

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

**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. 11,335,164**

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I, John Szeder, hereby declare as follows:

I. INTRODUCTION

1. Counsel for Milestone Entertainment, LLC's ("Patent Owner") has retained me as an expert in this matter to provide my independent opinion in regard to the matters at issue in *inter partes* review of U.S. Patent No. 11,335,164 (the "164 Patent") in IPR2025-00711.

2. I submit my opinions in this declaration based on my study of the evidence; my education, training, research, knowledge, and personal and professional experience; and my understanding as an expert in the field.

3. This declaration contains statements of my opinion formed to date and the bases and reasons for those opinions. I may offer additional opinions based on further review of materials in this case, to rebut opinions offered by any of Petitioners' experts, and to address issues raised by Petitioners in their briefing to the extent permitted by the Patent and Trademark Appeal Board.

A. Education and Professional Experience

4. My qualifications and credentials are fully set forth in my *curriculum vitae*, attached as Attachment 1.

5. I have more than 30 years of experience in the computer software industry, and nearly 25 years of experience in computer game design and development. I highlight here some of my relevant experience. From 2001-2003, I

was the founder and general manager Seismic Studios, Inc., in San Francisco, California, where I developed dozens of games in C++ and Java. From 2003-2004, I was Director of Development, for Digital Chocolate, Inc., in San Mateo, California. While there, I oversaw the development and shipment of Bubble Ducky, a best-selling launch title, which was the second-most downloaded casual game on Verizon during its launch. I also was credited as a scenario designer for Oasis, winner of the Seamus McNally Indie Game of the Year. From 2005-2008, I was General Manager and CoFounder, of Mofactor, Inc., a gaming company in Davis, California. While there, I helped bring to market multiple top selling games in the early mobile market.

6. From 2010-2011, I was Director of Developer Relations at hi5 Networks, Inc., a San Francisco, California gaming company. While there, I designed and developed features to enhance game play and social relationships between game players, while we published 5-7 games each week, and supported more than 250 developer partners on the platform. From 2013 – 2014, I was Vice President of Product Development at PLAYSTUDIOS in Burlingame, California. There I managed a team of 50 people through a mobile game product launch. For 2014-2016, I provided consulting services to numerous companies, including Blizzard Entertainment, The Clorox Corporation and many startups. From 2018-2020 I was an architect, and then Director of Engineering for Zynga, a well-known gaming company, where I worked on social and casual games, as well as Zynga

Poker. In 2022, I worked as an experimentation technical manager for the AAA game Multiversus for WB Games, ensuring they had sophisticated tools for doing cross promotion and price optimization within their franchise, and other WB Games portfolio titles.



7. Here, I highlight various electronic games I have designed, developed, and/or published. Duckshot was an original title I designed, developed, and copublished, which was nominated for the AIAS game of the year in 2007. See https://www.interactive.org/games/video_game_details.asp?idAward=2007&idGame=903.

DUCKSHOT

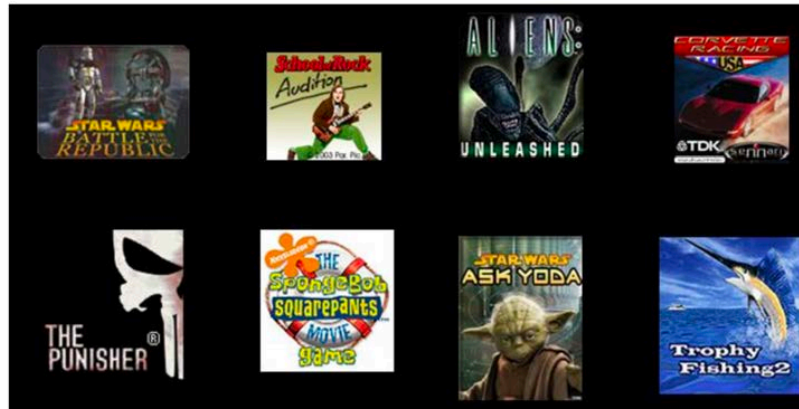
Mobile



At the same time as Duckshot was #1 in the sports category on Verizon, we also published Paintball Challenge with Superscape 3D. I also worked on multiple mobile titles during this era for movies, celebrities, and brands, including School of Rock Audition for mobile, Babe Ruth Bashball, and Aliens: Unleashed. I ported more than 30 titles on for other publishers across many brands, including Corvette Racing, Suzuki Motocross, Fast And The Furious Mobile Game, and Steven Seagal's Fudyomo.

Mobile Title History

Brands



Mobile Title History

Original IP



8. Based on my above-described years of experience in the field of computer games, I believe that I am considered to be an expert in the field of computer gaming.

B. Compensation

9. I am being compensated for my time in connection with this case at my standard legal consulting rate, which is \$300 per hour. I have no personal or financial interest in the outcome of this proceeding.

C. Materials Reviewed and Relied Upon

10. In formulating my opinions, I have considered: U.S. Patent Nos. 11,335,164 and its file history; Patent Owner's Response filed concurrently herewith including all documents cited therein; all documents cited in this declaration; the Petition in IPR2024-00711 (Paper 1) and all Exhibits thereto including the Expert Declaration of Mr. Dwight Crevelt (Ex1003); the Patent Owner's Preliminary Response (Paper 9) and all Exhibits thereto; the Institution Decision (Paper 14), and the deposition of Mr. Dwight Crevelt taken on December 19, 2025 in connection with this IPR. If Petitioners' expert submits an additional declaration, I may submit a supplemental declaration addressing any new opinions or additional explanations, as appropriate and if permitted.

D. Legal Principles

11. I am not a lawyer. I have been provided with an understanding of the legal principles that govern claim construction and patent validity. I have conducted my analysis in conformance with these principles. I set forth those understandings below.

1. Claim Construction

12. I understand that in assessing the patentability of a claim, the Patent Office generally construes claim terms in accordance with their ordinary and customary meaning as understood by a person of skill in the art (“POSITA”) at the time of the invention in view of the claim language in light of the specification and file history.

13. I understand that various sources are available that may help show what a claim term should mean. These sources include the text of the claims themselves, the patent’s specification, the prosecution history of the patent, and the prior art cited in a patent or in the prosecution history. Together, I understand that these sources are called “intrinsic” evidence. I also understand that other sources, for example concerning relevant scientific principles, dictionaries or technical dictionaries, and other information concerning the state of the art is called “extrinsic” evidence. I understand that extrinsic evidence may not be used to contradict the claim language.

14. I understand that claim terms should generally be given their ordinary meaning, which is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention

15. I understand that the context in which a claim term is used can be highly instructive. Other claims of the patent in question, both asserted and not asserted, can also be valuable sources as to the meaning of a claim term. Because claim terms

are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims. Differences among claims can also be a useful guide in understanding the meaning of particular claim terms.

16. I understand that a person of ordinary skill in the art is deemed to read a claim term not only in the context of the particular claim in which the disputed term appears, but also in the context of the entire patent, including the specification. The specification is the primary basis for construing the claims and is considered the single best guide to the meaning of a disputed term. For this reason, the words of the claim must be interpreted in view of the specification. The interpretation of a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to cover within the claim.

17. A claim term should not be interpreted to exclude embodiments disclosed in the specification absent probative evidence on the contrary. I further understand that, in general, the claimed invention is not limited to a preferred embodiment, even if the specification does not describe any other embodiment.

18. In addition to consulting the specification, one should also consider the patent's prosecution history, if it is available. The prosecution history consists of the complete record of the proceedings before the Patent Office and includes cited prior art. The prosecution history can inform the meaning of the claim language by

demonstrating how the inventor understood the invention. I understand that the prior art cited in a patent, or the prosecution history of the patent also constitutes intrinsic evidence.

2. Pre-America Invents Act

19. I understand Petitioners seek cancellation of Claims 1-2, 4-7, 9, 11-13, 15, 19, 23, 24 and 29 (“the challenged claims”) of the 164 Patent under pre-AIA 35 U.S.C. § 103.

20. I understand that the pre-AIA patent statute applies to the 164 Patent because it has an effective filing date before March 16, 2013 (filed September 2, 2003).

21. I understand effective filing date to mean either: (1) the actual date on which the patent application containing the claimed invention was filed; or (2) the filing date of an earlier patent application (*e.g.*, provisional and non-provisional applications, domestic and foreign) upon which patent application containing the claimed invention relies for priority.

22. I understand the date of the claimed invention to be either: (1) the effective filing date of the patent; or (2) when the claimed invention was conceived or reduced to practice.

3. Presumption of Validity and Burden of Proof

23. I have been informed that an issued patent is presumed valid, and a party seeking to challenge the validity of a claim of an issued patent must submit proof that each claim is invalid. I understand that in this IPR, Activision bears the burden of proving unpatentability by a preponderance of the evidence.

4. Invalidity: Anticipation

24. I understand and have been informed that in order for an inventor to be entitled to a patent, the invention must be “new” and the inventor must not have lost his or her right to a patent by delaying filing of a patent application directed to the invention. There are a number of ways that an invention can be “anticipated”—that is, not new.

25. One such way is when the invention was already patented or described in a printed publication, anywhere in the world before the date of invention by the inventor. Additionally, a patented invention may not be new if it was described in an application for a patent filed in the United States that later issued as a patent, so long as the earlier application pre-dates the date of invention. If the subject matter covered by a patent claim is found within the “four corners” of a prior art reference, the claim is said to be anticipated by that reference.

26. A patent claim can be said to be anticipated if each and every limitation of the patent claim is found either expressly or inherently in a single prior art

reference. While a prior art reference need not use the same words as a patent claim to anticipate the claim, the prior art reference must describe the requirements of the claim with sufficient clarity such that a person of ordinary skill in the art would have been able to make and use the claimed invention based on the reference and their knowledge in the applicable technical field without undue experimentation. To constitute anticipation, the prior art reference must describe the claimed invention in sufficient detail to place it in the possession of a person of ordinary skill in the field of the invention.

27. The disclosure of a feature of a claimed invention can be either “express” or “inherent.” A feature is expressly disclosed if the text, figures, or other content of a reference actually disclose the aspects of the patent claim. I have been informed and understand that in order to establish that an element of a claim is “inherent” in the disclosure of a prior art reference, it must be clear to a POSITA that the element (although not expressly disclosed) is an inevitable part of what is explicitly described in the reference, and that it would have been recognized as necessarily present by a person skilled in the art. Inherency cannot be established by probabilities or possibilities, and the mere fact that something may result from some teaching found in the prior art is not enough to establish inherency. Unless all the elements are found in a single piece of prior art in exactly the same situation and united the same way to perform the identical function, there is no anticipation.

28. I have been informed that a claim is invalid under 35 U.S.C. § 102(a) only if an invention reflected in a patent claim was known or used by others in the United States, or patented or described in a printed publication in the United States or a foreign country, before the invention date of that patent claim.

29. I have been informed that a claim is invalid under 35 U.S.C. § 102(b) only if an invention reflected in a patent claim was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year before the earliest priority date for that patent claim.

30. I have been informed that a claim is invalid under 35 U.S.C. § 102(e) only if an invention reflected in a patent claim was disclosed in another patent that was granted from a United States patent application filed before the invention date of the patent claim at issue.

31. I have been informed that a claim is invalid under 35 U.S.C. § 102(g) only if an invention reflected in a patent claim was invented before the invention date of the patent claim at issue by another inventor in the United States and not abandoned, suppressed, or concealed by that earlier inventor.

32. I understand that to qualify as a “printed publication,” a reference must have been sufficiently accessible to the public interested in the art and that a reference is sufficiently accessible if it was disseminated or otherwise made

available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence can locate it.

5. Invalidity: Obviousness

33. I have been informed that if a single reference does not contain every limitation of a patent claim, it can only invalidate that claim if it would be obvious when considered in light of other prior art references or devices without viewing the combination with hindsight bias. The claim is invalid only if the differences between the claimed invention and the prior art are such that the claimed invention, as a whole, would have been obvious to a person having ordinary skill in the art at the time the invention was made (without the benefit of hindsight bias).

34. I have been informed that the prior art references can be combined to show a patent is invalid as obvious under 35 U.S.C. § 103.

35. I understand that an obviousness evaluation can be made on a single reference or a combination of several prior art references. For example, a single reference, when considered in view of the knowledge of a person of ordinary skill in the art, could render a claim obvious.

36. I have been informed that the analysis of obviousness involves several factual inquiries including (1) level of ordinary skill in the pertinent art; (2) the scope and content of the prior art; (3) the differences between the prior art as a whole and the claim at issue; and (4) objective indicia of non-obviousness (also known as

secondary considerations of non-obviousness). I understand that the patentee has the burden of production on any objective indicia of non-obviousness.

37. I have been informed that the test for analogous art is very specific. I have been informed that art is non-analogous unless it is: (1) from the same field of endeavor as the claimed invention; or (2) reasonably pertinent to the particular problem faced by the inventor. I have been informed that an art citation that is not from the same field of endeavor as a claimed invention must be “reasonably pertinent” to the problem addressed by the inventor. I have been informed that art is “reasonably pertinent” when it would “logically commend itself” to an inventor’s attention in considering his problem. Conversely, I have been informed that when art is directed to a different purpose than a claimed invention, an inventor would have less motivation or occasion to consider it.

38. I have been informed that the fact that prior art references all concern the same field of endeavor is not in itself sufficient rationale for making the combination. Many types of techniques and systems exist in the same field of endeavor. That fact alone would not make it obvious to combine their features. I have been informed that a proper obviousness determination must show reason why a person of ordinary skill in the art would have thought to combine particular available elements of knowledge, as evidenced by the prior art, to reach the claimed invention.

39. I have been informed that a party seeking to invalidate a patent on obviousness grounds must demonstrate that a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so.

40. I understand for a claim to be obvious where not every element of a claim is taught by the prior art, a party trying to show obviousness must show why it would have been obvious to a person of ordinary skill in the art to both combine the prior art references and overcome the differences and make modifications between the claimed invention and the prior art. I also understand that the existence of every element of the claimed invention in the prior art does not necessarily mean a skilled artisan would have been motivated to combine those references. I also understand that a skilled artisan must have had a reason to combine the elements in the same way as the claimed invention. Conclusory statements that a skilled artisan would have been motivated to combine the prior art or would have thought it obvious to modify the prior art are insufficient to show obviousness.

41. I have been informed that, when assessing if there was motivation to combine the prior art references, important factors include (1) whether the claimed invention was merely the predictable result of using prior art elements according to their known functions; (2) whether the claimed invention provides an obvious

solution to a known problem in the relevant field; (3) whether the prior art teaches or suggests the desirability of combining elements in the invention; (4) whether the prior art teaches away from combining elements in the claimed inventions; and (5) whether it would have been obvious to try the combinations of elements, such as when there is a design incentive or market pressure to solve a problem and there are a finite number of identified, predictable solutions.

42. I have been informed that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.

43. I understand that Petitioners, as the challengers asserting obviousness based on a combination of prior-art references, must demonstrate that a POSITA would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of successfully achieving the claimed invention from the combination.

44. I understand that a showing that a prior art reference teaches away from a given combination is evidence that one of skill in the art would not have been motivated to make that combination to arrive at the claimed invention. A reference may be said to teach away when a POSITA, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a

direction divergent from the path that was taken by the applicant. If the proposed invention would defeat the purpose of a reference, for example, that reference teaches away from the invention. To teach away, the reference must criticize, discredit, or otherwise discourage the solution reached by the proposed invention. I also understand that the absence of a formal teaching away in one reference does not automatically establish a motivation to combine it with another reference in the same field.

45. I have been informed that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.

46. I have been informed that to determine whether a combination of known elements would have been obvious to a person of ordinary skill in the art at the time of the invention, one must consider the references in their entirety to ascertain whether the disclosures in those references render the combination obvious to such a person.

47. I have been informed that the combination of familiar elements according to known methods may be obvious when it does no more than yield predictable results. Additionally, I understand that a patent may be invalid for obviousness if a POSITA can implement a predictable variation or if there existed at

the time of the invention a known problem for which there was an obvious solution encompassed by the patent's claims. I understand that the obvious solution only needs to be a known solution for solving the problem, and not an improvement over other solutions. A combination is not obvious, however, where the combination cannot be implemented without undue experimentation or when the motivation to create the combination comes from hindsight.

48. I have been informed that when there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a POSITA has good reason to pursue the known options within his or her technical grasp. I understand that, if this leads to anticipated success, it may be the product not of innovation, but rather of ordinary skill and common sense. I have been informed that the fact that a combination was obvious to try might show that the patent claim was obvious.

49. I have been informed that, even when all claim limitations can be found in a combination of prior art references, the fact-finder must consider as part of the obviousness determination not only what the prior art teaches, but whether the prior art teaches away from the claimed invention and whether there is a motivation to combine teachings from separate references in the manner claimed.

E. Level of Ordinary Skill in the Art

50. I have been asked to offer my opinion regarding the level of ordinary skill in the art at the time of the invention or the effective filing date, which I understand to be September 2003 for the 164 Patent. I have considered the types of problems encountered in the art, the prior solutions to those problems found in prior art references, the rapidity with which innovations are made, the sophistication of the technology, the level of education of active workers in the field and my own experience working with those of skill in the art at the time of inventions.

51. I understand that 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, I do not dispute Petitioner’s proposed level of skill. It is my opinion that under any level of skill a POSITA would not understand the asserted Grounds to raise any unpatentability issue. Accordingly, I have applied Petitioner’s proposed level of skill in evaluating the prior art and the challenged claims.

52. I would qualify as a POSITA as of the priority date of the 164 Patent and have applied the understanding of such a POSITA in forming my opinions.

II. BACKGROUND

A. The 164 Patent

53. The 164 Patent claims recite inventive 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”).

54. As an 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.

55. 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.

56. As another example, 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.

57. 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.

58. The specification explains that this capability to analyze game play and programmatically alter the structure of the game 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”).

59. The 164 Patent also claims the use of variable virtual currencies. The specification explains that 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 164 Patent disclose that not only is the currency virtual, but 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. Kelly (Ex1005)

60. 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. 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, Kelly does not teach a method for storing information regarding particular game play events, and then **programmatically** selecting 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 recite. 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”).

2. Walker (Ex1006)

61. 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)

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

III. PETITION GROUNDS

A. Grounds 1 and 2: Kelly

63. I understand that under Ground 1, Petitioners contend that Claims 1-2, 4-7, 9, 11-13, 15, 19, 23-24 and 29 of the 164 Patent are obvious under 35 U.S.C. § 103 over Kelly, alone or in view of the knowledge of a person of ordinary skill in the art. Under Ground 2, I understand that Petitioners contend that Claims 2 and 4 are obvious over Kelly in view of Paulsen. For at least the reasons stated below, I disagree with Petitioner’s contention as to dependent Claims 7 and 9. I have not been asked to consider, and take no position, regarding any other claims of the 164 Patent. In my opinion, Petitioner has failed to demonstrate that Claims 7 and 9 are unpatentable under Grounds 1 and 2.

1. Claim 7: The “system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play”

64. In my opinion, 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 is a dependent claim that 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 is a dependent claim of claim 1, which 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]. of Claim 1. Specifically, Claim 5 requires 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 further narrows Claim 5, specifying that this threshold value “includes information on frequency of play.”

65. For Ground 1, I understand that 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, but only addresses Claims 2 and 4). 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.

66. I disagree with Petitioner's contention that Claim 7 is met by a disclosure of "the number of times played." That phrase reflects a count of the number of times a game has been played, not a frequency of play. In my opinion, 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. In my opinion 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*; it describes 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.”). The “number of times [a game has been] played,” relied on by Petitioners, provides no information about the frequency of play and is not sufficient to disclose a “frequency of play.” For example, a user could play a game 100 times, over the course of a day, a week, a year, or ten years. In each case, the frequency of play varies in accordance with the period, indicating for example a high frequency (100 times in one day) or very low frequency (100 times in ten years) of play.

67. In my opinion, nothing else relied upon by Petitioners demonstrates disclosure of a threshold value including information on the *frequency* of play, as required for Claim 7. A POSITA would not understand the “hit ratio” discussion cited by Petitioners to disclose any threshold based on the frequency of play. Ex1005, 40:19-39. While it discloses a “win frequency,” that also does not indicate anything about the frequency of play. Instead, 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.

2. Claim 9: The “system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win”

68. In my opinion, Petitioner has not shown 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.”

69. 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” (Pet. at 31), 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. (Ground 2 does not address Claim 9; *see* Pet. at 36).

70. In my opinion, 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. For example, Petitioner’s expert Mr. 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 winning player was awarded a video console. *See* Ex2012 (12/19/25 Crevelt Tr. at 105:24-25). At best, in my opinion, a POSITA would understand this portion of Kelly 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. A POSITA would understand that such evidence 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.

B. Ground 3: Walker

71. I understand that under Ground 3, Petitioners contend that Claims 1-2, 4-7, 9, 11-13, 15, 19, 23-24 and 29 of the 164 Patent are obvious under 35 U.S.C. §

103 over Walker, alone or in view of the knowledge of a person of ordinary skill in the art. For at least the reasons stated below, I disagree with Petitioner's contention as to dependent Claims 7 and 9. I have not been asked to consider, and take no position, regarding any other claims of the 164 Patent. In my opinion, Petitioner has failed to demonstrate that Claims 7 and 9 are unpatentable under Ground 3.

1. Claim 7: The “system for electronic game play in an electronic environment of claim 5 wherein the threshold value includes information on frequency of play”

72. In my opinion, Petitioner has not identified 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 in connection with Grounds 1 and 2, 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, a POSITA would understand that 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]. of Claim 1. Specifically, Claim 5 requires 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.”

73. For Ground 3, Petitioner asserts that Claim 7 is disclosed by Walker. Pet. at 68-69. I disagree with each asserted basis, as described herein. 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, a POSITA would not understand Claim 7 to be met by a disclosure of “the total time spent playing,” as Petitioners contend. Instead, 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. In my opinion, the 164 Patent confirms the plain meaning of “frequency” is the number of occurrences *over a particular period of time or in a given sample*; it describes 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.”). The “total time spent playing” relied on by Petitioners, provides no information about the frequency of play. As an example, a game could be played for 100 hours but played only once and played more than a year ago. Or the game could be played for 100 hours over 1000 plays within the last month. Only a specific period indicates a frequency for the “amount of time played,” such as a low frequency (once, more than a year ago) or high frequency (1000 times in the last month) of play. Petitioner points to no such information suggesting a frequency of play.

74. 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. I disagree that this contention demonstrates 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, a POSITA would understand 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. Both examples represent a different frequency of play.

75. 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. I disagree with Petitioner’s contention. A POSITA would understand the Walker disclosure relied on by Petitioners provides a description of how the tracked game play results that will be compared to a threshold value will be selected, not a description of 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 to be evaluated, 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. I am aware of no such disclosure.

2. Claim 9: The “system for electronic game play of claim 5 wherein the threshold value includes information on the number of plays since a last win”

76. In my opinion, Petitioner has not identified 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.”

77. Petitioners contend that this claim is disclosed by Walker’s discussion 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. In my opinion, as Petitioners seem to concede, 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. Instead, that discussion merely provides a description of the number of game plays “during a specific period of time.”

78. To fill the gap, Petitioner offers a convoluted discussion of how a POSITA would understand this disclosure. I disagree with discussion and its conclusions. First, Petitioner 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.*

79. In my opinion, Petitioner’s attempt to demonstrate disclosure of Claim 9 by Walker is incorrect, in multiple respects. First, I disagree that a POSITA would understand 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 70. In my opinion, that is not how a POSITA would understand “promotion” in Walker. “Promotion” appears in the Walker specification only once – in the language quoted. In fact, Walker never describes advancing to a next level of a game as a “promotion.” Instead, to the extent

Walker describes advancement to subsequent game levels at all, it describes that a player “achieves” or “gets to” a next game level. Ex1006 at [0265].

80. In my opinion, 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. In addition, the 164 Patent 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

81. In my opinion, even if Petitioners were correct about the meaning of “promotion,” the evidence relied on would not disclose Claim 9. As with Claim 7, Petitioners 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. I disagree with that contention. In the quoted language, Walker 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 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 the number of plays since a 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. I am aware of none.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge based on the information available to me at this time, and that this declaration was executed on January 12, 2026, in Folsom, CA.



John Szeder

Attachment 1

John Szeder

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EXECUTIVE SUMMARY

- Strong mentor, confident communicator, highly motivated worker and rapid learner
- Extensive experience with a wide variety of technologies
- Dynamic team building skills from two decades of company and product launches

WORK EXPERIENCE

2017 - Current **Director of Engineering**, Zynga, San Francisco, California

- Grew remote studios (Toronto, Austin) with strong hires and reliable leaders
- Established studio leadership training, mentoring relationships and leadership best practices
- Presented Poker structured hiring practices to 80 cross discipline managers
- Filled studio head count quickly with organic hires and strong referrals
- Managed GDPR efforts for Zynga Poker

2016 – 2017 **VP of Customer Success**, Scientific Revenue, San Mateo, California

- Responsible for overseeing customer integrations team
- Maintained django-based ecosystem tools including mobile app store integrations
- Worked with business development to onboard partners, and get content live
- Supervised SDK rebuild, with a massive size and method count reduction

2014 – 2016 **Principal Consultant**, Self Employed, Davis, California

- Consulted for Samsung, Blizzard Entertainment, The Clorox Corporation and many startups
- Managed multiple client/server IC projects concurrently on different platforms
- Established tools pipeline, team hiring practices, and strategic engineering direction as needed

2013 – 2014 **Vice President of Product Development**, PLAYSTUDIOS, Burlingame, California

- Created a sustainable high-volume recruiting pipeline, filling high priority engineering head count.
- Managed team through mobile product launch (50 people, 17 directly)
- Implemented better processes and release plans for the team to sync mobile and web releases
- Established career development plans for key contributors, dramatically reducing churn

2011 – 2012 **Vice President of Engineering**, magi.com (formerly hi5 Networks, Inc.), Emeryville, California

- Managed new product team through reboot after sale of live site assets
- Launched "next gen" social game platform with live partners in four months, included ads, third party auth, payments, and prizing systems
- Transitioned live site assets as part of sale to Tagged.com of hi5.com site

2010 – 2011 **Director of Developer Relations**, hi5 Networks, Inc. San Francisco, California

- Designed features to enhance game play and social relationships between game players
- Closed critical accounts with large social game publishers to validate the hi5 platform
- Published 5-7 games each week, communicating go live dates to marketing, partners, and CS
- Supported pipeline of over 250 developer partners from cold call to close during aggressive launch

2008 – 2010 **Director of New Media**, FaceCake Marketing Technology, Inc. Calabasas, California

- Application development, Firmware integration, Patent work
- 2005 – 2008 **General Manager and CoFounder**, Mofactor, Inc. Davis, California
- Bootstrapped game studio to profitability with multiple top selling games in early mobile
- 2003 – 2004 **Director of Development**, Digital Chocolate, Inc. San Mateo, California
- Employee #3, Educated early staff on how to make mobile, shipped a best-selling launch title
- 2001 – 2003 **General Manager and Founder**, Seismic Studios, Inc. San Francisco, California
- Developed dozens of C++/J2ME games, and tools and frameworks
- 1999 – 2000 **Senior Systems Engineer**, HearMe, Inc. Mountain View, California
- Supported presales team to evangelize and close global partners above quota
- 1997 – 1999 **Senior Software Developer**, AirLink Communications, Inc. San Jose, California
- Developed client/server application in C++ that collects real time vehicle tracking information
- 1996 – 1997 **Software Developer**, Research In Motion, Waterloo, Ontario, Canada
- Designed multi-tasking IP protocol analyzer for a wireless data network to speed development

EDUCATION

1991 - **Honors Bachelor of Mathematics, Co-op Computer Science**, University of Waterloo,
 1996 Waterloo, Ontario, Canada