

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 SUR-REPLY
RE: PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
11,335,164**

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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 <i>Pro Hac Vice</i> and Exhibit A
2011	Declaration of Matthew D. Powers in Support of Patent Owner’s Motion for <i>Pro Hac Vice</i> 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 <i>Inter Partes</i> Review of U.S. Patent No. 11,135,164, with Attachment 1 (Szeder Curriculum Vitae)
2014	Excerpt of Microsoft Computer Dictionary, 5 th Ed. (2002)

I. INTRODUCTION

The Reply fails to salvage Petitioner's failure to demonstrate the unpatentability of Claims 7 and 9 of the 164 Patent.

Petitioner cannot show that Kelly (for Grounds 1 and 2), or Walker (for Ground 3) discloses or renders obvious Claim 7, which recites the “system for electronic game play in an electronic environment of claim 5 wherein the threshold value” – a value used as the basis to modify the game play experience per Claim 5 – ***“includes information on frequency of play.”*** That is because none of the disclosures of Kelly or Walker teach changing the game play experience based on a threshold that includes any information on the frequency of users' game play. Instead, Petitioner has only pointed to disclosures of changing the game play experience based on the number of times played (Kelly), or based on the total time spent playing (Walker) – neither of which meet the plain meaning of a “frequency of play” (*i.e.*, a rate). POR, 9-13, 15-18

Similarly, neither Walker nor Kelly disclose Claim 9, which recites that the “threshold value” used as the basis to modify the game play experience ***“includes information on the number of plays since a last win.”*** Instead, Petitioner has only pointed to disclosures of changing the game play experience based on the number of “wins” that have occurred (Kelly), or selecting data on the number of game plays

during a specific period of time (Walker). Neither of these meet the plain meaning of “the number of plays since a last win.”

In Reply, Petitioner first unveils two new claim construction arguments, which seek to depart from the plain meaning of “frequency” for Claim 7, and the “number of plays since a last win” for Claim 9. Petitioner’s new claim construction is improper, but it is also irrelevant; the plain meaning of “the threshold value *includes information on*” frequency of play is that the threshold value must include information reflecting the frequency of play (a rate). The plain meaning of “the threshold value *includes information on*” the number of plays since a last win is that the threshold value must include information reflecting the number of plays since a win occurred. Petitioner’s apparent argument that “includes information on” should encompass information that is not a frequency, and is not the number of plays since a last win, has no merit.

The remainder of the Reply reargues the same failed grounds presented in the Petition, albeit with new evidence and contentions not presented in the Petition. While improper, Petitioner’s arguments, new and old, fail to demonstrate unpatentability of Claims 7 and 9.

II. CLAIM CONSTRUCTION

Despite neither party having offered a claim construction in the Petition or the POR, Petitioner inexplicably, and improperly, proposes that the Board construe both

Claim 7 and Claim 9. If Petitioner had a claim construction for these claims, it was obligated to disclose them in the Petition, with the consequence that its ability to do so now has been waived. 37 C.F.R. § 42.104 (stating that the “petition must set forth” “[h]ow the challenged claim is to be construed.”).

Petitioner’s new claim constructions are erroneous, and irrelevant in any event, because they do not remedy any deficiency of the Petition.

**A. “threshold value includes information on frequency of play”
(Claim 7)**

In essence, Petitioner’s new claim construction argument is that “information on *frequency* of play” need not itself be a “frequency,” *i.e.* a rate. Reply, 5. No evidence, intrinsic or extrinsic, supports redefining “frequency” in a manner that departs from its plain and ordinary meaning as “the number of occurrences *over a particular period of time or in a given sample,*” *i.e.*, a rate. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312, 1317 (Fed. Cir. 2005) (“We have frequently stated that the words of a claim ‘are generally given their ordinary and customary meaning,’” unless “the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess.”).

Petitioner does not actually dispute this definition of frequency as a rate. How could it? Not only is this the commonly understood meaning of “frequency”, it is supported by the intrinsic and extrinsic evidence. For example, 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, 6:35-39 (“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.”). Petitioner argues that this passage does not show what “frequency of play” would mean in this patent, since it describes “frequency of wins” as “1:X,” not frequency of play. Reply, 6. That argument has no merit. As explained by Petitioner’s unrebutted expert opinion, this passage confirms that a POSITA would understand the “frequency” of an event – whether wins, or play – as a rate, *i.e.*, a number of occurrences over a time period or sample (“1:X”). Ex2013, ¶66. PO also relied on a confirmatory definition from the extrinsic evidence – the 2002 Microsoft Computer Dictionary – which defines the term as the “*measure of how often a periodic event occurs.*” POR, 12 (Ex2014). Petitioner says that this definition is inapplicable “as it refers to frequency in the signal processing context, not the electronic gaming context.” Reply, 7. This argument is also meritless. First, Petitioner is wrong that the Microsoft Computer Dictionary’s definition limits its application to signal processing. The definition of “frequency” there simply provides an example from signal processing, using the words “*such as* a signal going through a complete cycle.” Ex2014, 4. Second, Petitioner has failed to explain what meaning, other than a rate, it contends this generally understood term would have in “the

electronic gaming context.” Finally, this argument is pure attorney say-so, unsupported by expert opinion.

Instead of seeking to refute the irrefutable (a “frequency” is a “rate”), Petitioner instead appears to contend that “*information on* frequency of play” can be information that is not itself a frequency. That nonsensical argument is unsupported by any intrinsic or extrinsic evidence. Petitioner points to a “data field” in the 164 Patent that indicates “simply whether the person is a frequent player,” and to a data field providing “frequent player points,” to suggest that the 164 Patent teaches that a “frequency” is not a rate. Reply, 4-5. That is wrong. The disclosed fields indicate, respectively, whether or not a player is a “*registered* frequent player” (See Ex1001, Fig. 20D), and the amount of “player points” such registered frequent players possess. Neither one of these data fields presents any information on the “frequency of play.” As Petitioner appears to concede, they indicate neither the number of plays, nor the period over which they occurred. The 164 Patent itself shows that these are not “information on frequency of play.” It describes “frequent player points” as points awarded as a “points rewarded for game play” to registered player’s club members – not that they represent information on the frequency of play. Ex1001, 9:55-60. As such, they are not embodiments of “information on frequency of play.” To the contrary, the 164 Patent clearly distinguishes between a *number* of plays, and a *frequency* of play. For example, it describes that “game play parameters

may include the structure and operation of the gaming experience, such as the duration of game play, number of levels, the decision points, e.g., inducements for various game play options, GLEPS or other allocation variables, such as in the **number or frequency** of winning outcomes. . .” Ex1001, 6:28-33. This unmistakably shows that the patentee understood the difference between a **number**, such as the number of plays, and a **frequency** – and patentee claimed frequency. *See also id.*, 32:19-23 (describing that a “perceived positive outcome occurs with a **frequency** that is substantially, e.g., more than **20% of the time**, more particularly more than **10% of the time**, and most particularly more than **5% of the time**. . .”), 41:28-32 (“Alternately, the **frequency** of a result qualifying a player for entry into the secondary prizing phase may be greater than the real world probability. In the example of Perfect 10, the revealed numbers in the first phase of the game may ‘win’ more than **40% of the time**.”). Petitioner’s attempt to rewrite “frequency” is also unsupported by any expert opinion.

No claim construction is required. The plain and ordinary meaning of “the threshold value includes information on frequency of play” is that the threshold value includes information regarding the frequency – a rate – of play. None of Petitioner’s evidence shows that in Kelly or Walker, as discussed below.

B. “threshold value includes information on the number of plays since a last win” (Claim 7)

Petitioner’s claim construction argument here is murky, but it appears to contend that “**information on** the number of plays since a last win” somehow encompasses information that does not reflect the number of plays since a last win. The consequence of this argument is that data showing how many wins have occurred, and how many plays have occurred, would meet this limitation despite not actually reflecting “the number of plays *since* a last win”. Reply, 8-9. Perhaps unsurprisingly, this insupportable reading that contradicts the plain language of the claim is unsupported in the record.

None of the specification disclosures Petitioner presents alter the plain meaning of “**information on** the number of plays since a last win,” or otherwise teach that it need not be information regarding or reflecting the number of plays since a last win. Reply, 9. Petitioner points to an embodiment in which the “[t]he set of plays by a given player may be subject to the prizing structure rules such that a player could be guaranteed a certain minimum prizing over some number of plays, e.g., 50 plays,” Reply, 9, but that is not a disclosure of the “number of plays *since* a last win,” as Claim 9 recites. That discloses a win rate – a number of wins over a certain number of plays – but does not disclose how many plays have occurred since a win. Nor do the other passages Petitioner has relied on, which disclose allocation of prizes based on the number of plays (not wins). Petitioner’s arguments are also

unsupported by any expert opinion regarding how a POSITA would understand the claim language.

Petitioner next invokes a purported drafting distinction between claims employing “based on” and those employing “included information on.” Reply, 10. Nothing about that choice in draftsmanship informs or changes the meaning of “included information on the number of plays since a last win,” such that it could include within its scope information that does not reflect the number of plays since a last win.

No claim construction is required. The plain and ordinary meaning of “the threshold value includes information on the number of plays since a last win” is that the threshold value includes information regarding the number of plays *since* a last win. None of Petitioner’s evidence shows that in Kelly or Walker, as discussed below.

III. THE REPLY FAILS TO REBUT PO’S DEMONSTRATION THAT CLAIMS 7 AND 9 ARE NOT UNPATENTABLE

A. Grounds 1 and 2: Petitioner Fails To Show That Kelly Discloses Claim 7’s “wherein the threshold value includes information on frequency of play”

The Reply fails to cure the deficiencies in Petitioner’s attempt to prove that any disclosure in Kelly of 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.”

As PO has explained, 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. Claim 7 specifies that this threshold value “includes information on frequency of play.” POR, 9-10. *See* Declaration of John Szeder (Ex2013), ¶64.

For Ground 1, PO showed that Kelly’s disclosure of “the number of plays for a particular player,” relied on by Petitioner, fails to disclose Claim 7, because it discloses a number, not a rate. POR, 9-13. The Reply does not remedy this deficiency of proof. Petitioner first insists that Kelly’s disclosure of “storing the *number* of games played” teaches “information on *frequency* of play,” because “[i]f the number of games played is low, the frequency of play is low. If the number of games played is high, the frequency of play is high.” Reply, 12. That is false. As PO has explained, the number of games played – whether high or low – does not indicate frequency.

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. But 1 play, 100 plays, or even 100,000 plays alone indicate nothing about frequency.

Petitioner further argues in Reply that Kelly’s disclosure of the “number of games played” really is disclosure of a frequency, or a rate, of play, because “the number of times played is how often play occurred across a given sample—*namely, the lifetime of a game.*” Reply, 12-14. In support of this, the Reply argues that “[w]hether a player has played a game 0 times or 50 times, this ‘number’ provides a rate—the player has played N times during the lifetime of the game (N times:1 lifetime of the game).” *Id.* Of course, this is pure attorney argument, unsupported by any evidence. Petitioner identifies no disclosure in Kelly that the “number of times played” is a frequency because it is necessarily across the “life of the game,” or that this is how a POSITA would understand “frequency of play.” Petitioner’s argument is also absurd, as it would erase the clear distinction in the 164 Patent, also found in common sense and basic mathematical literacy, between a number and a rate. Everyone (perhaps excluding Petitioner) acknowledges the distinction between eating 1 apple (ever), and eating an apple a day.

Petitioner next argues again that Kelly’s discussion of a “hit ratio” discloses a “frequency of play.” Reply 12-13. But as PO has already explained, while Kelly’s

“hit ratio” may disclose a “win frequency,” that does not indicate anything about the frequency of play. *See* Ex1005, 40:19-39. It merely discloses the proportion of plays which resulted in a win, *e.g.*, 10 out of 100 plays resulted in a win. But that 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. *See* POR, 12-13.

The Reply presents a mathematical formula purporting to represent how Kelly’s “hit ratio” is calculated, which includes the “number of games played/sample (X)” and so therefore discloses a frequency of play. Reply, 13. This “formula” was not presented in the Petition, so it should be disregarded. More fundamentally, it does not reflect any disclosure in Kelly. Kelly explains, in no uncertain terms, that its “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.” Ex1005, 40:19-21. As such, Kelly’s hit ratio is expressly a simple fraction.

$$\frac{\textit{Wins}}{\textit{Games played}}$$

That does not disclose the frequency of play. The Board may also wonder where Petitioner’s “formula” comes from, if it is not part of Kelly, not part of any

expert declaration, and not part of the Petition. The answer is simple: it comes from Petitioner as pure attorney conjecture, raised for the first time in Reply. This argument does not show that any disclosure in Kelly discloses “information on frequency of play.”

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

B. Grounds 1 and 2: Petitioner Fails To Show That Kelly Discloses Claim 9’s “wherein the threshold value includes information on the number of plays since a last win”

The Reply fails to remedy the Petition’s failure to show any disclosure in Kelly of 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.”

PO has shown that Kelly’s disclosure of a “video console” that modifies prizing to better ensure that “every 8,000 games, two video consoles are to be awarded” does not disclose this claim. POR, 13-14. As the POR explained, this embodiment does not disclose either tracking the number of plays since a last win, or that a threshold value used to alter the game play variable parameters includes information on the number of plays since a last win. Kelly’s system has no knowledge of the number of game plays that have occurred since a win occurred. This is made clear by the Kelly disclosure Petitioner relies upon, which states that 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.” Ex1005, 36:63-37:9. 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. *See* Ex2013, ¶70.

Nothing in the Reply cures this deficiency. Petitioner emphasizes an argument concerning a disclosure of Kelly regarding an embodiment that “checks whether the current game is the 4000th game,” and contends this discloses Claim 9. Reply, 14-16. However, that evidence and argument was not presented in the Petition, which presented only the discussion of “every 8,000 games, two video consoles are to be awarded”. *See* Petition, 25, 27, 31. Instead, the Petition presented only a bare citation to its expert’s declaration (Ex1003, ¶235), which presents this contention. That is improper under 37 C.F.R. § 42.6(a)(3), which requires that “[a]rguments must not be incorporated by reference from one document into another document.” *See 3M Co. v. Evergreen Adhesives, Inc.*, 860 F. App’x 724, 725 (Fed. Cir. 2021) (rejecting argument presented only by citation to an expert declaration, explaining that the rule “minimizes the chance that an argument would be overlooked and eliminates abuses that arise from incorporation and combination.”) Its presentation for the first time in Reply is too late, and should be disregarded. *See, e.g.*, Consolidated Trial Practice

Guide (Nov. 2019) (“TPG 2019”), 73 (“Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g., to make out a prima facie case of unpatentability.”).

Even so, this passage of Kelly fails to disclose a threshold value which “includes information on the number of plays since a last win.” Instead, like the embodiment relied on in the Petition, Kelly’s system has no knowledge of the number of game plays that have occurred since a win. At most, this portion of Kelly could be read to disclose that over the course of 4,000 games, the system knows whether it has awarded a video console or not. It does include information on how many games have passed since the last game play in which a win occurred.

As such, Petitioner has failed to show Kelly discloses Claim 9.

C. Ground 3: Petitioner Fails To Show That Walker Discloses Claim 7’s “wherein the threshold value includes information on frequency of play”

The Reply cannot remedy Petitioner’s failure to show that Walker discloses this limitation. As PO has demonstrated, none of the evidence and argument presented in the petition discloses a threshold value that includes information on the *frequency of play*. Instead, Walker discloses tracking the “total time spent playing” or “the number of lives lost,” or selecting a data set for evaluation comprising “all game plays played during a specific period of time,” such as ‘all game plays played in the last week...’ None of these disclose a *threshold value* that includes

information on the frequency of play. The former disclosures are not frequencies of play at all; they are simply numbers. The latter disclosure is not a threshold value used to alter a game play experience; it is a selection protocol for what data will be evaluated *against* a threshold value. POR, 15-18.

In Reply, Petitioner again misdescribes Walker’s disclosure of a data selection protocol for a set of game play results to evaluate against predetermined criteria as a “threshold value includ[ing] information on frequency of play.” Reply, 17-18, 20-21. No part of this discussion reflects any actual disclosure of Walker. First, Petitioner presents a purported example from Walker in which a “predetermined criteria” is a “minimum predetermined threshold of 10 game plays in a one week period,” and contends that the “10 game plays in a one week period is *information on frequency of play*.” Reply, 18. ***That disclosure appears nowhere in Walker.*** There is indisputably no discussion of “10 game plays in a one week period” in Walker, let alone as a predetermined criteria. Petitioner’s fanciful description of how Walker tests that purported “predetermined criteria” is equally ungrounded in the text of Walker.¹

¹ Petitioner’s later discussion of a purported example of “five plays over the ‘specific period of time’ (Reply, 21) is equally ungrounded in the text of Walker,

The actual portions of Walker relied upon do not concern the use of *any frequency of play* as a threshold value. Instead, the relied-upon sections of Walker describe “Determining A Set of Results” obtained over multiple game plays, by for example, “selecting the set of results.” Ex1006, [0232, 0233]. A later section of Walker describes a protocol for “Determining Whether (the selected) Set of Results Satisfies Predetermined Criteria,” *id.*, [0247], such as by “determin[ing] whether a variance of the set of results is (i) within a predetermined range.” *Id.*, [0249].

As PO has explained, Walker’s discussion of “all game plays played during a specific period of time (e.g., all game plays played in the last week, all game plays played within two weeks of a promotion)” (*id.*, [0236]), relied upon by Petitioners to show “frequency of play”, is part of Walker’s discussion of selecting a set of results for evaluation against a predetermined criteria – not a part of the predetermined criteria, or the evaluation, itself. As Walker discloses, its system may

and fails for the same reason. There simply is no disclosure in Walker that “if a user has not played a game more than five times over the specific period of time or across the sample, then the system could adjust the game or prizes to encourage the user to increase game play,” as Petitioners contend (Reply, 21) – not even conceptually.

use “one or more selection conditions to select results to be included in the set,” and “*one selection condition may be a period of time* during which the results have been obtained. *Id.*, [0234, 0235]. Walker then explains that one “example data set” that may be obtained in this way is ““all game plays played during a specific period of time” – the disclosure relied on by Petitioners. *Id.*, [0236]. *See* POR, 16-17. 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.

The Reply next reargues that Walker’s disclosures of “total time spent playing,” “number of lives lost,” and “number of questions answered correctly” disclose “information on the frequency of play.” Reply, 18-20. None of its arguments have merit.

For “total time spent playing,” Petitioner again makes the insupportable contention that “information on the *frequency* of play” “can just be a number.” Reply, 18. Petitioner supports this notion with its expert’s observation that “the more time spent playing, the more frequently a game is played.” *Id.*, 19. As explained above in Section II.A, however, Petitioner’s false equivalence of a number with a rate cannot be squared with the plain and ordinary meaning of the claim, as

confirmed by the intrinsic evidence. They are different things. *See, e.g.,* Ex1001, 6:28-33 (describing that “game play parameters may include the structure and operation of the gaming experience, such as the duration of game play, number of levels, the decision points, e.g., inducements for various game play options, GLEPS or other allocation variables, such as in the **number or frequency** of winning outcomes. . .”). Here again, Petitioner relies on its misreading of Walker’s data selection protocol as disclosing a “predetermined criteria” based on frequency of play. There is no such disclosure, so it cannot help Petitioner here.

Petitioner insists in Reply that “number of lives lost” can be “information on frequency of play” (Reply, 19-20), claiming that Walker’s system monitors the “‘number of lives lost’ over a specific period of time and compares it to a ‘predetermined criteria’”, citing Walker, [0245]. *Id.* But there is no such disclosure at paragraph [0245] of Walker or anywhere else. Paragraph [0245] states:

In one or more embodiments a characteristic of a game that is indicative of achievement in a game, other than a score or value corresponding to a prize, may be evaluated. For example, range in a number of levels completed, a number of lives lost, a total time spent playing, or a number of questions answered correctly may be determined and compared to one or more gaming predetermined criteria.

Ex1006.

There is no disclosure of lives lost “over a specific period of time” here. It simply recites “a number of lives lost”, not a frequency.

Petitioner again contends that Walker’s disclosure of “number of questions answered correctly” is information on “frequency of play,” because a higher “number of questions answered correctly” would generally indicate an increased frequency of game play.” Reply, 20. Petitioner is wrong that this indicates anything about frequency of play. A user could answer 100 questions correctly in one gaming session, in one day. Or they could answer 1 question correctly in 100 games, over 3 years. Those are indisputably different frequencies of play, and “number of questions answered correctly” does not provide information on “frequency of play.”

Petitioner has failed to show Walker discloses this claim.

D. Ground 3: Petitioner Fails To Show That Walker Renders Obvious Claim 9’s “wherein the threshold value includes information on the number of plays since a last win”

The Reply provides no credible defense of the Petition’s failure to demonstrate that Walker renders obvious Claim 9. Instead, it doubles down on the Petition’s errors.

Petitioner again relies on Walker’s disclosure that “a set of results may include ‘all game plays played during a specific period of time,’ such as ‘all game plays played within two weeks of a promotion,’” to demonstrate the disclosure of this Claim. Reply, 21-22. Petitioner fails to cure any of the many deficiencies in this argument.

First, as PO has demonstrated, this 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. Rather, it is simply a description of the number of game plays “during a specific period of time.” POR, 19-20. To transform this disclosure into “information about the number of plays since a last win,” Petitioner has misread “within two weeks of a promotion” to mean “within two weeks of a game win,” rather than within two weeks of an advertisement or a marketing promotion. As PO has explained, there is no basis for such a reading of Walker. *Id.* “Promotion” appears in Walker only once – in the language quoted – and it 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, [0265]. In Reply, Petitioner offers no credible defense of its misreading of Walker’s “promotion”; it simply insists, despite the absence of evidence, that Walker’s “promotion” refers to advancing to another game level. Reply, 23-24. Petitioner further contends that it doesn’t matter that the 164 Patent, a contemporaneous gaming patent, uses “promotion” to describe marketing (*id.*), but of course it is relevant to how a POSITA would understand this passage. Petitioner’s evidence founded on a misreading of Walker’s disclosure should be disregarded.

Second, even if “promotion” takes Petitioner’s implausible meaning, it still does not disclose or render obvious Claim 9. That is because the cited discussion in Walker concerns data selection steps that occur *prior to* any evaluation of game play results against a “threshold value,” and Walker makes no disclosure that *any* of its threshold values (desired standard deviations, etc.) themselves include information on the number of plays since a last win. As PO has explained in connection with Claim 7, and in the POR, this disclosure in Walker concerns a data selection protocol to identify what set of results data will be compared to a predetermined criteria – *not* that Walker’s “predetermined criteria” (alleged by Petitioner to be the “threshold value”) itself includes information on the number of plays since a last win, as Claim 9 requires. 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.

In Reply, Petitioners contend that Walker discloses “threshold values” that “include information on the number of plays since a last win,” pointing to a disclosure in Walker that “discusses the ‘number of levels completed,’ and a win/awarding of a prize ‘if a player achieves a particular...level of achievement in one or more game plays of a game (e.g., the player gets to level 3 of the game within two consecutive game plays).’” Reply, 24. On its face, that discussion does not disclose “a number of plays since a last win,” as Claim 9 requires. Getting to “level

3 of the game within two consecutive game plays” does not disclose any information about the number of plays *since a last win*, and Petitioner does not describe how it does. More fundamentally, that disclosure in Walker has nothing to do with any threshold value used to determine the selection of game play parameters, as Claim 9 requires. It merely discloses prizing conditions, as Petitioner admits: “Here, the number of plays since a last win would be included in the information collected to determine whether a player is to be awarded a prize.” Reply, 24. As such, it cannot disclose Claim 9.

Finally, Petitioner contends that PO has “ignored” a disclosure in Walker that “the system monitors ‘variance in prizes awarded’ to determine whether players are winning too much (‘prizes for a game is too high’) or too little (‘prizes for a game is ... too low’) and ‘modif[ies] the game to alleviate this problem.’” Reply, 24-25 (citing EX1006, ¶[0025]). As such, Petitioner contends, “the system must necessarily track the last win to do so.” *Id.* There are many problems with this contention. First, it was not presented in the Petition and was therefore waived. Second, Petitioners mischaracterize this disclosure in Walker, which actually discusses monitoring “*variance*” in prizes across games to determine if that variance is too high, or too low. Ex1006, [0025]. The problem being addressed in this disclosure is that if the variance in prizes awarded is high, “expert players may win large prizes while novice players win almost nothing.” *Id.* Nothing about monitoring

the variances in the *size* of prizes across games, and reacting in extreme cases, implies or suggests utilizing information on the number of plays since a past win, as Claim 9 requires. As such, Petitioner’s contention that “the system must necessarily track the last win” to perform this is without merit, and the Claim recites information on the number of plays since a last win, not “track[ing] the last win.” This new argument fails too.

Petitioner has failed to show Walker discloses this claim.

IV. 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: April 23, 2026

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(c)(4) and (d), the undersigned hereby certifies that the Patent Owner's Sur-Reply complies with the type-volume limitation 37 C.F.R. § 42.24(c)(4) permitting a sur-reply of up to 5,600 words because, exclusive of the exempted portions, the sur-reply contains 5,547 words, as identified by Microsoft Word's word-counting feature.

Dated: April 23, 2026

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

The undersigned hereby certifies that on April 23, 2026, copies of PATENT OWNER MILESTONE ENTERTAINMENT LLC'S SUR-REPLY RE: PETITION were served via Electronic Mail to the following:

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