UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.
Petitioner
v.

MILESTONE ENTERTAINMENT, LLC
Patent Owner

Case No. IPR2025-00711
U.S. Patent No. 11,335,164

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

List of Patent Owner's Exhibits

Ex. No.	Description
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. Patent Application Publication No. 2006/0287051
2010	Declaration of William P. Nelson in Support of Patent Owner's Motion for *Pro Hac Vice* and Exhibit A
2011	Declaration of Matthew D. Powers in Support of Patent Owner's Motion for *Pro Hac Vice* and Exhibit A
2012	Deposition Transcript of Dwight Crevelt, dated December 19, 2025
2013	Declaration of John Szeder in Support of Patent Owner Milestone Entertainment, LLC's Response to Petition for *Inter Partes* Review of U.S. Patent No. 11,135,164, with Attachment 1 (Szeder Curriculum Vitae)
2014	Excerpt of Microsoft Computer Dictionary, 5th Ed. (2002)

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 Kelly as the primary reference and one based on Walker as the primary reference) and each fails to establish unpatentability of at least challenged Claims 7 and 9. As a result, at least these claims should be found not unpatentable.

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 16:58-17:13. 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: "[i]f 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, "[i]f [] 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, "[h]aving 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 "[e]nhanced 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. Kelly (Ex1005)

As Petitioners note, Kelly 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, Kelly 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 Kelly 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, Kelly confirms that its game adjustments, such as the "speed" and "difficulty" game aspects relied on by Petitioners, are ***operator-determined***. *Id.* 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."); 34:51-54 ("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 Kelly

of storing and tracking information about individual players, such as "player club points."

2. Walker (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].

3. Schneier143 (Ex1008)

Schneier143 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")

Petitioner contends 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. For the purposes of this response, Patent Owner does not dispute Petitioners' proposed level of skill, and under any level of skill a POSITA would not understand the asserted Grounds to raise any unpatentability issue. Accordingly, this POR and supporting declarations apply Petitioner's proposed level of skill.

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. *Toyota Motor Corp. v. Cellport Systems, Inc.*, IPR2015-00633, Paper 11 at 16 (P.T.A.B. Aug. 14, 2015) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). However, Patent Owner notes that it has relied on the plain meaning of "frequency of play" in Claim 7, as discussed in detail below, as demonstrated by the 164 Patent specification and extrinsic evidence.

V. THE PETITION FAILS TO DEMONSTRATE UNPATENTABILITY OF AT LEAST CLAIMS 7 AND 9

A. Grounds 1 and 2 Do Not Establish A Reasonable Likelihood That Claims 7 and 9 Are Unpatentable

1. Kelly Does Not Disclose Claim 7's "system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play."

Petitioner has failed to identify any disclosure in Kelly (Ground 1), or Kelly in view of Paulsen (Ground 2), of Claim 7 of the 164 Patent's "system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play." Claim 7 depends from Claim 5, which recites "The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience." As such, Claim 5 narrows Claim 1's "modifying the variable parameters to provide a second set of variable parameters providing a second game

play experience, where the first game play experience differs from the second game play experience," recited in limitation 1[c.v], by requiring that the determination to implement a second game play experience by providing a second, modified set of variable parameters is based on a threshold value, such as a "predefined number of wins of certain amounts per week" – *i.e.,* a win rate or frequency. *See, e.g.,* Ex1001 at 7:7-16 ("In one implementation, prizing structure may implement a prizing structure which includes a predefined number of lower tier prizes. The allocation of prizes may be defined in various ways, such as by defined numbers and values of prizes for a given number of plays, system-wide for every Nth play, or based on the number of plays for a particular player, or groups of players, or based on the source of the play, such as a given retailer, or by the geographic region of the source of the play, or based on a time parameter, such as a predefined number of wins of certain amounts per week."). Claim 7 specifies that this threshold value "includes information on frequency of play." *See* Declaration of John Szeder (Ex2013), ¶64.

For Ground 1, Petitioner asserts that Claim 7 is disclosed because "Kelly683 discloses modifying the gaming structure based on the number of times played." Pet. at 31. (Ground 2 does not address Claim 7; *see* Pet. at 36). In support of this assertion, Petitioner points to the following passage of Kelly concerning a "hit ratio":

> The "hit ratio" is the fraction of games played, on average, in which a specific prize goal is met and thus a specific prize is won. The hit ratio can be an average chance that an independent skilled task will be

> completed by the player and a specific prize won; alternatively, if no skilled task need be completed to win a specific prize, then the hit ratio can be the random or statistical chance that a specific prize is awarded during a game. Initially, the hit ratio is determined by the game developer, since the game developer can adjust the difficulty of the specific prize goal so that a ***"hit" occurs after a predetermined average number of games***, similar to adjusting average awarded prize credits. An estimated hit ratio as determined, for example, by the game developer is initially used in the above calculation of equation (6). In embodiments having skilled specific prize goals, ***once the game unit 10 has been played one or more times by actual players (e.g., after 100 times), the system can automatically adjust the hit ratio to the actual win frequency*** determined from the players' use of the game unit 10 by, for example, ***storing the number of games played and the number of times the specific prize goal was hit***.

Ex1005, 40:19-39.

However, Claim 7 is not met by a disclosure of "the number of times played," as Petitioners contend. That phrase reflects a count of the number of times a game has been played, not a frequency of play. A POSITA would understand that the plain meaning of "frequency" in Claim 7's recitation that "the threshold value includes information on ***frequency*** of play" requires that the threshold value include information on how often play occurred over some period of time or across a given sample, *i.e.,* a rate. The 164 Patent confirms this plain meaning of "frequency" as the number of occurrences ***over a particular period of time or in a given sample***,

describing a "frequency of wins" as "(1:X)". Ex1001 at 6:35-30 ("Again by way of example, the prizing structure parameters may include the desired payout amount, GLEPS or other allocation variables, *the frequency of wins* **(1:X),** overall number of winners and prizing structure and allocation of prizes."). *See also* Ex2014 (Microsoft Computer Dictionary, 5th Ed. (2002) ("frequency *n.* ***The measure of how often a periodic event occurs***, such as a signal going through a complete cycle."). Ex2013, ¶66. The "number of times [a game has been] played," relied on by Petitioners, provides no information about the frequency of play. For example, a game could be played 100 times, over the course of a day, a week, a year, or ten years, with the specific period indicating a high frequency (100 times in one day) or very low frequency (100 times in ten years) of play. Ex2013, ¶66.

Nothing else relied upon by Petitioners demonstrates disclosure of a threshold value including information on the ***frequency*** of play, as required for Claim 7. The "hit ratio" discussion cited by Petitioners does not disclose any threshold based on the frequency of play. Ex1005, 40:19-39. It discloses a "win frequency," but that also does not indicate anything about the frequency of play; it simply discloses the proportion of plays – over a day, week, month, decade, or all time – which resulted in a win. Similarly, it discloses that a "'hit ratio' is the fraction of games played, on average, in which a specific prize goal is met and thus a specific prize is won." *Id.* That also does not disclose information about the "frequency of play." It measures

only how many games were played, out of all games played, in which a specific prize was won. It provides no information regarding how ***frequent*** the game play was. Ex2013, ¶67.

As such, Petitioner has failed to show Kelly discloses this claim.

2. Kelly Does Not Disclose Claim 9's "system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win"

Petitioner has failed to identify any disclosure in Kelly (Ground 1), or Kelly in view of Paulsen (Ground 2), of Claim 9 of the 164 Patent's "system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win." Claim 9 depends from Claim 5, which recites "The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience." Claim 9 specifies that this threshold value "includes information on the number of plays since a last win."

For Ground 1, Petitioner asserts that Kelly discloses this Claim because it discloses "modifying the prizing structure by tracking the number of plays since a last win to achieve desired odds," in reliance on the following text from Kelly:

> In one embodiment, the random determination of whether a particular prize is to be awarded is also modified by statistical information to create a "best fit" of prizes awarded according to the operator's desired odds; this is done to offset the sometimes undesirable results that purely

> random (or pseudo-random) determination provides. For example, every 8,000 games, two video consoles are to be awarded. If it is randomly determined that a third video console is to be awarded within, e.g., the 3,000th game, then a different prize can be awarded so that the desired odds are better met. For example, the next most valuable prize in the list can be awarded instead of the video console, as long as awarding the next prize would fit the desired odds for that prize.

Ex1005, 36:63-37:9; Pet. at 31. (Ground 2 does not address Claim 9; *see* Pet. at 36). However, a POSITA would not understand this passage from Kelly to disclose either tracking the number of plays since a last win, or using such tracking as a threshold value to alter the game play variable parameters to provide a second gaming experience. Petitioner's expert Crevelt testified that a POSITA would understand this passage to describe that "two different players would be awarded a prize" – not that the system is tracking the number of plays since a win. *See* Ex2012 (12/19/25 Crevelt Tr. at 105:24-25). At most, this portion of Kelly could be read to disclose that over the course of 2,999 games, leading up to the 3,000th game, the system knows it has awarded two video consoles to players. That does not disclose the number of plays since a last win of a video console – *i.e.,* when the last video console was awarded as a prize –or the number of plays since a win of any other prize, as the claim requires. Ex2013, ¶70.

As such, Petitioner has failed to show Kelly discloses this claim.

B. Ground 3 Does Not Establish A Reasonable Likelihood That Claims 7 and 9 Are Unpatentable

1. Walker Does Not Disclose Claim 7's "system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play."

Petitioner has failed to identify any disclosure in Walker of Claim 7 of the 164 Patent's "system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play." As discussed above, Claim 7 depends from Claim 5, which recites the "system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience." As such, Claim 5 narrows Claim 1's "modifying the variable parameters to provide a second set of variable parameters providing a second game play experience, where the first game play experience differs from the second game play experience," recited in limitation 1[c.v], by requiring that the determination to implement a second game play experience by providing a second, modified set of variable parameters is based on a threshold value, such as a "predefined number of wins of certain amounts per week" – *i.e.,* a win rate or frequency. *See, e.g.,* Ex1001 at 7:7-16 ("In one implementation, prizing structure may implement a prizing structure which includes a predefined number of lower tier prizes. The allocation of prizes may be defined in various ways, such as by defined numbers and values of

prizes for a given number of plays, system-wide for every Nth play, or based on the number of plays for a particular player, or groups of players, or based on the source of the play, such as a given retailer, or by the geographic region of the source of the play, or based on a time parameter, such as a predefined number of wins of certain amounts per week."). Claim 7 specifies that this threshold value "includes information on frequency of play." Ex2013, ¶72.

For Ground 3, Petitioner asserts that Claim 7 is disclosed by Walker for a variety of reasons, none of which have merit. Pet. at 68-69. Petitioner first asserts that "Walker discloses that the threshold value may represent total time spent playing, which itself provides information on how often a game is played (*wherein the threshold value includes information on frequency of play*) since the more frequently a game is played, the greater the total time spent playing." *Id.* However, Claim 7 is not met by a disclosure of "the total time spent playing," as Petitioners contend. A POSITA would understand that the plain meaning of "frequency" in Claim 7's recitation that "the threshold value includes information on ***frequency*** of play" requires that the threshold value include information on how often play occurred over some period of time or across a given sample, *i.e.,* a rate, for the reasons explained in Section V.A.1, *supra,* incorporated by reference. The "total time spent playing" relied on by Petitioners, provides no information about the frequency of play. For example, a game could be played for 100 hours, once and more than a year

ago, or it could be played for 100 hours over 1000 plays within the last month, with the specific period indicating a low frequency (once, more than a year ago) or high frequency (1000 times in the last month) of play. Ex2013, ¶73.

Petitioners next contend that this Claim is disclosed by Walker's disclosure that "a number of lives lost…or a number of questions answered correctly may be determined and compared to one or more gaming predetermined criteria," because "the more frequently a game is played, the greater each of these values." Pet. at 68. Once again, Petitioners have failed to show disclosure of a threshold value including information on the ***frequency*** of play. Whether the number of lives lost or questions answered correctly is large or small, that is not information about the ***frequency*** of play. For example, those lives lost or correct answers may have occurred long ago, in one or a few plays; or they may have occurred within the last day, over a course of repeated plays. Ex2013, ¶74.

Petitioners next contend that this Claim is disclosed by Walker's disclosure that a selected set of results to be evaluated to determine whether they exceed a "desired variance" may be "'all game plays played during a specific period of time,' such as 'all game plays played in the last week; or 'all game plays played within two weeks of a promotion.'" Pet. at 68-69. But that passage describes how the tracked game play results that will be compared to a threshold value will be selected; it does not describe a threshold value that includes information on the frequency of play. In

other words, the relied-upon disclosures describe what period of time will define the universe of game result data such as scores, or prize awards, that will ***then*** be compared to some threshold value for such scores or prize awards. Put another way, these disclosures describe a selection protocol for game outcome data, not a threshold value that includes information on frequency of play. Petitioners have pointed to no disclosure in Walker that the threshold value itself that will be used to evaluate these results will be based on, or include information on, ***frequency*** of play. There is none. Ex2013, ¶75.

As such, Petitioner has failed to show Walker discloses this claim.

2. Walker Does Not Disclose Claim 9's "system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win"

Petitioner has failed to identify any disclosure in Walker of Claim 9 of the 164 Patent's "system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win." Claim 9 depends from Claim 5, which recites "The system for electronic game play of claim 1 wherein the game processor utilizes a threshold value to change from the first game play experience to the second game play experience." Claim 9 specifies that this threshold value "includes information on the number of plays since a last win." Ex2013, ¶76.

Petitioners contend that this Claim is disclosed by Walker's disclosure that a selected set of results to be evaluated to determine whether they exceed a "desired variance or standard deviation" may comprise "'all game plays played during a specific period of time,' such as 'all game plays played in the last week' or 'all game plays played within two weeks of a promotion.'" Pet. at 68-69. On its face, that discussion in Walker does not disclose that the "threshold value includes information on the number of plays since a last win," as Claim 9 requires; it is simply a description of the number of game plays "during a specific period of time." Petitioner offers a convoluted, and incorrect, discussion to attempt to fill the gap. First, Petitioner implausibly contends that a "POSITA would have understood that a ***promotion*** in Walker is a game play win that results in a player's promotion to the next level of a game (*a last win*)." Pet. at 69-70. Then, Petitioner contends that "since the variance or standard deviation of scores for all game plays played within two weeks of a promotion is compared to the predetermined threshold, the threshold value itself also reflects a variance or standard deviation of scores for all game plays played since the last promotion" - *i.e,* the last "win". *Id.* Ex2013, ¶77.

Petitioner's attempt to demonstrate disclosure of Claim 9 by Walker is deficient in multiple respects. First, it is based on the flawed premise that Walker's reference to a "promotion" in "all game plays played within two weeks of a promotion" (Ex1006 at [0236]) refers to a "promotion to the next level of a game (*a*

last win).” Pet. at 69-70. That is not how a POSITA would understand “promotion” in Walker. “Promotion” appears in Walker specification only once – in the language quoted. Walker never describes advancing to a next level of a game as a “promotion.” Instead, to the extent it describes advancement to subsequent game levels at all, it describes that a player “achieves” or “gets to” a next game level. Ex1006 at [0265]. Rather, particularly given Walker’s stated interest in creating “happy and motivated” players (*id.* at [0003]), and its concern that “the loss of discouraged players can lead to substantial revenue decreases for businesses that manage games” (*id.* at [0006]), a POSITA would understand Walker’s discussion of “promotion” in the context of “all game plays played within two weeks of a promotion” to refer to the ***marketing*** of a game, such as an advertising or publicity campaign. A POSITA would know, for example, that it would be useful to measure the results of game play in the period just following an advertising campaign, in order to make sure that users who were attracted to the game by the promotion were “happy and motivated” by ensuring that their game play results were within a certain desirable range. Ex2013, ¶¶78-80. The 164 Patent itself confirms that a POSITA would understand “promotion” to refer to advertising or marketing. *See* Ex1001 at Fig. 20B, 9:47-55, 14:38-45, 35:25-55, 46:30-33

Even if Petitioners were correct about “promotion,” it would not disclose Claim 9. As with Claim 7, Petitioners incorrectly contend that a threshold value

including information on the number of plays since a last win is disclosed by Walker's discussion that a selected set of results to be evaluated may comprise "'all game plays played during a specific period of time,' such as 'all game plays played in the last week' or 'all game plays played within two weeks of a promotion.'" Pet. at 68-69. But Walker here is describing how the tracked game play results that will be compared to a threshold value will be selected. It is not describing a threshold value that includes information on the number of plays since a last win. In other words, the relied-upon disclosures describe what period of time will define the universe of game result data such as scores, or prize awards, that will then be compared to some threshold value for such scores or prize awards. Put another way, these disclosures describe a selection protocol for game outcome data, not a threshold value that includes information on plays since a last win. Petitioners have pointed to no disclosure in Walker that the threshold value itself that will be used to evaluate these results will be based on, or include information on, the number of plays since a last win. There is none. Ex2013, ¶¶81.

As such, Petitioner has failed to show Walker discloses this claim.

VI. CONCLUSION

Petitioners' grounds fail to establish invalidity or obviousness of at least Claims 7 and 9 of the challenged claims of the 164 Patent. Consequently, these claims should be found not unpatentable.

Dated: January 12, 2026

Respectfully submitted,

/s/ John C. Pierce

John C. Pierce
Tensegrity Law Group LLP
USPTO Reg. No. 79,938
1676 International Drive
Suite 910
McLean, VA 22102
Telephone: 865-388-5914
Facsimile: 650-802-6001
Email: john.pierce@tensegritylawgroup.com

Matthew D. Powers, *admitted pro hac vice*
William P. Nelson, *admitted pro hac vice*
Tensegrity Law Group LLP
555 Twin Dolphin Drive, Suite 650
Redwood Shores, CA 94065
Telephone: 650-802-6000
Facsimile: 650-802-6001
Email:
matthew.powers@tensegritylawgroup.com
william.nelson@tensegritylawgroup.com
Milestone_Service@tensegritylawgroup.com

Counsel for Patent Owner
Milestone Entertainment, LLC

CERTIFICATION OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(b)(1) and (d), the undersigned hereby certifies that the 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 5,461 words, as identified by Microsoft Word's word-counting feature.

Dated: January 12, 2026

Respectfully submitted,

/s/ John C. Pierce

John C. Pierce
Tensegrity Law Group LLP
USPTO Reg. No. 79,938
1676 International Drive
Suite 910
McLean, VA 22102
Telephone: 865-388-5914
Facsimile: 650-802-6001
Email: john.pierce@tensegritylawgroup.com

Matthew D. Powers, *admitted pro hac vice*
William P. Nelson, *admitted pro hac vice*
Tensegrity Law Group LLP
555 Twin Dolphin Drive, Suite 650
Redwood Shores, CA 94065
Telephone: 650-802-6000
Facsimile: 650-802-6001
Email:
matthew.powers@tensegritylawgroup.com
william.nelson@tensegritylawgroup.com
Milestone_Service@tensegritylawgroup.com

Counsel for Patent Owner
Milestone Entertainment, LLC

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

The undersigned hereby certifies that on January 12, 2026, copies of PATENT OWNER MILESTONE ENTERTAINMENT LLC'S RESPONSE TO PETITION were served via Electronic Mail to the following:

Lisa K. Nguyen
Eric E. Lancaster
Joshua Yin
PH-Activision-Milestone@paulhastings.com
PAUL HASTINGS LLP
1117 S. California Avenue
Palo Alto, CA 94303
(650) 320-1900

Naveen Modi
Alexa J. Lowman
PH-Activision-Milestone@paulhastings.com
PAUL HASTINGS LLP
2050 M St., N.W.
Washington, DC 20036
(202) 551-1705

/s/ John C. Pierce

John C. Pierce
USPTO Reg. No. 79,938
Tensegrity Law Group LLP
1676 International Drive
Suite 910
McLean, VA 22102
Telephone: 865-388-5914
Facsimile: 650-802-6001
Email: john.pierce@tensegritylawgroup.com

Counsel for Patent Owner
Milestone Entertainment, LLC