

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIGHT & WONDER, INC.,
Petitioner

v.

EVOLUTION MALTA LIMITED,
Patent Owner.

Case IPR2025-01072

U.S. Patent No. 11,011,014

**PETITIONER REPLY TO
PATENT OWNER RESPONSE**

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- EX1079 U.S. Patent No. 6,059,659 to Busch
- EX1080 U.S. Patent No. 7,892,083 to Okada

I. INTRODUCTION

The Board correctly found that L&W demonstrated a reasonable likelihood of prevailing in showing the unpatentability of the independent claims of the '014 patent and instituted IPR against all challenged claims accordingly. DI, 18-19. Evolution's POR rehashes arguments the Board already rejected in granting institution—chief among them the untenable claim-construction position that game prizes expressly described in Kido and Baron as “*payouts*” are somehow not “*payouts*” within the meaning of the claims. The Board rejected Evolution's construction, finding that “the current record does not support limiting the term ‘payout’ to just the amount a player will win in relation to the amount wagered.” *Id.*, 14. As shown below, the record has not meaningfully changed.

The POR also repeats Evolution's meritless “spin of the wheel” argument, insisting Baron requires “multiple spins of [multiple] wheels.” But the Petition relies on Baron's Figure 6 embodiment, which uses a *single roulette wheel 406* and a random number generator—not additional wheels (physical, virtual, or otherwise)—to produce multiple outcomes within a single round of play. The few new arguments of the POR, principally an unsupported sequence-of-elements theory and motivation-to-combine arguments that fail to apply a proper POSITA viewpoint, do not save any of Evolution's claims.

Challenged claims 1-3, 5-11, 13-19, and 21-24 should be held unpatentable.

II. CLAIM CONSTRUCTION

A. The Board Correctly Construed “Payout”

Evolution reasserts the same narrow construction of “payout” that the Board rejected at institution, arguing that “payout” means “the amount a player will win in relation to the amount wagered.” POR, 3, 14-21; DI, 8-9. The Board found this unpersuasive, noting that while the specification provides examples in odds format, it “also states that ‘[a]ny suitable payouts can be used in some embodiments,’” which “suggests a broader interpretation of ‘payout’ beyond just payout odds[.]” DI, 8. Nothing in the POR undermines this correct finding. The intrinsic evidence thus supports L&W’s plain and ordinary meaning construction of “payout,” and Evolution’s extrinsic evidence cannot narrow the term contrary to the intrinsic record. *Profectus Tech. LLC v. Huawei Techs. Co.*, 823 F.3d 1375, 1380 (Fed. Cir. 2016) (“Extrinsic evidence may not be used to contradict claim meaning that is unambiguous in light of the intrinsic evidence.”) (internal citations omitted); *Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1290 (Fed. Cir. 2021) (“[T]o the extent the Board relied on extrinsic evidence to alter the meaning of [a claim term] that is clear from the intrinsic evidence, that was error.”).

The term “payout” should be interpreted according to its plain and ordinary meaning: an amount that is paid to someone. As L&W explained in its Reply to the POPR (at 3), there is no evidence of disclaimer or lexicography in the intrinsic

record that would warrant departure from that meaning. The '014 patent's examples of odds-formatted payouts are not limiting (“[a]ny suitable payouts can be used,” EX1001, 5:16-17), and multiple references cited during prosecution use “payout” to describe amounts unrelated to the wager. Paper 12 (Reply to POPR), 3 (citing Valdez, Busch, Okada, filed herewith as EX1073, EX1079, EX1080, respectively). The IPR art confirms that the term “payout” is not limited to odds-formatted payouts: Kido describes its jackpot as “a special payout” (EX1007, ¶[0129]) and states that the privilege unit “awards, as a payout, the game value stored in the accumulated game value memory” (*id.*, ¶¶[0117], [0119]). Baron likewise describes a “payout” as “an entire amount of the progressive pot.” EX1008, ¶[0045].

Evolution's position is also self-contradictory. In the parallel district court proceeding, Evolution insists the '014 patent represents an unconventional technological improvement over standard roulette, yet here demands that “payout” be confined to its alleged meaning in “conventional” roulette, the fixed 35:1 odds format. *See, e.g.*, EX1023, 017, 024, 025 (“[T]he patents claim a new game of roulette and technological improvements[.]”). Moreover, as a practical matter, any amount can be expressed in relation to what is wagered: a \$75,000 jackpot won on a \$10 bet is a 7,500:1 payout. EX1071, ¶¶50-57. What matters in the '014

patent's claims is that the first payout is higher than the second, not the format in which it is expressed.

Mr. Friedman's deposition statement that "a traditional game of roulette does not include a progressive jackpot" (EX2045, 40:4-6) is beside the point because the '014 patent does not claim traditional roulette, as Evolution has repeatedly confirmed. *See, e.g.*, POR, 8 (contrasting the '014 patent and Lightning Roulette with "traditional roulette"). Mr. Friedman's general statement that "table games almost always specify payouts as N-to-1" (EX2045, 46:16-18) is irrelevant for the same reason; if anything, the qualifier "almost always" confirms that payouts are not categorically limited to those in an N-to-1 format. And Dr. Casey makes the same errors as Evolution in seeking to impose an odds-based requirement onto the term "payout" (EX2041, ¶¶78-95), and his own patents use the term "payout" to describe roulette games with absolute-amount payouts. *See, e.g.*, EX1072, 4:19-26, 11:31-37 ("standard payout of 100 credits").

Evolution's construction of "payout" should be rejected.

B. "A Spin Of The Roulette Wheel"

Evolution asserts that "a spin of the roulette wheel" means one spin of one wheel and argues this defeats the Petition's Baron grounds. POR, 21-23, 51-56. L&W agrees that the claims require a number of steps performed for a particular spin of the claimed "roulette wheel," but disagrees that this defeats the Petition's

Baron grounds. As explained in Section V.A below, Baron discloses table 400 with wheel 406 and teaches each claim step relative to a single spin of that single wheel.

C. Alleged Sequence Of Elements

Evolution argues that the final five limitations of independent claims 1, 9, and 17 must be performed in the order listed. POR, 23-26. But “unless the steps ... actually recite an order,” claim steps are not limited to the order written. *Interactive Gift Exp., Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1342 (Fed. Cir. 2001). In this regard, the Federal Circuit has articulated a two-part test: (1) whether claim language “as a matter of logic or grammar” requires the order; or (2) whether the specification “directly or implicitly requires such a narrow construction.” *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369-70 (Fed. Cir. 2003) (quotation omitted). Evolution’s argument fails both parts.

First, neither the logic nor the grammar of the claim language requires that the first and second payouts be determined before the ball lands. EX1071, ¶¶43-47. The “randomly select” step expressly requires that the random selection occur “prior to the ball falling into an outcome position on the roulette wheel,” but the “determine a first payout ... and a second payout” step lacks any such restriction:

randomly select a first selected position on the roulette wheel for the spin of the roulette wheel **prior to the ball falling into an outcome position on the roulette wheel**, wherein the first selected position is the same as the single first position;
 determine a first payout for the first single position and a second payout for the single second position for the spin of the roulette wheel, wherein the first payout is higher than the second payout;

EX1001, Cl. 1 (highlighting added).

In fact, during prosecution, Evolution amended the “randomly select” step to add “prior to the ball falling,” demonstrating knowledge of how to limit certain steps temporally. EX1002, 050. Evolution did not similarly limit the “determine [the first and second payouts]” step:

randomly select a first selected position on the roulette wheel for the spin of the roulette wheel prior to the ball falling into an outcome position on the roulette wheel, wherein the first selected position is the same as the single first position;
 determine a first payout for the first single position and a second payout for the single second position for the spin of the roulette wheel, wherein the first payout is higher than the second payout;

Id.

The express inclusion of a requirement in one element, coupled with its omission from another, evidences an intentional choice to leave the latter unrestricted. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed.

Cir. 2004). The “determine [the first and second payouts]” limitation is accordingly not restricted to occurring “prior to the ball falling.”

Evolution argues that payouts must “logically” be determined before the ball falls because “it would be highly suspicious” otherwise, and Dr. Casey states that “determining the payouts while the ball is spinning allows the excitement to build.” POR, 25 (citing EX2041, ¶ 103). But there are no claim limitations relating to player wariness or building excitement. EX1071, ¶¶43-47. Evolution’s and Dr. Casey’s arguments fail since they are based on elements that do not exist in the claims.

Second, the specification does not require payouts to be determined before the ball lands. The ’014 patent expressly states that “at least some of the ... blocks of the process of FIG. 2 can be executed or performed in any order or sequence not limited to the order and sequence shown in and described in the figure.” EX1001, 7:19-27. Evolution ignores this critical disclosure and instead argues that “Step 212 must occur before Step 214” because determining new payouts before the ball lands “builds excitement.” POR, 26. But again, there are no limitations relating to excitement. While the first payout must be determined prior to the final claim step (“indicate that the first player is to be paid at the first payout”), nothing in the intrinsic evidence requires payout determination before the ball lands. Rather, the specification teaches it can happen “in any order.”

III. CLAIMS 1-3, 5-7, 9-11, 13-15, 17-19, AND 21-23 ARE OBVIOUS OVER GROUND 1

A. Kido Discloses “Determine A First Payout For The First Single Position And A Second Payout For The Single Second Position For The Spin Of The Roulette Wheel, Wherein The First Payout Is Higher Than The Second Payout”

Evolution raises several arguments against Kido’s disclosure of this element, most of which the Board already rejected. None have merit.

First, the POR’s argument (at 30-32) that Kido’s progressive payout is not a “payout” was already rejected by the Board. DI, 14 (finding Kido “even describes its bonus routines and jackpots as payouts”). Nothing warrants a departure from this finding. *See* Section II.A, *supra*. Likewise, Evolution’s argument that Kido’s payout determination occurs after the ball falls (POR, 36) depends on Evolution’s erroneous sequence-of-steps claim-construction position refuted above in Section II.C.

Second, Evolution contends Kido’s standard 35:1 payout is the same for every position, so Kido cannot disclose a “first payout” that “is higher than the second payout.” POR, 29-30; EX2041, ¶128 (asserting “Kido does not provide a mechanism for varying roulette payouts among different numbers on the wheel”). But the Petition explained that a player in Kido wins A11 + A12 (*i.e.*, the accumulated Prog bonus together with the standard base-odds payout for a non-star-mark position) when the player’s bet matches the ball outcome and the same

position is the star mark, whereas a player receives A12 only (*i.e.*, the standard base-odds payout) when the player wins on a number that is not the star mark. Pet. 32-35; EX1003, ¶¶364-372. In view of these disclosures, the Board correctly found that “a first payout that receives Kido’s accumulated Prog bonus payout is necessarily higher than a second payout that does not receive the Prog bonus.” DI, 14.

Third, Evolution argues that Kido determines a payout for “only one position on the roulette wheel: the position the ball fell into.” POR, 33-35 (emphasis omitted). The Board squarely rejected this at institution, finding that “[t]he portions of Kido cited by Petitioner disclose that bet win determining unit 111 determines payouts based on the payout rate relative to the bet type for all positions bet.” DI, 15-16. Evolution now points to Kido’s paragraph [0114] to argue that payout calculating unit 114 operates only “when it is yes.” POR, 35. But the claims require *determining* the first and second payouts for the respective first and second positions; they do not require *calculations* of any payouts. In Kido, when one player wins on the star mark position and another player places a losing bet on a different position (receiving \$0), Kido has necessarily determined two payouts for the two respective positions. EX1003, ¶368. Further, this is another example of Kido disclosing a first (greater-than-zero) payout that is greater than a second payout of zero. *Id.*

B. Kido Teaches Claims 5, 13, And 21

Claims 5, 13, and 21 each require the processor to “randomly select a second selected position on the roulette wheel” and “determine a payout for the second selected position that is different than the payout for the single first position.”

Evolution’s arguments rest on flawed premises about the skill of a POSITA and an erroneous insistence that game features must be perfectly balanced as disclosed.

EX1071, ¶¶9-25.

1. Dr. Casey Applies An Improper Standard For A POSITA

Dr. Casey’s arguments for claims 5, 13, and 21 interpret the prior art from the viewpoint of someone ignorant of casino game design principles. EX1071, ¶¶9-12. He argues that Kido at most discloses one star-triggered privilege that a game designer would reject as exploitable and that the selection of a second star mark would further undermine Kido’s commercial viability. EX2041, ¶¶129-58. But a POSITA “familiar with gaming mathematics would already understand” how to set payouts “for numbers not selected ... to account for the increased payouts of the selected numbers” and “would have been capable of using probability theory to carry out the calculations necessary to implement the mathematics described in the challenged patents.” EX1003, ¶¶95-96. A proper POSITA would know how to adjust game aspects of Kido and re-evaluate if a feature appears to pay back too much. EX1071, ¶¶18-20.

Further, Dr. Casey’s reasoning, if accepted, would apply equally against Evolution’s own claims. *Id.*, ¶¶14-16. His “exploit” involves a player wagering on every roulette position, guaranteeing that the player has wagered on a star-mark position. EX2041, ¶¶135-136. But the same logic applies to the ’014 patent: a player could wager on every position, guaranteeing a win with the increased payout. EX1071, ¶¶14-16. Dr. Casey himself opines that Evolution’s Lightning Roulette is an embodiment of the claims (EX2041, ¶202), yet it too would be “exploitable” under his reasoning. EX1071, ¶¶14-16. As Mr. Friedman explains (*id.*), a proper POSITA understands that such increased payouts cannot feasibly be awarded on every spin in a game with only 38 equal possibilities where the player may bet on all of them, and this understanding applies equally to the ’014 patent, Lightning Roulette, and Kido.

2. Kido Renders Obvious Randomly Selecting A Second Position

Evolution argues that the Petition did not provide a reason for using a second star mark in Kido. POR, 38-39. In fact, the Petition showed that “[a] POSA would have understood that, after a first selected position is randomly selected, it would have been obvious to randomly select a second,” citing Mr. Friedman’s testimony that Kido discloses multiple privilege routines, each of which can randomly select a position of a star mark, and that Kido discloses combining its privileges. Pet., 43-44; EX1003, ¶¶389-390. When combining privileges, there are only two

possibilities: either the same star mark triggers both, or two different star marks each trigger one. EX1003, ¶390; EX1071, ¶31. A POSITA would have understood that combining privileges triggered by the same star mark would lead to higher mathematical variance than implementing two privileges with different star positions, and would have chosen either approach based on mathematical design goals. EX1003, ¶390; EX1071, ¶¶29-31. It would therefore have been at least obvious to combine two privilege routines by randomly selecting a different star mark for each, thus disclosing the claimed “randomly select a second selected position on the roulette wheel.” EX1003, ¶390; EX1071, ¶¶26-33.

The Petition further explained that simply reciting two or more of something does not, by itself, qualify as a nonobvious difference. *See In re Harza*, 274 F.2d 669, 671-672 (CCPA 1960). The POR (at 39 n.10) attempts to distinguish *Harza* by noting the claims’ different-payout requirement, but making the payouts different is itself obvious, as explained below.

3. It Would Be Obvious To Make The Payouts Different

Evolution argues L&W has not provided any reason why the payouts for each star mark would be different in an implementation of Kido using two different star marks. POR, 44-45. But once the two different star marks are selected, the payouts could only be the same or different, and making them different is at least obvious. Pet. 44-45; EX1003, ¶¶391-392. Doing so would satisfy Kido’s stated

“object of the invention [which] is to provide a roulette gaming device that awards a new game value to several numbers.” EX1003, ¶391 (quoting EX1007, ¶[0008]). Kido also describes an objective of avoiding “monotonous” play and “increasing a player’s game desire” (EX1007, ¶¶[0006]-[0008]), and a POSITA would have recognized that different payouts for different selected positions would add excitement, motivating this design choice. Pet. 44-45; EX1003, ¶¶391-392. Further, many other games provided different awards for different winning outcomes, and it would have been obvious to do so in Kido. Pet., 45; EX1003, ¶392. Dr. Casey’s exploitability arguments (EX2041, ¶¶132-162) do not respond to these showings.

IV. CLAIMS 8, 16, AND 24 ARE OBVIOUS OVER GROUND 2

For dependent claims 8, 16, and 24, which recite “indicating ‘500×’ at the first selected position on a roulette board in the first graphical user interface,” the Petition (at 49-50) showed that the added “500×” display language is non-limiting printed matter. On that basis, the Petition explained that these claims are unpatentable for the same reasons as the claims from which they depend. Pet., 49-50. Evolution does not dispute this. *See* POR, 48-49.

Evolution instead addresses only the Petition’s alternative obviousness showing. Specifically, Dr. Casey contends that Mr. Friedman’s proposed modification “does not make sense” because he “proposes substituting Kido’s star

mark ... with Yee's display of '500x.'" EX2041, ¶166. As an initial matter, this fails to address the entirety of Mr. Friedman's opinion. Mr. Friedman testified that "a POSITA would have thought it obvious to substitute *or add* Yee's disclosure of a multiplier 500x." EX1003, ¶434 (emphasis added). Mr. Friedman further testified that both Kido and Yee relate to roulette variations involving a comparison between a randomly generated number and a number generated by a spin of a roulette wheel, and that since Yee and many prior games have disclosed using and displaying a 500x multiplier, it would have been obvious that Kido could have done so as well. *Id.*, ¶¶425-439.

Dr. Casey's exploitability and commercial-viability criticisms (EX2041, ¶¶164-170) do not answer that obviousness theory. As explained above for claims 5, 13, and 21, Dr. Casey's criticisms are not grounded in the perspective of a POSITA, who would have understood how to adjust game mathematics to address house edge, return-to-player, and related implementation considerations. EX1071, ¶¶19-23, 34-39. At most, Dr. Casey's criticisms challenge one possible implementation of the Kido-Yee combination as allegedly being undesirable from a commercial standpoint. EX2041, ¶¶164-170.

But Dr. Casey does not rebut Mr. Friedman's testimony that adding or substituting Yee's 500x indication in Kido would have been obvious. EX1003, ¶¶428-439. Both Kido and Yee disclose roulette gaming systems with enhanced

payout features based on randomly selected numbers. EX1003, ¶¶426-427; Pet., 47-49. Yee discloses that multipliers may be “10 times, 25 times, 50 times, 100 times, 250 times, 500 times, and 1,000 times for a payout” (EX1009, 2:15-20), and Yee’s Figure 3 depicts a display showing “x1000 YOUR BET!” A POSITA would have understood the enhanced payout to be an arbitrary design choice and, depending on business decisions, would be motivated to use a 500x multiplier. EX1003, ¶¶428-439; Pet., 49-51.

Mr. Friedman further explained that it would have been obvious to display “500x” at the first selected position on a roulette board. EX1003, ¶¶431-439; Pet., 50-51. Kido’s first graphical user interface displays a betting board with a star mark showing the randomly selected position. EX1007, Fig. 5; Pet., 50-51. A POSITA would have found it obvious to display “500x” instead of—or in addition to—the star mark because doing so would serve two functions: showing the payout multiplier and the roulette position needed to win it. EX1003, ¶434; Pet., 51. Yee also discloses that displaying the multiplier in advance “adds anticipation and further enjoyment to the game.” EX1009, 10:61-67; EX1003, ¶435. Dr. Casey’s criticisms directed to exploitability and commercial viability address none of this. *See* EX2041, ¶¶164-170.

Dr. Casey’s criticisms are misguided, in any event. His reasoning about Kido’s alleged exploitability applies equally to the challenged patents. EX1071,

¶¶14-16. Using Dr. Casey’s own “exploit” methodology with a player wagering on all 38 positions, the player would profit massively every spin, whether playing the game of Kido or the game of claims 8, 16, and 24 using the 500x multiplier. EX1071, ¶¶14-16, 34-35; *see* Section III.B above. This proves only that Dr. Casey applies a flawed concept of POSITA: a competent game designer would understand that a 500x payout cannot feasibly occur on every spin and would adjust the game mathematics accordingly. EX1071, ¶¶18-19, 39. Dr. Casey’s line of reasoning about games being “beatable” is a red herring.

V. CLAIMS 1-3, 5-7, 9-11, 13-15, 17-19, AND 21-23 ARE OBVIOUS OVER GROUND 3

A. Baron Discloses The “For A Spin Of The Roulette Wheel” Claim Elements

Evolution’s arguments that Baron does not disclose certain “for a spin of the roulette wheel” claim elements rest on the incorrect premise that the Petition relies on a three-wheel embodiment of Baron. POR, 51-56. Evolution points to Baron’s Figure 4, depicting a table with three roulette wheels, and argues that “Baron’s game requires spinning three different roulette wheels.” POR, 5, 50. But the Petition never cites Figure 4 for this purpose. It relies on Baron’s Figure 6, which depicts a table 400 containing a single roulette wheel 406. Pet., 53-68.

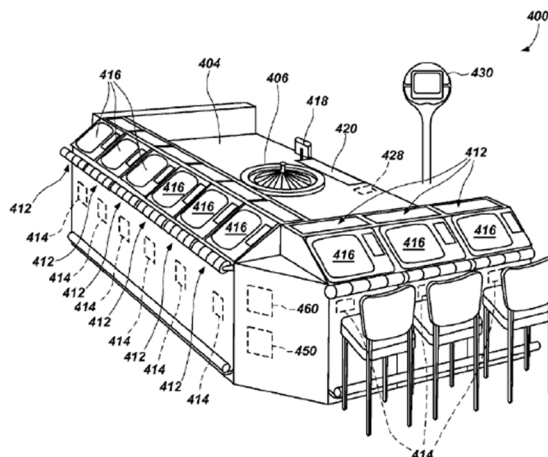


FIG. 6

The Petition (at 52, 60-65) showed that in a given round, “[a] plurality of roulette outcomes” are generated: a “primary roulette outcome” is produced by the physical wheel and ball, and “ancillary outcomes” are “generated utilizing a random number generator [RNG] (e.g., operated by a control circuit).” EX1008, ¶¶[0039]-[0041]. The Petition mapped these disclosures to the challenged claims, explaining that Baron’s ancillary outcomes are generated by the RNG during a single round in which the single roulette wheel 406 is spun once. Pet., 60-64. Evolution’s arguments related to the three wheels of Baron’s Figure 4 do not respond to the Petition’s unpatentability showing, and Evolution’s other arguments lack merit for the reasons below.

First, the POR (at 54) argues that because Baron’s roulette wheels generate outcomes by a ball falling into a position, none can select a position “prior to” a ball falling. EX2041, ¶180. That argument fails because the Petition does not map ancillary outcomes to balls falling into positions and instead cites Baron’s ancillary

outcomes generated via a RNG. Pet., 60-61; EX1003, ¶¶471-478; EX1008, ¶[0041]. Baron further discloses that ancillary outcomes can be generated “at the close of wagering or at the beginning of a new round of play,” *i.e.*, before the ball falls into its outcome position on the single physical wheel. EX1008, ¶[0088]; Pet., 61-62.

Second, Dr. Casey contends Baron does not disclose bet information “corresponding to only a single [first | second] position on the roulette wheel” because Baron’s progressive wagering involves a separate side bet. EX2041, ¶181. But the claims do not require a traditional straight-up wager or exclude side bets. EX1071, ¶¶58-61. Baron’s progressive wager is made on a single number, just as the claims require, and the player’s predicted outcome corresponds to a single position on the roulette wheel. EX1008, Abstract, Fig. 1 at 102.

Third, the POR (at 55-56) argues that Baron’s payouts are the same for any one spin of one roulette wheel, and higher payouts require results from two spins of two wheels. But again, L&W is not relying on an embodiment of Baron using multiple wheels, and the actual relied-upon embodiment from Baron discloses higher payouts resulting from one spin of one roulette wheel in conjunction with a randomly-generated number. Pet., 53-68.

Finally, Baron does not use “multiple spins of multiple roulette wheels” to any greater extent than the ’014 patent itself. POR, 51; EX1071, ¶¶48-49. Like

Baron, the '014 patent uses a random number generator to select positions for increased payouts (EX1001, 4:58-67), and Evolution's Lightning Roulette "combines Live Casino with a high-payout RNG (Random Number Generator) element." EX2027, 2.

B. Baron Teaches Claims 5, 13, And 21

Evolution argues L&W "completely fails to identify [the] 'second selected position' [required by claims 5, 13, and 21] in Baron." POR, 56-57. That is wrong. The Petition identified Baron's randomly generated roulette outcomes as the claimed "selected position[s]" and explained that Baron's random number generator may generate "one or more of the plurality of roulette outcomes." EX1008, ¶¶[0039]-[0041]; Pet., 72. The Petition further identified Baron's Figure 3 as disclosing three randomly generated roulette outcomes, including two ancillary outcomes (also referred to as "progressive outcomes") and one primary outcome, and Baron explains that each such outcome may be any number from zero to thirty-six. EX1008, Fig. 3, ¶[0041]; Pet., 72. The two ancillary outcomes are the first and second "selected position[s]" required by the claims. Pet., 72; EX1003, ¶¶507-509.

Evolution does not dispute that Baron's random number generator can select multiple roulette positions for a single round. POR, 56-58. Instead, Evolution argues that these positions cannot be "selected positions" because they are

supposedly determined by “wheels” and therefore are “outcome positions.” *Id.*

But as explained in Section V.A above, the Petition relied on Baron’s Figure 6 embodiment using a single wheel, and the ancillary-outcome positions are determined by a RNG, not wheels.

Dr. Casey contends that Mr. Friedman “does not explain why generating multiple ‘roulette outcomes’ requires selecting both a first and second position for increased payouts.” EX2041, ¶188. But this rests on the flawed premise that both positions must receive “increased” payouts. EX1071, ¶¶26-33. The claims require only that they be different. Mr. Friedman’s example (EX1003, ¶¶507-508) directly refutes Dr. Casey: there is only one ball, landing on 24; the RNG generates outcomes of 24 and 10; and the different match counts yield different payouts (100:1 vs. 7:1).

VI. CLAIMS 8, 16, AND 24 ARE OBVIOUS OVER GROUND 4

Evolution’s Ground 4 arguments fail for the same reasons as its Ground 2 arguments. *See* Section IV above. Claims 8, 16, and 24 merely add the requirement of indicating “500x” at the first selected position on a roulette board in the first graphical user interface, and Yee expressly discloses using a 500x multiplier in a roulette game. Pet., 76-80. Mr. Friedman also explained that using and displaying a 500x multiplier was an available design choice for a POSITA, and

that it would have been obvious to add or substitute Yee's 500x indication in Baron's enhanced-award roulette game. EX1003, ¶¶551-565.

Evolution and Dr. Casey again mischaracterize L&W's obviousness theory by focusing on whether a 500x award would replace one particular Baron award, and they further argue that players would find Baron's progressive jackpot preferable to a 500x payout. POR, 58-59; EX2041, ¶¶190-191. But Mr. Friedman showed that "a POSITA would have thought it obvious to substitute *or add* Yee's disclosure of a multiplier 500x" (EX1003, ¶561 (emphasis added)), and it is "not necessary to show that an [obviousness] combination is 'the *best* option, only that it be a *suitable* option.'" *Intel Corp. v. Qualcomm, Inc.*, 21 F.4th 784, 800 (Fed. Cir. 2021) (emphasis in original) (citation omitted). Dr. Casey's assertion that replacing a progressive jackpot with a fixed 500x award "would change the nature of the game" is also wrong. EX1071, ¶¶34-39. As Mr. Friedman explains, Baron's fundamental gameplay remains the same; only the form of the enhanced award changes. *Id.* A 500x award is plainly enhanced relative to traditional roulette's 35:1 straight-up payout, and Yee confirms that such multipliers were known in the art. *Id.*

Nor does Mr. Friedman's testimony that some players may find a progressive jackpot more attractive than a 500x payout help Evolution. POR, 59 (citing EX2045, 31:11-14). That testimony reflects, at most, one possible

consumer preference and does not show that a POSITA would have lacked motivation to implement the known 500x multiplier. A competent game designer would evaluate the tradeoffs between a progressive jackpot and the 500x multiplier, including that the multiplier can avoid progressive-jackpot regulatory overhead, avoid depletion after a win, and eliminate any seeding requirement.

EX1071, ¶39. Obviousness does not require the selected design to be the most attractive possible alternative. *Intel*, 21 F.4th at 800. Evolution identifies, at most, a preference dispute among known alternatives, which does not make the claimed 500x indication nonobvious.

VII. EVOLUTION’S ALLEGED SECONDARY CONSIDERATIONS CANNOT SAVE THE CLAIMS

Evolution argues that secondary considerations save the challenged claims (POR, 59-73), but they do not.

First, Evolution’s alleged secondary considerations are “irrelevant to the issue of anticipation.” *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1562 n.10 (Fed. Cir. 1983) (Davis, J., concurring in part). The Petition showed that the majority of the challenged claims are anticipated by Kido and Baron, and the Board agreed that L&W has shown a reasonable likelihood that independent claims 1, 9, and 17 are anticipated by Kido. DI, 18.

Second, there is no presumption of nexus because Lightning Roulette is not coextensive with the claims. Evolution invokes a presumption of nexus, but that

presumption attaches only where the product is “coextensive” with the claims, *i.e.*, where the product is “essentially the claimed invention.” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373-74 (Fed. Cir. 2019). The POR’s element-by-element chart (at 64-72) proves, at most, that Lightning Roulette falls within the claims, but the POR nowhere shows that Lightning Roulette is coextensive with the claims, and it is not. The claims recite a wagering system including a roulette wheel, ball, and hardware processor configured to perform steps. Lightning Roulette, by contrast, includes numerous additional features: an “online” format in which “players can see a live video feed from a studio,” where “a [live dealer] host presents the game,” among others. POR, 1, 6, 9, 60, 64. None of these features is claimed. Because Lightning Roulette is not coextensive with the claims, no presumption arises. *Fox Factory*, 944 F.3d at 1375.

Third, without the presumption of nexus, none of Evolution’s four categories supplies the required nexus. Objective indicia merit weight only if the patentee proves a nexus between the evidence and “the merits of the claimed invention.” *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). The nexus must run to “what is both claimed and *novel* in the claim, [otherwise] there is no nexus.” *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011).

The only feature Evolution identifies as allegedly being new is the random selection of roulette positions for increased payouts. *See, e.g.*, EX1015, 024. But

the Petition demonstrated that this feature was disclosed years before the '014 patent: Along with the asserted prior art, the Petition also cited Orselli, which discloses paying “odds of 1000 to 1” for a coincidence between a roulette outcome and a random number generator output (EX1019, 3:8-12); de Raedt, which discloses “randomly selecting a plurality of numbers as bonus game numbers” with multipliers such as “five times the normal payoff” (EX1018, [0047]-[0051]); and Hsu (2013), which discloses a “dynamic raised odds calculation element” that “randomly selects a specific number of the game results and generates dynamic raised odds” for roulette (EX1017, Abstract).

Thus, even if Evolution could tie its evidence to the claimed random selection of roulette positions for increased payouts, that would still not establish nexus to any inventive feature because this alleged point of novelty was already well known in the prior art. EX1071, ¶¶62-65. Evidence attributable to prior-art features cannot supply the required nexus to the challenged claims. *Kao*, 639 F.3d at 1068; *Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006).

Fourth, Evolution’s own evidence confirms that its asserted secondary considerations are driven by unclaimed features. The awards and press materials praise the overall Lightning Roulette experience, including its online, live-dealer format, and studio presentation. POR, 59-63. Those features are not claimed, and

Evolution does not show that any award, praise, commercial success, alleged long-felt need, or asserted skepticism was caused by the random selection of roulette positions for increased payouts, specifically. *See id.* At most, Evolution’s evidence shows that a branded, online live-dealer game succeeded in the marketplace; it does not show that the claimed invention was nonobvious. *Fox Factory*, 944 F.3d at 1375.

Fifth, L&W’s license does not prove secondary considerations. The March 2021 agreement was a forward-looking business deal for L&W to develop a land-based version of the branded Lightning Roulette product, not a license reflecting the inventive value of the claimed random-selection mechanism. EX2014; POR, 61. Licenses are often taken for business reasons unrelated to the merits of a patent. *In re Cree, Inc.*, 818 F.3d 694, 703 (Fed. Cir. 2016). Nor does *Ancora* help Evolution. There, the Federal Circuit credited litigation-settlement licenses taken late in litigation and supported by royalties that “far exceeded the cost of litigation,” reflecting a reluctance to risk larger infringement exposure and the market value of the patented technology. *Ancora Techs., Inc. v. Roku, Inc.*, 140 F.4th 1351, 1362-63 (Fed. Cir. 2025). The L&W agreement is not commensurate with this: Evolution offers no comparable settlement, royalty-magnitude, or patent-valuation evidence.

Sixth, Evolution’s copying theory likewise fails. Copying requires “evidence of efforts to replicate a specific product”; a pending infringement allegation is not evidence of copying. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010). Evolution’s bare assertions about the parallel infringement case are not evidence of copying. POR, 62-63.

Finally, even if any of Evolution’s evidence were credited, such weak objective indicia “cannot overcome a strong prima facie case of obviousness.” *Wyers*, 616 F.3d at 1246; *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). The Petition establishes that the prior art discloses every element of the challenged claims—including randomly selecting payout positions for increased payouts—and that their combination yields no more than the predictable result of applying a known technique to a known game. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). The Board should accord Evolution’s objective evidence no weight.

VIII. CONCLUSION

The Board should cancel claims 1-3, 5-11, 13-19, and 21-24 of the ’014 patent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies the foregoing document, PETITIONER
REPLY TO PATENT OWNER RESPONSE, and corresponding exhibits were
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CERTIFICATE OF WORD COUNT UNDER 37 C.F.R. § 42.24(a)

I, the undersigned, do hereby certify that the attached brief contains 5,593 words, as measured by the Word Count function of Microsoft Word 2016. This is less than the limit of 5,600 words as specified by 37 C.F.R. § 42.24(c)(i).

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