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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EVOLUTION MALTA LIMITED, EVOLUTION GAMING MALTA LIMITED, EVOLUTION GAMING LIMITED and SIA EVOLUTION LATVIA, Plaintiffs, vs. LIGHT & WONDER, INC. f/k/a SCIENTIFIC GAMES CORP. and LNW GAMING, INC. f/k/a SG GAMING, INC., Defendants,	CASE NO.: 2:24-cv-00993-CDS-NJK **DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT [ECF NO. 86] PURSUANT TO RULE 12(b)(6)**

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I. INTRODUCTION

Only months ago, the Court dismissed the patent counts of Evolution's original complaint, holding that all three asserted patents "are invalid under *Alice*" and expressing "doubt that Evolution can amend around this problem." ECF No. 76 ("Order") at 15, 16 n.8.

The Court's prior ruling turned on a single, immovable point: the claims are stated "merely [as] results, and not means to achieve the results." *Id.* at 11. The asserted patents "lack the specificity necessary to show how [the claimed] components provide a concrete solution to the problem addressed by the patent," *id.* at 15, and the purported technological improvement—randomly selecting one or more roulette positions and increasing the payouts for those positions, ECF No. 1 ("Compl.") ¶¶44–45, 69–70, 96–97—is "described and claimed too generically." Order at 15. Those findings do not depend on the pleadings; they flow from the intrinsic record. As the Federal Circuit has made clear, "no amendment to a complaint can alter what a patent itself states." *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 706 (Fed. Cir. 2023).

Rather than heed the Court's warning and focus on the remaining trade secret claims as the parties approach the close of fact discovery, Evolution has instead returned with a sprawling First Amended Complaint ("FAC") the contents of which only underscore the invalidity of the Asserted Patents.[1] Indeed, the FAC is bloated with improper attorney argument and case citations regarding patent eligibility. Amidst that attorney argument, Evolution belatedly attempts to challenge that Claim 1 of U.S. Patent No. 11,011,014 is representative of all of the asserted claims, after the Court confirmed that Evolution conceded that point during briefing on the initial motion to dismiss. And even after submitting the FAC, Evolution submitted what it calls an "errata" to the FAC the next day, which purports to edit Evolution's prior substantive allegations "to more accurately reflect the scope of the various asserted patent claims." ECF No. 94 at 1.

In the end, however, none of Evolution's desperate attempts in the FAC can revive its invalid patents. The patents say what they say, and what they say is fatal under *Alice*. Because the FAC offers nothing that could change that conclusion, the Court should dismiss the patent

[1] The same day, Evolution also sought leave to file a Second Amended Complaint ("SAC"), seeking to add a new plaintiff, and at least two new patents unrelated to the original patents. ECF No. 90.

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claims again—this time with prejudice.

II. BACKGROUND

A. The Asserted Patents

Evolution accuses L&W of infringing U.S. Patent Nos. 10,629,024 (the "'024 patent"), 11,011,014 (the "'014 patent"), and 11,756,371 (the "'371 patent") (collectively, the "Asserted Patents"). ECF No. 86 ("FAC"). The '024 patent was filed February 5, 2019 and claims priority to a provisional application filed February 5, 2018. The '014 patent is a continuation of the '024 patent, and the '371 patent is a continuation of the '014 patent. Each is titled "Systems, Methods, and Media for Implementing Internet-Based Wagering" and shares a common specification.

The Asserted Patents purportedly disclose "[s]ystems, methods, and media for implementing internet-based wager[ing]." '014 patent[2] at 1:31–32. Specifically, the Asserted Patents are directed to wagering on the century-old game of roulette, and all of the described embodiments use three core components—a roulette wheel, a ball, and a hardware processor.

To play roulette, a dealer spins the wheel one direction and directs the ball to spin around the wheel in the opposite direction. *Id.* at 3:3–6. The ball eventually falls into a position on the wheel associated with a number. *Id.* at 3:6–8. If the player has placed a bet on that number, he or she is paid a sum. If not, the bet amount belongs to the house.

In the purported invention of the Asserted Patents, the wheel and ball perform their respective conventional roles while the hardware processor—which may be "any suitable" processor for "controlling . . . a general-purpose computer," (*id.* at 6:32–48)—acts as the dealer. That is, the processor accepts player bets associated with a specific number (or numbers) on the roulette wheel (*id.* at 8:19–28), determines whether the ball and wheel have been spun (*id.* at 8:29–30), determines whether the ball has landed on the number selected by the player(s) (*id.* at 8:40–41), and, if so, determines the payout amount (*id.* at 8:36–39) and indicates that the player is to be paid (*id.* at 8:42–43). In short, the claimed processor applies the rules of roulette.

The Asserted Patents also require that the same generic processor randomly identify a number on the roulette wheel before the ball falls into position on the wheel. *Id.* at 8:31–35. If

[2] All cites to the specification are with respect to the '014 patent, attached as Exhibit 3 to the FAC.

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this randomly identified number matches the number on which a player has placed a bet, and if the ball lands on that number on the roulette wheel, the player receives an increased payout. *Id.* at 5:15–32. This randomly identified number is essentially a "multiplier" and is no different from countless others known by 2018 that increase a player's payout.

Claim 1 of the '014 patent below is representative of all claims.[3]

> A system for wagering, comprising:
> a roulette wheel;
> a ball configured to be used in the roulette wheel;
> at least one hardware processor collectively configured to:
> generate a first graphical user interface for presentation on a first player device of a first player;
> generate a second graphical user interface for presentation on a second player device of a second player;
> receive first bet information for a first bet on a spin of the roulette wheel via the first graphical user interface, the first bet information corresponding to only a single first position on the roulette wheel;
> receive second bet information for a second bet on the spin of the roulette wheel via the second graphical user interface, the second bet information corresponding to only a single second position on the roulette wheel that is different from the single first position;
> determine that the roulette wheel and the ball have been spun for the spin of the roulette wheel;
> *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*;
> determine that the ball has fallen in the single first position for the spin of the roulette wheel; and
> indicate that the first player is to be paid at the first payout for the spin of the roulette wheel.

'014 patent at 8:11–43 (emphases added indicating the purported innovation).

As shown above, the claims use generic components (wheel, ball, processor) to perform steps specified in broad, results-oriented language, including at the alleged point of novelty (*e.g.*, "*determine a first payout*"). No new hardware or software for implementing the functional claim language is described in the Asserted Patents (much less required by their claims). And the alleged innovation of increasing the payout for a randomly selected position is an entrepreneurial tweak to conventional roulette rules, not a technical advancement worthy of patent protection.

[3] Evolution conceded claim 1 is representative in the initial motion to dismiss. Order at 8.

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B. Procedural History

On May 28, 2024, Evolution filed its initial complaint alleging infringement of the Asserted Patents and actions for trade secret misappropriation. *See* Compl. L&W moved to dismiss on July 24, 2024, showing that the Asserted Patents are invalid under 35 U.S.C. § 101.[4] The Court agreed, concluding on February 11, 2025, that the Asserted Patents are "invalid under *Alice*. Therefore, L&W's motion to dismiss must be granted." Order at 15; *Alice Corp. Pty. Ltd. v. CLS Bank Int'l.*, 573 U.S. 208 (2014). The Court further noted, "***Because I find the patents invalid***, I do not address the merits of whether two of the patent claims are time barred." Order at 15 n.7 (emphasis added).

The Order granted Evolution leave to amend its complaint and replead the Asserted Patents stating that such leave "should generally be denied only if allowing amendment would unduly prejudice the opposing party," but the Court noted that it was "unclear if the pleading deficiencies can be cured by amend[ment]," and even went so far as to say that "[c]onsidering the plain language of the claims in the patent, the Court has some doubt that Evolution can amend around this problem." *Id.* at 15–16; *id.* n.8. Nevertheless, on April 10, 2025, Evolution filed a nearly 70-page FAC reasserting the '024, '014, and '371 patents, and adding a new accused product. FAC. The next day, on April 11, 2025, Evolution filed an errata to the FAC. ECF No. 94 ("Errata") at 1. The errata did not correct ministerial errors and instead modified substantive allegations of the FAC "to more accurately reflect the scope of the various asserted patent claims." *Id.*

L&W now moves again to dismiss the patent-related counts (Counts III, IV, and V) in the FAC because the claims of the Asserted Patents have not changed; the Asserted Patents are still "invalid under *Alice*." Order at 15.

C. The FAC

The following sections summarize the FAC's allegations related to patent eligibility carried over from the original complaint, and then describe the revisions contained in the FAC.

1. The FAC Re-Packages The Same Section 101 Allegations That The Court Already Considered And Rejected

[4] L&W's motion also showed that Evolution's trade secret counts are subject to arbitration and/or time-barred. ECF No. 34 at 14–22. On January 31, 2025, the Court asked L&W to refile as a separate motion its motion on Evolution's trade secret claims. ECF No. 72. That briefing was completed on February 26, 2025. *See* ECF Nos. 74, 78, 79. That motion is currently pending.

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In its original complaint, Evolution relied on three conclusory sets of allegations (Compl. ¶¶44–45, 69–70, 96–97), to contend that the claims overcome *Alice*. Evolution argued that the patents' random selection of one or more positions and increased payouts for those positions "significantly improved existing technology for a roulette game" and pronounced—without any support—that these features were "neither well-known, routine, nor conventional." *Id.*

Notwithstanding the Court's prior ruling—which squarely rejected Evolution's contention that the mere recitation of random-number selection and increased payouts amounted to a technological advance (Order at 14–15)—the FAC repeats the same refrain. *See*, *e.g.*, FAC ¶¶76–77, 80–81, 93. Yet, as before, Evolution points to no claim language reciting *how* the claimed processor allegedly accomplishes those functions and leaves unchallenged the Court's observation that the random selection and increased payout limitations are framed in purely functional, results-oriented terms and therefore do not provide a technological advance. Order at 14–15.

2. The FAC's New § 101 Allegations

The FAC includes roughly twenty pages (pp. 15–37), much of which is attorney argument, asserting that the claims are patent-eligible. The FAC identifies new alleged technological improvements and seeks to walk back Evolution's previous concessions regarding the representativeness of claim 1 of the '014 patent. These additions regarding alleged patent eligibility and other allegations are summarized in the chart below.

FAC Additions	What Was Pled (or Conceded) Before	What the FAC Still Lacks
Allegation that "ensuring … random selection" takes place "before the ball has fallen in a position" is a technological improvement (FAC ¶76, Errata at 1)	Evolution argued that the patents "improved existing technology" via the claimed random position selection (Compl. ¶¶44–45, 69–70, 96–97), which the Court rejected (Order at 9–15).	Any factual allegations that the claims recite *how* the purported "random selection before ball lands" feature is achieved, any non-conclusory allegations that this feature is not well-known, routine, and conventional, and any factual allegations as to why this feature is not a necessary part of the abstract idea itself, such that it cannot supply an inventive concept
Allegation that multiplayer participation via electronic player	Evolution did not previously argue that the claimed use of first and second graphical	Any factual allegations that the claims recite *how* multiplayer participation is achieved, any non-conclusory

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FAC Additions	What Was Pled (or Conceded) Before	What the FAC Still Lacks
devices is a technological improvement (FAC ¶76)	user interfaces (GUIs) for receiving bets is a technological improvement.	allegations that this feature is not well-known, routine, and conventional, and any factual allegations as to why this feature is not a necessary part of the abstract idea itself
Allegation that the claims enable remote gameplay, another purported technological improvement (FAC ¶¶77, 83)	Evolution did not previously argue that the claims enabled remote gameplay, nor that this is an alleged technological improvement.	Any factual allegations that the claims recite features for enabling remote gameplay, and any non-conclusory allegations that this feature is not well-known, routine, and conventional
Allegations that the claims provide a "specific technological software improvements" (FAC ¶¶52, 68, 76, 77, 80, 92, 93)	Evolution argued that the patents "improved existing technology" but did not identify any technology that was actually improved. ECF No. 66 at 2–6.	Any factual allegations that the claims recite algorithms or any other concrete software architectures for achieving the functions recited in the claims
Assertion that certain dependent claims recite "additional … technological improvements," *e.g.*, randomly selecting a second position (FAC ¶¶86–88)	Evolution previously conceded that the dependent claims "relate to the same abstract idea" as Claim 1 of the '014 patent and any additional limitations "do not save the Asserted Patents." Order at 8 n.6.	Any factual allegations that the claims recite *how* the various dependent-claim features are achieved, and any non-conclusory allegations that these features are not well-known, routine, and conventional

III. THE ASSERTED PATENTS ARE INVALID UNDER 35 U.S.C. § 101

Despite the attorney argument, inapposite case law, and unsupported assertions of technological solutions and improvements that pervade the FAC, the focus of the Section 101 inquiry—the claims—are unchanged since the Court held them "invalid under *Alice*" on February 11, 2025. Order at 15. The claims still recite the process of playing roulette using its well-known, conventional components—a ball and a wheel. This Court, not to mention the Federal Circuit, has repeatedly held that claims on wagering games without more are directed to ineligible abstract ideas. What's more, the conventional ball and wheel are coupled with a generic processor to perform basic computer tasks, all of which are specified at a functional, results-oriented level (*e.g.*, "determine a payout"). '014 patent at 6:32–48. Nowhere do the claims or the specification explain

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how any of these steps are performed, and courts routinely hold that using generic processors to perform abstract ideas do not create inventive concepts. *See*, *e.g.*, *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354–55 (Fed. Cir. 2016) (claims calling for use of "a set of generic computer components" to perform abstract ideas held invalid under *Alice*). Even after two bites at the apple, Evolution cannot explain *why* the claims of the Asserted Patents constitute patent-eligible subject matter under 35 U.S.C. § 101. They do not, and should be dismissed again under *Alice*.

A. Legal Standard

35 U.S.C. § 101 defines patent-eligible subject matter as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." "Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice*, 573 U.S. at 216 (quoting *Ass'n of Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Under the Supreme Court's two-step framework governing the eligibility inquiry, a court must first determine whether the invention is directed to an abstract idea. *Id.* at 217–18. If so, the court then determines whether the claim elements recite an "inventive concept" sufficient to transform the abstract idea into patent-eligible subject matter. *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66, 72–73 (2012)). Comparing the claims at issue to claims previously found to be ineligible under § 101 is a common and Federal Circuit-approved approach. *Teliax Tech. LLC v. Affinity Network, Inc.*, 636 F. Supp. 3d 1199, 1207 (D. Nev. 2022) (Silva, J.) (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016), *appeal dismissed*, No. 2023-1197, 2023 WL 2525057, at *1 (Fed. Cir. Mar. 15, 2023)).

"Whether a patent is eligible under § 101 is a question of law that may be determined at the dismissal stage." *NEXRF Corp. v. Playtika Ltd.*, 547 F. Supp. 3d 977, 986 (D. Nev. 2021), *aff'd*, No. 2021-2147, 2022 WL 1513310, at *1 (Fed. Cir. May 13, 2022); *see also Teliax Tech.*, 636 F. Supp. 3d at 1206; *Scibetta v. Slingo, Inc.*, No. CV 16-8175, 2018 WL 466224, at *8 (D.N.J. Jan. 17, 2018) (collecting cases). Early resolution conserves judicial and party resources and "protects the public by expeditiously removing the barriers to innovation created by vague and overbroad patents." *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1165 (Fed. Cir. 2018) (Mayer, J., concurring).

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B. *Alice* Step One – The Abstract Idea of Playing Roulette

In granting L&W's motion to dismiss the original complaint, the Court correctly concluded at *Alice* step one, that "the '014 patent is directed to an abstract idea." Order at 11. The Court cited Federal Circuit precedent and this district's *NEXRF Corp.* decision holding that patents "'directed toward rules for conducting a wagering game' compare to other 'fundamental economic practice[s]' found abstract by the Supreme Court." *Id.* at 10–11 (quoting *In re Smith*, 815 F.3d 816, 818–19 (Fed. Cir. 2016)); *Planet Bingo, LLC v. VKGS LLC*, 576 F. App'x 1005, 1007–08 (Fed. Cir. 2014); *NEXRF*, 547 F. Supp. 3d at 988. The Court recognized that, like the claims of these other cases, "Evolution's 'method for a roulette game' is, at its core, a method of exchanging and resolving financial obligations based on probabilities," *i.e.*, an abstract idea. Order at 11. As further support, the Court also recognized Evolution's concession that the steps of the Asserted Patents can be carried out using existing computers. Order at 10–11 (citing *Planet Bingo*, 576 F. App'x at 1007, 1008 (claims for "managing a bingo game" directed to an abstract idea can be "carried out in existing computers") (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))).

The Court likewise recognized the functional, results-oriented nature of the claims, rejecting Evolution's argument that the Asserted Patents are directed to "a patentable, technological improvement" over existing roulette games. Order at 11 (citing ECF No. 53 at 13). Specifically, in its original complaint, Evolution alleged without support that the claims' random selection and increased payout constitutes a technological improvement sufficient to survive *Alice*. Compl. at ¶¶44–45, 69–70, 96–97. But, the Court properly recognized that the claims themselves do not "explain how any of the purported technological improvements work." Order at 11 (quoting *NEXRF Corp.*, 547 F. Supp. 3d at 988). And "[w]ithout explanation as to *how* the graphical [user interfaces] or payouts are determined, these statements are merely results, and not means to achieve the results." *Id.* (citing *Bot M8 LLC v. Sony Corp. of Am.*, 465 F. Supp. 3d 1013, 1021 (N.D. Cal. 2020) (emphasis original)). The Court also stated that "Claim 1 of the '014 patent will serve as the Representative Claim 1 for the purposes of this action," citing L&W's showing of representativeness (ECF No. 34 at 19), and Evolution's failure to contest it. Order at 8.

The FAC (at ¶¶76–77, 80–81, 93) repeats the same allegations that the Court already

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rejected and offers no basis for the Court to reach a different conclusion. The FAC also pleads a host of newly minted assertions, summarized in Section II.C.2 above. But, as demonstrated in the sections that follow, these new allegations add no meaningful technological substance and do not cure the fundamental defect that the claims are directed to the abstract idea of playing roulette.

1. Evolution's Errata Undermines Its Claimed Technological Improvement Of Random Selection Before The Ball Lands

Evolution's FAC asserted that the alleged technological improvements of the Asserted Patents include "ensuring that the random selection of positions for multipliers takes place after the roulette wheel and ball have been spun, but before the ball has fallen in a position." FAC ¶76; *see also* ¶70 ("[D]uring a narrow window of time—after the spinning of the wheel and ball, but before the ball lands on a position—Evolution's software uses a random number generator to select a subset of the positions . . . ."), ¶77 ("[I]n the narrow window of time after the wheel and ball have been spun and before the ball lands, the innovative game software uses an algorithm to randomly or pseudo-randomly select one or more positions on the roulette wheel . . . .").

Then, on April 11, 2025—the very next day—Evolution walked these statements back, filing an errata to the FAC "to more accurately reflect the scope of the various asserted patent claims." Errata at 1. Now, instead of asserting that the Asserted Patents' random position selection occurs "*after the spinning of the wheel and ball*, but before the ball lands on a position" (emphasis added), the errata, confirms that it need only occur sometime "before the ball lands":

Page:Line	FAC (ECF No. 86)	Should Read
21:22	"after the spinning of the wheel and ball, but before the ball lands on a position"	"before the ball lands on a position"
24:18–19	"takes place after the roulette wheel and ball have been spun, but before the ball has fallen in a position"	"takes place before the ball has fallen in a position"
25:4–5	"after the wheel and ball have been spun and before the ball lands"	"before the ball lands"

Errata at 1.

Evolution's after-the-fact corrections are procedurally improper and substantively

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revealing. Errata are reserved for the correction of clerical or typographical slips, not for rewriting the operative pleading to recast central factual contentions. *See*, *e.g.*, *ATLP by & through Taylor v. CoreCivic, Inc.*, No. 2:21-cv-02072-JCM-EJY, 2023 WL 9232967, at *2 (D. Nev. Dec. 5, 2023) *report and recommendation adopted*, 2:21-cv-02072-JCM-EJY, 2024 WL 1072016, at *4 (D. Nev. Mar. 11, 2024) ("[A]n errata should only correct ministerial errors made in a previously filed document that is pending before the Court."). It is telling that—after enjoying months to prepare the FAC following the Court's February 11, 2025, Order —Evolution still managed to misstate what it now calls a central "technological improvement" of its supposed invention.

In any case, Evolution's allegation that randomly selecting a roulette position before the ball drops is a technological improvement (FAC ¶¶70, 76, 77, as corrected in Evolution's Errata) cannot save the claims. Nothing in the FAC supports the assertion that this feature is an improvement of any kind, much less a technological one. *See id.* Moreover, this feature is specified at a functional, results-oriented level. Representative claim 1 of the '014 patent illustrates the problem precisely: the claim instructs a generic hardware processor to "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." '014 patent at 8:31-33. That language is quintessentially results-oriented. It supplies no algorithm, no sequence of concrete processing steps, and no hardware architecture capable of performing the claimed random position selection prior to the ball landing. In other words, the claim recites the desired *result*—random position selection before the ball lands—but is wholly silent as to *how* to achieve it. Merely reciting a result is not a technological improvement. *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1356, 1359 (Fed. Cir. 2024) (claims "drafted using largely (if not entirely) result-focused functional language, containing no specificity about how the purported invention achieves those results" are invalid under *Alice*).

Indeed, in granting L&W's motion to dismiss the original complaint, the Court already considered Evolution's argument about the "random selection" feature, rejecting it as being "described and claimed too generically." Order at 15 (the claimed random position selection "lack[s] the specificity necessary to show how" this feature provides "a concrete solution to the problem addressed by the patent") (quoting *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838

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F.3d 1266, 1271 (Fed. Cir. 2016)). The Court's determination is consistent with Federal Circuit precedent, which has repeatedly rejected claims framed in exactly this functional, black-box manner. In *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, the Federal Circuit explained that claims drafted with "result-based functional language" without "sufficiently describ[ing] how to achieve [the claimed] results in a non-abstract way" cannot survive § 101. 874 F.3d 1329, 1337–38 (Fed. Cir. 2017). Likewise, in *Elec. Power Grp.*, the Federal Circuit found that claims describing "a process of gathering and analyzing information of a specified content, then displaying the results," were "directed to an abstract idea." 830 F.3d at 1354. The Federal Circuit held the claims invalid, emphasizing that "the essentially result-focused, functional character of claim language has been a frequent feature of claims held ineligible under § 101." *Id.* at 1356.

Evolution's alleged technological improvement of "ensuring that the random selection of positions for multipliers takes place before the ball has fallen in a position" falls squarely within that forbidden category; reciting this as a result without specifying how to do it. FAC ¶76; Errata at 1. As in *Two-Way Media* and *Elec. Power Grp.*, that is not a technological improvement.

2. The Generic "Two-GUI" Limitation—Merely Displaying The Same Betting Screen Twice—Adds No Technological Improvement

The FAC asserts that another alleged technological improvement of the Asserted Patents is "multiplayer participation through electronic player devices." FAC ¶76. To be sure, some of the asserted claims recite, in purely functional terms, "generat[ing] a first graphical user interface for presentation on a first player device of a first player" and "generat[ing] a second graphical user interface for presentation on a second player device of a second player." '014 patent at 8:15–18. But these limitations do not describe any new GUI technology, any particular data structures, or any concrete implementation details. They are simply instructions to display the same betting screen twice—one to each participant—and, as such, amount to nothing more than "displaying information," an activity the Federal Circuit has held is "well-understood, routine, [and] conventional" and therefore insufficient to overcome *Alice*. *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019). Further, the FAC fails to provide any factual support for its assertion that the use of two betting screens provides a technological improvement over the

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prior art. *See* FAC ¶76.

Nor does the bare recital of two GUIs—as opposed to one—save the claims. The claims speak only in results-oriented language: the processor must "generate" the first GUI, "generate" the second GUI, and "receive" bet information through each. The claims do not describe any technical architecture for managing multiple concurrent interfaces, synchronizing data between them, or resolving latency, security, or bandwidth issues that might arise in a genuine multiplayer system. In other words, the claims recite desired results, but do not explain how to achieve those results, which is insufficient under *Alice*. *Bot M8 LLC*, 465 F. Supp. 3d at 1023, 1028 (invalidating claims under § 101 that "only instruct[] a game operator to present new jackpot opportunities" without explaining how to do so).

3. The Purported "Remote Play" Is Absent From The Claims And Cannot Supply A Technological Improvement

Yet another purported technological improvement alleged in the FAC involves playing roulette "from a remote location." FAC ¶77; *see also id.* ¶83 ("The Asserted Patents thus provide technological solutions … that achieve improved systems and processes for playing the claimed new roulette game in remote … gaming environments."). Evolution provides no support for its assertion that remote gaming is a technological improvement (*see id.*), and more importantly, remote game play appears nowhere in the claim language. Representative claim 1 of the '014 patent recites three conventional components: a roulette wheel, a ball, and "at least one hardware processor." '014 patent at 8:11-14. The processor is said to spin the wheel and ball, receive player bets, "randomly select" a number, determine where the ball lands, and compute appropriate payouts. *Id.* at 8:29-43. Neither claim 1 of the '014 patent nor any other claim says *anything* about networks, servers, the Internet, or any other infrastructure that might plausibly constitute a technological advance for enabling remote roulette play.

Evolution cannot rely on unclaimed subject matter—whether described in the specification or in the FAC—to survive *Alice*. Controlling precedent makes this clear. "The § 101 inquiry must focus on the language of the [a]sserted [c]laims themselves." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016). A court cannot "import details from the specification

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if those details are not claimed." *Packet Intel. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1318 (Fed. Cir. 2020) (Reyna, J., concurring-in-part and dissenting-in-part) (quoting *ChargePoint, Inc. v. SemaCo*nnect, Inc., 920 F.3d 759, 769 (Fed. Cir. 2019)). *See also Two-Way Media*, 874 F.3d at 1338–39 (holding that the claim—not specification—must supply an inventive concept); *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) ("[T]he level of detail in the specification does not transform a claim reciting only an abstract concept into a patent-eligible system or method."); *Voip-Pal.Com, Inc. v. Apple Inc.*, 375 F. Supp. 3d 1110, 1145 (N.D. Cal. 2019), *aff'd sub nom. Voip-Pal.com, Inc. v. Twitter, Inc.*, 798 F. App'x 644 (Fed. Cir. 2020) ("Here, however, attorney argument in the complaint cannot save the claims because the purported improvements have not been captured in the claim language.").

Relatedly, Evolution argues that the claims address two supposed "problems" identified in the background section of the Asserted Patents: (1) players historically had to travel to a casino in order to experience roulette, and (2) Internet-based, computer-generated roulette interfaces allegedly "do not replicate in any way a real environment like is present in a casino." FAC ¶83. But again, the claims do not address remote or Internet-based gaming. They therefore do not speak to (much less *solve*) the alleged problems of having to travel to a casino or else experience Internet-based gaming that does not replicate a casino environment.

Because the alleged remote-participation features (FAC ¶¶77, 83) are not recited in the claims, such features cannot establish eligibility. *Synopsys*, 839 F.3d at 1152 ("Our analysis focuses, as it must, on the Asserted Claims. Those claims are directed to an abstract mental process and contain no inventive concept. The claims are therefore invalid under 35 U.S.C. § 101.").

4. Evolution's Newly-Minted "Software-Improvement" Theory Fails Because The Asserted Patents Recite Only Results-Oriented, Functional Steps That Do Not Advance Any Technology

Evolution's original complaint alleged—without elaboration—that the Asserted Patents "improve[] existing technology for a roulette game." *See, e.g.*, Compl. ¶¶44, 69, 96. That pleading never identified what "technology" was supposedly improved, how it was improved, or why any such improvement matters under § 101. Having been called on that omission before (ECF No. 66 at 2–3), Evolution now characterizes the patents as claiming "specific technological software

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improvements" and "innovative software." FAC ¶¶52, 76–77, 80, 92–93. But the FAC's new labels cannot mask the same fatal flaw: the claims never disclose, let alone claim, any software. The claims do not recite, for example, any concrete software architecture or specific algorithmic technique.[5] They merely state the desired results in functional terms. "Claims of this nature are almost always found to be ineligible for patenting under Section 101." *Beteiro*, 104 F.4th at 1356; *see also IBM Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1378 (Fed. Cir. 2022) (claims that are "result-oriented, describing required functions (presenting, receiving, selecting, synchronizing), without explaining how to accomplish any of the tasks" are invalid under *Alice*) (citation omitted).

Specifically, the FAC cites a list of steps to support its new software-improvement theory, but each step is nothing more than a statement of what is to be achieved, not how to achieve it:

- "randomly select[ing] a first selected position on the roulette wheel for the spin of the roulette wheel prior to the ball falling into a position on the roulette wheel, wherein the first selected position is the same as the first position" (¶80);
- "determin[ing] a first payout for first position and a second payout for the second position for the spin of the roulette wheel, wherein the first payout is higher than the second payout" (*id.*);
- "indicating that the first player is to be paid at the first payout for the spin of the roulette wheel" (*id.*);
- "generating, using at least one hardware processor, a first graphical user interface for presentation on a first player device of a first player" (¶85);
- "generating, using the at least one hardware processor, a second graphical user interface for presentation on a second player device of a second player" (*id.*);
- "randomly select[ing] a second selected position on the roulette wheel; and

[5] The FAC repeatedly refers to "specific technological software improvements." FAC at ¶¶52, 76, 80, and 93. To the extent Evolution is referring to collections of functionally-claimed steps (*e.g.*, the steps of method claim 9 of the '014 patent) as allegedly providing algorithms—which they do not—those steps improve no technology: Notwithstanding their execution, the hardware processor runs no faster than it did before, and the roulette wheel and ball operate as they always have. As explained herein, the alleged inventiveness of the claims over the prior art is insufficient to survive *Alice*. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018) (advances in the realm of abstract ideas, "no matter how groundbreaking the advance," are not protected.).

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determin[ing] a payout for the second selected position that is different than the payout for the single first position (¶86);

- "randomly or pseudo-randomly select[ing] a second selected position of the plurality of positions on the roulette wheel to have a second increased payout for the spin of the roulette wheel" (¶87);
- "presenting a 'first graphical user interface [that] includes a roulette board' and highlighting the first selected position on the board in response to the first selected position being randomly selected" (¶88);
- "caus[ing] the ball and the roulette wheel to automatically spin" (*id.*); and
- "clos[ing] bets when the roulette wheel and the ball are determined to have been spun" (*id.*).

Each of these steps is claimed at the highest level of abstraction. The Asserted Patents do not describe or claim algorithms for any of these steps, much less unique algorithms for "encourag[ing] 'the onward march of science,'" which might qualify for patent protection. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 721 (Fed. Cir. 2014) (Mayer, J., concurring) (quoting *O'Reilly v. Morse*, 56 U.S. 62, 113 (1853)). Instead, the Asserted Patents describe the exact opposite of specific algorithms—*e.g.*, "randomly select[ing] one or more of the roulette wheel numbers" in "*any suitable manner*," and "determin[ing] the increased payouts for the numbers selected," where "[*a*]*ny suitable payouts can be used*." '014 patent at 4:58–61, 5:16–17 (emphasis added). Such "result-focused, functional . . . claim language" improves no technology. *Elec. Power Grp.*, 830 F.3d at 1356.

Unable to point to any disclosed algorithm or architectural innovation, Evolution tries to re-label entrepreneurial concepts—*e.g.*, the idea of randomly selecting one or more positions for increased payouts—as a technical breakthrough. That gambit is foreclosed: "[I]n assessing patent eligibility, advances in non-technical disciplines," such as gaming, "simply do not count." *Ultramercial*, 772 F.3d at 721 (Mayer, J., concurring); *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1166 (Fed. Cir. 2019). Evolution's claimed "software" steps do not enhance processor performance, improve data handling, or solve a computer-centric problem; they merely apply well-

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known computer functionality to execute a business-logic tweak to "enhance the 'player's experience'" and drive profits. ECF No. 53 at 9 (quoting '024 patent at 4:56–5:30). Such economic or psychological benefits may be laudable from a marketing perspective, but they are legally irrelevant to a patent-eligibility analysis.

In short, the Asserted Patents still claim nothing more than the abstract idea of playing a modified roulette game using conventional computer components. Dressing up that idea in the language of "software improvements" cannot save the claims.

5. The FAC Is Replete With Case Law And Attorney Argument That Has No Bearing On The Claims Of The Asserted Patents

"[Evolution's] attorney arguments in the amended complaint do not create a factual dispute precluding disposition of the instant case on a Rule 12 motion." *Orcinus Holdings, LLC v. Synchronoss Techs., Inc.*, 379 F. Supp. 3d 857, 882 (N.D. Cal. 2019), *aff'd sub nom. Dropbox, Inc. v. Synchronoss Techs., Inc.*, 815 F. App'x 529 (Fed. Cir. 2020); *see also Dropbox, Inc. v. Synchronoss Techs., Inc.*, 371 F. Supp. 3d 668, 700 (N.D. Cal. 2019), *aff'd*, 815 F. App'x 529 (Fed. Cir. 2020) ("Plaintiff's attorney arguments do not create a factual dispute precluding disposition of the instant case on a Rule 12 motion because Plaintiff's attorney arguments are attempting to manufacture a factual question.").

Nevertheless, in a desperate effort to establish patentability of the Asserted Patents, Evolution takes case law and attorney argument that was the backbone of its failed opposition to L&W's original motion to dismiss (*see* ECF No. 53), and styles it as twenty pages of "facts." FAC ¶¶52–107. Setting aside the impropriety of this approach, (*see Orcinus Holdings*, 379 F. Supp. 3d at 882; *Dropbox, Inc.*, 371 F. Supp. 3d at 700), it has no bearing on the claims, which are the focal point of the Section 101 analysis. *Synopsys*, 839 F.3d at 1149 ("The § 101 inquiry must focus on the language of the Asserted Claims themselves."); *Accenture*, 728 F.3d at 1345 ("[T]he important inquiry for a § 101 analysis is to look to the claim.").

The focus of the Section 101 inquiry is the claims, and the claims have not changed since the Court found them "invalid under *Alice*." Order at 15. Nothing that Evolution now says changes the Court's February 11, 2025, conclusion that these results-oriented claims do not explain *how* to

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achieve any of the claimed functions, meaning they are not patent-eligible subject matter. *Id.* at 11 ("Without explanation as to *how* the graphical [user interfaces] or payouts are determined, these statements are merely results, and not means to achieve the results."); *id.* at 14 ("Like the *NEXRF Corp.* challenged patent, the features described in Claim 1 of the '014 patent are described and claimed generically because they describe *what* they can do and not *how* they can do it.").

Moreover, the majority of case law and attorney argument that Evolution has incorporated into its FAC is duplicative of the case law and attorney argument that Evolution included in its opposition to L&W's original motion to dismiss, and that the Court already considered and rejected. *Compare* ECF No. 53 at 7 (citing to (1) *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); (2) *EcoServices, LLC v. Certified Aviation Servs., LLC*, 830 F. App'x 634 (Fed. Cir. 2020); and (3) *Contour IP Holding LLC v. GoPro, Inc.*, 113 F.4th 1373 (Fed. Cir. 2024)) *with* FAC ¶61 (citing same); *compare* ECF No. 53 at 8 (citing to (1) *Skillz Platform Inc. v. AviaGames Inc.*, No. 21-cv-02436, 2022 WL 783338 (N.D. Cal. Mar. 14, 2022); (2) *Vetnos, LLC v. Sideprize, LLC*, No. 23-cv-02746, 2024 WL 3843015 (N.D. Ga. July 9, 2024); and (3) *CG Tech. Dev., LLC v. Bwin.party (USA), Inc.*, No. 16-cv-00871-RCJ-VCF, 2016 WL 6089696 (D. Nev. Oct. 18, 2016)) *with* FAC ¶¶65–67 (citing same). Incorporating these legal arguments into a FAC rather than an opposition brief cannot change the Court's conclusion that these patents are "invalid under *Alice*." Order at 15; *see Orcinus Holdings*, 379 F. Supp. 3d at 882; *Dropbox, Inc.*, 371 F. Supp. 3d at 693 ("Plaintiff's attorney arguments in the amended complaint do not create a factual dispute precluding disposition of the instant case on a Rule 12 motion.").[6]

The FAC (¶¶78, 94, 102) argues that the claims of the Asserted Patents are not broadly

[6] The FAC (¶¶67, 79) argues that the asserted claims cannot be performed in the human mind, like those of *CG Tech.* This is wrong at least because humans have been randomly selecting numbers for decades, if not centuries, *e.g.*, by rolling dice or picking numbers out of a hat, and determining a payout is simply math. ECF No. 66 at 5–6. Both are textbook examples of abstract ideas. *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) ("Adding one abstract idea (math) to another abstract idea … does not render the claim non-abstract."); *Ericsson Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d 1317, 1327 (Fed. Cir. 2020) ("[W]e have repeatedly found unpatentable" processes that can be performed in the human mind). Evolution's *CG Tech.* case confirms this: the court said that determining "game outcomes" and "payouts" based on rules or algorithms are abstract because they "can be conducted in one's mind." No. 16-CV-00871, 2016 WL 6089696, at *4 (D. Nev. Oct. 18, 2016). The claims in *CG Tech.* survived because they "require[d] activity outside of one's mind" (*id.*), but the claims here do not.

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preemptive, allegedly like those of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014). But controlling authority holds that preemption is not a standalone test for eligibility, and that claims directed to abstract ideas remain ineligible even if they do not preempt *all* applications of the abstract idea. *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.") (citation omitted); *see also*, *Voip-Pal.Com, Inc. v. Apple Inc.*, 411 F. Supp. 3d 926, 972 (N.D. Cal. 2019), *aff'd*, 828 F. App'x 717 (Fed. Cir. 2020) ("[A] claim is not excused from the need to make an inventive contribution on top of the underlying abstract idea simply because its application of the abstract idea is narrow.").

C. *Alice* Step Two – The Asserted Patents Still Claim Well-Known Gambling Concepts, None of Which Are Inventive Alone Or In Combination

The Court's February 11, 2025, Order confirmed that the asserted claims do not contain an inventive concept that would transform the abstract idea into a patent-eligible application. Order at 14–15. Specifically, the Court compared the instant claims to those in *NEXRF Corp.*, whose claims "consisted of 'a combination of generic computer elements performing conventional functions'" (Order at 14 (quoting *NEXRF Corp.*, 547 F. Supp. 3d at 989)), and found that "the features described in Claim 1 of the '014 patent are described and claimed generically because they describe *what* they can do and not *how* they can do it." *Id.* (emphasis original). The Court also disposed of Evolution's argument that "random position selection and advanced payouts are inventive concepts" because "Evolution does not articulate how these advancements were [not] well-known, routine, or conventional," and "[i]nstead, it merely concludes as such." *Id.* The Court likewise noted that random position selection and advanced payout "are described and claimed too generically[,]" meaning they "lack the specificity necessary to show how these components provide a concrete solution to the problem addressed by the patent." *Id.* at 15 (quoting *Affinity Labs of Tex.*, 838 F.3d at 1271).

The claims of the Asserted Patents have not changed since the Court's February 11 Order, and nothing compels a different outcome now. For example, the new alleged technological improvements of (i) "ensuring … random selection" takes place "before the ball has fallen in a

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position" (FAC ¶76, Errata at 1), and (ii) multiplayer participation via electronic player devices (FAC ¶76) are necessary parts of the claimed abstract idea and thus cannot supply an inventive concept. *See*, *e.g.*, *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1294 (Fed. Cir. 2024); *Savvy Dog Sys., LLC v. Pa. Coin, LLC*, No. 2023-1073, 2024 WL 1208980, at *2, 4 (Fed. Cir. Mar. 21, 2024); *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

As another example, in its *Alice* step two argument in the FAC, Evolution once again turns to the Federal Circuit's decision in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, the same case it relied upon in opposing L&W's original motion to dismiss, (*see* ECF No. 53 at 14), to suggest that the instant claims are patentable. FAC ¶103; 827 F.3d 1341, 1350 (Fed. Cir. 2016). But as the Court noted on February 11, Evolution's "reliance on *Bascom Glob. Internet Servs., Inc.*, is unpersuasive because they fail to explain how the finding in *Bascom Glob. Internet Servs., Inc.*, actually applies to the '014 patent." Order at 14.

In response, the FAC states that while the claims in the Asserted Patents and those in *Bascom* "include a generic 'hardware processor,'" both sets of claims represent an "inventive application" because they "are a specific, discrete implementation of a new and improved wagering roulette game." FAC ¶103. Per Evolution, these allegedly inventive aspects "include, for example, software steps for using, *e.g.*, a pseudo-random number generator, to randomly select one or more of the roulette wheel numbers, and determine the increased payouts for those randomly selected numbers." *Id.* Even taken as true, these claimed "inventive concepts" still only "describe *what* they can do and not *how* then can do it." Order at 14. That is fatal to their eligibility. *Id.*

Evolution then returns to the concepts of "randomly selected positions" and "increased payouts," arguing that they are "a novel advancement" over "conventional table roulette games." FAC ¶104. But these are the same alleged "inventive concepts" Evolution identified the first time in its failed opposition. *See* ECF No. 53 at 12; Order at 14–15. Coupling these non-inventive concepts with a "computerized system or process" (*see* FAC ¶104), which the patents explain is "any suitable hardware processor," ('014 patent at 6:43–48), only affirms the claims recite "a combination of generic computer elements performing conventional functions." Order at 14 (citing *NEXRF Corp.*, 547 F. Supp. 3d at 989). The claims recite "merely results, and not means

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to achieve the results." Order at 11. Nothing more.

Evolution also suggests that receipt of "several prestigious awards" is evidence of inventive concepts (*see* FAC ¶¶71, 105), but that is not sufficient to establish patentability. *See SAP Am.*, 898 F.3d at 1163 ("We may assume that the techniques claimed are '[g]roundbreaking, innovative, or even brilliant,' but that is not enough for eligibility.") (quoting *Myriad,* 569 U.S. at 591); *see also Univ. of Fla. Rsch. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1367 (Fed. Cir. 2019) (invalidating patents under Section 101 because even where the claimed subject matter is "laudable," that "does not render it any less abstract"). And Evolution cites no authority suggesting that the alleged awards and industry praise establishes eligibility under Section 101. *See* FAC ¶¶71, 105; *Angel Techs. Grp., LLC v. Meta Platforms, Inc.*, No. 2022-2100, 2024 WL 4212196 at *6 (Fed. Cir. Sept. 17, 2024) ("Angel is also incorrect that the purported 'industry praise' it references shows an inventive concept."); *Two-Way Media*, 874 F.3d at 1336 (holding that nonobviousness, and therefore secondary considerations, "[do] not bear on whether the claims are directed to patent-eligible subject matter under § 101").

More important, however, is that Evolution does not explain which *claim elements*, the focal point of the Section 101 inquiry, are the recipients of such praise. It cannot be the ball or roulette wheel, as those have been known for centuries. So that leaves the processor, which is "configured to" perform a number steps to execute the game, but as this Court previously recognized, the results-oriented nature of the claims never explains *how* to perform these steps. Order at 14. Without an explanation, purely functional claim language does not show an inventive step. *Two-Way Media*, 874 F.3d at 1339; *Elec. Power Grp.*, 830 F.3d at 1356; *see also* Order at 11.

Lastly, Evolution points to the prosecution history as evidence that the alleged inventive concepts were not well-understood, routine, or conventional. FAC ¶106. It argues that the "claimed innovation of randomly selecting positions on [a roulette] wheel to receive increased payouts" enabled it to overcome the Yee prior art reference. *Id.* First, the Court has already rejected this argument: "Last, Evolution's argument that the random position selection and advanced payouts are inventive concepts also fails because these features set forth in the claim are described and claimed too generically. Stated otherwise, they 'lack the specificity necessary to

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show how these components provide a concrete solution to the problem addressed by the patent.'" ECF No. 76 at 15 (quoting *Affinity Labs of Tex.*, 838 F.3d at 1271). And second, it is not "enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103." *SAP Am.*, 898 F.3d at 1163.

"The claims of the patents say what they say." *Wireless Discovery LLC v. Coffee Meets Bagel, Inc.*, 654 F. Supp. 3d 347, 359 (D. Del. 2023), *aff'd*, No. 2023-1583, 2024 WL 3336774 (Fed. Cir. July 9, 2024). Evolution's FAC does "not change the Court's § 101 analysis." *Id.*

D. The Dependent Claims Recite Only Conventional, Non-Inventive Elements In Furtherance Of The Abstract Idea

L&W explained in its original motion to dismiss (*see* ECF No. 34 at 11–13), and Evolution conceded by not challenging in its opposition (*see* Order at 8 n.6), that the dependent claims recite only conventional, non-inventive elements in furtherance of the abstract idea of playing roulette. Nothing about these claims has changed and Evolution's attorney argument can be ignored.

Nevertheless, for the first time in its FAC, Evolution attempts to cast the dependent claims as "additional features and technological improvements" that make them different from "traditional roulette," and thus allegedly patent-eligible. FAC ¶¶86–88. For support, Evolution points specifically to the steps of (1) "randomly select[ing] a second selected position on the roulette wheel; and determin[ing] a payout for the second selected position that is different than the payout for the single first position," (2) "randomly or pseudo-randomly select[ing] a second selected position," (3) "caus[ing] the ball and the roulette wheel to automatically spin," and (4) "clos[ing] bets when the roulette wheel and the ball are determined to have been spun." *Id.* at ¶¶86–88. However, Evolution does not even attempt to explain how these claimed additional features, which are performed by "any suitable hardware processor," are technological improvements and not merely executing the abstract idea of playing roulette. They are not.

Evolution also points to a wheel sensor and first graphical user interface that includes a roulette board as alleged "technological improvements." *Id.* at ¶88. But the Federal Circuit has already held that GUIs alone are not inventive (*see Trading Techs. Int'l.*, 921 F.3d at 1093), and Evolution cannot credibly maintain that a "wheel sensor," which "can be implemented in any

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suitable manner," such as a camera ('014 patent at 3:11–16), renders the abstract idea patentable. *See In re Marco Guldenaar*, 911 F.3d at 1161 ("For example, a claim calling for a generic computer operating in conventional ways to perform an abstract idea lacks an inventive concept."). Merely appending a generic camera to determine that the roulette wheel and ball have been spun is exactly the sort of "apply it with a computer" drafting that Supreme Court precedent deems insufficient. *Alice*, 573 U.S. at 223. Nothing in the claims explains how the camera detects spin state, how the data are processed, or how the processor discerns that the spin has begun.

The dependent claims merely limit the abstract idea and do not themselves contain inventive concepts that confer patentability. *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014) ("Thus, while these claims may have a narrower scope than the representative claims, no claim contains an 'inventive concept' that transforms the . . . otherwise ineligible abstract idea.").

E. Claim 1 Of The '014 Patent Is Representative

In its Order finding the Asserted Patents "invalid under *Alice*," the Court confirmed that Claim 1 of the '014 patent is representative. Order at 8 ("In its motion to dismiss, L&W asserts that Claim 1 of the '014 patent is representative of all of the claims. Evolution does not respond to this assertion, and therefore has conceded that Claim 1 of the '014 patent is representative.") (internal citation omitted). Evolution cannot relitigate what it already conceded. *See Aevoe Corp. v. AE Tech. Co.*, No. 12-cv-00053-GMN-NJK, 2013 U.S. Dist. LEXIS 58665, at *3 n.1 (D. Nev. Apr. 23, 2013) (finding that failure to respond to an argument results in acquiescence); *Newdow v. Cong. of United States*, 435 F. Supp. 2d 1066, 1070 n.5 (E.D. Cal. 2006), *aff'd sub nom. Newdow v. Lefevre*, 598 F.3d 638, 646 (9th Cir. 2010) (Court "interpret[ing] Plaintiff's silence as a non-opposition to defendants' motions [to dismiss] on these claims"); *Maxon, LLC v. Funai Corp., Inc.*, 255 F. Supp. 3d 711, 716 (N.D. Ill. 2017), *aff'd*, 726 F. App'x 797, 800 (Fed. Cir. 2018) (concluding that patentee had "forfeit[ed] the point" where it did not respond to defendant's argument that certain claims were representative of all claims for the Section 101 analysis).

But even if it could, the FAC's conclusory assertions that each claim is unique and must be analyzed independently, (*e.g.*, FAC ¶¶74, 137, 160, and 184), do not comport with the

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applicable law. As the patent challenger, L&W has the "initial burden to make a prima facie showing that the group of claims are 'substantially similar and linked to the same' ineligible concept." *Mobile Acuity*, 110 F.4th at 1290 (quoting *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017)). Here, L&W has done so.

Claim 1 of '014 patent recites a *system* claiming: a ball, roulette wheel, and hardware processor. '014 patent at 8:11–43. Claim 9, a *method* using the same. *Id.* at 9:7–46. And claim 17, a *non-transitory computer-readable medium* reciting the same method as claim 9. *Id.* at 10:4–35. The remaining Asserted Patents (the '024 and '371) are no different. *See* '024 patent at 8:9–36 (system claim 1); *id.* at 8:62–9:24 (method claim 8); *id.* at 9:46–10:24 (non-transitory medium claim 15); '371 patent at 8:15–36 (system claim 1); *id.* at 9:11–31 (method claim 11); *id.* at 10:1–19 (non-transitory medium claim 21).

All independent claims across the Asserted Patents claim the same three components—a ball, a roulette wheel, and a processor—directed to a system, method, or medium "for wagering." Further, there is no meaningful distinction between any of the system, method, or medium claims. Each relies on the same components—ball, wheel, and processor—to play roulette. *See Planet Bingo*, 576 F. App'x at 1007 ("[W]e agree with the district court that there is no meaningful distinction between the method and system claims or between the independent and dependent claims. The system claims recite the same basic process as the method claims, and the dependent claims recite only slight variations of the independent claims.") (internal citation omitted). And as explained above, the generic, results-oriented dependent claims that rely on the same generic processor do not change the calculus. As explained in its original motion (ECF No. 34), which Evolution did not contest (ECF No. 53), claim 1 of the '014 patent is representative of all claims.

L&W has shown that the asserted claims are "substantially similar and linked to the same ineligible concept," so "the burden shifts to [Evolution] to present non-frivolous arguments as to why the eligibility of the identified representative claim cannot fairly be treated as decisive of the eligibility of all claims in the group." *Mobile Acuity*, 110 F.4th at 1290. Evolution cannot do so.

In its FAC, Evolution attempts to manufacture a dispute over representativeness, arguing that "Evolution has accused PowerX of infringing the '371 patent, but not the '024 and '014

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patents" because "the '014 and '024 patents includes [*sic*] different limitations that are distinct from what is claimed in the '371 patent." *See* FAC ¶¶74, 137, 160, and 184. The claims of the three patents have slightly varying scopes, of course, but nowhere does Evolution address the central inquiry underlying representativeness—whether any limitation not found in representative claim 1 of the '014 patent would have a material impact vis-à-vis Section 101. *Mobile Acuity*, 110 F.4th at 1290; *see also Data Scape Ltd. v. W. Digit. Corp.*, No. SA CV 18-2285-DOC (KESx), 2019 WL 4145245, at *4 (C.D. Cal. May 17, 2019), *aff'd*, 816 F. App'x 461 (Fed. Cir. 2020). Moreover, whatever products Evolution has decided to accuse of infringing any given patent are simply irrelevant to the question of representativeness. Accordingly, Evolution has not met its obligation to make non-frivolous arguments in opposition to L&W's representative claim showing.

F. Compliance with Local Patent Rule 1-4(c)

"A party moving to dismiss one or more claims as patent-ineligible under § 101 must demonstrate in its motion, if appropriate, that there is no factual issue, claim construction or otherwise, that the court need determine before deciding dismissal under 35 U.S.C. § 101." LPR 1-4(c). As explained above, the claims of the Asserted Patents have already once been declared "invalid under *Alice*." Order at 15. Nothing about those claims has changed since the Court's Order, and nothing in Evolution's FAC introduces a factual dispute or claim construction issue that requires the Court's attention before ruling on L&W's new motion to dismiss. The three components that form the backbone of each claim—ball, roulette wheel, and processor—are conventional components with unambiguous meanings, and the claimed results-oriented functions are the same as they were on February 11. Dismissal is appropriate.

IV. CONCLUSION

For the foregoing reasons, the Asserted Patents still recite patent-ineligible subject matter under 35 U.S.C. § 101, and this Court should dismiss the Patent Claims (Counts III, IV, and V) pursuant to Federal Rule of Civil Procedure 12(b)(6) with prejudice.

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DATED this 15th day of May, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2025, I caused a true and correct copy of the foregoing **Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint [ECF No. 86] Pursuant To Rule 12(b)(6)** to be served via the United States District Court CM/ECF system on all parties or persons requiring notice.

/s/ *Philip R. Erwin*
An employee of Campbell & Williams

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