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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
Petitioner
v.
MILESTONE ENTERTAINMENT, LLC,
Patent Owner.

IPR2025-00708 (Patent 8,529,336 B2)
IPR2025-00709 (Patent 10,650,635 B2)
IPR2025-00710 (Patent 10,825,294 B2)
IPR2025-00712 (Patent 11,393,279 B2)

Record of Oral Hearing
Held: June 23, 2026

Before SCOTT A. DANIELS, JAMES A. TARTAL, and
SCOTT C. MOORE, Administrative Patent Judges.

APPEARANCES:

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The above-entitled matter came on for hearing Tuesday, June 23, 2026, commencing at 2:00 p.m. EDT, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P-R-O-C-E-E-D-I-N-G-S

2 2:00 p.m.

3 JUDGE TARTAL: Welcome back to PTAB. Today's hearing, again,
4 provides an opportunity for counsel to orally advocate your positions on the
5 cases that are before us. We are convening today for arguments in four
6 related, to some degree related, inter partes review cases – Activision
7 Blizzard Incorporated, Petitioner, and Milestone Entertainment LLC, the
8 Patent Owner, in each of the cases. The cases are IPR 2025-00708
9 concerning U.S. Patent No. 8,529,336 B2, IPR 2025-00709 concerning U.S.
10 Patent No. 10,650,635 B2, IPR 2025-00710 concerning U.S. Patent No.
11 10,825,294 B2, and IPR 2025-00712 concerning U.S. Patent No. 11,393,279
12 B2.

13 I'm Judge Tartal, and I'm joined today by Judge Daniels, on my right,
14 and Judge Moore, who are appearing remotely. We can begin today with
15 appearances again from both parties, and if you can identify who will be
16 arguing, as well as anyone else attending in person or remotely on your
17 behalf, please identify them as well. And we can start with Petitioner.

18 MS. NGUYEN: Good afternoon, Your Honors. My name is Lisa
19 Nguyen on behalf of Petitioner Activision Blizzard. Here with me today is
20 my colleague, Ms. Leonardi. And also with us today is in-house counsel at
21 Activision Blizzard, Zac Buyr. We also have a summer associate attending
22 today, Jola Ilori.

23 JUDGE TARTAL: Okay. Welcome --

24 MS. NGUYEN: With respect to -- I'm sorry. With respect to
25 argument, I will be arguing on the '336 and the '279, and Ms. Leonardi will
26 be arguing on the '294 and '635.

1 JUDGE TARTAL: Okay, thank you. And for Patent Owner, who do
2 we have this afternoon?
3 MR. NELSON: Good afternoon, Your Honors. My name is Will
4 Nelson from the Tensegrity Firm on behalf of Milestone Entertainment.
5 With me today is John Pierce, my colleague. Also attending on the public
6 line are Mr. Katz, one of the named inventors of the challenge patents, as
7 well as Mr. Murphy, the patent prosecutor, whose declaration is part of this,
8 as well as Mr. Scott Jensen, who is an executive at Milestone.
9 I will be arguing on behalf of Milestone for the '279 and '336 patents,
10 IPR '708 and '712. Mr. Pierce will be handling the argument for the '695 and
11 '234 patents, the remaining two.
12 JUDGE TARTAL: Okay, great. And as you sort of noted, there is
13 public access to this hearing, and so the hearing is available to those who
14 dial in, as well as the streaming service. It's our understanding that no
15 confidential information is at issue in today's proceedings.
16 We issued hearing orders in each of these cases, and each party has
17 been provided a total of 60 minutes to present argument time for all four
18 cases. We also received Petitioner's requests for Ms. Leonardi and Patent
19 Owner's requests for Mr. Pierce to participate in the oral hearing as the
20 LEAP Program or Legal Experience and Advancement. Accordingly,
21 Petitioner and Patent Owner will each have an additional 15 minutes of
22 argument time during the oral hearing, bringing the total argument time to
23 75 minutes.
24 We do have four cases being argued this afternoon. The cases are not
25 joined or consolidated, but will be heard at the same hearing. Petitioner will
26 open the argument and may reserve rebuttal time, which may not exceed

1 more than half of Petitioner's total argument time. Because we have four
2 cases, did the parties discuss ahead of time the order in which they want to
3 present the cases? Petitioner?
4 MS. NGUYEN: Yes, Your Honor. If it works for the Court, Patent
5 Owner and Petitioner have conferred, and we propose that the LEAP
6 practitioners argue first on the '294 and the '635 patents, where Petitioner
7 will present first on those two patents, and then followed by Patent Owner,
8 and then with rebuttal time from both parties.
9 JUDGE TARTAL: Did you anticipate the 75 minutes, how much
10 time you wanted to devote to that initial presentation for the '709 and '710
11 cases?
12 MS. NGUYEN: Yes, Your Honor. With respect to the arguments, 20
13 minutes for those arguments with five minutes for rebuttal, so 15 minutes
14 and then five minutes.
15 JUDGE TARTAL: Okay. And is that also the case for Patent
16 Owner?
17 MR. NELSON: Yes, Your Honors. Fifteen minutes for rebuttal, and
18 then another five minutes for surrebuttal.
19 JUDGE TARTAL: Okay. The court reporter will provide a transcript
20 of the hearing that will become part of the record. The intent is to provide a
21 single transcript of the complete hearing for all four cases. Is there any
22 concern that that would raise?
23 MR. NELSON: There is none.
24 MS. NGUYEN: No concern.
25 JUDGE TARTAL: And so the single transcript will be entered in the
26 record for each of the four cases. We have the demonstratives for all four

1 cases on our computers, as well as the papers and evidence available to us.
2 We remind the parties that demonstratives are not evidence, and will not be
3 relied upon in the final written decision. We do ask the parties not to
4 interrupt each other, and instead to hold any objections regarding the other
5 parties' arguments until it's your time at the podium.
6 Also, as a reminder from earlier today, to ensure the transcript of the
7 hearing is clear, we ask that you speak directly into the microphone when
8 talking, and to identify specific slide numbers and numbering and figures
9 when referring to demonstratives. I'll be maintaining a clock, and we'll try
10 to provide warnings or an indication as to when time is up. And also, as
11 you've noticed, we'll provide color indications when you're approaching the
12 end of your argument period. Are there any other questions from Petitioner
13 at this time?
14 MS. NGUYEN: No questions.
15 JUDGE TARTAL: Or any questions from Patent Owner?
16 MR. NELSON: None from Patent Owner. Thank you.
17 JUDGE TARTAL: Okay. We look forward to hearing from the new
18 practitioners, and appreciate the clients as well as the counsel for making
19 that opportunity available to them. And with that in mind, we'll begin with
20 Petitioner in the '709 and '710 proceedings. And I believe you requested 15
21 minutes to begin with, and then five minutes for rebuttal, so we'll begin with
22 the timer at 15 minutes. And you can begin when you're ready. I'll start the
23 timer.
24 MS. LEONARDI: Thank you. Good afternoon, Your Honor. My
25 name is Nyssa Leonardi, and on behalf of Petitioner, I will be presenting on
26 the single disputed issue as it relates to Petitions '709 and '710. The single

1 disputed issue raised by Patent Owner for Petitions '709 and 710 are specific
2 to claims 8 -- I'm sorry, dependent claim 8 of the '294 and dependent claim 9
3 of the '635, which involve the same issue, and that is that the multiplier is
4 variable over time.
5 JUDGE TARTAL: Can you check to see if your mic is close enough
6 to the camera?
7 MS. LEONARDI: Sorry.
8 JUDGE TARTAL: This helps for the transcript as well as the people
9 participating by videoconference.
10 MS. LEONARDI: Thank you. I hope this is better.
11 JUDGE TARTAL: That's better.
12 MS. LEONARDI: Okay.
13 JUDGE TARTAL: You can hear through the sound. Thank you.
14 MS. LEONARDI: I'm going to turn to slide 5 for the record. The
15 '294 and '635 patents relate to systems for affecting user experience and
16 electronic game environment through the use of virtual currency, also
17 referred to as the V-coins within the patents, and the conversion of real
18 money into virtual currency.
19 We're on slide 8 for the record. As you are aware, Your Honors,
20 virtual money has been a mainstay in electronic gaming for decades. The
21 first large-scale virtual world was launched in 1997, and many more
22 examples were soon to follow, with Sony's EverQuest in 1999 and
23 Microsoft's Asheron's Call in 2000, Funcom's Anarchy Online in 2001, and
24 many more. And these virtual worlds have their own economies in which
25 real cash currency can be converted into virtual currency and used within

1 these virtual worlds. And by 2004, this feature became really common
2 among games.
3 Actually, our prior art that's going to be discussed today, Schneier,
4 provides a great example of how this feature is used in games. We discussed
5 this in our petition at one. Schneier discloses, quote, While exploring a 10-
6 level dungeon, the player could be charged an additional credit for the use of
7 a special weapon, access to a map, or hints on avoiding traps. And when the
8 purchase credit amount is exhausted, if the player desires to continue to play,
9 he must purchase more credits.
10 And as discussed by our expert, Mr. Crevell, virtual money can take
11 the form of promotions, coins, or cashless gaming. For instance, a player
12 may be rewarded with double credits, i.e., which is virtual money, or a
13 special weapon, as in cashless gaming, for completing certain game goals or
14 objectives and to continue gameplay.
15 So turning to slide 11 for the record, the prior art that we're going to
16 be discussing today is Schneier. Schneier discloses an electronic gaming
17 system where credits, i.e., virtual money, can be used to purchase in-game
18 items. The gaming system allows players to play against each other by
19 submitting game returnment outcomes, in which the central computer
20 certifies those outcomes and then they rank the players against each other
21 according to name.
22 JUDGE DANIELS: Ms. Leonardi, is there any dispute in this case
23 that credits are not some kind of virtual money or can't be mapped?
24 MS. LEONARDI: Yes, Your Honor. Patent Owner has disputed in
25 the briefings that credits are not virtual money, but if you look at the patents
26 at issue, the '294 and '635, and then you look at Schneier, the term V-coins

1 and credits are both referring to virtual money. They just have different
2 terminology associated with them.
3 JUDGE DANIELS: Is there anywhere in Schneier, and maybe you're
4 going to get to this, that explains to us a little more about what the credits are
5 that are disclosed in Schneier?
6 MS. LEONARDI: I'm actually not going to get to that today, and I'm
7 not aware offhand if there is a more detailed description on credits in
8 Schneier.
9 JUDGE DANIELS: All right, thank you.
10 MS. LEONARDI: Thank you, Your Honor. Turning briefly to the
11 disputed claims today, so Patent Owner has only disputed dependent claims
12 8 and 9. This is an unusual position, and the dependent claims 8 and 9
13 actually depend upon independent claim 8, which Patent Owner has not
14 disputed. And as you are aware, Your Honors, that waives all challenges for
15 Patent Owner to raise for the other challenge claims. So today we'll solely
16 be focused on dependent claim 8 and dependent claim 9.
17 So let's switch over to the limitation at issue, wherein the multiplier is
18 variable over time. So we're on slide 17 for the record. As you are aware,
19 Your Honors, the '294 and '635 patents are related to virtual money. So as
20 depicted on the screen here, we have independent claim 1, and we have an
21 excerpt of, or we have the actual dependent claim 8 at the bottom there for
22 you.
23 The patents provide a system for enhancing user experience with
24 virtual money that is either purchased or acquired through gameplay and is
25 subject to a multiplier. The dependent claim 8 adds the multiplier is variable
26 over time. And on slide 18, you can see the same for the '635 patent.

1 So Your Honors, the issue raised by Patent Owner really just boils
2 down to whether Schneier discloses this limitation, which it does. So
3 turning to slide 19 for the record, Your Honors, first let's turn to the term
4 multiplier. In the limitation, the multiplier is variable over time. So not only
5 does Patent Owner not dispute any other challenge claims besides dependent
6 claim 8 and dependent claim 9, but they also do not dispute the term
7 multiplier. They spend the majority of their briefing disputing the phrase
8 variable over time.
9 So Schneier, in fact, does disclose the multiplier and how it may vary
10 over time in several embodiments, including by the varying rates at different
11 points of play using its updating cost information protocol.
12 As shown on the screen, after it states Program 26, Schneier provides
13 the price per game may be stored within the meter's non-volatile memory
14 and can be manipulated with codes from the central computer to alter or
15 change the pricing structure via the updating cost information protocol --
16 JUDGE DANIELS: Ms. Leonardi, let me ask you another question.
17 It says to alter or change the pricing structure for particular games. If I'm
18 reading this in context, that seems to say that it's changing it for specific
19 games, and I'm not so sure that it says changing over time.
20 MS. LEONARDI: So, Your Honor, this particular slide, I'm
21 highlighting alter or change the pricing structure to demonstrate that there is
22 a multiplier at play. And in reference to particular games, I think what it's
23 showing here is that you can use this cost updating information protocol to
24 change different games. Not all games have to have the same pricing
25 structure. So a particular game might have one type of structure and another

1 game can have another. So that's how the pricing structure within these
2 games can be changed over time, and I can get to that in a little bit.
3 I guess we can turn to that right now, in this slide right here. The part
4 where it talks about meter's 502 and its non-volatile memory and the
5 manipulation of the codes, that is showing in and of itself that it's varying
6 over time in that the data is being sent to the central computer and is stored
7 in memory, and then the codes are being changed. And that is something
8 that happens over time. It's updating that pricing structure, and that's just
9 something that plainly and expressly discloses something that's variable over
10 time.
11 And this alter or change of the pricing structure, that change, that
12 alteration, that manipulation, is showing that a multiplier is at play. So it's a
13 multiplier that is variable over time.
14 And actually, you can think of this, Your Honor, as an exchange rate.
15 When you're traveling to, say, a foreign country, you need to exchange your
16 U.S. dollars for foreign currency. So you take your U.S. dollars to a bank or
17 an airport, and you need to exchange it. And every time you go to exchange
18 your U.S. dollars, there's a different exchange rate. It can change depending
19 on economic factors. Here, the cost-updating protocol can change that
20 exchange rate, essentially, can change what a credit is worth for that
21 particular game.
22 JUDGE DANIELS: My follow-up question -- that was a helpful
23 answer. My follow-up question is this. You were saying that this shows a
24 multiplier. A multiplier seems to me to be some sort of a particular value, is
25 that the same as just changing, is a multiplier just the same as changing
26 pricing structure? I mean, and here's my example. It's never a good idea. If

1 I go to the store and buy something for $2, and the store, at checkout, they
2 say, oh, it's $3, and I have to just pay $3, is there a multiplier being applied,
3 or isn't it just a change in value?
4 MS. LEONARDI: Your Honor, the change in value would require a
5 multiplier to come into play. For that price to go from $2 to $3, there would
6 need to be a multiplier to make it to $3, and then that change would happen
7 over time.
8 JUDGE DANIELS: Yeah, that's pretty broad when the patent at issue
9 is pretty specific about a multiplier. But I get what you're saying. Okay,
10 thank you. That was helpful.
11 MS. LEONARDI: Thank you, Your Honor. I want to turn quickly to
12 slide 20. So let's talk more about the price variable over time, which Patent
13 Owner spends most of its time disputing. In Patent Owner's response
14 papers, Patent Owner states that the multiplier can, quote, vary the value of
15 virtual currencies across different time periods. But the patents themselves
16 do not impose such a limitation that they are required to vary across certain
17 time periods. It's just that they need to vary over time.
18 And you can see on your screen, we've provided an excerpt, which is
19 just an example. And it states, for example, play during certain times may
20 result in double V-coins. So this use of the phrase certain times does not
21 require V-coins to vary across different time periods. So, in fact, the
22 specification suggests that rates can change at different points in time. So
23 there exists no limitation that the V-coins to double over across a period of
24 time.
25 So take, for instance, a player is playing a game and they're trying to
26 beat this certain level. The V-coins are not going to be gradually increasing

1 to be doubled by the point they complete the objective. It's going to be
2 doubled in one instance once they complete the objective in the game. And,
3 in addition, not only does this limitation not apply to the patents, but the
4 patents don't define variable over time. The phrase only comes up in claims
5 8 and 9.
6 JUDGE DANIELS: So are you arguing that with the '294 and '635,
7 that it's basically an instantaneous change? Like the double V-coins,
8 doubling the value meets the limitations?
9 MS. LEONARDI: Well, Your Honor, the claim language and the
10 specification within the patents, it's broad. So it's not limited to what the
11 Patent Owners are trying to dispute here. And so we're trying to keep in line
12 with what the patents themselves are saying, that it could be an instant, it
13 could be across a period of time, but it can't be limited to across a period of
14 time, like Patent Owner asserts.
15 JUDGE DANIELS: Okay. So you're saying that something in the
16 prior art that shows a change at some point in the value of the V-coin would
17 meet claim 8 and 9?
18 MS. LEONARDI: That's correct, Your Honor. And actually, if you
19 look at -- I have figure 19 on the screen here, and our expert explains this
20 pretty well. During his deposition on figure 19, he was asked by opposing
21 counsel to expand on where Schneier says varies over time. And he
22 provides that figure 19 is showing that it is updating the cost value for a
23 metered play where you're buying so much time or so many credits or so
24 many games. And when it runs out, then you have to buy more, and that
25 variable can change over time.

1 And he's pressed by opposing counsel where the word time is, and he
2 responds that the entire description of figure 19 talks about changing the
3 meter value and changing that meter value from a central site, which means
4 that it changes over time.
5 So if we look at figure 19, it states that first, the meter creates an
6 update request. It's sent to the central computer. The central computer
7 creates a cost update. That cost update is then sent to the meter, and it
8 merges and creates that new cost table. So this process, this procedure, is
9 taking place over a period of time. It may appear to be instantaneous
10 because it's through software and different programming, but it is still over a
11 period of time, and it is subject to a multiplier.
12 JUDGE DANIELS: So this would be similar -- so your point is this
13 would be similar to the example I just gave you where I walk up, offer $2 for
14 an item that says it costs $2 and the store clerk says -- he has an update that
15 he knows about in his brain, and he goes, oh, no, it costs $3. So that would
16 also meet this limitation?
17 MS. LEONARDI: That's correct, Your Honor, because at one point in
18 time, it changed in price, and it changed in price over some period of time.
19 Let's see here.
20 JUDGE DANIELS: Is that a point -- is that period of time essentially
21 instantaneous, or is it the period of time from, like, I'm looking at the price
22 on the item as $2 and then he updates it to $3?
23 MS. LEONARDI: Your Honor, I mean, the patent language is not
24 specific, and that's one of our content -- I see I'm out of time.
25 JUDGE TARTAL: You can keep talking to finish.

1 MS. LEONARDI: Thank you, Your Honor. The Patent Owner's
2 dispute is that it should be limited to across some sort of period of time. It's
3 imposing some sort of limitation that the patent language is broad. And so
4 we're trying to interpret it as the patent language, the language does, along
5 with our prior charge, and it is plainly disclosed in Schneier. And with that,
6 thank you for your time, Your Honors.
7 JUDGE TARTAL: So you'll still have five minutes left for rebuttal.
8 MS. LEONARDI: Thanks, Your Honor.
9 JUDGE TARTAL: And for Patent Owner, we'll start with 15
10 minutes, correct?
11 MR. PIERCE: Yes, thank you.
12 JUDGE TARTAL: And you can begin when you're ready.
13 MR. PIERCE: Good afternoon, Your Honors. John Pierce of
14 Tensegrity Law Group on behalf of Patent Owner Milestone Entertainment.
15 I will be presenting Patent Owner's argument for the '709 and '710
16 proceedings. These concern the '635 and '294 patents. Now, Your Honors,
17 this argument concerns only a single pair of very similar dependent claims,
18 these two patents, concerning a multiplier on virtual money that is variable
19 over time.
20 Petitioner only argues that one reference, Schneier 143, discloses all
21 elements of these dependent claims, but none of the disclosures in Schneier
22 143 that Petitioner's point to have virtual money, a multiplier of virtual
23 money, and a multiplier varying over time. The disclosures Petitioner points
24 to only have volume discounts and metered play rates fixed at a single point
25 in time. Petitioner's own expert cannot point to any required multiplier of

1 virtual money in the Schneier 143 reference, and accordingly, the
2 patentability of the challenge claims should be confirmed.
3 Let's take a quick look at the challenge patents. So first, we have the
4 '635 patent here. It was issued in May of 2020 to first named inventor
5 Randall Katz, who's the co-founder of Applicant Milestone Entertainment.
6 It's titled, A System for Implementing Enhanced Gaming and Prizing
7 Parameters in an Electronic Environment. '294 patent, similar, has the same
8 first named inventor and applicant title. The date of this patent is November
9 of 2020. Let's take a look at --
10 JUDGE DANIELS: Counsel, can you just tell me what slides you're
11 on when you go -- both for myself and for the court reporter when you
12 switch?
13 MR. PIERCE: Gladly, Your Honor.
14 JUDGE DANIELS: Thanks.
15 MR. PIERCE: So here we're on slide six, and this is an overview of
16 the Petitioner's asserted grounds. Petitioner asserted two grounds for both of
17 these patents, Schneier 143, and Schneier 143 and Okita. Moving to claim
18 7, we'll look at the challenged independent claim of patents '635 and '294.
19 Both these patents have a single independent claim that all the dependent
20 claims depend from, and they also share a specification.
21 So if we look at the challenged independent claim here on slide 8,
22 what we have is the preamble which states that this claim is directed to a
23 system for affecting user experience on a user communication device in a
24 multi-level electronic game environment. And important for our purposes
25 today, this claim includes 1b1, the gameplay information, including
26 gameplay with virtual money, 1b3, the virtual money acquired by cash

1 purchase being subject to a multiplier, 1b4, the virtual money is converted
2 into a non-cash good comprising an image that permits advancement to
3 another level within the game.
4 If we look at the '635 challenge independent claim 1 that I have here
5 on slide 9, we see that the claim elements are almost identical. The '635
6 challenge independent claim omits 1b5 that was in claim 2, the '294
7 challenge independent claim as shown here in yellow highlight on slide 10.
8 And here on slide 11, we'll take a look at the challenge dependent claims
9 that, as Petitioners pointed out, is the focus of this argument. These
10 challenge dependent claims read, the system for affecting user experience in
11 a multi-level electronic game environment of claim 1, wherein the multiplier
12 is variable over time.
13 Your Honors, during Petitioner's argument, I was aware that Petitioner
14 is apparently trying to read the claim term multiplier out of both these
15 dependent claims and also from the independent claim. Milestone's virtual
16 money is described in the specification as shown here on slide 12 as being
17 subject to a multiplier. The Milestone patent specification explains that the
18 games may be played either with real money or may be played with virtual
19 money, sometimes referred to as V-coins. These V-coins will typically be a
20 multiplier times the corresponding numeric monetary value. For example,
21 $1 may equal 500 V-coins.
22 And in claim 1, we see how this virtual money of Milestone's patents
23 can be used. It can be converted into a non-cash good comprising an image,
24 the image to permit advancement to another level.
25 I move now to slide 13. Slide 13, I have two portions of the
26 Milestone patent specification. These describe the multiplier that is variable

1 over time as claimed in claims 8 and 9. The multiplier may be fixed over
2 time and over games, or may vary based on factors such as time. For
3 example, play during certain times may result in double V-coins. The
4 Milestone specification also says that enhanced multipliers may be used to
5 induce play at times when other entertainment is available as an inducement
6 for the player to play the subject games.
7 Moving to slide 14, and Petitioner called this out. She conceded that
8 the only issue here is whether the Schneier 143 reference discloses that
9 claim by claims 6 -- pardon me, claims 8 and 9. This system for affecting
10 user experience in a multi-level electronic game environment of claim 1,
11 wherein the virtual money acquired by cash purchase being subject to a
12 multiplier is variable over time.
13 I'm moving to slide 15. This reiterates this point. In the petition for
14 both the '709 and '710 proceedings, the Petitioner only says that Schneier
15 143 discloses its limitation. Moving to slide 16, we talked earlier about the
16 asserted grounds and that there was a second ground of Schneier 143 in view
17 of Okita, but Petitioner stated no challenge based on Okita for the dependent
18 claims of the '635 and '294 patents.
19 Slide 17 here, Your Honor. It's a transitional slide. I'm here to tell
20 you today that Schneier 143 does not disclose a multiplier that's variable
21 over time.
22 JUDGE DANIELS: Counsel, are we -- so basically, are you agreeing
23 with Petitioner that this dispute at this point is limited to dependent claims 8
24 and 9?
25 MR. PIERCE: For the purposes of this argument, Your Honor, we do
26 not dispute the other claims that Petitioner raised. It is still always their

1 burden to prove unpatentability, but this argument will be focused solely on
2 claims 8 and 9.
3 And here on slide 18, we have a view of the Schneier 143 reference.
4 Schneier 143 is issued in 1999 and is titled Remote Auditing of Computer
5 Generated Outcomes, Authenticated Billing and Access Control, and
6 Software Metering System Using Cryptographic and Other Protocols.
7 So next, Your Honors, and I have this up on slide 19, we'll begin to
8 walk through some of the portions of Schneier 143 that Petitioner has
9 asserted disclose a multiplier that is variable over time, that multiplier being
10 virtual money. So first, Petitioner relies on a multiplier at one point in time.
11 The portion of specification they point to is Schneier 143 here on the left,
12 and it says a purchase of 10 credits may cost $0.50 each while at the same
13 time a purchase of 20 credits may cost $0.30 each.
14 On the right here, I have simple arithmetic to show this. At all times,
15 10 credits purchased at a rate of $0.50 per credit equals $5 of total cost.
16 Twenty credits purchased at a rate of $0.30 per credit equals $6 total cost.
17 This discloses different multipliers at one point in time, and it's not a change
18 in a multiplier over time. And Your Honor, support for this argument can be
19 found in '709 paper 17 at 6 and '710 paper 16 at 6.
20 Moving on to the next argument Petitioner has raised, is Petitioner
21 relies on a variance in credit costs across users. The portion of the Schneier
22 143 specification they've relied on is here on the left. It says that credit
23 discounts can be offered. For example, a five-star Mortal Kombat player
24 may receive a 10 percent discount. Here there is, again, no variance over
25 time. We have two users. One user would pay full price. The Mortal

1 Kombat five-star player would pay a 90 percent price. Support for this
2 argument, Your Honors, is in '709 paper 20 at 5, '710 paper 19 at 5.
3 Your Honor, moving to slide 21, Petitioner relies on a rate for credits
4 to time at the same time. The portion of the Schneier 143 specification is
5 here on the left. It reads that in lieu of purchasing one game, each credit
6 may entitle the player to play for a certain period of time. One credit may
7 buy five minutes, while two credits may buy 12 minutes of play. Here
8 again, there's, first of all, no virtual money being described here. This is
9 only the exchange of a value for time rather than an actual medium of
10 exchange in a virtual currency being described. And there's no variance
11 over time.
12 Again, at all times in this example, one credit will allow you to play
13 for five minutes and two credits will allow you to play for 12 minutes.
14 Support for these arguments can be found at '710 paper 16 at pages 7
15 through 8 and '709 paper 17 at pages 7 through 8.
16 JUDGE DANIELS: Counsel, why is a credit not virtual money?
17 MR. PIERCE: Your Honor, especially specific to this example, the
18 credit is being exchanged directly for play time as opposed to the virtual
19 money that's described in the '635 and '294 patent being a medium of
20 exchange that exists within the game.
21 Moving to slide 22, Petitioner raises a new argument in reply. So this
22 is new evidence, not in the petition, and it should not be considered as a trial
23 practice guide. It states very clearly.
24 JUDGE DANIELS: But doesn't your -- I'm thinking about your last
25 statement. Doesn't the virtual money -- doesn't the virtual money also do the
26 same thing? In other words, it can be used, I believe there's disclosure in the

1 challenge patents that says that it can be used for player time or more games,
2 or am I incorrect?
3 MR. PIERCE: Your Honor, I'd be interested to look at that specific
4 disclosure within the '635 and '294 patents, but the difference between the
5 credits as described in Schneier and the virtual money that's described in the
6 Milestone patents is their existence within the game as a medium of
7 exchange. For example, in claim 1, there's a requirement that there's a -- the
8 virtual money is converted into an image that permits advancement to
9 another level. And that's something that's not described of the credits, for
10 example, in Schneier, in particular how they're described in this embodiment
11 that the Petitioner points to.
12 And so I'll go quite quickly through this rates for enabling play, but
13 essentially this is new evidence, it's not in the petition, it shouldn't be
14 considered. And regardless, there's no disclosure of virtual currency here
15 and there's no disclosure of any multiplier of virtual currency. Support for
16 this argument can be found at '710 paper 19 at Ford and '709 paper 20 at
17 Ford.
18 JUDGE DANIELS: But I'm still concerned, we have markets that
19 trade credit, which is no different than any other fungible monetary unit. So
20 why can't a credit be the same as a coin, even though they have -- they may
21 have different physical manifestations, they're both of value to someone who
22 -- whether it's one of the function, which is why I was asking about the
23 gameplay, because I thought the V-coins, I'm looking for it, I thought the V-
24 coins could be used for gameplay. And maybe someone can tell me if that's
25 true before we all leave today. But I'll --

1 MR. PIERCE: I understand your point, Your Honor. And even if
2 there is such a disclosure, there's no disclosure in Schneier 143 that a
3 multiplier for credit, those credits that Schneier does disclose, could be
4 varied over time or does vary over time. And I see that I'm running a little
5 bit out of time. So with the last minute and 30 seconds, I'd like to respond to
6 a few points from the Petitioner. And so one thing that's very important is
7 that Petitioner consistently claims that Schneier 143 discloses a multiplier,
8 but there's no actual multiplier they're able to point to. That's why now
9 they're trying to read it out of the claim altogether.
10 So the title of this slide says, Mr. Crevell confirmed a protocol on
11 updating cost information is a multiplier that is variable over time.
12 However, the Crevell deposition testimony, you see that Mr. Crevell says
13 that the variable can change over time. It's talking about something that this
14 system could do, not that it does or not that it's described as doing. And
15 that's in the first highlighted block text in the last sentence.
16 In the next highlighted block, you see the entire description of 19 talks
17 about changing that metered value, again, cost, which cost is certainly not
18 virtual money, that metered value from a central site, which means it can
19 change over time. And that's not what the Petitioner has contended. Not
20 that the updated cost protocol could be used and a person of ordinary skill in
21 the art could modify the cost information protocol to achieve that claim by 8
22 and 9, by the dependent claims 8 and 9.
23 What they've actually argued is that it's disclosed, it's expressly
24 disclosed and it's not. The cost information protocol is simply an update
25 request, a update response providing cost information. And then once the
26 user device or meter receives the cost update response, it merges that

1 information into its internal cost table. And Your Honors, I'll take a minute
2 from my rebuttal time to just address one more slide.
3 JUDGE MOORE: Counsel, before you move on, I mean, you're
4 slicing the rest of the metaphor pretty thinly here. Doesn't this disclosure
5 describe the cost of a credit changing? And if so, I mean, doesn't that
6 change necessarily over, over time? And you also, before I let you answer,
7 you're also talking about the argument that it discloses this. The argument
8 here is one of the three obviousness arguments, so it's enough to teach your
9 suggestion that it varies over time.
10 MR. PIERCE: So, excuse me, Your Honor, I didn't mean to --
11 JUDGE MOORE: No, go ahead.
12 MR. PIERCE: So here there's no discussion of credits. It's actually
13 only this cost information, and the updated cost information protocol is very
14 specific. I will actually --
15 JUDGE MOORE: This is the cost of credits, right?
16 MR. PIERCE: Not necessarily, Your Honor. And so --
17 JUDGE MOORE: What else could be the cost of --
18 MR. PIERCE: The cost to play? They have rates for enabling play.
19 For example, the Schneier 143 reference does not refer to credits when
20 describing the updated cost information protocol. So, for example, here on
21 slide 25, I have the figure 19, the description of the cost information
22 protocol, a portion of it, and it's this cost table, the cost table information.
23 And the word credits is not used in this portion of the Schneier 143
24 reference. And so, Your Honors, I'll reserve my remaining three minutes for
25 surrebuttal. Thank you.
26 JUDGE TARTAL: Petitioner, you can begin when you're ready.

1 MS. LEONARDI: Thank you, Your Honor. Firstly, I'd like to
2 address -- I'd like to make a correction for the record. So the only thing at
3 dispute today is dependent claims 8 and 9. What is not disputed is credits
4 and what is not disputed is multiplier. We are solely focused on dependent
5 claims 8 and 9 because that's what Patent Owner has disputed. The second,
6 our expert is -- I'm actually going to move to slide -- let me see here.
7 Apologies.
8 JUDGE DANIELS: Well, Patent Owner's counsel had a good point
9 that you still have a burden. So we're -- it's not like we're going to ignore the
10 independent claims here.
11 MS. LEONARDI: That's true, Your Honor. We have a burden and
12 we have proven that burden with our updating cost protocol disclosure in
13 Schneier. And actually, let me just turn to that quickly. As Patent Owner
14 was just contesting that our updating cost information protocol does not say
15 credits, it still discloses this multiplier variable over time. It may not say
16 credits, just like Schneier does not use the specific word time. It does
17 involve time.
18 And if you look at the -- our expert actually provides that a POSITA
19 would understand that, looking at figure 19 and the steps required, it would
20 disclose that a multiplier is variable over time. And when we're applying
21 this cost -- this updating cost information protocol, credits are involved
22 because it's adjusting the pricing structure. And that's what credits are used.
23 Credits are used to purchase gameplay. You're buying in and that's -- the
24 updating cost protocol is what alters that pricing structure. And so credits
25 are entirely involved in that.

1 And the updating cost protocol is what discloses the multiplier and
2 discloses that it varies over time with its -- within the meter, it's in the non-
3 volatile memory can be manipulated with codes from the central computer to
4 alter or change the pricing structure for particular games using this updating
5 cost information protocol. So not only is it storing this data in its memory,
6 but then it's processing it after codes are manipulated and sent to the central
7 computer and adjusted. Now quickly with the time remaining, I want to turn
8 to this --
9 JUDGE MOORE: I remember that cost is for the cost of credits.
10 MS. LEONARDI: I'm sorry, Your Honor. What was your question?
11 JUDGE MOORE: That cost you were just discussing. How do I
12 know that's the cost to purchase credits?
13 MS. LEONARDI: Well, the credits, Your Honor, are what are used to
14 play games in this sense. And so the pricing structure -- go ahead.
15 JUDGE MOORE: Right. But the game also discusses the, you know,
16 the value of credits, right? Credits might give you different numbers of
17 minutes. But how do I know the -- you know, so I think Patent Owner's
18 team was doing the cost of purchasing the credits themselves and then the
19 value of the credits when they're used to purchase game time. Those are two
20 different things. How do I know that that update routine is changing the first
21 of those, the cost of purchasing the credits and not something else, for
22 example, the value of the credits?
23 MS. LEONARDI: Right, Your Honor. So within, you can see within
24 figure 19, it kind of breaks down the steps and it shows that the process in
25 which the cost table is being updated with this pricing structure. And so that
26 cost table would update what value that credit is given. And so these

1 multiple examples of rates of enabling play and this one credit for five
2 minutes and, you know, two credits for 12 minutes, those are all different
3 ways of the cost of updating the protocol can change how much value a
4 credit is worth.
5 JUDGE MOORE: Right. That's what I'm getting at, Counsel. And
6 you're talking about devaluing the credit after it's been purchased, right?
7 And you're conflating that with the claim limitation that talks about a
8 multiplier and the multiplier of the virtual money acquired by cash purchase
9 being subject to a multiplier. So, okay, now I apologize. I see I'm reading
10 the claim -- I was reading a little bit differently. I'll let you continue.
11 MS. LEONARDI: Okay. Thank you, Your Honor. So I want to turn
12 just with the 20 seconds. Patent Owner can test this disclosure on the screen
13 here where it states one credit made by five minutes of play while two
14 credits made by 12 minutes of play. So like we've been discussing, this is
15 just one of many examples we've provided, including the rates for enabling
16 play of how the cost updating protocol works. And so these are responsive
17 to arguments made by Patent Owner. And -- I'm sorry, my time has expired.
18 JUDGE TARTAL: You can conclude.
19 MS. LEONARDI: Okay, thank you. So this is just one of many
20 examples of how the updating cost information protocol works. So you need
21 not decide on whether these disclosures disclose this limitation. It's really
22 expressly and plainly provided within the cost updating protocol provided in
23 Schneier.
24 JUDGE TARTAL: Thank you, Counsel.
25 MS. LEONARDI: Thank you, Your Honors.

1 JUDGE TARTAL: Okay. Patent Owner, you can begin when you're
2 ready, and we'll just set you at five minutes as well.
3 MR. PIERCE: No problem, but should only need one.
4 JUDGE TARTAL: Okay. You don't need to use all five. You can
5 begin.
6 MR. PIERCE: All right. So, Your Honors, what we just heard from
7 Petitioner is that for the cost information protocol, credits is not explicitly
8 described, the multiplier is not explicitly described, and time is not explicitly
9 described, but somehow they're offering that it still discloses that claim by
10 dependent claims 8 and 9.
11 And additionally, Your Honor, I just want to point to one thing that
12 Petitioner raised in the last part of argument, and that is this portion where
13 there's the combination of one reference they've relied on with the cost
14 information protocol. If you actually look at '294 and '635 replies pages 11
15 through 12, there is no discussion of the updating cost information protocol.
16 The combination of this example with the updating cost information
17 protocol is new. That's a brand new argument they're making in the hearing
18 for the first time.
19 And for those reasons, Your Honor, the patentability of the challenge
20 claims should be confirmed. Thank you.
21 JUDGE TARTAL: Thank you, Counsel. Is there any additional
22 questions from the panel?
23 JUDGE DANIELS: No, I'm good. Thank you. Good job.
24 JUDGE TARTAL: Okay. That concludes our discussion on the '709
25 and '710 cases. Petitioner, you have 55 minutes for the remaining '708 and
26 '712 cases. That, did you want to reserve a certain amount for?

1 MS. NGUYEN: Thank you, Your Honor. Yes, 25 minutes.
2 JUDGE TARTAL: So I'll start with 30 minutes on the timer. You
3 can begin when you're ready.
4 MS. NGUYEN: Thank you, Your Honors. Once again, my name is
5 Lisa Nguyen, and I'll be discussing the '708 and '712 petitions. Ultimately,
6 again, the '336 patent and the '279 patents are perfect examples of patents
7 that should have never issued.
8 If we go to slide 2 of Petitioner's demonstratives, there are only really
9 two disputed issues, although they're very complex issues. But the first
10 issue, whether or not Walker is prior art, is really whether or not Patent
11 Owner can antedate Walker. Let's talk about the actual timeline. So if we
12 go to slide 19, the earliest effective filing date of both the '336 and the '279
13 is September 2, 2003. This is after the May 1, 2003 non-provisional filing
14 date for the patent.
15 So if you go to slide 21, the real question is whether or not Patent
16 Owner's handwritten notes from December 4, 2002 can antedate the Walker
17 non-provisional filing date, and it can't. How do we know that? Let's go to
18 slide 25 of demonstratives. This first excerpt is from the declaration of one
19 of the inventors, Randall Katz, and he says, in relation to an earlier file
20 application related only to variable parameters, what we had not done by that
21 time was to connect the use of such variable parameters to achieving a set of
22 objectives for the system.
23 Now, this is a very key admission because what he is saying here is
24 that a key component of the '336 and the '279 patents is that there must be
25 some connection to the use of variable parameters to achieving a set of
26 objectives for the system, basically the mandated parameters. This is a key

1 concept of the '336 and the '279 patent. And if we look at the evidence
2 presented by the Patent Owner, Patent Owner is never able to establish this
3 connection.
4 What is Patent Owner's evidence? The only corroborating evidence
5 with respect to this key component of the '336 and the '279 patents is, if we
6 go on to 31 of the demonstratives, two pages of handwritten notes. And
7 specifically with respect to connecting the use of variable parameters to
8 mandated parameters, utilizing variable parameters to achieve those
9 mandated parameters. That single line that says, can increase percentage of
10 wins by the level 2 is what Patent Owner is arguing connects variable
11 parameters to mandated parameters.
12 But that absolutely does not meet the burden. Why? Because
13 conception requires possession. Conception requires that the patent actually
14 -- inventors were actually in possession of this concept, of this idea. And
15 this single line is not sufficient to show that the inventor was actually in
16 possession of this idea.
17 In fact, Patent Owner, in arguing with respect to the provisional,
18 argues that just a simple example, detailed example of, for example, in
19 Walker, does not disclose this connection, the connection of possession.
20 And so this single line cannot establish this. But let's actually go into detail
21 about the patents and go through the actual claim language, because there's
22 other limitations there.
23 And to be clear, Patent Owner states in its surreply that we don't
24 challenge any other limitations are met or by the meeting notes from the
25 Patent Owner, but we absolutely do. And that's actually on our reply on
26 pages for the '336 patent, reply 14 through 15, and '279, reply 12 through 13.

1 We identify other limitations in the claims that Patent Owner has not
2 established that the inventor was in possession of.
3 Again, let's go actually to slide 5. What is the purported invention?
4 Systems and methods that permit greatly enhanced flexibility in gameplay,
5 and a surprising experience for a player while globally achieving the
6 mandated parameters. Now let's actually look at the claims. So if we go to
7 slide 8, these are the claims. And not only does a claim require that the
8 mandated parameters be achieved by the system as a whole, for the '336 and
9 the '279, you have to utilize the variable parameters to achieve the mandated
10 parameters.
11 And '279 is even more specific. It's not just any variable parameters,
12 but it's programmable variable parameters. And these variable parameters
13 must represent parameters characterizing at least game structure or pricing
14 structure.
15 So going back to the handwritten notes on slide 31, can increase
16 percentage of wins by the level 2. This has nothing to do with pricing
17 structure, this has nothing to do with game structure, and it absolutely has
18 nothing to do with connecting mandated parameters and variable parameters.
19 It just does not show that the inventor was in possession of this concept.
20 So let's go to slide 10 because it may be helpful to discuss what was
21 going on at the time. So again, networking systems have been around since
22 the 1980s. In fact, Kelly, the '683 patent is actually a 1996 reference
23 disclosing how to adjust prices and determine desired price costs and win
24 ratios, providing operators the ability to adjust those to optimize user
25 enjoyment, better retaining current users, help attract even greater numbers

1 of new users. This is exactly what the '336 and '279 patents we're trying to
2 do.
3 And then Walker also discloses that the system methods of present
4 invention facilitate adjustment of a game in order to help ensure that a set of
5 results obtained during a variety of game plays of a game satisfy one more
6 predetermined criteria. Again, to increase that user engagement.
7 So let's go back to slide 19. Again, we have the effective date of the
8 '336 and '279 and the Walker provisional date. So as it stands, Walker is
9 prior art. So the question now is burden shifting. If we go to slide 20, once
10 we've satisfied the initial burden of production, it then shifts to the Patent
11 Owner. And we have satisfied the initial burden. Patent Owner does not
12 dispute that Walker discloses every limitation of all the talent-rich claims.
13 So now the question, again, if we go to slide 21, is whether or not the
14 handwritten notes dated December 4, 2002 actually do.
15 And remember, if we go to slide 22, conception requires both, one, the
16 idea of invention structure, and two, possession of an operative method of
17 making it. Conception requires that the inventor appreciate that which he
18 has invented. If we go to slide 34, there's some additional law. A general
19 goal or research plan Milestone hopes to pursue does not show conception.
20 And even then, even with saying that, oh, hey, let's increase the percentage
21 of wins before level 2, that is barely a goal. That is not a research plan. And
22 that certainly does not show conception.
23 So let's go to what evidence Patent Owner actually relies on. Let's go
24 to slide 23. We have three declarations. And then, again, an unrelated
25 patent application relating to serial parameters that Mr. Katz himself has

1 admitted does not disclose the key limitation of the '336 and the '279, and
2 the handwritten name notes from December 4, 2002.
3 With respect to this evidence, again, it's simply insufficient. If we go
4 to slide 24, it is well-established that when a party seeks to prove conception
5 via oral testimony of a putative inventor, that party must proffer evidence
6 corroborating that testimony. That means that Mr. Katz's blanket testimony
7 that he did conceive of utilizing variable parameters to achieve mandated
8 parameters is insufficient.
9 He needs corroborating evidence that that was actually conceived, that
10 the idea was actually in his possession. And there is no such corroborating
11 evidence showing that he actually understood the connection between
12 variable parameters and mandated parameters.
13 Patent Owner also relies on testimony. But if you compare the charts
14 between Mr. Szeder and Mr. Katz, they're virtually identical. And so, Mr.
15 Szeder's testimony really adds nothing beyond a conclusory statement in the
16 party's submission. In particular, Mr. Katz simply says utilizing variable
17 parameters was there, points to, again, the handwritten notes on slide 31.
18 And that single line is the only line that Mr. Katz and Mr. Szeder point to in
19 order to show utilizing variable parameters to meet mandated parameters, to
20 achieve mandated parameters.
21 And Mr. Szeder provides no explanation, no context, no arguments,
22 no analysis as to why this simple sentence is sufficient to actually show that
23 Mr. Katz was in possession of this concept.
24 So again, let's go to slide 20 -- let's go to slide 25. What we had not
25 done by that time was connect the use of such variable parameters to

1 achieving a set of objectives of the system. Again, they had not connected
2 variable parameters to mandated parameters.
3 Patent Owner additionally relies on the testimony of its prosecutor,
4 David Murphy. But Mr. Murphy adds nothing more than the conclusory
5 statements that Mr. Katz makes in his declaration. He states, as reflected in
6 the meeting notes, again, the same meeting notes in slide 31, inventors Katz
7 and Dawson first described a well-known pricing structure for lotteries,
8 GLEPS, or Guaranteed Low-End Prize Structure. The identification of
9 GLEPS in and of itself cannot show mandated parameters, because GLEPS,
10 as admitted by Mr. Murphy, was a well-known pricing structure.
11 There, again, is no connection between variable parameters and
12 mandated parameters. In fact, the patents itself admit, particularly in the
13 '336 patent, column 4, 39 to 41, that one known price structure is GLEPS.
14 So pointing to the description of GLEPS in the handwritten notes shown in
15 slide 31, cannot itself also show this connection between mandated and
16 variable parameters.
17 And Patent Owner constantly points out, oh, Mr. Crevell says that
18 GLEPS or other wind ratios and things like that are mandated parameters.
19 But what's not there is the connection, once again, connection between
20 variable parameters and mandated parameters.
21 And so, if you go to slide 27, the testimony of Mr. Katz, Mr. Murphy,
22 and Mr. Szeder cannot by themselves show that there was this connection
23 between variable parameters and mandated parameters. And if we, again, go
24 to slide 30, this is figures from the patents themselves, from the '279 patent
25 and the '336 patent, describing the fact that you receive mandated

1 parameters, a process that implements the mandated parameters through
2 selection and implementation of variable parameters.
3 They utilize the first and second programmable variable parameters
4 set to achieve the mandated parameters. There is simply no connection on
5 how these parameters interact as established in the '279 and '336 patent. So
6 what it comes down to, once again, on slide 34, a general goal or research
7 plan hopes to pursue does not show conception. And those handwritten
8 notes do not show conception. But even more than that, there is no due
9 diligence.
10 So if we go to slide 36, inventors fail to establish due diligence where
11 the inventors possess the capacity to test the invention and chose instead to
12 test something else, to do something else. And one of the problems that
13 Patent Owner has on slide 37 is that they point to Mr. Murphy and his work
14 on Milestone patents generally, but there is nothing in the billing or any of
15 Mr. Murphy's testimony that established that he was actually focused on
16 mandated parameters and connecting variable parameters to mandated
17 parameters.
18 If you look at slide 38, which in Patent Owner's surreply discusses,
19 oh, Mr. Murphy did actually say that he was working on these things, that
20 they were actually working on these patents. If you actually look at the
21 description provided in the citations, it's very general. It does not tell you
22 whether or not they were working, for example, on the '861 application or on
23 the mandated parameter patents, i.e., the '336 patent and the '279 patent. So
24 there is no characterization in these billing statements that actually helps the
25 Patent Owner to show that there was due diligence.

1 And we appreciate that Mr. Katz was sick during that time, but Patent
2 Owner still has not explained why Gary Dawson, Mr. Katz's co-inventor, or
3 Mr. Murphy could have not been working on it.
4 And so, if you look at slide 39, there was no due diligence between
5 December to May 1st with respect to these patents. And for that additional
6 reason, Patent Owner cannot antedate the Walker non-provisional date.
7 And, in fact, if you look at what Patent Owner says with respect to Mr.
8 Dawson, Patent Owner says, well, Mr. Dawson actually did meet with Mr.
9 Murphy from May 1, 2003 to September 2, 2003 on surreply page 15 of the
10 '336.
11 But again, that doesn't help, because during that time is not the period
12 of no due diligence. It's before that time, that five-month period, almost six-
13 month period where there is no due diligence and no reasons provided that
14 Mr. Dawson or Mr. Murphy could not have worked on the mandated
15 parameter patents. And so, with respect to whether or not Patent Owner can
16 actually antedate Walker, they cannot. And because Patent Owner does not
17 dispute that Walker discloses every single limitation of the challenge
18 patents, there really is no question that the '336 and '279 patents are not
19 patentable.
20 But let's actually talk about our other grounds, the Kelly 683 grounds.
21 So let's actually jump to slide 53 --
22 JUDGE TARTAL: Counsel, can I just ask you, just as a reminder if
23 nothing else, looking at your slide 39.
24 MS. NGUYEN: Slide 39.

1 JUDGE TARTAL: And then the following slide is where you then
2 get into provisional support for Walker. In what context are you relying on
3 the provisional date of Walker?
4 MS. NGUYEN: We are -- so generally, we are not, because at the
5 end of the day, the Walker non-provisional filing date is sufficient because
6 Patent Owner has not been able to antedate that. We do make some
7 arguments that, except they could, we could rely on the Walker provisional
8 date, but the reality is, is that they just can't. And so we really don't need to
9 show that Walker is entitled to its provisional filing date.
10 JUDGE TARTAL: Okay, thank you.
11 MS. NGUYEN: So if we go to slide 53. And let's just talk about
12 Kelly generally and what Patent Owner's arguments with respect to Kelly
13 are. Patent Owner argues that the petition fails to map the same gameplay
14 events throughout all the limitations of Kelly. And in particular, that the
15 same gameplay events that are analyzed are not actually stored within the
16 Kelly reference. But that just simply doesn't make sense and ultimately fails
17 to look at Kelly as a whole and what the petition actually mapped each of the
18 claim limitations to.
19 So if we actually go to slide 54. This is a key part of the disclosure.
20 So Kelly discloses a processing system coupled to memory. So that memory
21 is the memory that the processing system uses to store information,
22 including storing information about gameplay events that it determines. So
23 if you go to slide 55, in limitation 1D, we talk about how if there's user
24 input, the game processor takes that user input and interprets the demands
25 and influences the game states and game events in the game process.

1 There was some discussion that what we're trying to argue is that the
2 user inputs are actually like stored. That has never been Petitioner's
3 argument. Petitioner's argument has always been that what is actually stored
4 is that output of what the game processor interprets. Those game states and
5 game events, those are what's actually stored in the memory.
6 So if you go to the next slide, slide 56, this is explained in both the
7 declaration and in deposition by Petitioner's expert. Petitioner's expert
8 explains that Kelly discloses storing information regarding particular
9 gameplay events as determined by the processor. Because when you have a
10 processor that is interpreting user input, for example, continue, let's continue
11 to play additional games. That information is going to be stored by the
12 processor in the memory coupled to the processor.
13 And if you go back to slide 55, what is that memory? The
14 microprocessor is coupled to RAM30 by a data address controlled bus to
15 permit the use of RAM for scratchpad memory and other functions during a
16 game process. And that's key, during a game process. Those game states
17 and game events that the game processor develops and determines based off
18 the commands from the user, from the user input, that is what is stored by
19 the microprocessor into memory. It is not the user input. Let's not have any
20 confusion over that. It is the actual game commands, game states, game
21 events that's actually stored in the memory.
22 And so when we get to 57, slide 57, we get to performing game
23 analytics on game play events. Those game events, those game play
24 information, game states, that's what's being stored and that's what's being
25 analyzed. That's what the processor is performing game analytics on.
26 Additional information can also be stored in the tournament list, which can

1 be used to help determine a winner or to provide statistical information for
2 the operator.
3 The number of times the player has played can be stored with a player
4 identification on a storage device or in memory so that the game apparatus
5 can use it. This number may be increased based on the amount of times of a
6 particular game is played, the number of times that different games are
7 played, or by achieving a game related goal.
8 So anytime the user input something, let's say, play another game, use
9 my life, let's play another game, that is being stored in memory and the game
10 processor then uses that information to perform game analytics on those
11 game play events that the user selected the user and that the game processor
12 stored in its memory.
13 If we go to slide 59, same story. There is a memory and that memory
14 records game play information regarding particular game events. Again,
15 these are the same citations that we use to explain that, hey, there's game
16 information that's actually stored in the processor coupled to memory.
17 These are the same exact things. And so there is no inconsistency. We are
18 not switching from user input to somehow game play information. We are
19 using the same game play information that was actually resulting from the
20 user input.
21 And this conflation of user input and the game states and game events
22 that are determined by the game processor, that is incorrect. That is not
23 what our petition says. And so there should be no ambiguity that Kelly itself
24 also discloses each and every limitation of the challenge claims.
25 So if we go back to slide 2, again, what are the disputes? The disputes
26 are whether or not Patent Owner can anticipate Walker and prevent it from

1 being prior art, and it cannot. And whether or not Kelly somehow
2 inconsistently uses game play events in the petition, and we do not. We
3 consistently use game play information throughout every single limitation
4 that's in the petition. So unless there are any questions, I'll pass on.
5 JUDGE TARTAL: We'll take any questions at this time. And you
6 still have five minutes remaining from the opening towards 30, which I think
7 leaves you with 30 minutes to use for your rebuttal.
8 MS. NGUYEN: Thank you, Your Honor.
9 JUDGE TARTAL: Before you go on, I was going to take a break.
10 Do you want to take a break? Is that okay with you?
11 MR. NELSON: I'd appreciate that.
12 JUDGE TARTAL: I'd appreciate that as well. So we will go off the
13 record at this point. And it's 3:15, let's return at 3:25.
14 (Whereupon, the above-entitled matter went off the record at 3:15
15 p.m. and resumed at 3:25 p.m.)
16 JUDGE TARTAL: We're back on the record. And we'll turn now to
17 Patent Owner. And I believe you also had 55 minutes of time remaining.
18 Did you want to reserve some amount for the surrebuttal?
19 MR. NELSON: Yes, Your Honor. How about 15 minutes reserved
20 for surrebuttal time?
21 JUDGE TARTAL: You can begin when you're ready.
22 MR. NELSON: Thank you, Your Honors. Good afternoon. My
23 name is William Nelson on behalf of the Patent Owner Milestone. Today,
24 I'm going to begin my presentation with a discussion of whether Walker can
25 be deemed prior to the '336 and '279 patents. The presentation and the

1 evidence is largely the same for both of them. So I think they can largely be
2 treated together, although I will depart as needed from that.
3 Before I do though, I'd like to offer an observation that the
4 presentation you just heard from counsel for Petitioner is in several respects
5 radically different than anything presented in the petition or the reply papers.
6 And I'll give you two examples now, but I will do my best to draw attention
7 to them as I go through my presentation.
8 The first is that I now understand that Petitioners no longer contend
9 that the Walker reference should be accorded the date of its provisional
10 application. At least that's what I understood them to say in this
11 presentation.
12 JUDGE TARTAL: Well, just to be clear, they haven't withdrawn
13 arguments based on that. They simply clarified that they don't think it's
14 necessary because they feel they've sufficiently shown unpatentability based
15 on Walker's nonprovisional date. So I wouldn't go so far as to say it's a
16 change in their arguments. It's I think not what they chose to focus on
17 during the hearing.
18 MR. NELSON: Understood, Your Honor. Although I heard it a little
19 more strongly, but I defer to you on that. I would say that a decision like
20 that has consequences. And as we'll see, one of the consequences that it has
21 is that the entirety of Petitioner's argument, which concerning diligence and
22 reduction of practice of the claimed inventions, is dependent on a purported
23 period from December 2002 to May 1, 2003, in which, according to the
24 petition, no diligence occurred.
25 As a matter of law, that's irrelevant if Walker is not entitled to its
26 provisional application date. The critical date under the perfect surgical

1 case, and this is on page 56 of our Patent Owner response, is the effective
2 date of the purported prior art records, which would be May 1, 2003. And I
3 promise you we'll take a look at their slide 39 again, which has a big red bar
4 where they say there was no diligence up until May 1, 2003. That's
5 incorrect, but it's also entirely irrelevant because if they cannot claim the
6 date of their provisional, the critical period is Walker's utility date, which is
7 May 1, 2003 through September 2, 2003.
8 You also heard argument that, despite what the petition says about
9 Kelly, or both petitions say about Kelly, they weren't really talking about
10 user inputs as the things that are stored. I think we will see very early on
11 that not only is that false in that that's exactly what their petition said, it is
12 the case. And you didn't hear anything about this from the Petitioner, that
13 this office has already found evidence like the kind presented by them in
14 their petition to be insufficient to disclose substantially similar claims. So
15 these decisions have consequences, and I hope to address them as we go
16 throughout the discussion.
17 First, I'd like to address the question of whether it is the case that
18 Petitioner has shown that Walker is prior to the '336 patent. I'm going to
19 discuss both issues surrounding prior conception, as well as diligence and
20 reduction of practice, and I will at least address whether Petitioner has
21 demonstrated, as was its obligation under In re Riggs, that Walker was
22 entitled to the provisional application date. Because if they can't, all of that
23 story about diligence is fundamentally irrelevant under perfect surgical. And
24 the fact is, they can't, which is why I suspect you didn't hear much about it
25 today.

1 So on conception, really, Walker, for these grounds, is the primary
2 assertive ground that they contend renders these claims unpatentable.
3 Originally, the Petitioners had contended that Walker is not pre-AIA 102a
4 art. We pointed out that that can't be right, because Walker's publication
5 date is January 1, 2004. As best as we can tell, the Petitioners now in reply
6 have conceded that point and say that, at most, Walker is 102e prior art.
7 They do not make any assertion in their reply that it is 102a art.
8 But that fails too, and I'm on slide 17, Your Honors. Here's Arctic
9 Cat, a case that lays out the basic requirements to show that something is
10 prior art, or rather to show how a purported prior art reference may be
11 antedated. And Arctic Cat tells us that antedating of a reference requires
12 that the inventors, one, conceived of the inventions at issue before the prior
13 art date, and two, diligently reduced those conceptions to practice.
14 And we have come forward with evidence that we believe is, frankly,
15 unrebutted by anything other than lawyer argument, that in fact there was
16 conception of each element of the challenged claims by the date of
17 December 4, 2002, prior to the Walker utility date of May 1, 2003.
18 And so what is that evidence? First, let's frame that with the legal
19 standard. It is the case that first conception must be proved by corroborating
20 evidence, which shows that the inventor disclosed to others his completed
21 thought, and that there must be a showing that the inventors had a definite
22 and permanent idea of the complete and operative invention. We contend
23 that. We've shown that, Your Honors.
24 You heard from counsel for Petitioner that the only thing we had was
25 two pages of notes from a December 4, 2002 meeting with prosecutors. In
26 view of the unrebutted nature of this evidence, and what I mean by that is no

1 cross-examination has occurred in the inventor, no cross-examination has
2 occurred of our expert, no cross-examination has occurred of our prosecutor,
3 each of whom, as I will show you momentarily, explained exactly what this
4 evidence showed. There is nothing but lawyer argument trying to poke
5 holes in that. They had the opportunity to take all these depositions. They
6 did not do so. This evidence stands unrebutted.
7 But in our view, even if it were just the case that these December 4,
8 2002 notes were the only thing that could demonstrate or corroborate
9 invention, we contend they're sufficient, as supported by the evidentiary
10 submissions of the named inventor, the patent prosecutor, and an expert,
11 none of which have been challenged, other than just occasional poking
12 holes.
13 So it would be sufficient were that the case. But that's not the case.
14 Because of course, as Your Honors are aware, Patent Owners have relied
15 upon U.S. patent application 10,123,861, an earlier application from the
16 same inventors just prior in time to the conception in December of 2002.
17 Now, interestingly, I heard counsel say, this is an unrelated
18 application. I don't know what that could possibly mean, Your Honors. It is
19 an application written by the same inventors concerning largely the same
20 subject matter, multiplayer games, and how they may be improved. It is also
21 on the face of both the '279 and '336 patents, identified in column one as a
22 related application. I don't know what it means to be unrelated in this
23 context in view of that evidence. It is related. It gives you a window, a
24 written window, that was indisputably disclosed to others as to what they
25 understood as of that date and time.

1 And the December 4, 2002 notes, as we've explained in our pleadings
2 and the supporting declarations, explains how those two documents are
3 linked together to demonstrate that the inventors had a complete and definite
4 idea of the invention in their mind. Not a goal or plan or whatever counsel
5 characterized, but limitation by limitation, they possessed what was claimed
6 in the '336 and '279 patents. That's what we've shown.
7 Again, and I'm on slide 21 now, this account of prior conception is
8 supported by the declaration of named inventor Randall Katz. Unrebutted.
9 He was not cross-examined by Petitioner. Is supported by the declaration
10 and billing records, additional corroborating evidence of the patent
11 prosecutor, David Murphy. Unrebutted. He was not cross-examined. The
12 declaration of expert John Szeder, also unrebutted. He was not cross-
13 examined.
14 Each of these declarations explains exactly the meaning of that
15 application and the December 4, 2002 notes to explain and identify how they
16 demonstrate conception of each limitation of the claimed inventions. Mr.
17 Katz's declaration does so, and I'm on slide 22 now. He identifies and
18 explains the corroborating evidence of conception for each limitation of each
19 challenge claim. There is a massive chart in his declaration that walks
20 through limitation by limitation and explains how these two documents
21 show his conception of each element of the claimed inventions.
22 And so I will demonstrate, including not only the mere idea of
23 mandated parameters, but the use of mandated parameters in conjunction
24 with variable parameters to achieve those mandated parameters, which is
25 really what I think the root of Petitioner's complaint about this evidence is,

1 and I will show that to you. It further recounts Mr. Katz's diligence,
2 reasonable diligence, and reduction of practice.
3 The declaration of the patent prosecutor, another piece of supporting
4 evidence, also unrebutted. He was not cross-examined. It describes and
5 explains the '861 application, which he worked with the applicants on, and
6 the significance of those prosecutor's meeting notes, which he took. He
7 authenticates them and what they mean.
8 He also has provided billing records for prosecution of the claims and
9 gave his account of how Mr. Katz's grave illness affected his ability to
10 participate in prosecution meetings, prosecution work, and how that level of
11 diligence, really all that can be expected from a gravely ill man,
12 demonstrates reasonable diligence and reduction of practice during the
13 critical period of May 1 to September 2, 2003. All of this is unrebutted. The
14 declaration of our expert, Mr. Szeder, does the same thing. He identifies and
15 explains corroborating evidence of conception.
16 I heard some complaints from counsel for Petitioner that Mr. Szeder's
17 declaration was conclusory or didn't say anything different. Well, I don't
18 agree with that, but Petitioner, of course, had the opportunity to cross-
19 examine Mr. Szeder and find out whether he had his own opinions or not.
20 They didn't do so. It is unrebutted. There is no evidence to dispute the
21 credibility of any of these witnesses. There's nothing. There is just this
22 unrebutted evidence of prior conception.
23 And Mr. Szeder's declaration does identify and explain corroborating
24 evidence of conception of each limitation on a limitation by limitation basis,
25 and that's in his declaration at a lengthy paragraph 87.

1 So what does Petitioner -- I'm on slide 25 now. What does Petitioner
2 really say about this? Not much. Petitioner disputes none of that evidence
3 of prior conception except for a few specific limitations regarding the
4 implementation or usage of mandated parameters in connection with
5 variable parameters. None of the other part of that declaration is actually
6 disputed. None of the other prior evidence is actually disputed.
7 Petitioners say, Katz just addresses the idea of mandated parameters.
8 He does not address the claims as a whole. And here, there are three things
9 that Petitioner identified. Receiving mandated parameters, utilizing variable
10 parameters to achieve mandated parameters, and varying displays presented
11 to the user to achieve those mandated parameters.
12 This is for the '336 patent. The limitations are quite similar for the
13 '279. They involve storing mandated parameters, using variable parameters
14 to achieve mandated parameters. They're functionally the same, and the
15 complaint from Petitioner for both patents is largely the same. It's just not
16 so that we didn't show this. Your Honors, it's just not so.
17 Importantly, I'd like to frame this part of the discussion with some of
18 the law here. You know, what you heard from Petitioner is, well, it's just
19 one document. It's not enough. Not sufficient. Not sufficient. We never
20 really heard why. Primarily because it's just not true. There is no magic
21 number of corroborating evidence documents. There is no magic formula
22 for determining prior conception.
23 Rather, Chen and B. Bouchard, in other cases, made it clear that
24 whether an inventor's testimony has been sufficiently corroborated is
25 determined by a rule reason analysis in which all the pertinent evidence must
26 be evaluated to this determination. There's no magic rule here. And we

1 have done more than enough on limitation by limitation basis to explain how
2 these documents, including both the lengthy patent specification, as well as
3 the inventor's meeting notes, demonstrate conception of each limitation.
4 So I'm going to start with the idea of mandated parameters first here.
5 I'm on slide 27. Mr. Katz's declaration makes clear that we describe to Mr.
6 Murphy, that's the patent prosecutor, our idea is to enhance gameplay by
7 varying outcomes, structure, or pricing. Variable parameters. In other
8 words, using variable parameters to ensure some result set by the game
9 operator. In other words, to achieve a mandated parameter. Such as, and
10 he's here describing specifically language in the December 4, 2002 meeting
11 notes that supports that idea, including the idea of a fair number of low-tier
12 prize winners. Force an even distribution of pricing.
13 What does it mean to force an even distribution of pricing? Our
14 declarations discuss that in some detail. That is exactly the mechanism to
15 achieve mandated parameters. Forcing an outcome is changing a game from
16 its otherwise expected odds to a different set of odds that ensure that some
17 result is achieved. That is the use of a variable parameter, forcing an
18 outcome that would not otherwise be achieved so that some result occurs.
19 That is expressly the use of variable parameters to achieve a mandated
20 parameter.
21 Guarantee a payout, and I'm going to explain these in some detail in
22 the following slides, Your Honors. Guarantee a payout or increase the
23 percentage of a payout of a lottery game is another form of mandated
24 parameters to obtain a higher global payout percentage, and I'll discuss that
25 in the following slides. So there's not a bare idea. There's a firm, well-
26 conceived, and definite idea of how variable parameters, which as based on

1 what I've heard today, Petitioners don't actually contest the inventors
2 possessed as of the '861 application. That '861 application describes varying
3 gameplay.
4 And as Mr. Katz said in his own declaration, what we hadn't done yet
5 with the disclosure of varying game parameters in the '861 was to connect it
6 to some larger set of goals. That's exactly what Mr. Katz is here describing
7 in connection with his meeting with his prosecutor December 4, 2002.
8 We moved beyond and added to that idea of variable parameters, that
9 we could use those changes in gameplay, changes in the structure of a game,
10 changes in the odds of a game, changes in the pricing of a game, to achieve
11 some set of results that the game operator wants to achieve. That's using
12 variable parameters to achieve mandated parameters.
13 Here we have a discussion from the prosecutor's meeting notes from
14 December 4, 2002, describing the use of GLEPS, G-L-E-P-S, Guaranteed
15 Low-End Prize Structure. In other words, Mr. Katz and Mr. Dawson
16 conveyed to their prosecutor, there's this idea of GLEPS that over a series of,
17 let's say in their example, 100 tickets in a packet, there's at least $50 of win -
18 - $50 of wins. And the problem statement they were addressing in their
19 discussion was right below it, how to translate that idea, how to translate that
20 into internet or SMS.
21 Mr. Katz explained that's exactly what he proceeded to describe to his
22 prosecutor. How are we going to translate that idea of guaranteed pricing
23 into an internet game? And he described exactly how that could be
24 accomplished. Not just in one line, but over and over. You heard it was just
25 one line. It's not true. The declarations of our expert and Mr. Katz made

1 clear that's not true. That this set of notes repeatedly describes mandated
2 parameters and the use of variable parameters to achieve them.
3 Force, the notes say, force an even distribution of pricing. And you
4 could do that, they said, by within every X plays, certain amount of low-tier
5 wins. And as Mr. Katz explained in deposition -- excuse me, his declaration,
6 what that means is that you could ensure that within every X number of
7 plays, there were a certain amount of low-tier or low-value wins. That's a
8 mandated parameter. And how do you do it? You do it by forcing an even
9 distribution of pricing such that there's a fair number of low-tier prize
10 winners. That is, again, a mandated parameter and it's used with variable
11 parameters to ensure that mandated parameter is met. Not just a line,
12 multiple times.
13 Here's Mr. Katz explaining exactly what he meant by those notes.
14 Explaining exactly what those notes meant. That we described a glimpse.
15 And this is here describing what's known in the industry and in the patents as
16 a win rate. We described that in a 100-ticket packet of scratch-off lottery
17 tickets, each costing a dollar, the operator would guarantee at least $50 of
18 wins.
19 As the notes further reflect, we would describe that one aspect of the
20 problem we were attempting to solve was how to translate that into internet
21 or SMS. And the notes reflect our proposed solution, which could force an
22 even distribution of pricing. It's exactly what's described in these claims
23 where variable parameters are used to achieve mandated parameters.
24 And that's, he says, that's a guaranteed win rate. An example of what
25 we call in the patents a mandated parameter. There's no dispute here that a
26 win rate is a mandated parameter in the context of '336 and '279 patents.

1 They haven't disputed that. This is a win rate. A certain number of wins
2 across a number of games. He disclosed it to his prosecutor and he disclosed
3 achieving that win rate by the use of variable parameters like forcing certain
4 outcomes so that that result was achieved.
5 I know there's not a dispute that a win rate is a mandated parameter
6 because their expert said so in deposition. We did cross-examine their
7 expert and he told us a win rate is an example of a mandated parameter.
8 And I even asked him if a defined number of wins in a game over X number
9 of plays in accordance with or consistently with what the December 4, 2002
10 notes say, is that a win rate? Yes, it is. That's a win ratio, he says. That's a
11 mandated parameter. It's disclosed in those notes. And the use of those
12 variable parameters is disclosed there too.
13 Similarly, those notes disclose another mandated parameter, a global
14 payout percentage. Mr. Katz has explained that this reference to lottery --
15 there's a caret you can see to the side of 50 percent, a bigger net, 50 percent
16 payout to 75 percent, can increase the number of wins by the level 2.
17 There's another thing he wrote about this. He also writes, you may
18 need it to be predetermined. That guarantees the payout. He's explaining to
19 his prosecutor exactly how a global payout percentage, meaning that here,
20 and as he explains in this declaration, typical lottery payouts are about 50
21 percent of all tickets pay out something, whether it's just another scratch or
22 something else.
23 He said, how can we raise that to 75 percent so that the global payout
24 percentage is higher? He says, well, one thing you can do is you can
25 increase the percentage of wins by the level 2 by the next level of the game.
26 That would increase the global payout. That's a variable parameter. That is

1 changing the structure of a game beyond what it would do otherwise so that
2 the global payout can be 75 percent instead of 50 percent. That is again
3 describing the use of a variable parameter to achieve a mandated parameter,
4 which is precisely what the Petitioners are saying isn't disclosed or
5 corroborated.
6 He also says, you may need it to be predetermined. What does he
7 mean by that? His declaration tells you what he means by that. He means
8 that the outcome may need to be predetermined. That's another variable
9 parameter, forcing an outcome, turning a loss into a win so that the payout is
10 raised to 75 percent. He says that guarantees the payout. That is a mandated
11 parameter, global payout percentage. And these notes are reflecting Mr.
12 Katz and Mr. Dawson understood how their variable parameters from the
13 '861 application could be used to obtain them.
14 Mr. Katz, and this is Mr. Katz's declaration explaining exactly what he
15 meant by increasing a 50 percent payout to 75 percent. We propose that our
16 invention could raise this global payout to 75 percent, a mandated parameter,
17 by increasing the percentage of wins by the level 2, by using a variable
18 parameter.
19 We're not alone in believing that a global payout percentage is a
20 mandated parameter as used in the context of these patents. Mr. Crevell,
21 Petitioner's expert, agreed with us in deposition that the precise example
22 used in those notes from December 4, 2002, is a global payout percentage
23 and is a mandated parameter. Their expert confirmed it.
24 So now, I think I've covered quite a bit of this. But as I understand the
25 Petitioner's argument, it's not just the idea of mandated parameters that
26 needed to be disclosed, that there was evidence of a clear and definite

1 possession of that idea. It's the idea of, among other things, for the '336
2 patent, receiving those mandated parameters somewhere. We addressed that
3 too. We did not simply identify the presence of mandated parameters in the
4 notes of the meeting and other evidence. We identified the specific
5 satisfaction of the limitations of the issued claims and possession of those
6 limitations.
7 Receiving mandated parameters, we explained that the '861
8 application, which was the inventor's prior application, already disclosed
9 how the inventor's game system could receive parameters by accessing a
10 memory of the system. That was already in their possession. What they
11 didn't have at that point of the '861 application but clearly had by the time of
12 the 2002 notes is that among the parameters that would be received could be
13 a set of mandated parameters, such as a GLEPS number, such as a global
14 payout percentage. We explained exactly how a person of skill in the art
15 would understand that evidence.
16 Apart from saying, it's not so by Petitioner's counsel, there's no expert
17 opinion from their side saying that's not right. There's been no cross-
18 examination of our expert or our inventor saying that's incorrect. There is
19 nothing but counsel say so, but that's not enough. We submit this evidence
20 more than establishes that the inventors had a complete and definite idea of
21 this invention. Ad here's the section of the '861 application that makes clear
22 that they understood how a system could receive parameters, whether they
23 be variable or mandated.
24 The next limitations that are complained of by Petitioners for the '336
25 patent, and I can show you -- I will show you these same or similar
26 limitations for the '279, is the idea of implementing the mandated parameters

1 by utilizing variable parameters and achieving those mandated parameters,
2 again, using variable parameters.
3 I covered this in the original discussion of the inventor's notes, but we
4 made very clear that the notes from the December meeting reflect that the
5 inventors proposed that their invention could raise the global percentage,
6 global payout percentage to 75 percent, that that's a mandated parameter,
7 and could do so by increasing the percentage of wins by the level 2, in other
8 words, on a secondary game level, which is a variable parameter. The
9 expert opinion we provided confirming this stands again, unrebutted.
10 The same is true for the implementing of mandated parameters.
11 Again, here's the declaration of Mr. Szeder echoing and confirming the same
12 understanding of what those notes show.
13 So I know you've heard that there's somehow no disclosure of the
14 specific limitations involving mandated parameters or conception. There
15 clearly is, and it's unrebutted. The only rebuttal is what you just heard from
16 counsel that I don't believe in. That is not sufficient to overcome the
17 showing that we've made.
18 Diligence in reduction to practice. So Petitioner here in the '336 and
19 '279, for those patents, has contested that there has been reasonable or
20 continuous diligence. Among the complaints offered are that we haven't put
21 forth any evidence showing that the inventor Dawson exercised any
22 diligence at all, and that there's somehow some contradictory evidence from
23 the patent attorney. I dispute that there is any such contradictory evidence,
24 and we can walk through it.
25 First, we need to focus on the law a little bit. The law is that
26 reasonable diligence must be shown throughout the entire critical period,

1 which begins just prior to the competing reference's effective date and ends
2 on the date of the invention's reduction to practice. So reasonable diligence
3 is what's required, not just diligence.
4 And the Federal Circuit has explained we apply a rule of reason to
5 such corroborating evidence. And the diligence need not be perfectly
6 continuous, only reasonably continuous. And periods of inactivity within
7 the critical period do not automatically vanquish Patent Owner's claim of
8 reasonable diligence. Instead, you're looking at the evidence as a whole.
9 And so I'd like to focus on some of that evidence.
10 The unrebutted declaration of Mr. Katz explains that shortly after the
11 meeting reflected in December notes, he was diagnosed with a very
12 aggressive form of cancer that was truly life-threatening. And undertook a
13 course of treatment that was deleterious to his health, made it difficult for
14 him to participate in the prosecution of his patents.
15 What I heard from Petitioner is that under this rule of reason, which
16 requires an evaluation of evidence as a whole, that really what Mr. Katz
17 should have done as a dying man was to spend more time on his legacy in
18 the patent application than treating himself. I don't think that's what the rule
19 requires. It's clear enough that the rule doesn't require that. And that
20 suggestion that he should have done more while trying to save his own life is
21 frankly not supported by the evidence where Mr. Katz, in his unrebutted
22 declaration, says, I could not have done more while I was doing this.
23 He says that they didn't take his deposition, they didn't cross-examine
24 it. They have no evidence true about that. Their contention is essentially
25 that Mr. Murphy and Mr. Dawson should have gone on without him, without
26 any indication of how that would have worked or whether that was an

1 appropriate thing to do. The diligence must be reasonable, and it was here.
2 It stands unrebutted.
3 I also wanted to briefly, as I mentioned at the beginning here, focus on
4 the argument from the Petitioner that -- here it is, on slide 39. Let me see if I
5 can get that up here. There we are. I apologize for my lack of technical
6 prowess, but I've done it. What Petitioner has said is that there is, in this red
7 bar in the middle, there's just been no diligence from December 4, 2002 right
8 up until May 1, 2003. That's not accurate. The December 4th notes reflect
9 diligence. The other records of the prosecutor reflect it.
10 But more importantly, the critical period here is not December 4,
11 2002. It's from the effective date of Walker. And Petitioners cannot show
12 that Walker's entitled to the date of his provisional. They cannot. So
13 whatever occurred in this period when they contend there was no diligence
14 is really irrelevant. What matters is the period from May 1 to September
15 2003, from Walker's effective date to the reduction to practice by submission
16 of the patent application. That's the perfect surgical case. That's what the
17 path tells you.
18 And during that period -- let me go back to our slides. Just a second.
19 I apologize, Your Honors. Bear with me just for a second. Let's see if I can
20 get this working. There we go. Thank you.
21 That period of diligence is amply supported both by Mr. Katz's
22 declaration, which explains exactly why he couldn't do more during that
23 period, but also the prosecutor's billing notes or billing records, which show
24 more than reasonably continuous diligence from the period of May 1, 2003
25 through September 2, 2003 when this application was ultimately filed and
26 therefore reduced to practice, at least constructively.

1 I'm going to briefly focus on whether Petitioner is entitled --
2 demonstrated that Walker's entitled to his provisional application date. We
3 didn't hear much argument about this, but I do think it's important to note. It
4 was and is, under the Dynamic Drinkware Framework, Petitioner's burden at
5 all times to establish the priority date to which the raised grounds are
6 entitled. It was their burden. It never shifts to us. That's what Dynamic
7 Drinkware tells you.
8 If the Petitioner wanted to rely on Walker's provisional date, which
9 does antedate the '861 application and the December 4 notes, they needed to
10 show it. How did they need to show it? Well, In re Riggs tells you how
11 they needed to show it. In re Riggs tells you they needed to show it by
12 establishing not only that one claim of Walker itself is supported by the
13 provision, but that the material relied upon to establish unpatentability from
14 Walker's utility is supported, has written description in the provisional. All
15 of it.
16 That's what's In re Riggs, that's new laws of 2025. I'm sure you know.
17 They must show supporting the provisional for everything they rely on to
18 claim that provisional date and push the diligence period back early. They
19 haven't done that. Petitioners had that burden. It was not ours. Never our
20 burden.
21 The only attempt that's made in their petition, their reply, or anywhere
22 else, is to show support in the Walker provisional for predetermined criteria.
23 One aspect of the claims. There is no attempt by Petitioners to show support
24 for receiving mandated parameters, for storing in a memory mandated
25 parameters, for utilizing variable parameters to achieve mandated
26 parameters, for storing information regarding particular gameplay events.

1 Any of the other limitations of these patents that there is material relied on in
2 Walker for, they did not attempt to show it at all.
3 They cannot, they did not, they have failed to meet their burden to
4 establish that their reference Walker is entitled to that provisional date at
5 best as a result.
6 And I don't think this is disputed. They have said, we show
7 predetermined criteria. That's all we need to do. That's not enough under In
8 re Riggs. They must have shown, they must have shown support for
9 everything in Walker that they relied upon to attempt to invalidate these
10 claims. They didn't do it. They're not entitled to that date. And that has
11 consequences, as I said at the start of this discussion. The consequences --
12 JUDGE TARTAL: Counsel, can I just ask --
13 MR. NELSON: Yes.
14 JUDGE TARTAL: Sorry to interrupt. Recognizing the burden
15 doesn't shift to Patent Owner, just for clarity as to what the arguments are,
16 has Patent Owner sought to show any of the limitations shown on slide 52
17 lack disclosure in the provisional application? And if so, any particular that
18 you would draw attention to?
19 MR. NELSON: So I understand your question, and it recognizes that
20 it is not our burden to do so. We have pointed out that they provided no
21 support for that. We have not independently sought to show that there is no
22 such support. It's their burden. That's all. I hope that answers your
23 question.
24 So Walker provisional cannot be the date. The May 6, 2002 date for
25 Walker provisional cannot be the date that they're entitled to for Walker

1 because they haven't shown it. They haven't met their burden under In re
2 Riggs.
3 And, Your Honors, I see that I've got a minute left. I haven't done
4 Kelly. I would like to take 12 more minutes from my rebuttal time, if that's
5 acceptable, to address Kelly and what remains of Walker for the '279.
6 JUDGE TARTAL: Sure. I think you started at 40 though, so 12
7 more. I'll give you three minutes to start rebuttal.
8 MR. NELSON: Why don't I do ten? I think five would be plenty. I
9 want to address Kelly. First, the '336 patent, but I think the issues are the
10 same. The issue we're addressing here and that Patent Owner has disputed
11 for Kelly is under ground 1 for the '336 patent, whether the Kelly reference
12 discloses or renders obvious limitations 1d and 1f. 1d, storing information
13 regarding particular gameplay events as determined by the processor, and 1f,
14 performing game analytics on the gameplay events.
15 And I've highlighted the there because it's important. Petitioner's
16 presentation sort of eluded that word, but I think it's important because one
17 of the key deficiencies in their showing is that there really is no dispute that
18 the gameplay events described in limitations 1f that have game analytics
19 performed on them finds its antecedent basis in 1d, storing information
20 regarding particular gameplay events as determined by the processor. And
21 so that what is described as being stored in connection with 1d must be the
22 thing that has game analytics performed on it in connection with step 1f.
23 And there's a critical failure of proof here.
24 So for 1d in the '336 patent and 1b2 in the '279, Petitioner has said,
25 well, at least in the petition we heard something different today, that this
26 information includes information on an initial gameplay event based on the

1 user input, and there's a string site to various disclosures of Kelly that are
2 purported to meet this.
3 And then there was a kind of generic statement that, well, it would
4 have been obvious to do it anyways. But I think that really is about -- there
5 is no disclosure in Kelly 683 that this, any information is stored, but it does
6 say there's a memory. So their argument, I think, is that a person of skill in
7 the art would find it obvious to do that.
8 So I know you heard today that Petitioners say, we really didn't point
9 to user inputs or button presses as being what stored information in
10 connection with limitation 1d. Well, if you look at the evidence they rely
11 upon, which I presented in detail here, that's exactly what they said. They
12 said the information that is stored is what's described in these citations to
13 Kelly.
14 Buttons or other controls, input to the game unit, input to the game
15 unit, each type of user input can provide a particular game command to the
16 computer. They are saying now, no, no, we didn't mean that. But, Your
17 Honors, if you look at what the petition actually says, there is nothing else.
18 There is nothing else pointed to except these user inputs.
19 I now know that they are saying, well, what we really meant by that is
20 that these are -- actually what happens is that these user inputs lead to game
21 events and game states, and those are stored. They didn't say that. There's
22 more problems with their proof, but they didn't say that. Their petition
23 points to these user inputs, not gameplay events and not game states.
24 And the problem with that is, first of all, there is no evidence and no
25 opinion that the user inputs are ever stored in memory. They say it's obvious
26 to do that. The petition for limitation 1d here and 1b2 for the '279 identifies

1 no game state or game event that's associated with these user inputs that
2 they've identified. And they ignore that, as our expert has explained, the
3 user inputs they're talking about, these button presses, would not be regarded
4 by a person of skill in the art as a gameplay event stored by the system. Nor
5 do they ever identify in 1d or anywhere else what game states or game
6 events they now allege are captured as a result of those user inputs. It's
7 nowhere.
8 And more fundamentally, there is no identification, either in
9 connection with limitation 1d or 1f for the '336 patent, or in 1b2 and 1d1 and
10 1d2 for the '279 patent. That what they identify as the gameplay events
11 stored in the system are actually the things that are assessed or analyzed
12 under limitation 1f for the '336 patent, or limitation 1d1 and 1d2 for the '279.
13 They never connect those two.
14 They identify, as we'll see, one set of things that are analyzed for
15 limitation 1f. That has no relation to what they identify in limitation 1d as
16 the gameplay events that are being stored. That is a fundamental failure of
17 proof. The claims say performing game analytics on the gameplay events.
18 The '279 says the same thing. They were required to demonstrate to you that
19 what is stored in limitation 1d is what is analyzed in 1f, and they do not do
20 so.
21 I'm not alone. I'm not out here in the wilderness shouting that this is a
22 problem. The PTO, this office, has already found in connection with very
23 similar limitations that exactly the same evidence relied upon does not
24 disclose these limitations.
25 In, as we described in our briefing, in the -- sorry, the '713 IPR
26 petition, which was denied by this office, very similar limitations, including

1 identical evidence, specifically the user input evidence set here on the
2 second full paragraph, was exactly what was relied upon for showing,
3 storing, or the limitation. A server including memory to process and store
4 gameplay information regarding particular gameplay events, functionally the
5 same limitation.
6 JUDGE TARTAL: Just to be clear, Counsel, that wasn't a final
7 decision, was it?
8 MR. NELSON: It was not.
9 JUDGE TARTAL: So then your representation that the office has
10 already considered this and found it insufficient is an overstatement of what
11 the office has done, is it not?
12 MR. NELSON: I don't think so. It rejected this, at least on a
13 preliminary basis, as sufficient to institute a trial --
14 JUDGE TARTAL: For purposes of that case, in the context of
15 whether a reasonable likelihood of it was shown to go forward with a full
16 trial to make a final determination. It was not a final determination. So just
17 --
18 MR. NELSON: I understand that. And I appreciate --
19 JUDGE TARTAL: It concerns me that you would suggest that the
20 office considered this and rejected it as though that were a final
21 determination by the office when it plainly was not that.
22 MR. NELSON: I agree with you it was not a final determination. It
23 is the office weighing the same evidence and finding it insufficient for
24 institution.
25 JUDGE TARTAL: Okay.

1 MR. NELSON: And I appreciate the clarification. But importantly, it
2 was the same evidence, not different evidence, and effectively the same
3 limitation, insufficient to institute. Petitioners have said, no, that's not quite
4 right. It's materially different. There is no material difference between those
5 limitations. There's just not. One says, a server including memory to
6 process and store gameplay information regarding particular gameplay
7 events. The other one says, storing here, for the '336 patent, storing
8 information regarding particular gameplay events as determined by the
9 processor.
10 In reply, the only thing that is different from the other case, they got a
11 reply to say what they really meant by that, is that, well, this one says,
12 information regarding particular gameplay events as determined by the
13 processor. That makes no difference, and no difference has been identified
14 by Petitioner as to how that changes the deficiency of their evidence. They
15 just say, well, it's different. But there is no discussion of how it is different
16 or why it is different.
17 For 1f, this is performing game analytics on the gameplay events.
18 Here, there are some gameplay events identified. The number of times the
19 players played, according to the Petitioner, and this is true for the '279 too.
20 The time the player took to play a game, the number of times the players
21 participated in similar previous tournaments and the like, the number of
22 games played, the number of times the specific prize goal was hit. All of
23 these are things that the Petitioner has said Kelly discloses that were
24 performing game analytics on these gameplay events.
25 None of those were identified in connection to limitation 1d, not even
26 by inference, not even by implication. There is nothing connecting what

1 was described in connection with the storage limitations of the '336 and '279
2 that is reflected here, and there's no connective tissue provided by
3 Petitioners. They simply say, here are some gameplay events. They're
4 definitely analyzed. That's not what the limitation requires. The limitation
5 requires that the gameplay events stored in 1d are those ones that are
6 analyzed in 1f. That's what it means to have the gameplay events. They
7 have not made that shown.
8 And again, here's what they identified for 1d. Number of times --
9 excuse me, 1f. Number of times played. The time the player took a game.
10 None of that is disclosed in connection with 1d. And none of it is described
11 or explained by either Petitioner or its expert how they result from user
12 inputs like button presses. There is no such evidence. None was presented.
13 I'm going to move past that. And for the '279, I just have 30 seconds
14 left. I would only point out that with respect to Petitioner's suggestion that
15 the meeting notes and the '861 application do not disclose memory to store
16 mandated parameters, utilizing first and second parameter sets to achieve
17 mandated parameters, and determine selection of first or second variable
18 parameter sets utilizing the recorded gameplay information.
19 Again, we have described in our unrebutted evidence, including the
20 inventor's declaration, including the expert declaration of Mr. Szeder and the
21 prosecutor's declaration, exactly how those notes in the '861 application
22 demonstrate conception of the claimed inventions, including those
23 limitations. If there's no further questions, I'll stop at this time. Thank you
24 for your patience.
25 JUDGE TARTAL: Seeing no other questions at this time. So that
26 leaves you with five and a half minutes for closing remarks. So, Counsel, I

1 think you have in the vicinity of 30 minutes, should be less than a half the
2 total.
3 MS. NGUYEN: Your Honor, I believe I will not use all of my time,
4 so --
5 JUDGE TARTAL: I'll start you at 30 minutes. I don't think we'd get
6 much longer than 30 minutes, but if that would be appropriate, we could
7 adjust to that.
8 MS. NGUYEN: Thank you, Your Honors. Let's start with Kelly's
9 disclosure, and particularly what the petition actually says. We are in the
10 '336 petition, page 23. And the petition expressly says, Kelly 683 discloses
11 that the gameplay information provided by the processor includes
12 information on initial gameplay events based on the user input. So this is
13 not the user input. We're talking about gameplay information provided by
14 the processor.
15 And at the bottom of page 23, we state, to the extent that Kelly 683
16 does not expressly disclose that the gameplay information is stored, a PSITA
17 would have found this obvious. And this is important because we're not
18 saying user input as Patent Owner keeps on saying we intended it to be user
19 input. It's clear from this last sentence on page 23 that what was provided in
20 the petition is that it's the gameplay information provided by the game
21 processor, which is actually being stored.
22 Now, Patent Owner repeatedly refers to the '607 IPR. Again, that is a
23 completely different proceeding based on completely different evidence,
24 based on completely different claim limitations. And in particular, Patent
25 Owner actually pointed out that there is a limitation that requires that it be
26 stored -- stored information provided by the game processor. That is why in

1 this actual petition, the '336 petition, it's a lot clearer because it's the
2 gameplay information provided by the game processor that was based on
3 user input.
4 So the additional explanation in the petition with respect to that
5 gameplay information clarified something that was misunderstood in the
6 other petition.
7 So I'd like to now go to the argument with respect to whether or not
8 Patent Owner can actually antedate the Walker patent. And again, it goes
9 back to slide 21. We are relying on the May 1, 2003 date, and the
10 handwritten notes simply do not antedate that date. Patent Owner repeatedly
11 talks about how the testimony from its expert, from the inventor, is
12 unrebutted, that we are occasionally poking holes. But it goes back to it is
13 the Patent Owner's burden to establish that it can antedate that May 1, 2003
14 date, and they simply have not met that burden.
15 JUDGE TARTAL: Counsel, looking at slide 39. You're on slide 39?
16 MS. NGUYEN: Yes. Well, it's 30. I'm sorry.
17 JUDGE TARTAL: Do you agree that the relevant diligence period is
18 not the red bar shown to the extent that we're not relying upon the priority
19 date of the original application, but rather the time period from May 1st to
20 September 2, 2003?
21 MS. NGUYEN: Understood, Your Honor. So we believe that Patent
22 Owner is misinterpreting the perfect surgical case, and that diligence is
23 required from where your effective date that you're trying to seek.
24 So the date here is December 4, 2002 through reduction to practice.
25 The case law has repeatedly said that it is with respect to -- diligence needs
26 to be with respect to through reduction to practice, so conception through

1 reduction to practice. And again, there's just no due diligence with respect
2 to that, particularly given that there is no indication that there was ever any
3 conception with respect to utilizing the variable parameters for the mandated
4 parameters. And that really just goes back to slide 25 of Petitioner's
5 demonstratives.
6 So if you go to slide 25, once again, what we have not done by the
7 time was connect the use of such variable parameters to achieve a set of
8 objectives for the system. Now, Patent Owner repeatedly talks about how
9 these unrebutted declarations, but let's actually look at what the declarations
10 say with respect to utilizing the variable parameters to achieve the mandated
11 parameters.
12 So if we go, for example, to Exhibit 2017, page 41, which is Mr.
13 Katz's declaration on utilizing variable parameters, he only relies, again, on
14 that limitation -- I'm sorry, the example of the 70, of the increasing
15 percentage of wins by the level 2. So for this limitation, Mr. Katz only relies
16 with respect to the connection, because again, he admits in the '861
17 application there is no disclosure of this connection.
18 He says that we have determined such variable parameters could be
19 used to achieve objectives set by the game operator. For example, using this
20 example. But there is no explanation, there is no indication that he actually
21 appreciated what this meant.
22 And Patent Owner says that the declaration of its expert provides
23 more than that. It doesn't. Your Honors are free to go ahead and compare
24 the declarations themselves, but Mr. Szeder's declaration on page 45, Exhibit
25 2012, is exactly the same language as Mr. Katz's. And this goes back to, it

1 provides nothing but conclusory statements that this simple sentence
2 discloses utilizing variable parameters for mandated parameters.
3 This cannot be sufficient to just simply say, hey, this is -- this proves
4 it without any sort of analysis or explanation. And that is why we didn't
5 need to rebut it, because this is simply insufficient to show that the notes
6 antedate the Walker provisional.
7 If we go to Petitioner's demonstratives at slide 30, Patent Owner
8 points to other examples where they state that this establishes utilizing the
9 variable parameters to achieve mandated parameters. But this language is
10 very carefully worded, where you don't actually see that language. You
11 don't actually see them saying this actually does achieve mandated
12 parameters. And again, it doesn't show that Mr. Katz understood what the
13 idea -- what utilizing variable parameters to achieve mandated parameters
14 means.
15 And again, with respect to GLEPS, and this passage is about GLEPS
16 and how GLEPS should be implemented, GLEPS is admittedly higher art.
17 Well-known pricing structures, as mentioned earlier, well-known pricing
18 structures that everybody accepted, people knew about. And so the
19 description of GLEPS itself cannot provide that connection between variable
20 parameters and mandated parameters. That is actually in the admitted prior
21 art in the '336 and '279 patents, and is not a demonstration that the inventor
22 actually understood that variable parameters could achieve mandated
23 parameters. Similarly --
24 JUDGE TARTAL: Can I just ask, counsel, on that same slide there
25 their focus seemed to be on the disclosure statement regarding forcing any

1 distribution pricing. It's not that they were describing GLEPS as it was
2 already known in the art.
3 MS. NGUYEN: It was describing GLEPS into internet or SMS. So
4 we're, in effect, a virtual GLEPS. So they're actually talking about how to
5 implement a virtual GLEPS, so putting it on the internet, which again is
6 simply not something that would actually connect variable parameters to
7 mandated parameters or demonstrate possession that that inventor knew that
8 that was an idea, that that was a concept, that that was a key concept with
9 respect to the '336 and the '279 patent.
10 So it goes back to GLEPS, again, was well known to pricing structure,
11 and it was implemented in the same way. It had a pricing structure where
12 you had guaranteed low end prices, and you'd have to meet those price --
13 that guaranteed low price rate and adjust schemes in order to make that.
14 And so it doesn't demonstrate, again, this connection between variable
15 parameters and mandated parameters.
16 And notably, this paragraph doesn't actually say that. It explains what
17 they were doing, explains that you are, you know, forcing certain players. It
18 doesn't actually say, like, this is how we said eureka. I've come up with an
19 idea of let's use variable parameters to actually achieve mandated
20 parameters. Again, it's very carefully worded so that it explains the example
21 but doesn't actually explain that the inventor understood what was actually
22 conceived, that the idea was actually conceived.
23 And that goes back to slide 22 of Petitioner's demonstratives, which
24 talks about the law that you actually have to understand the idea and possess
25 the ability to operatively implement it.

1 And so same thing with the other examples. And notably, they did
2 not include this discussion when mapping the limitations to the utilizing the
3 mandated parameters, utilizing variable parameters to achieve mandated
4 parameters. Again, if you actually look at what is mapped there, it is that
5 sole statement of increasing the percentage of wins by level 2 on page 34 -- I
6 guess 36 of the actual PDF, 36 to 37 of Exhibit 2017. That is the only thing
7 from the notes that they actually mapped onto the utilizing variable
8 parameters to achieve mandated parameters, both Mr. Katz and Mr. Szeder.
9 So there was just simply nothing to rebut, because there's no
10 explanation here. There's no analysis here to actually rebut. They simply
11 did not meet their burden.
12 Now, Patent Owner said repeatedly that there were no other
13 limitations that Petitioner is challenging. And just to be clear, we did. Like,
14 if you go to, for example, the '279 reply at pages 12 through 13, we list
15 numerous other limitations that simply were not supported by Patent Owner.
16 Programmable variable parameter set, determining the selection of first,
17 second programmable parameters sets utilizing the supported gameplay
18 information. And particularly, at least one of them being a game structure
19 and a pricing structure.
20 So it goes back to -- although this is the main dispute because of Mr.
21 Katz's admission that on slide 25 of Petitioner's demonstratives, that this is a
22 key part of the '336 and '279 patents. What we had not done by the time was
23 to connect the use of such variable parameters to achieving a set of
24 objectives for the system. This is a key limitation that is not established
25 anywhere in the meeting notes. And therefore, Mr. Katz's conclusory

1 statement that he had achieved this in the meeting notes, it's not corroborated
2 by any documentary evidence.
3 And as mentioned on slide 24, that simply is not sufficient. The
4 Patent Owner argues that we never explained why it's not sufficient. And it
5 goes back to -- this is, in Mr. Katz's own words, one of the key limitations
6 that what they had not done by that time, because it is a key concept, was to
7 connect the variable parameters to the mandated parameters. And there's
8 still, throughout the two page meeting notes, is nothing that actually
9 connects the variable parameters to the mandated parameters.
10 If we go to slide 32 in Petitioner's slide deck, there was a lot of
11 discussion about how Mr. Crevell, Petitioner's expert, admitted that these
12 documents disclosed mandated parameters, because those are mandated
13 parameters. But remember, it's not just mandated parameters. It's how the
14 mandated parameters are used, utilizing the variable parameters to achieve
15 those mandated parameters.
16 And when Mr. Crevell was answering questions in both slides 32 and
17 33, he was discussing them with respect to the claim structure in the patent
18 and with respect to how Kelly 683 discloses that structure as a whole. It
19 wasn't a discussion about, is this by itself, without anything else, sufficient
20 to meet all mandated parameter limitations? No. It was, okay, how is it set
21 up in the claim structure? And does Kelly 683 disclose the same claim
22 structure? And that was the discussion, not an admission that the mandated
23 parameters disclosed in the handwritten notes are sufficient to show
24 conception of the 336 and the 279. And so, with that, unless there are any
25 questions.

1 JUDGE TARTAL: I don't see any additional questions from the
2 panel. So thank you.
3 JUDGE DANIELS: I'm good.
4 JUDGE TARTAL: For Patent Owner, I think you had something less
5 than five minutes, so we'll do five minutes.
6 MR. NELSON: I will do under five minutes, Your Honor. I
7 guarantee it.
8 JUDGE TARTAL: You can start whenever you're ready.
9 MR. NELSON: Thank you. I wanted to start with what you heard
10 about Kelly. And in particular, I think counsel said, it's clear for Kelly, it's
11 clear, I heard that several times, that we didn't just mean user inputs. That
12 we meant game play events as determined by the processor.
13 So our slide 55, Your Honors, presents exactly what they said for this
14 limitation, for the '336 patent. And it's clear enough, but what's clear is that
15 no specific game state or game event that might be determined by a
16 processor is identified for limitation 1d. The only thing that's identified are
17 these string sites beginning with column 10 lines 12 to 15, followed by 144
18 to 46, and so on. That's the only thing that's identified.
19 And I've shown you what's there. None of them identify any game
20 state or game event, whether determined by a processor or not. They talk
21 about user commands and button presses. So I understand that's what their
22 argument is today, but I can only respond to what's in the petition, or even in
23 the reply. And what's been identified is this evidence, and none of it is a
24 game state, none of it is a game event.
25 And more importantly, none of what's identified here is described as
26 being analyzed in connection with limitation 1f for the '336 patent, or

1 limitations 1d1 and 1d2 for the '279. The same problem is there. There are
2 some game events identified there. None of them were identified as what's
3 stored by the system. It's just these user commands.
4 I can only respond to what they say, and what they say is sufficient,
5 because it doesn't identify any game events. In particular, not the game
6 events that they contend are analyzed in later limitations, nor is there any
7 discussion or demonstration that any of the things that they do identify lead
8 to those game play events. It's not in the petition. They have failed to prove
9 that.
10 With respect to the issues about Walker and whether we can swear
11 behind or whether we can demonstrate conception prior to Walker, you
12 asked a question, Judge Tartal, about what the proper diligence period is
13 here. And I heard the answer was, well, we don't read perfect surgical the
14 same way. Well, Arctic Cat tells you the same thing, which is that the
15 diligence period is the period from the effective date of the reported prior
16 art.
17 I'm not reading it any differently than what the Federal Circuit says,
18 so I don't understand that argument. And I don't understand how it is, if they
19 cannot show that Walker is entitled to his provisional date, how that critical
20 period begins prior to May 1, 2003, which is the Walker utility date.
21 Then I heard, I think, a couple of things about whether or not there's
22 enough evidence to show the utilization of mandated parameters -- variable
23 parameters to achieve mandated parameters, and that the only thing we
24 relied upon in any point of proof was the discussion of GLEPS. That's not
25 so.

1 I would refer the panel to paragraph 23 of Mr. Katz's declaration
2 where he describes in detail how the discussion of GLEPS and the forcing a
3 distribution of prizing that you referred to in your question to counsel is
4 described by Mr. Katz as demonstrating both the possession of mandated
5 parameters and the use of variable parameters to achieve them. And that, of
6 course, is cited throughout our petition, as well as our surreply -- excuse me,
7 our Patent Owner response and our surreply.
8 Finally, on the corroborating evidence point, I heard a novel point of
9 law, which is that corroborating evidence has to have a light bulb or a eureka
10 moment, and nobody can explain with additional evidence what that means.
11 I don't think that's the law. Petitioners haven't given you any law to that
12 effect. Certainly the law they cited doesn't say that.
13 It is typical in these cases for there to be corroborating written
14 evidence and an inventor to provide a declaration, in this case unrebutted,
15 describing what it means. That's not unusual and it doesn't fail to show
16 corroboration. That's an inventor unrebuttedly describing what the
17 corroborating evidence shows.
18 Finally, in the last six seconds, Petitioner said, well, we identified
19 some other limitations that they didn't provide support for in these notes.
20 That's a one-paragraph conclusory sentence saying not so. There's no
21 analysis presented that says not so. We say it is, and we actually provided
22 some discussion of why they did not. Thank you, Your Honors.
23 JUDGE TARTAL: You're over five minutes.
24 MR. NELSON: I apologize for the extra steps.
25 JUDGE TARTAL: Thank you both for your presentations today, for
26 appearing and answering our questions. We'd like to especially thank the

1 LEAP petitioners, Ms. Leonardi and Mr. Pierce, for appearing today and
2 participating in the oral argument. Hopefully it was a valuable experience
3 for both of you. The cases are taken under advisement, and we will issue
4 our decisions in due course. The hearing is adjourned.
5 (Whereupon, the above-entitled matter went off the record at 4:39
6 p.m.)

IPR2025-00708 (Patent 8,529,336 B2)
IPR2025-00709 (Patent 10,650,635 B2)
IPR2025-00710 (Patent 10,825,294 B2)
IPR2025-00712 (Patent 11,393,279 B2)

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