

Patent Owner Milestone: Oral Argument

June 23, 2026

Activision Blizzard, Inc.. v. Milestone Entertainment, LLC., Case No.
IPR2025-00711 U.S. Patent No. 11,335,164 B2

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

CHALLENGED PATENT: 11,335,164

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

The 164 Patent

US 11,335,164 B2

(12) **United States Patent**
Katz et al.

(41) Patent No.: **US 11,335,164 B2**
(45) Date of Patent: **May 17, 2022**

(54) **SYSTEMS FOR IMPLEMENTING ENHANCED GAMING AND PRIZING PARAMETERS IN AN ELECTRONIC ENVIRONMENT**

(71) Applicant: **Milestone Entertainment, LLC**

(72) Inventors: **Ramiah M. Katz** (Beverly Hills, CA) (US); **Gary Dawson** (Thousand Oaks, CA) (US)

(73) Assignee: **MILESTONE ENTERTAINMENT LLC**, Beverly Hills, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

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(22) Filed: **Nov. 8, 2021**

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(51) Int. Cl. **G07F 17/32** (2006.01)

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30 Claims, 25 Drawing Sheets

Activision Blizzard, Inc. - Ex. 1001
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(12) **United States Patent**
Katz et al.

(10) Patent No.: **US 11,393,279 B2**
(45) Date of Patent: **Jul. 19, 2022**

APPARATUS, SYSTEMS, AND METHODS FOR IMPLEMENTING ENHANCED GAMING AND PRIZING PARAMETERS IN AN ELECTRONIC ENVIRONMENT

Assignee: **Milestone Entertainment LLC**, Beverly Hills, CA (US)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent (Ex1001)

ASSERTED GROUNDS

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent Asserted Grounds

Ground	References	Claim
1	Kelly683	1, 2, 4, 5, 6, 7, 9, 11-13, 15, 19, 23, 24, and 29
2	Kelly683, Paulsen	2, 4
3	Walker, Schneier143	1, 2, 4, 5, 6, 7, 9, 11-13, 15, 19, 23, 24, and 29

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Petition (Paper No. 1) at 4-5

CHALLENGED CLAIMS

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164 Patent, Challenged Independent Claim 1

1. A system for electronic game play involving one or more remote users of a system in an electronic environment, the remote users utilizing electronic communication devices having display capabilities, the electronic communication devices having input capability and generate an output corresponding to the input, the electronic communication devices having storage to store information from a remote source, comprising:
a server including memory to process and store:
registration user information of the remote users,
payment information of the remote users, and
mandated and 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 variable parameters represent parameters characterizing at least one of: a game structure and a prizing structure,
a communication interface adapted to couple bi-directional communications between the one or more remote users utilizing electronic communication devices,
a game processor coupled to memory generating game play information, the game processor providing at least:
the game play information including game play with virtual money (vCoins),
the virtual money (vCoins) being acquired in response to a purchase utilizing the payment information of the users,
the virtual money (vCoins) acquired in response to a purchase being subject to a multiplier,
implementing a first set of variable parameters to provide a first game play experience, and
modifying the variable parameters to provide a second set of variable parameters providing a second game play experience,
where the first game play experience differs from the second game play experience,
memory storing account information which varies through game play,
a decision engine for performing game analytics on the game play, and
a prizing system to award a win to the one or more remote users determined by a prizing structure.

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent (Ex1001), Claim 1.

164 Patent, Challenged Dependent Claims 7, 9

[5. The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience.]

7. The system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play.

9. The system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win.

164 Patent: Issues

- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 7 (Ground 1)
 - Whether Walker/Schneier discloses or renders obvious Claim 7 (Ground 3)
- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 9 (Ground 1)
 - Whether Walker/Schneier, discloses or renders obvious Claim 9 (Ground 3)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent: Issues

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DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent: Issues

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- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 9 (Ground 1)
 - Whether Walker/Schneier, discloses or renders obvious Claim 9 (Ground 3)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent Claim 7: wherein the threshold value include information on frequency of play

[5. The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience.]

7. The system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on **frequency of play**.

In the Challenged Claims, A "Threshold Value" is The Basis For Changing Game Play Parameters, Such As Prizing

[5. The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience.]

"In one implementation, prizing structure may implement a prizing structure which includes a predefined number of 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."

164 Patent (Ex1001) at 7:6-16

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

POR (Paper No. 18) at 9-12

The intrinsic and extrinsic evidence confirms that “frequency” of play should take its ordinary meaning

Again by way of example, the prizing structure parameters may include the desired payout amount, GLEPS or other allocation variables, the frequency of wins (1:X), overall number of winners and prizing structure and allocation of prizes.

164 Patent (Ex1001) at 6:35-39

In my opinion, a POSITA would understand that the plain meaning of “frequency” in Claim 7’s recitation that “the threshold value includes information on *frequency* of play” requires that the threshold value include information on how often play occurred over some period of time or across a given sample, *i.e.*, a rate. In my opinion the 164 Patent confirms this plain meaning of “frequency” as the number of occurrences *over a particular period of time or in a given sample*; it describes a “frequency of wins” as “(1:X)”. Ex1001 at 6:35-30 See also Ex2014 (Microsoft Computer Dictionary, 5th Ed. (2002) (“frequency *n.* *The measure of how often a periodic event occurs*, such as a signal going through a complete cycle.”))

The intrinsic and extrinsic evidence confirms that “frequency” of play should take its ordinary meaning

Petitioner appears to contend that “information on the frequency of play” need not be a frequency

Although the terms “threshold value” and “frequency of play” are not used in the specification of the ’164 Patent, the specification does describe a “frequent player” and values associated with the “frequent player.” *See, e.g.*, EX1001, 36:21-22. For example, Fig. 20D shows “data elements [for] potential [] use in the system.” *Id.*, 36:4-5. This includes a data field that indicates “simply whether the person is a frequent player.” *Id.*, 36:21-22; *see also id.*, Fig. 20D (below).

Citizenship Information	Computer Address	E-mail Address	Physical Address	Registered Frequent Player
469384323FR	1324597223	jami@hotmail.com	3 rue de la Seine Paris, FR	yes
3555462NL	3968736293	FRStone@aol.com	unknown	no
SSN 564-35-1283	6945112442	unknown	unknown	no
SSN 523-25-3232	6978854645	dons@earthlink.et	1243 Main St. Yuba, CA 91331	Yes

information on frequency of play

- Fig. 20D describes status: “**registered**” frequent players
- Indicates neither the number of plays, nor the period over which they occurred.

FIG. 20D

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Petitioner’s Reply (Paper No. 20) at 4

The intrinsic and extrinsic evidence confirms that “frequency” of play should take its ordinary meaning

Petitioner appears to contend that “information on the frequency of play” need not be a frequency

Similarly, the specification also discloses that another data field that “relate[s] to the frequent player aspect” is “the number of points they possess.” *Id.*, 36:20-23. Notably, Fig. 20E shows the number of “frequent player points” associated with a player.

information on
frequency of play →

Frequent Player Points	Form of Compensation	Acknowledgment Number
13244	Cash	4220263541000coke
0	Airline Miles	164777538865
0	Further Game Play	164777538866
103	Cash	164777538867

FIG. 20E

- Fig. 20D describes “frequent player points” as points awarded as a “points rewarded for game play” to registered player’s club members (Ex1001, 9:55-60).
- Indicates neither the number of plays, nor the period over which they occurred.

Patentees Distinguished Between “Number” And “Frequency”

By way of example, game play parameters may include the structure and operation of the gaming experience, such as the duration of game play, number of levels, the decision points, e.g., inducements for various game play options, GLEPS or other allocation variables, such as in the number or frequency of winning outcomes, and player experiences, such as the number of near wins.

164 Patent (Ex1001) at 6:28-34

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner:

5. Claim 7

Kelly683 discloses this limitation. Crevelt ¶¶232–233. Kelly683 discloses modifying the gaming structure based on the number of times played (*information on frequency of play*). Crevelt ¶232; EX1005, 40:19-39; *see also* Section VIII.A.1.

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner:

232. In my opinion, Kelly683 discloses this limitation. Kelly683 discloses modifying the gaming structure based on the **number of times played** (*information on frequency of play*). Ex. 1005 at 40:19-39; *see also* Section X.A.1.

233. Kelly683 discloses a variety of techniques to adjust game difficulty so that average prize credits are awarded in order to achieve the global payout percentage inputted by the operator. **Kelly683 discloses a "hit ratio" which is "the fraction of games played, on average, in which a specific prize goal is met and thus a specific prize is won."** Ex. 1005 at 40:19-21. Kelly683 explains that an "estimated hit ratio" can be used initially, and that:

... once the game unit 10 has been played one or more times by actual players (e.g., after 100 times), the system can automatically adjust the hit ratio to the actual win frequency determined from the players' use of the game unit 10 by, for example, storing the number of games played and the number of times the specific prize goal was hit.

Ex. 1005 at 40:33-39. *See also id.* at 40:55-57 ("each offered game is normalized to the desired specific prize ratios based on the frequency of players achieving the specific prize goal.").

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

The "number of times played" is not information on the frequency of play

The "number of times [a game has been] played," relied on by Petitioners, provides no information about the frequency of play and is not sufficient to disclose a "frequency of play."

For example, a user could play a game 100 times, over the course of a day, a week, a year, or ten years. In each case, the frequency of play varies in accordance with the period, indicating for example a high frequency (100 times in one day) or very low frequency (100 times in ten years) of play.

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

Kelly683's "hit ratio" is not information on the frequency of play

A POSITA would not understand the "hit ratio" discussion cited by Petitioners to disclose any threshold based on the frequency of play. Ex1005, 40:19-39. While it discloses a "win frequency," that also does not indicate anything about the frequency of play. Instead, it simply discloses the proportion of plays – over a day, week, month, decade, or all time – which resulted in a win. Similarly, it discloses that a "'hit ratio' is the fraction of games played, on average, in which a specific prize goal is met and thus a specific prize is won." *Id.* That also does not disclose information about the "frequency of play." It measures only how many games were played, out of all games played, in which a specific prize was won. It provides no information regarding how *frequent* the game play was.

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner's Reply:

Just as in the '164 Patent, the allocation of prizes in Kelly683 is based on the number of games played. The hit ratio, which includes the number of games played, includes *information* on the frequency of play. If the number of games played is low, the frequency of play is low. If the number of games played is high, the frequency of play is high.

Petitioner's Reply (Paper No. 20) at 12

- **Would erase distinction in 164 between a number and a rate**
- **"Everyone (perhaps excluding Petitioner) acknowledges the distinction between eating 1 apple (ever), and eating an apple a day."**

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner's New Argument In Reply:

First, the number of times played does include "how often play occurred over some period of time or across a given sample." In particular, the number of times played is how often play occurred across a given sample—namely, the lifetime of a game. Whether a player has played a game 0 times or 50 times, this "number" provides a rate—the player has played N times during the lifetime of the game (N times:1 lifetime of the game).

- **New argument not presented in Petition**
- **No so such disclosure in Kelly683, and none cited**

Kelly Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner's New Argument In Reply:

Second, the term "hit ratio" itself demonstrates that the number of times played is a rate or frequency under PO's construction. As Petitioner's expert Mr. Crevelt explained, the term "hit ratio" is also referred to as "hit frequency" because it must be determined over a specific period of time or sample which a certain number of games have been played. EX1005, 40:26-30; *see also* EX1003 ¶233; EX2012 (Crevelt Tr.), 22:9-14 (A "win ratio is how often the game hits or you get a winner" and "sometimes it is referred to as a hit frequency"). Hit ratio (or hit frequency) is calculated as:

$$\text{hit frequency} = \frac{\frac{\text{number of wins}}{\text{sample (X)}}}{\frac{\text{number of games played}}{\text{sample (X)}}} = \frac{\text{frequency of wins (1:X)}}{\text{frequency of plays (1:X)}}$$

Petitioner's Reply (Paper No. 20) at 13

- **New argument not presented in Petition**
- **No so such disclosure in Kelly683, and none cited**
- **No such formula presented in Kelly or by any expert**
- **Kelly is contrary:** "hit ratio" "is the **fraction** of games played, on average, in which a specific prize goal is met and thus a specific prize is won." Ex1005, 40:19-21.

- *i.e.*,
$$\frac{\text{Wins}}{\text{Games played}}$$

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent: Issues

- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 7 (Ground 1)
 - Whether Walker/Schneier discloses or renders obvious Claim 7 (Ground 3)
- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 9 (Ground 1)
 - Whether Walker/Schneier, discloses or renders obvious Claim 9 (Ground 3)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner:

Walker discloses this limitation. Crevelt ¶¶339–341. As discussed for claim 6, Walker discloses that the threshold value may represent **total time spent playing, which itself provides information on how often a game is played** (*wherein the threshold value includes information on frequency of play*) since the more frequently a game is played, the greater the total time spent playing. *See* Section X.B.4. Walker further discloses that the threshold value may represent numerous other metrics that *include[] information on frequency of play*. For example, Walker discloses that **“a number of lives lost...or a number of questions answered correctly may be determined and compared to one or more gaming predetermined criteria.”** EX1006, ¶[0245]. Thus, the predetermined criteria (*threshold value*) may represent a specified number of lives lost or questions answered correctly, and *includes information on frequency of play* because the more frequently a game is played, the greater each of these values. Crevelt ¶340.

Walker Does Not Disclose Claim 7's "information on the frequency of play"

The "total time spent playing" is not information on the frequency of play

The "total time spent playing" relied on by Petitioners, provides no information about the frequency of play. As an example, a game could be played for 100 hours but played only once and played more than a year ago. Or the game could be played for 100 hours over 1000 plays within the last month. Only a specific period indicates a frequency for the "amount of time played," such as a low frequency (once, more than a year ago) or high frequency (1000 times in the last month) of play. Petitioner points to no such information suggesting a frequency of play.

Szeder Decl. (Ex2013), ¶73

POR (Paper No. 18) at 16-17

Walker Does Not Disclose Claim 7's "information on the frequency of play"

The "number of lives lost" and "number of questions answered correctly" are not information on the frequency of play

I disagree that this contention demonstrates disclosure of a threshold value including information on the *frequency* of play. Whether the number of lives lost or questions answered correctly is large or small, a POSITA would understand that is not information about the *frequency* of play. For example, those lives lost or correct answers may have occurred long ago, in one or a few plays; or they may have occurred within the last day, over a course of repeated plays. Both examples represent a different frequency of play.

Szeder Decl. (Ex2013), ¶74

POR (Paper No. 18) at 16-17

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner:

Walker also discloses that *the threshold value includes information on frequency of play* in a second way. As discussed for claim 5, a predetermined minimum/maximum threshold (*threshold value*) may represent a desired variance or standard deviation of a selected set of results. Crevelt ¶341; see Section X.B.3; EX1006, ¶[0249]. Walker discloses that the selected set of results may be "all game plays played during a specific period of time," such as "all game plays played in the last week" or "all game plays played within two weeks of a promotion." EX1006, ¶[0236]. The set of results thus includes more elements or results the more frequently the game is played. Walker discloses that the variance depends on the number of elements in the set, and that the standard deviation, which is the square root of the variance, thus also depends on the number of elements in the set. *Id.*, ¶¶[0251]-[0258] (formulas for variance and standard deviation). Thus, a predetermined variance or standard deviation (*threshold value*) depends on how frequently the game is played (*includes information on frequency of play*). Crevelt ¶341.

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the frequency of play

[0232] Determining a Set of Results

[0233] As described above, the controller **205** determines a set of results obtained over a plurality of game plays of a game. This determination may involve selecting the set of results. For example, the controller **205** may retrieve the set of results from a game play database, such as that embodied in **FIG. 6A** and **FIG. 6B**. If the game play database stores information on game plays of more than one game, the controller **205** may search the database for results of game plays of the game for which the evaluation of results is currently being performed.

Walker (Ex1006) at [0232]-[0233]

Patent Owner's Sur-Reply (Paper No. 21) at 15-16

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the frequency of play

a range is to be determined. In one or more embodiments, the set of results evaluated by the controller may comprise all of the results obtained during game plays of the game, with no limiting criteria as to which results qualify for inclusion in the set. Example data sets include:

[0236] (i) all game plays played during a specific period of time (e.g., all game plays played in the last week, all game plays played within two weeks of a promotion);

Walker (Ex1006) at[0235], [0236]

Patent Owner's Sur-Reply (Paper No. 21) at 16

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the frequency of play

[0248] In one or more embodiments, the controller 205 may determine whether the set of results selected above satisfies the one or more predetermined criteria associated with the game. Such a determination may comprise, for example, determining the one or more criteria associated with the game. This may be accomplished by, for example, accessing a record of the game in the game database 435 (e.g., based on the game identifier) and retrieving the one or more predetermined criteria stored in the record.

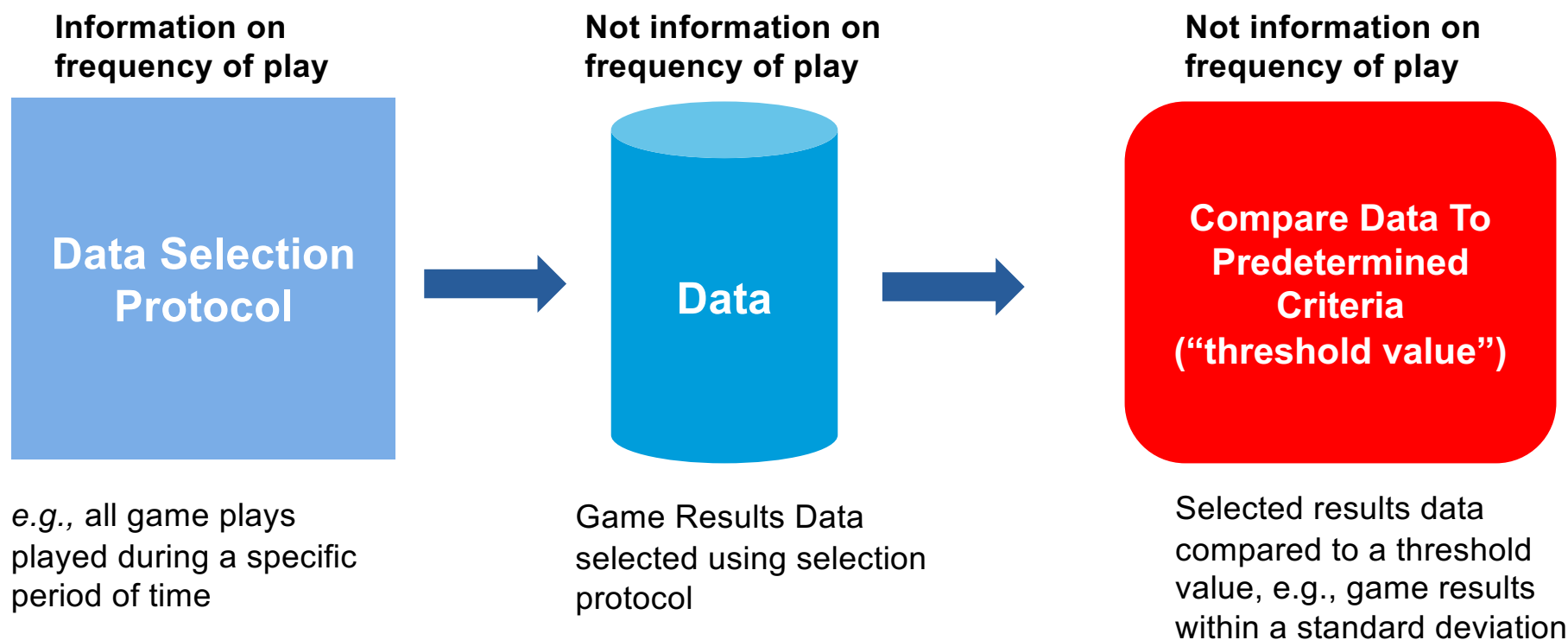
[0249] Determining whether the set of results satisfies the one or more predetermined criteria may comprise evaluating the set of results in a predetermined manner. For example, the controller 205 may determine whether a variance of the set of results is (i) within a predetermined range; (ii) above or below a predetermined minimum threshold; or (iii) above or below a predetermined maximum threshold. In another

Walker (Ex1006) at [0235], [0236]

Patent Owner's Sur-Reply (Paper No. 21) at 16

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the frequency of play



Patent Owner's Sur-Reply (Paper No. 21) at 16

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the frequency of play

A POSITA would understand the Walker disclosure relied on by Petitioners provides a description of how the tracked game play results that will be compared to a threshold value will be selected, not a description of a threshold value that includes information on the frequency of play. In other words, the relied-upon disclosures describe what period of time will define the universe of game result data such as scores, or prize awards, that will then be compared to some threshold value for such scores or prize awards. Put another way, these disclosures describe a selection protocol for game outcome data to be evaluated, not a threshold value that includes information on frequency of play. Petitioners have pointed to no disclosure in Walker that the threshold value itself that will be used to evaluate these results will be based on, or include information on, *frequency* of play. I am aware of no such disclosure.

Szeder Decl. (Ex2013), ¶75

POR (Paper No. 18) at 16-17

Walker Does Not Disclose Claim 7's "information on the frequency of play"

Petitioner's New Argument In Reply:

The Petition establishes that Walker discloses the *threshold value includes information on frequency of play*. Pet., 68-69; Crevelt ¶341. Specifically, Walker discloses that the system has predetermined criteria (*threshold value*) that is used to adjust the game (*to change from the first game play experience to the second game play experience*) depending on whether the criteria is met. EX1006, ¶[0267]. The predetermined criteria may be “a predetermined minimum threshold” or “a predetermined maximum threshold.” *Id.*, ¶[0249]. The predetermined criteria may be a minimum predetermined threshold of 10 game plays in a one week period. The controller will select a data set, such as “all game plays played in the last week” (*id.*, ¶[0236]), and then “determine whether the set of results selected [] satisfies the...predetermined criteria associated with the game.” *Id.*, ¶[0248]. The 10 game plays in a one week period is *information on frequency of play*. Accordingly, Walker discloses the limitation of claim 7 under the plain and ordinary meaning.

- **New argument not presented in Petition**
- **“Minimum predetermined threshold of 10 game plays in a one week period” is not disclosed in Walker**
- **No expert opinion**

164 Patent: Issues

- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 7 (Ground 1)
 - Whether Walker/Schneier discloses or renders obvious Claim 7 (Ground 3)
- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 9 (Ground 1)
 - Whether Walker/Schneier, discloses or renders obvious Claim 9 (Ground 3)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

164 Patent Claim 9: wherein the threshold value include information on the number of plays since a last win

[5. The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience.]

9. The system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win.

The intrinsic and extrinsic evidence confirms that “number of plays since a last win” should take its ordinary meaning

Petitioner appears to contend that “a threshold value that includes information on the number of plays since a last win” need not include information on the number of plays since a last win

PO argues that the system must adjust the game “based on...the number of since a last win” (POR, 21), effectively rewriting the claim term to read that “the threshold value is the number of plays since a last win” instead of “the threshold value includes information on the number of plays since a last win.” But PO cites to no support for this position, nor could it.

- “Including” information on the number of plays since a last win necessarily requires providing information regarding the number of plays since a last win

Kelly Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner:

6. Claim 9

Kelly683 discloses this limitation. Crevelt ¶¶234–235. Kelly683 discloses modifying the prizing structure by tracking the number of plays since a last win to achieve desired odds (*the number of plays since a last win*). Crevelt ¶234; EX1005, 36:63-37:9 (tracking wins); *see also* Section VIII.A.1.

Kelly Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner:

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 to offset the sometimes undesirable results that purely random (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.

Kelly Does Not Disclose Claim 9's "information on the number of plays since a last win"

Kelly's Disclosure Of Awarding A Different Prize On a 3,000th Game Does Not Show Anything About "The Number Of Plays Since A Last Win"

70. In my opinion, a POSITA would not understand this passage from Kelly to disclose either tracking the number of plays since a last win or using such tracking as a threshold value to alter the game play variable parameters to provide a second gaming experience. For example, Petitioner's expert Mr. Crevelt testified that a POSITA would understand this passage to describe that "two different players would be awarded a prize" – not that the system is tracking the number of plays since a winning player was awarded a video console. See Ex2012 (12/19/25 Crevelt Tr. at 105:24-25). At best, in my opinion, a POSITA would understand this portion of Kelly to disclose that over the course of 2,999 games, leading up to the 3,000th game, the system knows it has awarded two video consoles to players. A POSITA would understand that such evidence does not disclose the number of plays since a last win of a video console – i.e., when the last video console was awarded as a prize –or the number of plays since a win of any other prize, as the claim requires. Ex2013, ¶70.

- **At most, Kelly discloses that its system knows how many video consoles it has awarded by the 3,000th game**
- **It does not know when a console was last awarded, or how many plays have occurred since a last "win"**

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Szeder Decl. (Ex2013), ¶70

Kelly Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner's New Argument In Reply:

Mr. Crevelt explains that for "prizes [to be] awarded according to the operator's desired odds," the system of Kelly683 "keep[s] track of *the number of plays since a last win.*" EX1003 ¶235 (emphasis in original); EX1005, 36:30-37. For example, where the desired odds provides for one prize for every 4,000 games, Kelly683 expressly discloses that "the system checks whether the current game is the 4000th game (where the goal was met) *since the video game console was last awarded* to player on this game unit 10 (or the 4,000th game since console was awarded within the entire redemption system, i.e., among multiple game units 10.)" EX1005, 36:32-37. Thus, Kelly683 discloses the *threshold value includes information on the number of plays since the last win* under its plain and ordinary meaning.

- **Improper new argument not made in Petition**
- **37 C.F.R. § 42.6(a)(3):** "Arguments must not be incorporated by reference from one document into another document."
- **Still wrong:**
 - Kelly's system has no knowledge of the number of game plays that have occurred since a win.
 - At most, discloses that over the course of 4,000 games, the system knows whether it has awarded a video console or not.

164 Patent: Issues

- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 7 (Ground 1)
 - Whether Walker/Schneier discloses or renders obvious Claim 7 (Ground 3)
- Grounds 1 and 3:
 - Whether Kelly683 discloses or renders obvious Claim 9 (Ground 1)
 - Whether Walker/Schneier, discloses or renders obvious Claim 9 (Ground 3)

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner:

Walker alone or in view of the knowledge of a POSITA renders this limitation obvious. Crevelt ¶¶342–343. As discussed for claim 5, a specific set of results is evaluated to determine whether a predetermined minimum/maximum threshold (*threshold value*), such as a desired variance or standard deviation, has been met. See Section X.B.3. Walker discloses that the set of results may include, for example, “all game plays played during a specific period of time,” such as “all game plays played within two weeks of a promotion.” EX1006, ¶[0236]. A POSITA would have understood that a promotion in Walker is a game play win that results in a player's promotion to the next level of a game (*a last win*). Crevelt ¶343; EX1006, ¶¶[0245] (discussing “number of levels completed”), [0265] (discussing a win/awarding of a prize “if a player achieves a particular...level of achievement in one or more game plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays)”). Thus, since the variance or standard deviation of scores for all game plays played within two weeks of a promotion is compared to the predetermined threshold, the threshold value itself also reflects a variance or standard deviation of scores for all game plays played since the last promotion.

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner's Argument Misreads Walker's Discussion Of A "Promotion"

79. In my opinion, Petitioner's attempt to demonstrate disclosure of Claim 9 by Walker is incorrect, in multiple respects. First, I disagree that a POSITA would understand that Walker's reference to a "promotion" in "all game plays played within two weeks of a promotion" (Ex1006 at [0236]) refers to a "promotion to the next level of a game (*a last win*). " Pet. at 70. In my opinion, that is not how a POSITA would understand "promotion" in Walker. "Promotion" appears in the Walker specification only once – in the language quoted. In fact, Walker never describes advancing to a next level of a game as a "promotion." Instead, to the extent Walker describes advancement to subsequent game levels at all, it describes that a player "achieves" or "gets to" a next game level. Ex1006 at [0265].

80. In my opinion, particularly given Walker's stated interest in creating "happy and motivated" players (*id.* at [0003]), and its concern that "the loss of discouraged players can lead to substantial revenue decreases for businesses that manage games" (*id.* at [0006]), a POSITA would understand Walker's discussion of "promotion" in the context of "all game plays played within two weeks of a promotion" to refer to the *marketing* of a game, such as an advertising or publicity campaign.

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Walker's Discussion Of A Data Selection Protocol Does Not Disclose A "Threshold Value Including Information On the Number Of Plays Since A Last Win" In Any Event

[0232] Determining a Set of Results

[0233] As described above, the controller **205** determines a set of results obtained over a plurality of game plays of a game. This determination may involve selecting the set of results. For example, the controller **205** may retrieve the set of results from a game play database, such as that embodied in **FIG. 6A** and **FIG. 6B**. If the game play database stores information on game plays of more than one game, the controller **205** may search the database for results of game plays of the game for which the evaluation of results is currently being performed.

Walker (Ex1006)

Walker (Ex1006) at [0232]-[0233] (cited in Patent Owner's Sur-Reply (Paper No. 21) at 16)

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Walker's Discussion Of A Data Selection Protocol Does Not Disclose A "Threshold Value Including Information On the Number Of Plays Since A Last Win" In Any Event

a range is to be determined. In one or more embodiments, the set of results evaluated by the controller may comprise all of the results obtained during game plays of the game, with no limiting criteria as to which results qualify for inclusion in the set. Example data sets include:

[0236] (i) all game plays played during a specific period of time (e.g., all game plays played in the last week, all game plays played within two weeks of a promotion);

Walker (Ex1006), [0235], [0236]

Walker (Ex1006) at [0235]-[0236]; see also Patent Owner's Sur-Reply (Paper No. 21) at 16)

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Walker's Discussion Of A Data Selection Protocol Does Not Disclose A "Threshold Value Including Information On the Number Of Plays Since A Last Win" In Any Event

[0248] In one or more embodiments, the controller 205 may determine whether the set of results selected above satisfies the one or more predetermined criteria associated with the game. Such a determination may comprise, for example, determining the one or more criteria associated with the game. This may be accomplished by, for example, accessing a record of the game in the game database 435 (e.g., based on the game identifier) and retrieving the one or more predetermined criteria stored in the record.

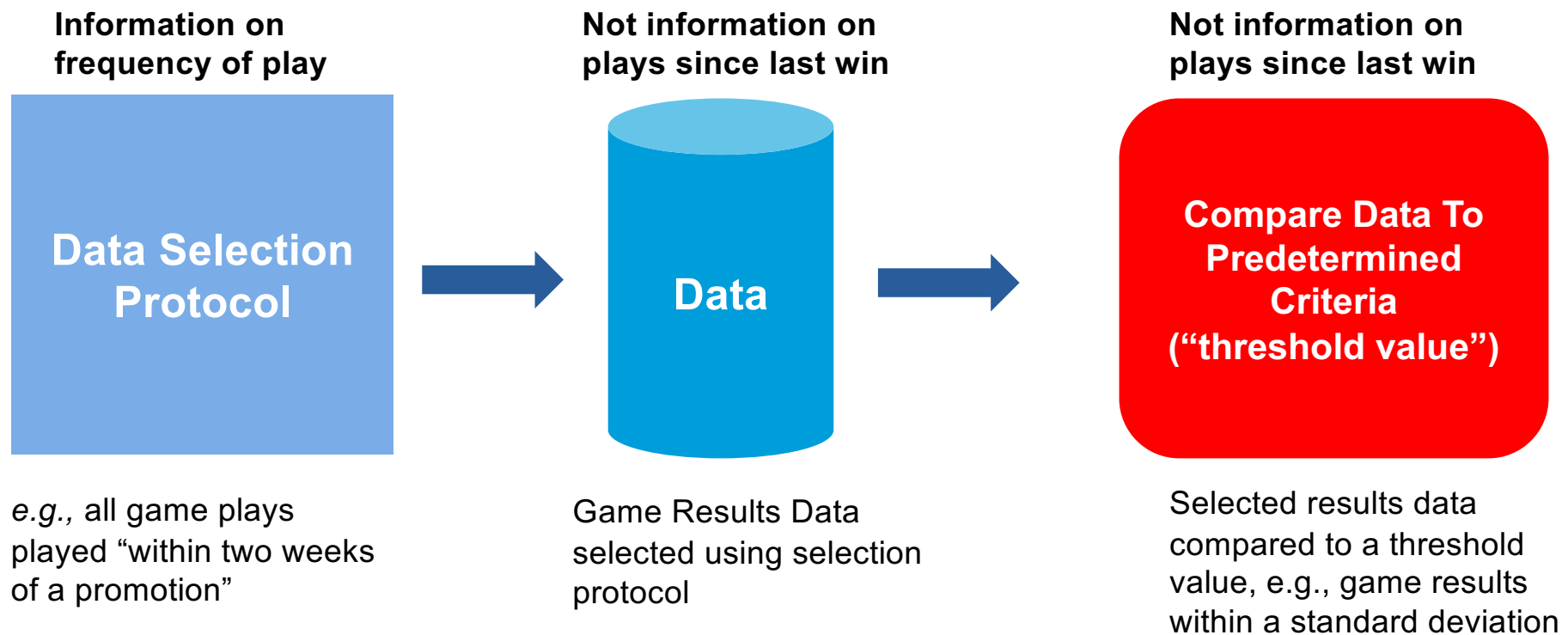
[0249] Determining whether the set of results satisfies the one or more predetermined criteria may comprise evaluating the set of results in a predetermined manner. For example, the controller 205 may determine whether a variance of the set of results is (i) within a predetermined range; (ii) above or below a predetermined minimum threshold; or (iii) above or below a predetermined maximum threshold. In another

Walker (Ex1006) at [0248], [0249]

Patent Owner's Sur-Reply (Paper No. 21) at 16

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the number of plays since a last win



Patent Owner's Sur-Reply (Paper No. 21) at 16

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Walker's "desired variance" for a *selected set of results* is not a "threshold value" including information on the frequency of play

81. In my opinion, even if Petitioners were correct about the meaning of "promotion," the evidence relied on would not disclose Claim 9. As with Claim 7, Petitioners contend that a threshold value including information on the number of plays since a last win is disclosed by Walker's discussion that a selected set of results to be evaluated may comprise "'all game plays played during a specific period of time,' such as 'all game plays played in the last week' or 'all game plays played within two weeks of a promotion.'" Pet. at 68-69. I disagree with that contention. In the quoted language, Walker is describing how the tracked game play results that will be compared to a threshold value will be selected; it is not describing a threshold value that includes information on the number of plays since a win. In other words, the relied-upon disclosures describe what period of time will define the universe of game result data such as scores, or prize awards, that will then be compared to some threshold value for such scores or prize awards. Put another way, these disclosures describe a selection protocol for game outcome data, not a threshold value that includes information on the number of plays since a win. Petitioners have pointed to no disclosure in Walker that the threshold value itself that will be used to evaluate these results will be based on, or include information on, the number of plays since a last win. I am aware of none.

Szeder Decl. (Ex2013), ¶81; see also POR (Paper No. 18) at 16-17

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner's New Argument In Reply:

Moreover, PO ignores Walkers disclosure that the system monitors "variance in prizes awarded" to determine whether players are winning too much ("prizes for a game is too high") or too little ("prizes for a game is ... too low") and "modif[ies] the game to alleviate this problem." EX1006, ¶[0025]. The system must necessarily track the last win to do so.

- **Improper new argument not made in Petition**
- **Still Wrong:**

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner's New Argument In Reply:

As players play games on the Web site, a computing device may monitor the games played to determine a variance in prizes awarded based on results of the games. If the variance in prizes awarded is too high, this may be discouraging to players, since expert players may win large prizes while novice players win almost nothing. Similarly, if the variance in prizes is too low, players may become bored because there is not enough variation in the prizes awarded. If the computing device determines that the variance in prizes for a game is too high or too low, then it may modify the game to alleviate this problem."

- **Improper new argument not made in Petition**
- **Still Wrong:**
 - **Has nothing to do with tracking the number of plays since a last win**
 - **Monitors *variance* in prizing between players**

Walker Does Not Disclose Claim 9's "information on the number of plays since a last win"

Petitioner's New Argument In Reply:

For instance, the Petition establishes that Walker discusses the "number of levels completed," and a win/awarding of a prize "if a player achieves a particular...level of achievement in one or more game plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays)." Pet., 70 (citing EX1006, ¶¶[0245], [0265]). Here, the number of plays since a last win would be included in the information collected to determine whether a player is to be awarded a prize.

- **Not a disclosure of a "threshold value" which "includes information on the number of plays since a last win"**
- **Does not disclose any information about the number of plays since a last win**
- **Merely discloses a prizing condition, as Petitioner admits**

THANK YOU

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE