of the network gaming system; and help attract even greater numbers of new users to the network gaming system.

EX1005, 6:10-19

'279 Pet., 7-9; '336 Pet., 8-10

Walker Discloses a Game System That Adjusts the Game and Prizing Structure Based on Predetermined Criteria

(10) United States Patent A Walker et al

(54) METHOD AND APPARATUS FOR ADJUSTING OF GAME PLAY

(70) Inventors: Jay Zimm, Brian (US), Steve

Correspondence: WALKER BROS. PTE. HIGH W. STEAMBOAT, S.
(21) Appl. No.
(22) Filed

(60) Provisional app. 6, 2002

800

GAME IDENTIFIER: G-5327		802
AVAILABLE ADJUSTMENT	804	ANTICIPATED CHANGE IN STANDARD DEVIATION
R-8-01	INCREASE SPEED OF SPACESHIP BY 10-20%	+ 20 POINTS
R-8-03	DECREASE SPEED OF SPACESHIP BY 10-20 %	- 30 POINTS
	INCREASE NUMBER OF LIVES FROM 3 TO 5	- 50 POINTS
R-8-05	INCREASE NUMBER OF HITS NEEDED TO DESTROY A SMALL METEORITE BY 30-50% AND INCREASE SPEED OF SMALL METEORITE BY 20-30%	+ 90 POINTS
	INCREASE POINTS AWARDED FOR DESTROYING LARGE METEORITE BY 20-30% AND DECREASE POINTS AWARDED FOR DESTROYING SMALL METEORITE BY 20-30%	- 100 POINTS
R-8-07	INCREASE TEMPO OF BACKGROUND MUSIC BY 5%	- 5 POINTS
	ADD "SLOW DOWN / REVERSE DIRECTION" CAPABILITY TO SPACESHIP	+ 30 POINTS
R-8-09	DECREASE PRECISION OF SPACESHIP HEADING CONTROLS BY 2 DEGREES	- 40 POINTS
	INCREASE SPEED OF MISSILES BY 10-20%	+ 15 POINTS

FIG. 8

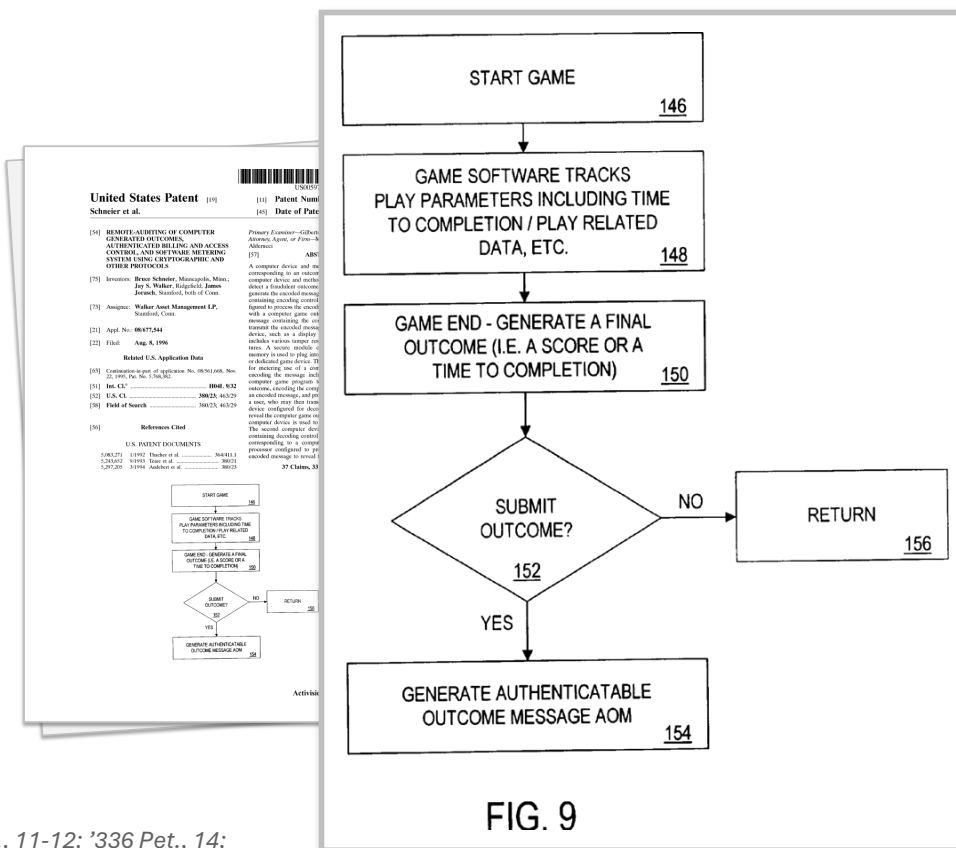
EX1006, Fig. 8

[0022] The invention overcomes the above and other drawbacks of the prior art by providing a method for managing the wide disparity in the results of a game that may be due to the wide disparity in experience and skill level of the players playing the game while also maintaining sufficient disparity in the results to keep player interest in the game. The systems and methods of the present invention facilitate adjustment of a game in order to help ensure that a set of results obtained during a plurality of game plays of a game satisfy one or more predetermined criteria (e.g., that a standard deviation of the results is not greater than a maximum predetermined standard deviation and not lower than a minimum predetermined standard deviation).

EX1006, [0022]

'279 Pet., 9-11; '336 Pet., 10-13

Schneier¹⁴³ Discloses “a system for enabling geographically dispersed tournaments for computer generated games”



score. Therefore, there exists a need for a system whereby players of such games can register their scores with a central computer that certifies the scores and enables players to receive their ranking/rating with respect to other players on a national or even worldwide scale. In this connection, such

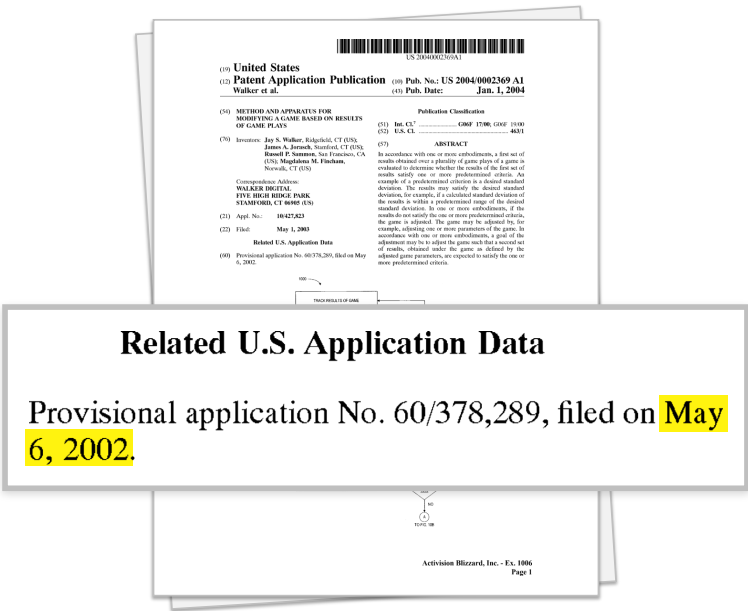
EX1008. 2:48-52

EX1008,
Fig. 9

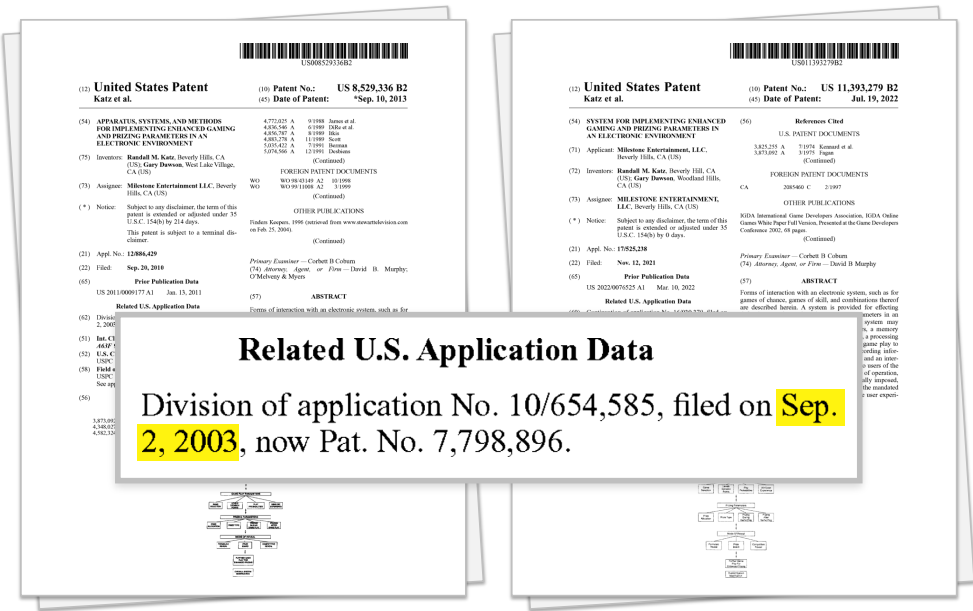
Disputed Issues

Walker Is Prior Art Under 35 U.S.C. §102(e)

Walker Is Prior Art



Presumed Priority Date of Walker
(Walker Provisional Filing Date)



Earliest Effective Filing Date for
'336 and '279

'279 Pet., 5; '635 Pet., 5; '279 Rep., 1; '635 Rep., 1; EX1006; '336 EX1001; '279 EX1001

Walker Is Prior Art



'279 Pet., 5; '635 Pet., 5; '279 Rep., 1; '635 Rep., 1; EX1006; '336 EX1001; '279 EX1001

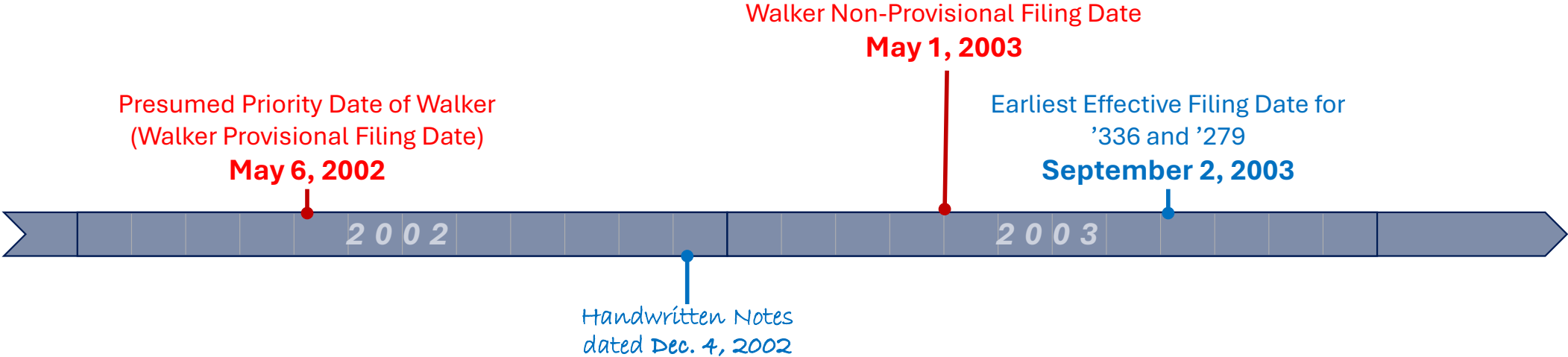
Petitioner has “the initial burden of production, and it satisfi[es] that burden by arguing that [the prior art] anticipate[s] the asserted claims of the under §102(e)(2).”

“The burden of production then shift[s] to [Patent Owner] to argue or produce evidence that either [the prior art] does not actually anticipate, or ... that [the prior art] is not prior art”

Dynamic Drinkware, LLC v. Nat’l Graphics, Inc., 800 F.3d 1375, 1379-1380 (Fed. Cir. 2015)

’279 Rep., 3-5; ’336 Rep., 2-6

Walker Is Prior Art



EX1006; '336 EX1001; '279 EX1001;
'279 POR, 21; '336 POR, 20

“Conception ... requires both (1) the idea of the invention's structure and (2) possession of an operative method of making it.”

Teva Pharmaceutical Industries Ltd. v. AstraZeneca Pharmaceuticals LP, 661 F.3d 1378, 1384 (2011)
(citing *Invitrogen Corp. v. Clontech Labs., Inc.*, 429 F.3d 1052 (Fed.Cir.2005))

“[C]onception requires that the inventor appreciate that which he has invented”

Teva Pharmaceutical, 661 F.3d at 1384

'279 Rep., 19-20; '336 Rep., 21

PO Cannot Antedate Walker’s May 1, 2003 Non-Provisional Filing Date

PO’s Evidence Is Insufficient

EX2017	Declaration of Randall Katz, a named inventor of the ’336 Patent	
EX2013	Declaration of David Murphy	
EX2012	Declaration of John Szeder	
EX2014	U.S. Patent Application No. 10/123,861 (the “’861 Application”)	
EX2016	Handwritten Meeting Notes from December 4, 2002	

’279 Rep., 12-22; ’336 Rep., 14-23

“It is well established that when a party seeks to prove conception via the oral testimony of a putative inventor, the party must proffer evidence corroborating that testimony.”

Chen v. Bouchard, 347 F.3d 1299, 1309 (Fed. Cir. 2003)

Expert testimony “adding nothing beyond the conclusory statements” in the party’s submission is unavailing.

Harmonic Inc. v. Avid Tech., Inc., 815 F.3d 1356, 1363 (Fed. Cir. 2016)

’336 Rep., 15-16; ’279 Rep., 13-15

Declarations Confirm “Mandated” Not Connected to “Variable” Parameters

– and the parameter can be varied to affect those things. What we had not done by that time was to connect the use of such variable parameters to achieving a set of objectives for the system, such as a global payout percentage, a win rate, or any other of a number of system-wide objectives. We called these types of parameters “mandated parameters” in the Milestone Variable Parameters Patents.

EX2017 (Decl. Randall Katz), ¶12; see also ¶20-24

18. As reflected in the meeting notes, inventors Katz and Dawson first described a well-known prizing structure for lotteries: GLEPS, or Guaranteed Low-End Prizing Structure. The meeting notes provide an example of a GLEPS structure:

EX2013 (Decl. David Murphy), ¶18

*'336 POR, 20-21; '279 POR, 21-22;
'279 Rep., 13-15; '336 Rep., 15-17*

Declarations Confirm “Mandated” Not Connected to “Variable” Parameters

1a. receiving mandated parameters, the mandated parameters being those which must be achieved by the system as a whole,

In my opinion, a POSITA would conclude the inventors conceived of this limitation no later than December 4, 2002.

The **notes of the 12/4/02 meeting** identify several examples of mandated parameters that must be achieved by the system as a whole, including a “fair number of low tier prize winners,” “force an even distribution of prizing,” “within every X plays, certain amount of low tier wins,” “guarantee[] the payout,” or increasing the percentage payout of a lottery game. Ex2016. The example of ensuring a “certain amount of low tier wins” “within every X plays.” is a guaranteed win rate – an example of what the 336 Patent calls a “mandated parameter.” *See, e.g.,* Ex1001 at 5:7-11 (“Exemplary mandated parameters may

'279 POR, 21-55; '336 POR, 20-44
'279 Rep., 13-15; '336 Rep., 15-17

EX2012 (Decl. John Szeder), 40; POR, 21-44 (same chart);
EX2017 (Decl. Randall Katz), ¶41 (same chart)

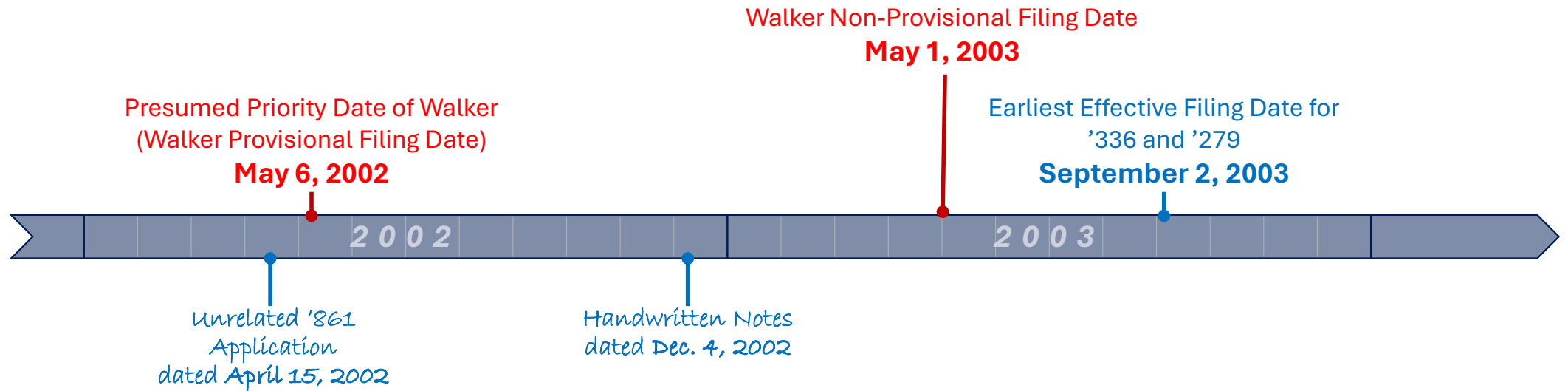
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EX2017	Declaration of Randall Katz, a named inventor of the ’336 Patent	X
EX2013	Declaration of David Murphy	X
EX2012	Declaration of John Szeder	X
EX2014	U.S. Patent Application No. 10/123,861 (the “’861 Application”)	
EX2016	Handwritten Meeting Notes from December 4, 2002	

’279 Rep., 12-15; ’336 Rep., 14-17

Walker Is Prior Art



EX1006; '336 EX1001; '279 EX1001;
'279 POR, 21; '336 POR, 20

The '861 App Fails to Show “Mandated” Connected to “Variable” Parameters

[00125] Fig. 20 shows a chronological flow for a electronic game having a variable component. Initially, the player may obtain a base game ticket from an authorized retailer. At this point, the player may play the base game. If they win, they may elect at that point to redeem their winnings. The secondary game play includes provision of the identification number. The user would then electronically provide the identification number to the game play server/lottery system. The system would then access memory utilizing the identification number to determine the variables associated with that ticket identification number. Such variables may include the prize amount, the game to be played and/or the degree of difficulty as previously explained. The system database may then be updated to indicate that the game had been played. The **variable information** as to the game play is then utilized to conduct game play in accordance with those variables. Ultimately, the player may redeem their winnings at an authorized outlet.

EX2014, [0125]

'279 Rep., 15-17; '336 Rep., 17-19; '279 POR, 25; '336 POR, 25

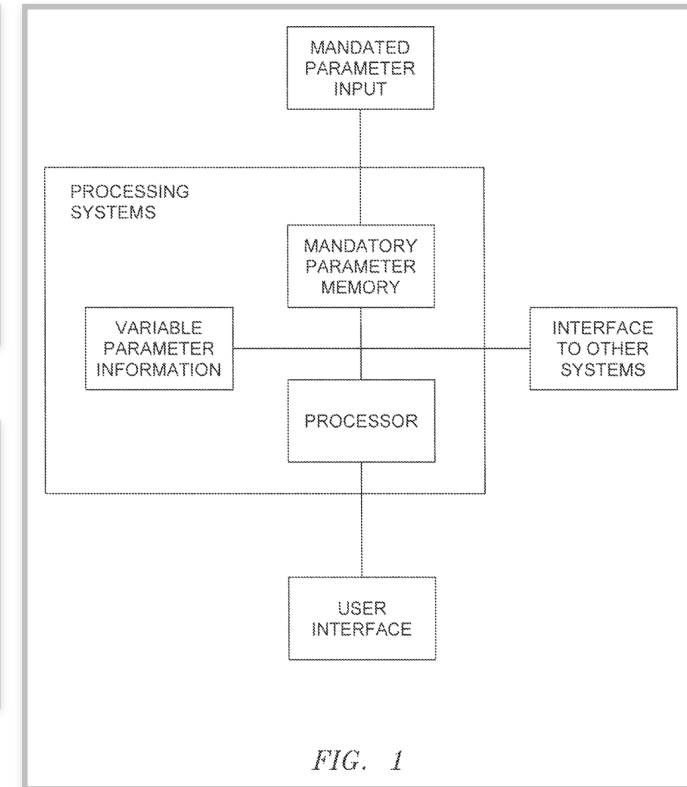
The '861 App Fails to Show “Mandated” Connected to “Variable” Parameters

FIG. 1 shows a block diagram of the system for receiving mandated input parameters, a processor for implementing the mandated parameters through selection and implementation of variable parameters, and interfaces to the user and the remainder of the system.

'279 EX1001, 14:33-37; '336 EX1001, 14:13-17

utilize the first and second programmable variable parameter sets to achieve the mandated parameters through at least the first and second game play experiences,

'279 EX1001, 46:8-9; '336 EX1001, 14:13-17



'279 EX1001, Fig. 1;
'336 EX1001, Fig. 1

'279 Rep., 15, 17; '336 Rep., 17-18; '279 POR, 29-30; '336 POR, 29-30

The December 4, 2002 Meeting Notes Fail to Show "Mandated Parameters"

Randy Katz; Gary Dawson.

12/04/02.

Predetermined Game
No or Minimal Interaction

Whether You Have purchased a Ticket
or Lottery, can- ~~select~~ select #1 from acct.

GLEPs-- e.g. 100 Tickets in Packet.
At least \$50 of coins.

Has To Translate that into Internet or SMS.

Now- Virtual Scratch-off Games
DK has they do prizes.
Generate all games in advance.
Usually predetermined-- in random.

Force an even distribution of prizes.
• Fair # of low tier prize winners.
• Virtual scratch (not limited to 100).
Win every X plays.
Certain amount of low tier wins.
Lottery- Reg's 75% payout.
Take Maximum Unwinnable, Subdivide

Perfect 10

SMS- Activate Game.

Certain # of Winnings Contributions

Certain # of Losses Contributions

Ensure that win every X is the 2
winning combo should be randomized.

-2-

"Plans" to generate the lot.

Individual-- Every player is entitled to
his Virtual GLEPs system.

Level 2--

Complete. You have hit 10.

Here to the Prize Board- pick "4".

Prize is predetermined.
Variable Top Prize

Lottery- 75% payout to 75%.

Casino 95-98%.

~~Can~~

~~Can~~

Can increase % of coins by the level 2.

In physical lottery, Free play costs
the system money.

Add this to any electronic game possibilities.
May need it to be predetermined.
That guarantees the payout.

Can apply to slot-machine

Video Lottery Terminal (VLT)

Ch- Jacko, Peko re. Predetermined.

PA- Watch

Fixed payout & randomization.

'279 Rep., 18-19;
'336 Rep., 19-20

EX2016, 1-2

“Mandated Parameters” Alone Do Not Connect to “Variable Parameters”

Q. Okay. And so here you wrote that Kelly683 discloses mandated parameters, and one of the disclosures of Kelly that you contend discloses **the use of mandated parameters, as claimed in the Milestone patents**, is the disclosure of a global payout percentage. Do you see that?

A. Yes.

Q. And that is your opinion, that because Kelly discloses -- or discusses a global payout percentage, it discloses, in your opinion, the mandated parameters that are described in the '336 patent, correct?

A. That is -- that is one of the parameters that Kelly discloses that would qualify as a mandated parameter.

EX2020, 15:7-22

'279 Sur-Rep., 11-12; '336 Sur-Rep., 11-12

“Mandated Parameters” Alone Do Not Connect to “Variable Parameters”

Q. And you, prior to providing service in these matters, you had heard the term "win ratio" in -- in the industry?

A. Yes.

Q. It's a commonly used term?

A. It's a common term, along with hit frequency and similar things. Anyone skilled in the art understands these terms.

Q. And that was true in 2004 as well?

A. That is correct.

Q. And why would a person of skill in the art reading Kelly683 understand the discussion of win ratios to be a disclosure of mandated parameters as claimed in the Milestone patents?

A. As described by Kelly, these are parameters that are set up for the entire system to maintain, which are mandated parameters, according to the claim structure, so they qualify for those values, and it is something that you would want to do with your system is set up these kind of parameters so you know you're going to make money.

EX2020, 22:15-23:12

'279 Sur-Rep., 11-12; '336 Sur-Rep., 11-12

A “general goal or research plan [Milestone] hopes to pursue” does not show conception.

Invitrogen Corp. v. Clontech Labs, Inc., 429 F.3d 1052, 1063 (Fed. Cir. 2005)

'279 Rep., 18-19; '336 Rep., 20

PO Cannot Antedate Walker’s May 1, 2003 Non-Provisional Filing Date

PO’s Evidence Is Insufficient

EX2017	Declaration of Randall Katz, a named inventor of the ’336 Patent	X
EX2013	Declaration of David Murphy	X
EX2012	Declaration of John Szeder	X
EX2014	U.S. Patent Application No. 10/123,861 (the “’861 Application”)	X
EX2016	Handwritten Meeting Notes from December 4, 2002	X

’279 Rep., 12-22; ’336 Rep., 14-23

“[I]nventors fail[] to establish due diligence ... [where] the inventors possessed the capacity to test the invention and chose instead to test” something else.

Griffith v Kanamaru, 816 F.2d 624, 627 (Fed. Cir. 1987)

'279 Rep., 20; '336 Rep., 21

PO Fails to Show Reasonable and Continuous Diligence

Exhibit No.	Billing Code	Dates	Amount
EX2022	0443773-00008	3/1/03 – 3/31/03	\$0
EX2023	0443773-00008	4/1/03 – 4/30/03	\$0
EX2024	0443773-00008	5/1/03 – 5/31/03	\$0
EX2025	0443773-00008	7/1/03 – 7/31/03	\$6,820.80
EX2026	0443773-00008	9/1/03 – 9/30/03	\$717.15

EX2013, ¶¶21-23

EX2022-2026; EX2017, ¶40; '279 Rep., 20-21; '336 Rep., 21-23

PO Fails to Show Diligence on Mandated Parameters Patents

DATE	NAME	DESCRIPTION	HOURS
<u>Group: Attorney</u>			
12/04/02	D MURPHY	TELEPHONE CONFERENCE WITH R. KATZ AND G. DAWSON REGARDING GAME IMPROVEMENTS; FOLLOW UP REGARDING SAME; REVIEW OF MATERIALS FROM G. DAWSON	1.10

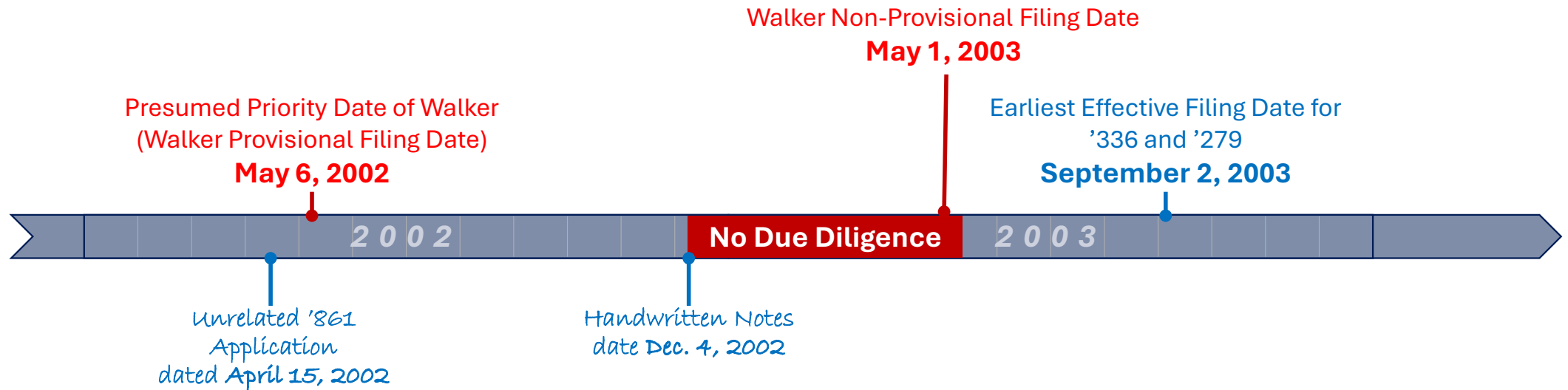
EX2022, 224

25. Attached as Exhibits 2022 through 2026 are true and correct copies of select billing records for my work on Milestone patent matters, kept in the ordinary course of business at O’Melveny & Myers. Generally, billing codes 0443773-00008 and some entries in 0443773-00099 pertain to the Milestone Variable Parameters Patents.

EX2013, ¶25

'279 Sur-Rep., 17;
'336 Sur-Rep., 17

PO Fails to Show Reasonable and Continuous Diligence



EX1006; '336 EX1001; '279 EX1001; '279 POR, 21;
'336 POR, 20; '279 Rep., 19-21; '336 Rep., 21-23

-
- (1) At least one claim of Walker is supported by its provisional (U.S. Provisional Application No. 60/378,289 (the “’289PROV”); and
 - (2) The specific subject matter relied upon as prior art is supported by the ’289PROV

In re Riggs, 131 F.4th 1377, 1384 (Fed. Cir. 2025); *Forescout Techs., Inc. v. Fortinet, Inc.*, IPR2021-01328, Paper 12, at 7-10 (Jan. 27, 2022)

’279 Rep., 5; ’336 Rep., 6

EX1031, 1

41

ACTIVISION | **BLIZZARD**

41

Walker's Provisional Provides Written Description Support for at Least One Claim

What is claimed is:

1. A method comprising:

determining whether a set of results achieved for a game satisfy one or more predetermined criteria associated with the game; and

adjusting the game if the set of results of the game do not satisfy the one or more predetermined criteria.

EX1006, Claim 1

'279 Rep., 6; '336 Rep., 7

Under §112(a), “a skilled artisan [] [need] reasonably conclude, based on the patent’s disclosures and the knowledge of a person skilled in the art, that the applicant possessed [the claimed invention].”

Medtronic, Inc. v. Teleflex Innovations S.a.r.l., 69 F.4th 1341, 1354 (Fed. Cir. 2023)
(quoting *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1582 n.7 (Fed. Cir. 1996))

'279 Rep., 6; '336 Rep., 7

The '289PROV Supports “determining whether a set of results achieved for a game satisfy one or more predetermined criteria associated with the game”

variance – In this disclosure, the term variance is not limited to the strict mathematical definition of variance, and is understood to include other measurements of distribution. For example, it is understood by those skilled in the art that a standard deviation may be calculated by taking the square root of a variance. Therefore, the term “variance” in this disclosure is understood to encompass related concepts like standard deviation. See Section 8.2 for details about calculating a variance.

EX1031, 5

game satisfies one or more predetermined criteria may comprise calculating a variance of the results and determining whether the calculated variance is within a predetermined range of a desired variance. In another example, the

EX1006, [0024]

'279 Rep., 7; '336 Rep., 8

The '289PROV Supports “determining whether a set of results achieved for a game satisfy one or more predetermined criteria associated with the game”

game satisfies one or more predetermined criteria may comprise calculating a variance of the results and determining whether the calculated variance is within a predetermined range of a desired variance. In another example, the

EX1006, [0024]

threshold. In yet another example, the controller 205 may determine whether a range of the results achieved is within a range defined by a predetermined number of a predetermined standard deviation of the mean result.

EX1006, [0249]

According to one embodiment, the controller may modify a game based on **standard values for variance**. For example, the controller may determine ideal minimum and maximum levels of variance in prizes for a game. If the variance for the game rises above the ideal maximum variance or below the ideal minimum variance, then the controller may take steps to modify the game and resolve the problem. According to one embodiment, standard values for variance may be provided by an operator of the controller (e.g., an employee of a company that runs a gaming website). Alternatively, or in addition, the controller may determine ideal values for variance using data mining or artificial intelligence algorithms.

According to one embodiment, the controller may determine **how much to change** the variance of a game. For example, the controller may determine that currently the standard deviation in prizes awarded in the game of Meteorites is 435 points (e.g., as shown in the game statistics database shown in Figure 4). Continuing this example, the controller may determine that Meteorites should be modified to reduce the standard deviation to approximately 200 points. Similarly, the controller may determine that the standard deviation should be reduced by 235 points. In a second example, the controller may determine to increase the variance in scores for novice players by 100 points.

EX1031, 14

'279 Rep., 8; '336 Rep., 8, 11; EX1006, [0078]-[0081], [0250]-[0263]

The '289PROV Further Describes Whether a Set of Results Achieved for a Game Satisfy These Predetermined Criteria (*e.g.*, Variances)

According to one embodiment, the controller may determine whether a calculated variance in prizes for a video game is too high or too low. Examples of determinations that may be made by the controller include:

- The variance in prizes for a particular data set (*e.g.*, a particular type of player, a particular type of game) is **too low**. If this occurs, then players may become bored because they always get approximately the same score. To avoid this problem, the controller may modify a game to increase the variance in prizes.
- The variance in prizes for a particular data set (*e.g.*, a particular type of player, a particular type of game) is **too high**. If this occurs, then some players may become discouraged because the game is too unpredictable or because the prizes they win in the game are much less than the top level prizes in the game. In this case, the controller may modify a game to decrease the variance of prizes.

EX1031, 13

'279 Rep., 9; '336 Rep., 11

The '289PROV Supports “adjusting the game if the set of results of the game do not satisfy the one or more predetermined criteria”

POTENTIAL MODIFICATION TO METEORITES GAME	ANTICIPATED CHANGE IN STANDARD DEVIATION OF PRIZES
INCREASE SPEED OF SPACESHIP BY 10-20%	+ 20 POINTS
DECREASE SPEED OF SPACESHIP BY 10-20 %	- 30 POINTS
INCREASE NUMBER OF LIVES FROM 3 TO 5	- 50 POINTS
INCREASE NUMBER OF HITS NEEDED TO DESTROY A SMALL METEORITE BY 30-50% AND INCREASE SPEED OF SMALL METEORITE BY 20-30%	+ 90 POINTS
INCREASE POINTS AWARDED FOR DESTROYING LARGE METEORITE BY 20-30%% AND DECREASE POINTS AWARDED FOR DESTROYING SMALL METEORITE BY 20-30%	- 100 POINTS
INCREASE TEMPO OF BACKGROUND MUSIC BY 5%	- 5 POINTS
ADD "SLOW DOWN / REVERSE DIRECTION" CAPABILITY TO SPACESHIP	+ 30 POINTS
DECREASE PRECISION OF SPACESHIP HEADING CONTROLS BY 2 DEGREES	- 40 POINTS
INCREASE SPEED OF MISSILES BY 10-20%	+ 15 POINTS

FIG. 5

According to one embodiment, the controller may modify a game based on **standard values for variance**. For example, the controller may determine ideal minimum and maximum levels of variance in prizes for a game. **If the variance for the game rises above the ideal maximum variance or below the ideal minimum variance, then the controller may take steps to modify the game and resolve the problem.** According to one embodiment, standard values for variance may be provided by an operator of the controller (e.g., an employee of a company that runs a gaming website). Alternatively, or in addition, the controller may determine ideal values for variance using data mining or artificial intelligence algorithms.

EX1031,
14, Fig. 5

EX1031, Fig., 5; '279 Rep., 8-10; '336 Rep., 11-12

“[T]o claim priority to the provisional filing date, the portion of the application relied on ... as prior art must be supported by the provisional application.”

In re Riggs, 131 F.4th 1377 (Fed. Cir. 2025)

'279 Rep., 5; '336 Rep., 6

The '289PROV Supports the Prior Art Disclosure of “mandated parameters” (The Predetermined Criteria, *e.g.*, Variance)

According to one embodiment, the controller may determine whether a calculated variance in prizes for a video game is too high or too low. Examples of determinations that may be made by the controller include:

- The variance in prizes for a particular data set (e.g., a particular type of player, a particular type of game) is **too low**. If this occurs, then players may become bored because they always get approximately the same score. To avoid this problem, the controller may modify a game to increase the variance in prizes.
- The variance in prizes for a particular data set (e.g., a particular type of player, a particular type of game) is **too high**. If this occurs, then some players may become discouraged because the game is too unpredictable or because the prizes they win in the game are much less than the top level prizes in the game. In this case, the controller may modify a game to decrease the variance of prizes.

EX1031, 13

'279 Rep., 9; '336 Rep., 11

The '289PROV Supports the Prior Art Disclosure of “mandated parameters” (The Predetermined Criteria, *e.g.*, Variance)

GAME IDENTIFIER: G-5327		802
AVAILABLE ADJUSTMENT	804	ANTICIPATED CHANGE IN STANDARD DEVIATION 806
R-8-01 → INCREASE SPEED OF SPACESHIP BY 10-20%		+ 20 POINTS
R-8-03 → DECREASE SPEED OF SPACESHIP BY 10-20 %		- 30 POINTS
→ INCREASE NUMBER OF LIVES FROM 3 TO 5		- 50 POINTS
R-8-05 → INCREASE NUMBER OF HITS NEEDED TO DESTROY A SMALL METEORITE BY 30-50% AND INCREASE SPEED OF SMALL METEORITE BY 20-30%		+ 90 POINTS
→ INCREASE POINTS AWARDED FOR DESTROYING LARGE METEORITE BY 20-30% AND DECREASE POINTS AWARDED FOR DESTROYING SMALL METEORITE BY 20-30%		- 100 POINTS
R-8-07 → INCREASE TEMPO OF BACKGROUND MUSIC BY 5%		- 5 POINTS
→ ADD "SLOW DOWN / REVERSE DIRECTION" CAPABILITY TO SPACESHIP		+ 30 POINTS
R-8-09 → DECREASE PRECISION OF SPACESHIP HEADING CONTROLS BY 2 DEGREES		- 40 POINTS
→ INCREASE SPEED OF MISSILES BY 10-20%		+ 15 POINTS

FIG. 8

EX1006, Fig.8

POTENTIAL MODIFICATION TO METEORITES GAME	ANTICIPATED CHANGE IN STANDARD DEVIATION OF PRIZES
INCREASE SPEED OF SPACESHIP BY 10-20%	+ 20 POINTS
DECREASE SPEED OF SPACESHIP BY 10-20 %	- 30 POINTS
INCREASE NUMBER OF LIVES FROM 3 TO 5	- 50 POINTS
INCREASE NUMBER OF HITS NEEDED TO DESTROY A SMALL METEORITE BY 30-50% AND INCREASE SPEED OF SMALL METEORITE BY 20-30%	+ 90 POINTS
INCREASE POINTS AWARDED FOR DESTROYING LARGE METEORITE BY 20-30%% AND DECREASE POINTS AWARDED FOR DESTROYING SMALL METEORITE BY 20-30%	- 100 POINTS
INCREASE TEMPO OF BACKGROUND MUSIC BY 5%	- 5 POINTS
ADD "SLOW DOWN / REVERSE DIRECTION" CAPABILITY TO SPACESHIP	+ 30 POINTS
DECREASE PRECISION OF SPACESHIP HEADING CONTROLS BY 2 DEGREES	- 40 POINTS
INCREASE SPEED OF MISSILES BY 10-20%	+ 15 POINTS

FIG. 5

EX1031, Fig.5

'279 Rep., 10-11; '336 Rep., 12-13

Kelly683 Alone or in View of the Knowledge of the POSITA Renders Obvious the Challenged Claims

'336 Patent Claim 1

Kelly683 Discloses “a processing system utilizing variable parameters to achieve the mandated parameters” (1.c)

being played. For example, in an action game the speed of controlled objects, response of input devices, and the like, can be adjusted so that most players don't receive a score higher than a particular value. In card games, the frequencies of winning combinations of cards can be adjusted. In quiz games, the difficulty of the questions at various times during the game can be adjusted so that average players will typically win a certain number of prize credits per game. Durations of games, which have a fixed duration, can also be adjusted to achieve an average payout level of prize credits.

EX1005, 38:65-39:7

Furthermore, the redemption system of the present invention vastly decreases operator involvement in a prize redemption system and the overhead of maintaining a prize structure for redemption games. An operator need only input desired prizes and a desired percentage of income that is to be paid back to players, and the system can automatically determine prize credit costs and win ratios for the entered prizes, which achieve the desired profitability of the game apparatus. These entered prizes and prize costs are then automatically provided to players on the game apparatus. This reduces the operator's need to update prizes and prize costs, and it provides a far more exact system for maintaining prizes and achieving a desired profitability of offered games, thereby reducing operating and maintenance costs of redemption games and allowing redemption games to be provided in the non-traditional gaming environments.

EX1005, 5:55-6:3

'336 Pet., 20-23; '336 Rep., 23-24

Kelly683 Discloses “a processing system coupled to the memory” (1.c)

Kelly683 discloses that the gaming system processes information using server 108 (*processing in a processing system*) including the storage device (*coupled to the memory*). EX1005, 18:33-36 (“The server 108 can be a separate device or apparatus which includes a controller, such as a microprocessor, and/or a storage device, such as a hard disk drive, memory devices, and the like.”). A POSITA would have understood that server 108 is used to process and store information used by the gaming system (*for implementing*). Crevelt ¶96.

Petition for Inter Partes Review of U.S. Patent No. 8,529,336, 21

'336 Pet., 21

Kelly683 Discloses “storing information regarding particular game play events as determined by the processor” (1.d)

Microprocessor 28 is coupled to RAM 30 by a data (D)/address (A)/control (C) bus 36 to permit the use of RAM for scratch-pad memory and other functions during a game process. ROM 32 is preferably an erasable, programmable read-

EX1005, 15:60-63

playing piece. Each type of user input can provide a particular game command to the game processor 12, and the game processor interprets the commands and influences game states and game events in the game process accordingly.

EX1005, 10:12-15

'336 Pet., 23-24; '336 Rep., 24-26; '336 EX1003 (Crevelt Decl.) ¶101

Kelly683 Discloses “storing information regarding particular game play events as determined by the processor” (1.d)

A. No. Kelly discloses that the prize table is stored in the server, and this is an example of the prize table on the input screen.

Anyone skilled in the art knows that when you're going to input it, you got to store it someplace. And it has to be stored in this case, it will be stored in the prize server, or any other memory that was -- the designer chose to use.

EX2020, 34:4-12

101. To the extent that Kelly683 does not expressly disclose that the game play information is stored, a POSITA would have found this obvious. A POSITA would have understood that the processor would have necessarily stored the game play information the coupled memory in order to implement the information.

EX1003, ¶101

'336 Pet., 22-24; '336 Rep., 24-26; '336 EX1003 (Crevelt Decl.) ¶101

Kelly683 Discloses “performing game analytics on the game play events” (1.f)

identification and their associated game scores. In other embodiments, additional information can also be stored in the tournament list, which can be used to help determine a winner or to provide statistical information for the operator of the tournament. For example, the time the player took to play a game, the number of times a player has participated in similar previous tournaments, and the like

EX1005, 32:27-33

As an option, the previous embodiment may be modified by increasing the variety and/or number of specific prize credits under certain circumstances. This number may be increased based on the amount of times a particular game is played, the number of times that different games are played, or by achieving a game-related goal, thus affording a “frenzy”-type situation.

EX1005, 56:46-51

winners or top players of the tournament. The number of times the player has played can be stored with a player identification on a storage device or in memory or at a central database accessible by game apparatus 100. Alternatively, the

EX1005, 25:23-26

'336 Pet., 25-26; '336 Rep., 26-27

'279 Patent Claim 1

Kelly683 Discloses “memory to...record game play information regarding particular game play events” (1.b.ii)

1. A system for dynamically varying game play parameters in an electronic environment, over a communications network between multiple users of the system at multiple locations and a remote location including a play engine, the users utilizing communication devices, the communication devices having input capability and generate an output corresponding to the input, comprising:

a processor,

memory to:

store mandated and programmable variable parameters for use in the course of game play,

wherein, the mandated parameters represent parameters which must be achieved by the system as a whole, and the programmable variable parameters represent parameters characterizing at least one of:

a game structure and a prizing structure,

record game play information regarding particular game play events, and

store player's club information, including at least

(i) player identification information, and

(ii) the amount of player points,

a play engine coupled to the memory and operating with the processor to:

'279, Pet., 22-23; '279 Rep., 22-25

'279, Claim 1

Kelly683 Discloses “memory to...record game play information regarding particular game play events” (1.b.ii)

playing piece. Each type of user input can provide a particular game command to the game processor 12, and the game processor interprets the commands and influences game states and game events in the game process accordingly.

EX1005, 10:12-15

network gaming and prize redemption system; (2) a game identifier relating to a particular game played by the user of

EX1005, 6:26-27

precise prize credit payout average. Previous game data can be stored in a storage device local to the game unit 10 or on a separate medium or a remote apparatus such as server 108.

EX1005, 39:14-16

Q. Okay. So I'd like to ask you a little bit about what it means to store information regarding particular game play events.

Is storing the amount of money won in an individual instance of a game play, storing information regarding a game play event in the meaning of this patent?

A. Again, this is storing information of the game play events, what's happened, what's done, the stakes in the game, the levels the game, whatever has happened in the game is being stored and obviously, you know, wins and losses, etc., would logically be one of those items stored but not all of those items stored. We're not limited to that item.

EX2020, 66:11-67:3, 67:5-14 (objection omitted)

'279 Pet., 22-23; '279 Rep., 22-25

Kelly683 Discloses “analyz[ing] game play as a function of the recorded information regarding particular game play events” (1.d.i)

winners or top players of the tournament. The number of times the player has played can be stored with a player iden-

EX1005, 25:23-24

credits under certain circumstances. This number may be increased based on the amount of times a particular game is played, the number of times that different games are played, or by achieving a game-related goal, thus affording a “frenzy”-type situation.

EX1005, 56:49-52

'279 Pet., 31-32; '279 Rep., 26-28

Kelly683 Discloses “determining the selection of *game* or prize structures utilizing the recorded game play information” (1.d.ii)

Game Structure

Once the required revenue, R, is determined for a particular prize, then the average number of prize credits or tickets, T, that are known to be awarded per game is determined (average ticket payout). It is possible for the game’s manufacturer to adjust game difficulty so that, on average, a predetermined number of prize credits will be awarded for each game played. For example, games often have a payout about 8-12 tickets game, averaging about 10 per game. The difficulty and thus the average prize credits awarded per game can be adjusted using a variety of techniques that depend on the type of game being played. For example, in an action game the speed of controlled objects, response of input devices, and the like, can be adjusted so that most players don’t receive a score higher than a particular value. In card games, the frequencies of winning combinations of cards can be adjusted. In quiz games, the difficulty of the questions at various times during the game can be adjusted so that average players will typically win a certain number of prize credits per game. Durations of games, which have a fixed duration, can also be adjusted to achieve an average payout level of prize credits.

EX1005, 38:55-39:7

’279 Pet., 32-33; ’279 Rep., 26-28; EX2020, 113:17-114:8

given outcome. This system permits game play where the player’s actions can determine the outcome of the individual game, but where the outcome for a set or series of game plays is predefined. A player provides input for game play, where for at least some players their actions determine their individual outcome. In operation, a set of outcomes is defined for multiple plays. Prior to individual game play, an

’279 EX1001, 7:47-52

- Q. Why is providing statistical information to an operator of a system performing game analytics on game play events?
- A. Well, you've got to analyze some data, and the data that you're collecting is your game play events, and you're going to use that in any analysis. That's the data you are collecting in the system is the game play events, and therefore, any analysis you do on it, for whatever purpose, is going to be on those game play events.

EX2020, 72:24-73:9

Kelly683 Discloses “determining the selection of *game* or prize structures utilizing the recorded game play information” (1.d.ii)

The 861 Application further discloses recording information regarding game play events for multiple users. The discussion of 1[b.ii] is incorporated by reference. For example, it describes that “[t]he game play server/lottery system would then access the system memory to retrieve the stored information associated with the identification data, such as to determine whether the player wins or loses, and if they win, *the amount and form of their win.* The system records would be updated to indicate that game play occurred.” Ex2014 at [00124].

EX2017, 62-64

’279 Pet., 28-33; ’279 Rep., 26-28; EX2020, 113:17-114:8

Kelly683 Discloses “determining the selection of game or *prize* structures utilizing the recorded game play information” (1.d.ii)

Prize Structure

08/628,490. In one embodiment, the random determination of whether a particular prize is to be awarded is also modified by statistical information to create a “best fit” of prizes awarded according to the operator’s desired odds; this is done

EX1005, 36:63-66

lower tier prizes. The allocation of prizes may be defined in various ways, such as by defined numbers and values of prizes for a given number of plays, system-wide for every Nth play, or based on the number of plays for a particular player, or groups of players, or based on the source of the play, such as a given retailer, or by the geographic region of the source of the play, or based on a time parameter, such as a predefined number of wins of certain amounts per week.

279 EX1001, 6:60-67

dom (or pseudo-random) determination provides. For example, every 8,000 games, two video consoles are to be awarded. If it is randomly determined that a third video console is to be awarded within, e.g., the 3,000th game, then a different prize can be awarded so that the desired odds are better met. For example, the next most valuable prize in the list can be awarded instead of the video console, as long as awarding the next prize would fit the desired odds for that prize.

EX1005, 37:1-10

’279 Pet., 28-33; ’279 Rep., 26-28; EX2020, 113:17-114:8

Kelly683 Discloses “utilizing the programmable variable parameter sets to achieve the mandated parameters through at least the first and second game play experiences” (1.c.iii)

08/628,490. In one embodiment, the random determination of whether a particular prize is to be awarded is also modified by statistical information to create a “best fit” of prizes awarded according to the operator’s desired odds; this is done

EX1005, 36:63-66

game, averaging about 10 per game. The difficulty and thus the average prize credits awarded per game can be adjusted using a variety of techniques that depend on the type of game being played. For example, in an action game the speed of controlled objects, response of input devices, and the like, can

EX1005, 38:62-66

age ticket payout). It is possible for the game’s manufacturer to adjust game difficulty so that, on average, a predetermined number of prize credits will be awarded for each game played.

EX1005, 38:58-60

(name, address, ID number, and the like). In networked embodiments, such as shown in FIGS. 3 and 4, the server 108 can store the prize credits won by a player over previous game sessions and can send this information to an individual game unit when requested by the game unit, e.g., when the player associated with a credit account plays a game on the game

EX1005, 24:7-15

’279 Pet., 28-29, 30; ’279 Rep., 28-29