

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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ACTIVISION BLIZZARD, INC.

Petitioner

v.

MILESTONE ENTERTAINMENT, LLC

Patent Owner

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Case No. IPR2025-00711

U.S. Patent No. 11,335,164

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**PATENT OWNERS MILESTONE ENTERTAINMENT, LLC'S  
PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES*  
REVIEW OF U.S. PATENT NO. 11,335,164**

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**List of Patent Owner's Exhibits**

<b>Ex. No.</b>	<b>Description</b>
2001	U.S. Patent No. 7,798,896
2002	PCT/US04/28560, filed on September 1, 2004 (the "Milestone PCT Application")
2003	U.S. Patent No. 5,816,918
2004	File History (excerpted), U.S. Patent No. 7,798,896
2005	New Matter form dated Dec. 10, 2002
2006	Invention disclosure
2007	Provisional application No. 60/378,289, filed on May 6, 2002 ("Walker Provisional")
2008	Information Disclosure Statement ("IDS") filed by Microsoft in connection with U.S. Patent App. No. 12/652,289
2009	U.S. Application No. 2006/028705

## **I. INTRODUCTION**

Patent Owner Milestone Entertainment, LLC (“PO” or “Patent Owner”) respectfully submits this Preliminary Response responding to the Petition for *inter partes* review (the “Petition”) filed by Activision Blizzard Inc. (“Petitioner” or “Activision”) against Claims 1-2, 4-7, 9, 11-13, 15, 19, 23-24 and 29 (“the challenged claims”) of U.S. Patent No. 11,335,164 (“the 164 patent”). As discussed in detail below, Petitioner presents three grounds (two based on Kelly683 as the primary reference and one based on Walker as the primary reference) and each suffers from numerous legal and substantive deficiencies, including a failure to demonstrate that the prior art, alone or in combination, meets each and every limitation. The Petition thus fails to meet the requirements for institution and does not demonstrate a reasonable likelihood of prevailing in proving unpatentability of any of the challenged claims. Institution should be denied.

For at least these reasons, institution should be denied.

## **II. BACKGROUND**

### **A. The 164 Patent**

The 164 Patent claims recite inventive new components, such as a “game processor” which can dynamically modify game play parameters (recited as “variable parameters”), and a “decision engine,” which performs” game analytics on the game play.” Those variable parameters include both the structure of the game (*e.g.*, the difficulty of the game, the number of game levels, or the game pieces

provided), the odds, and its prizing (*e.g.*, the amount, or frequency, of awards, bonuses, and prizing). The system modifies these parameters programmatically, in order to achieve a set of objectives which the system must achieve as a whole (recited as “mandated parameters”).

For example, the specification explains that the system can modify “game play parameters” including “*awarding extended game play, providing free play awards, advancing a player one or more levels based upon game play*” or even adjusting win/loss probabilities to make the game more difficult or less difficult:

Another variable layer of decision includes the *game play parameters*. . . .The play experience may be varied such as by *awarding extended game play, providing free play awards, advancing a player one or more levels based upon game play* and/or the provision of complex decisions. *The game play experience may be varied by changing the play probabilities*. In one implementation, game play experience may utilize real world probabilities for the game play portion of the experience, but utilize other probabilities for the prizing portion of the overall game. By way of example, a simple probability game such a coin toss should emulate a 50/50 outcome experience as far as game play goes, but may be subject to a second prizing phase in which the mandated parameters can be achieved. For example, a prize board may be utilized to reduce the prizing payout to conform to the mandated parameters. *Thus, the game play experience can feel as if the real world probabilities are being achieved, but the lower prizing payout be implemented as required by the mandated parameters.*

164 Patent (Ex1001) at 16:58:13. As an example of this dynamic in action, the 164 Patent contrasts its invention with traditional games with fixed rules, like traditional blackjack games. As the specification explains, in a “predetermined mode” – *i.e.*, blackjack as it has always been played – the “system may be arranged for a particular payout, e.g., 2.5% goes to the house, where the outcomes of the game play and the prize amounts are set for that result.” *Id.* at 43:29-34. In accordance with the invention, however, the specification explains that the game may be played with a set of variable parameters that alter the odds of the game, which permits “the results of game play to correspond to the desired prizing parameters.” *Id.* at 43:37-38. In fact, the specification explains that in blackjack according to the claimed inventions, it will force certain outcomes to obtain the mandated parameters: “if certain outcomes are no longer available in the set of outcomes, e.g., all of the \$5 wins are gone, the system will, *if necessary, cause game play to proceed such that the outcome is one which still exists in the set.*” *Id.* at 8:9-12. As the specification explains, while the mandated parameters are being met, “the system may play blackjack in the normal manner.” *Id.* at 44:18-19. However, “if [] there are less than all possible outcomes remaining, e.g., all monetary prizes have been won, and so the player must lose, then *the system will force that outcome.* If the player has 17, the system will select and display a card totaling at least 18, and not more than 21, such that the system wins and the player loses.” *Id.* at 44:19-25.

As another example of how the game processor can dynamically alter games, the system may monitor “usage of games and to correlate the game's popularity with the prizing structure” – by increasing the value of prizes, or by offering more frequent, but lower value, prizes to keep players engaged:

The system may monitor both usage of the game in terms of numbers of player, *but may also track user specific play*, such as the number of times a game is played during one contact or session, whether the player continuously plays that game without interruption, e.g., diverting to other forms of entertainment or information, and the frequency between player visits, such as to a sponsoring website. *This data on game play may be utilized by the system as inputs for a decision engine to optimize the prizing structure for a desired end goal, e.g., maximizing game play and therefore sales of game plays.* The system may *store data on prior game play activities relative to given games, and then utilize that information, either specifically or on a statistical basis, to optimize the selection of a prizing structure.*

*Id.* at 45:32-46.

The interaction of the claimed components enables game play to achieve a set of “mandated parameters,” which are objectives that “must be achieved by the system as a whole.” *Id.* at 5:25-26. These mandated parameters “may consist of prize pay out and win rates, and may include such factors as the minimum payout amount, the maximum payout amount, a defined percentage payout, the number of prizes, and/or the form of prizes.” *Id.* at 5:30-34. As the specification explains,

“having received the mandated parameters, the system processor then selects among dependent variable parameters to implement game play and prizing in a way that achieve the mandated parameters,” as described in the claims of the 164 Patent. *Id.* at 5:37-40. And as explained, they dynamically change the game probabilities, structure, and prizing, all in the course of a game.

As the specification explains, this capability to analyze game play and programmatically alter the structure of the game inventively solves a known problem in the field of computerized gaming – how to programmatically achieve a set of game objectives, such as an overall win probability, the desired amount of time played, or the overall prizing payout while obtaining a “higher level of audience interest and potential participation.” *Id.* at 14:57-58; *see also id.* at 5:53-56 (“The systems and methods of these inventions permit greatly enhanced flexibility in game play and the prizing experience for a player, while globally achieving the mandated parameters.”); *id.* at 7:58-59 (“Player interest may be maintained, while also maintaining the prizing structure and parameters”).

The 164 Patent also claims the novel use of variable virtual currencies. As the specification explains, the advantage of virtual currencies over real currencies is that their acquisition may be subject to a “multiplier,” which raises or lowers the cash equivalent value of the virtual currency. For example, at one time or under one set of game play conditions, \$1.00 in real currency may be used to obtain 500 units of

virtual currency, but at other times, the same dollar may obtain 1000 units of virtual currency. *Id.* at 46:14-29. The innovation claimed by the 164 Patent is not simply that the currency is virtual; it is that its real cash value can be programmatically varied (the “multiplier”) to maintain player interest in continuing game play, or some other set of mandated objectives. As the specification explains, the multiplier amount “may vary based on factors, such as time, game or player status. For example, play during certain times may result in ‘double vCoins’”. *Id.* at 14:33-35. The system may also implement an “enhanced multiplier” to encourage game play “at times when other entertainment is available . . . as an inducement for the player to play the subject games,” *Id.* at 46:24-29, or increase the multiplier “where the real or perceived level of skill required is greater.” The claims of the 164 Patent recite this multiplier directly.

## **B. Overview Of The References**

### **1. Kelly683 (Ex1005)**

As Petitioners note, Kelly683 discloses a networked gaming system that provides “an *operator*” of that gaming system – not the computer system itself - “the ability to adjust prizes and determine the desired prize costs and ratios.” Ex1005 at 5:4-5. As Petitioners further note, Kelly683 discloses that “[t]he difficulty and thus the average prize credits awarded per game can be adjusted using a variety of techniques that depend on the type of game being played.” *Id.* at 38:62-65. However,

nowhere does Kelly683 teach a computer system with a “game processor” that analyzes game play as a function of analyzing stored information regarding particular game play events, and then *programmatically* selects a set of changes to the game prizing or game structure based on that information so as to provide a different game play experience, as the 164 Patent claims require. Instead, Kelly683 confirms that its game adjustments, such as the “speed” and “difficulty” game aspects relied on by Petitioners, are *operator-determined*. *Id.* at 16:17-21 (“the control system can include *operator-configurable controls* to provide *selectable* game functions such as . . .the speed and/or difficulty of game play, the conditions required to add to the game score and/or receive universal or specific prize tickets, the conditions required for a player to win a progressive bonus award or enter a tournament, and the like.”); 34:51-54 (“FIG. 9 is a flow diagram illustrating a process 440 of the present invention for *allowing the operator of the game redemption system to adjust prize characteristics* of the system.”); 34:66-35:8 (“The prize table 480 is preferably displayed by a display screen, such as screen 56 of game unit 10 or 50, so that *the operator can adjust prize characteristics for that game unit* and any linked game units, if desired. Alternatively, the prize table can be displayed on a separate operator terminal, computer, server, or game unit that may be linked to game units 10. In such a system, the *operator would modify the prize characteristics* as desired and send any updated characteristics to all linked (or all

desired linked) game units over a network or other communication device.”); 38:58-59 (“It is possible for the game's *manufacturer* to adjust game difficulty”). And as Petitioners concede, there is no disclosure in Kelly683 of storing and tracking information about individual players, such as “player club points.”

## **2. Paulsen (Ex1007)**

Paulsen describes a player tracking system for digital casino machines, such as slot machines and video poker machines. Ex1007 at [0005]. For example, Paulsen describes providing “secondary bonuses” to players who use “player tracking cards” with these machines. *Id.* at [0011], [0012]. Paulsen discloses no concept of adjusting game structure or prizing, programmatically selecting adjustments, or achieving a set of mandated parameters.

## **3. Walker369 (Ex1006)**

Walker concerns a system that monitors electronic game play and adjusts game parameters to attempt to “ensure that a set of results obtained during a plurality of game plays of a game satisfy one or more predetermined criteria.” Ex1006 at [0022]. As explained below, Walker is not prior art to the 164 Patent.

## **4. Schneier143 (Ex1008)**

Schneier describes, *inter alia*, a system for purchasing and utilizing game credits in an electronic gaming system. Ex1008 at 63:13-19.

### **III. PERSON HAVING ORDINARY SKILL IN THE ART (“POSITA”)**

Petitioners contend that a person of ordinary skill in the art (“POSITA”) in 2004 “would have had at least a bachelor’s degree in computer science or computer engineering, with at least three years of experience in game development.” Pet. at 12. While Patent Owner disagrees with the proposed level of skill, under any level of skill a POSITA would not understand the asserted Grounds to raise any unpatentability issue. Patent Owner reserves its rights to propose a different level of skill should the Board grant institution.

### **IV. CLAIM CONSTRUCTION**

The Board need not construe any terms at this stage, because under any reasonable construction of the claim terms, the prior art fails to disclose or suggest the claimed features. Thus, no claims should be construed because the Board only construes the claims when necessary to resolve the underlying controversy. *ToyotaMotor Corp. v. Cellport Systems, Inc.*, IPR2015-00633, Paper 11 at 16 (Aug. 14, 2015) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

**V. THE PETITION FAILS TO DEMONSTRATE A REASONABLE LIKELIHOOD OF PREVAILING IN ITS CHALLENGES TO CLAIMS 1-2, 4-7, 9, 11-13, 15, 19, 23-24 AND 29**

**A. Grounds 1 and 2 Do Not Establish A Reasonable Likelihood That Any Claim Is Unpatentable**

**1. Kelly683 Does Not Disclose A “game processor” which performs “modifying the variable parameters to provide a second set of variable parameters providing a second game play experience” (limitation 1[c.v])**

Petitioner has failed to identify any disclosure in Kelly683 of the 164 Patent’s claimed “game processor,” which, *inter alia*, can “modify[] the variable parameters to provide a second set of variable parameters providing a second game play experience” as recited in limitation 1[c.v] of independent Claim 1, from which all Challenged Claims depend. Accordingly, it has failed to establish a reasonable likelihood that any asserted claim is unpatentable under this Ground.

Petitioner points to disclosures that Kelly683’s system can change the “speed” or “difficulty” of games as satisfying this limitation. Pet. at 8-9, 29. But it is not enough to disclose changing game variables. Rather, limitation 1[c.v] requires a “game processor” – a piece of software – that can programmatically determine the selection of one set of game variables over another.

Petitioners have failed to show any such disclosure in Kelly683. As discussed above, Kelly683 confirms that its game adjustments, such as the “speed” and “difficulty” game aspects relied on by Petitioners, are *operator-determined*. Ex1005 at 16:13-21 (“the control system can include *operator-configurable controls* to

provide *selectable* game functions such as . . .the speed and/or difficulty of game play, the conditions required to add to the game score and/or receive universal or specific prize tickets, the conditions required for a player to win a progressive bonus award or enter a tournament, and the like.”); 34:51-56 (“FIG. 9 is a flow diagram illustrating a process 440 of the present invention for *allowing the operator of the game redemption system to adjust prize characteristics* of the system.”); 34:66-35:8 (“The prize table 480 is preferably displayed by a display screen, such as screen 56 of game unit 10 or 50, so that *the operator can adjust prize characteristics for that game unit* and any linked game units, if desired. Alternatively, the prize table can be displayed on a separate operator terminal, computer, server, or game unit that may be linked to game units 10. In such a system, the *operator would modify the prize characteristics* as desired and send any updated characteristics to all linked (or all desired linked) game units over a network or other communication device.”); 38:58-59 (“It is possible for the game's *manufacturer* to adjust game difficulty”). Such operator-determined adjustments cannot disclose this limitation.

**2. Kelly683 Does Not Disclose A “game processor” which provides “virtual money (vCoins) acquired in response to a purchase being subject to a multiplier” (limitation 1[c.iii])**

Petitioner has failed to identify any disclosure in Kelly683 of the 164 Patent’s claims “game processor,” which, *inter alia*, provides “virtual money (vCoins) acquired in response to a purchase being subject to a multiplier” as recited in

limitation 1[c.iii] of independent Claim 1, from which all Challenged Claims depend. Accordingly, it has failed to establish a reasonable likelihood that any asserted claim is unpatentable under this Ground.

Petitioner points to a disclosure in Kelly683 that “[e]ach game credit [*the virtual money (vCoins) acquired in response to a purchase*] is equal to a fixed monetary value, such as 25 cents.” Pet. at 25. But a “fixed monetary value” is the opposite of what this limitation requires. Instead, as the 164 Patent claims recite, and the specification explains, virtual currency purchases are not tied to a “fixed monetary value”; they are subject to a “multiplier,” where the multiplier amount “may vary based on factors, such as time, game or player status. For example, play during certain times may result in ‘double vCoins’”. 164 Patent (Ex1001) at 46:22-24. The system may also implement an “enhanced multiplier” to encourage game play “at times when other entertainment is available . . . as an inducement for the player to play the subject games,” *Id.* at 46:24-29, or increase the multiplier “where the real or perceived level of skill required is greater.” Petitioners have failed to show any such disclosure in Kelly683, and there is none.

**B. Ground 3 Does Not Establish A Reasonable Likelihood That Any Claim Is Unpatentable**




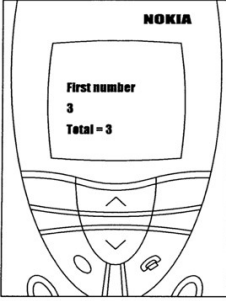

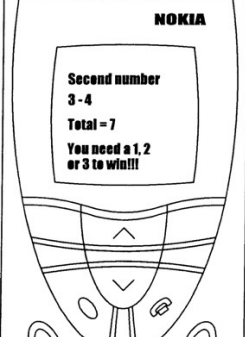
**1. Walker369 Is Not Prior Art To The 164 Patent**

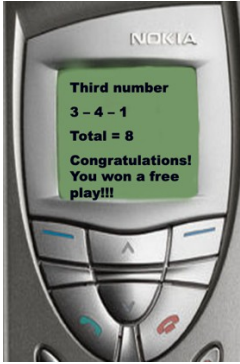
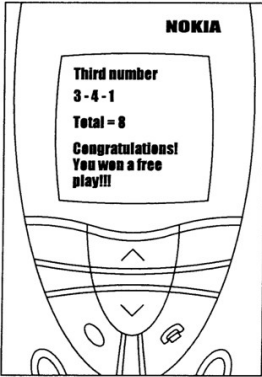
A fundamental requirement for Petitioner to show a reasonable likelihood of success in establishing unpatentability is to come forward with Grounds that constitute prior art under 35 U.S.C. §102. Petitioner has not done so with Walker369.

Because the 164 Patent has an effective filing date prior to March 16, 2013, it is a pre-America Invents Act (“pre-AIA”) patent. *See* Ex1001. Accordingly, the 164 Patent can be accorded a priority date corresponding to its date of invention, rather than its filing, which will in turn disqualify the Walker369 reference as prior art.

Petitioners contend that the “challenged claims are entitled to an effective filing date of no earlier than September 1, 2004” (Pet. 7). On its face, the 164 Patent claims priority to the Milestone PCT Application (Ex2002) filed on September 1, 2004, but the Milestone PCT Application is a continuation-in-part of application Serial No. 10/654,585, filed September 2, 2003. Ex2002 at [0002]. Walker369 has an effective filing date of May 1, 2003. Ex1006 at 1. However, Patent Owner invented the claims of the 164 Patent well prior to May 1, 2003. To illustrate, the patent prosecutor opened a new matter for this family of patents on December 10, 2002 (Ex2005), and as part of their disclosure, the named inventors provided the prosecutor with a slide deck describing a game named “Perfect 10” (Ex2006) on December 4, 2002. That invention disclosure is reproduced in relevant part in the 164 Patent:

### Comparison of Invention Disclosure with 164 Patent Disclosure

<b>December 2002 Invention Disclosure</b> <b>(Ex2006)</b>	<b>164 Patent Disclosure</b> <b>(Ex1001)</b>
 <p>The prize payout is... 10 = Top Prize 9 = \$2 8 = Free Play Good luck!!</p> <p>Slide 6</p>	 <p>NOKIA The prize payout is... 10 = Top Prize 9 = \$2 8 = Free Play Good luck!</p> <p>FIG. 23A</p>
 <p>NOKIA First number 3 Total = 3</p> <p>Slide 7</p>	 <p>NOKIA First number 3 Total = 3</p> <p>FIG. 23B</p>
 <p>NOKIA Second number 3 - 4 Total = 7 You need a 1, 2 or 3 to win!!!</p>	 <p>NOKIA Second number 3-4 Total = 7 You need a 1, 2 or 3 to win!!!</p> <p>FIG. 23C</p>

<b>December 2002 Invention Disclosure</b> <b>(Ex2006)</b>	<b>164 Patent Disclosure</b> <b>(Ex1001)</b>
Slide 8	
 <p>Slide 9</p>	 <p>FIG. 23D</p>

The 164 Patent describes the “Perfect 10” game extensively, including describing how it implements variable parameters to achieve a set of mandated parameters – for example by forcing a loss:

For example, in Perfect 10, if it has been determined that the particular game play will be a ‘lose’, it may enhance play experience to give the player a 3, followed by a 4, such that there is the potentiality of them

winning (the sum of 7 can win if the next number is a 1, 2 or 3). ***Then, since that game play was predetermined to be a loss, the next number displayed could be a 4, putting the player slightly over the ‘Perfect 10’.*** ***The required loss is achieved by the system,*** but the player may have a better play experience as compared, for example, to a game play where the player loses after the first two numbers (e.g., if the first 2 numbers are 1 followed by 1, for a sum of 2, and the maximum possible sum for the third number is 7, such that they know they have lost after the second number).

Ex1001 at 40:9-23.

The 164 Patent similarly describes how the “Perfect 10” game implements variable parameters to achieve a set of mandated parameters by changing the prizing structure.

By way of example, the probability of an 8, 9 or 10 in Perfect 10 ‘should be’ 40%. Game play may be selected such that a ‘win’ occurs at that frequency. The predefined prizing structure may then be achieved in the secondary prizing phase. Alternately, the frequency of a result qualifying a player for entry into the secondary prizing phase may be greater than the real world probability. In the example of Perfect 10, the revealed numbers in the first phase of the game may ‘win’ more than 40% of the time (i.e., there is a percentage of events that qualify the player to enter the second, prizing phase which is greater than the real world percentage). The prizing phase then corrects the prizing result to achieve the predefined outcome.

*Id.* at 41:23-36.

Were institution granted, Patent Owner would show that the named inventors worked diligently thereafter to reduce the invention to practice before May 1, 2003. This record alone, however, shows that Petitioners have failed to establish that Walker369 is prior art to the 164 Patent, and have failed to demonstrate a reasonable likelihood of showing unpatentability under this Ground.

Walker369 claims priority to Provisional application No. 60/378,289, filed on May 6, 2002 (“Walker Provisional”). Ex1006 at [0001]. However, the Walker Provisional, dated May 6, 2002 (Ex2006), cannot support an earlier date for Walker369, because it lacks the disclosures Petitioner relies on in Grounds 2 and 3. For example, Petitioner relies on Walker369’s disclosure of “predetermined criteria” as disclosing the claimed “mandated parameters.” Pet. at 9-10, 50-52. But the Walker Provisional makes no mention of predetermined criteria (Ex1006), and Petitioner has identified none therein. Because the Walker Provisional does not disclose “mandated parameters,” it also does not disclose “utilizing” a set of “variable parameters to achieve the mandated parameters” as the challenged claims require. Similarly, Petitioner relies on “rais[ing] a median or mean score of a game in order to further motivate players by enabling more players to achieve a score that corresponds to a prize (e.g., a more valuable prize) or that is closer to a score that corresponds to a prize.” Pet. at 12, 51. But the Walker Provisional makes no disclosure of adjusting the median or mean score of a game, let alone doing so to

“motivate players,” and Petitioner has identified none. Walker369 cannot be accorded an earlier effective date than May 1, 2003, and so it is not prior art.

Accordingly, Petitioners have failed to demonstrate a reasonable likelihood of demonstrating unpatentability under Ground 3.

## VI. CONCLUSION

For these reasons, Patent Owner respectfully requests that the Board deny the Petition for *inter partes* review.

Dated: July 17, 2025

Respectfully submitted.

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## CERTIFICATION OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(b)(1) and (d), the undersigned hereby certifies that the foregoing Patent Owner's Preliminary Response complies with the type-volume limitation 37 C.F.R. § 42.24(b)(1) permitting a response of up to 14,000 words because, exclusive of the exempted portions, the response contains 4,418 words, as identified by Microsoft Word's word-counting feature.

Dated: July 17, 2025

Respectfully submitted.

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**CERTIFICATION OF SERVICE (37 C.F.R. §§ 42.6(e), 42.105(a))**

The undersigned hereby certifies that on July 17, 2025, copies of the foregoing  
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