

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIGHT & WONDER, INC.,
Petitioner

v.

EVOLUTION MALTA LIMITED,
Patent Owner.

Case IPR2025-01072

U.S. Patent No. 11,011,014

**PETITIONER'S AUTHORIZED REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

TABLE OF CONTENTS

	Page
I. Evolution’s Construction For “Payout” Is Contrary To The Intrinsic Record.....	1
II. The POPR’s “Spin Of The Roulette Wheel” Arguments Misrepresent Baron’s Disclosure.....	5

I. EVOLUTION'S CONSTRUCTION FOR "PAYOUT" IS CONTRARY TO THE INTRINSIC RECORD

The Petition explains how Kido discloses "determin[ing] a first payout ... and a second payout" where "the first payout is higher than the second payout." *See* Pet., 32-36. In Kido, a winning bet on a roulette position having a "star mark" entitles a player to a first payout including an "accumulated prog bonus" that is necessarily higher than a second payout on a different position that does not receive the prog bonus. Pet., 34-35.

Lacking credible responsive arguments, Evolution attempts to import new limitations into the term "payout." Specifically, the POPR presents attorney argument contending that the term "payout" should be construed as the amount a player will win in relation to the amount wagered, typically written in odds format (such as 35:1). POPR, 2-4, 15-18. The POPR then argues that Kido's "accumulated prog bonus" does not meet such requirements because "it is simply the total amount that can be won regardless of the wager," and that Kido's "basic roulette payout[s]" are all "exactly the same," such that the reference fails to disclose the claimed determination of a first payout that is higher than the second payout. *Id.*, 25-26.

Evolution is wrong for several reasons. The term "payout" should be interpreted according to its plain and ordinary meaning, which is simply an amount

that is paid to someone. Evolution's improperly narrow construction is contrary to the intrinsic evidence and should be rejected.

First, the intrinsic record does not support limiting “payout” to an amount a player will win in relation to the amount wagered. “There is a heavy presumption that claim terms are to be given their ordinary and customary meaning.” *Aventis Pharms. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013). “Absent a clear disavowal or contrary definition in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language.” *Aug. Tech. Corp. v. Camtek, Ltd.*, 655 F.3d 1278, 1286 (Fed. Cir. 2011). A “patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope.” *Thorner v. Sony Comput. Ent. Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012).

Here, Evolution does not identify any evidence of disclaimer or lexicography that would warrant departure from the plain and ordinary meaning of “payout.” That is because there is none. The standard for disavowal of claim scope is “exacting,” and “[i]t is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments, the patentee must clearly express an intent to redefine the term.” *Id.*, 1365-66. While the '014 patent describes payouts like “49:1,” the intrinsic record lacks “clear and unmistakable” evidence necessary to limit the claims as Evolution proposes. *Am. Piledriving Equip., Inc. v. Geoquip*,

Inc., 637 F.3d 1324, 1335 (Fed. Cir. 2011). Rather, the '014 patent states that “[a]ny ***suitable payouts can be used***” (*i.e.*, not just amounts to be awarded in relation to the amount wagered), and that embodiments described in the specification are merely examples that do not limit the claims. *See* EX1001, 5:16-17, 8:1-9.

Other intrinsic evidence supports interpreting “payout” according to its plain and ordinary meaning, *i.e.*, an amount that is paid to someone. Numerous references listed on the face of the '014 patent use the term “payout” in this manner. For example, U.S. Patent No. 5,934,999 to Valdez, cited by the Examiner during prosecution of the '014 patent (EX1002, 85), describes a payout that is “\$1,000,000” and does not depend on the amount wagered by the player. *See, e.g.*, 6:7-41; Figs. 1, 6 (“progressive payout display unit 27” showing a progressive payout of \$1,000,000 that accumulates over rounds of roulette). As another example, U.S. Patent No 6,059,659 to Busch, also cited by the Examiner during prosecution (EX1002, 85), discloses a “*fixed small cash payout*” that does not depend on the amount wagered by the player. *See, e.g.*, 4:50-53. Likewise, U.S. Patent No. 7,892,083 to Okada, cited on the face of the '014 patent, discloses “a JP *payout value*” that does not depend on the wagered amount. *See, e.g.*, 16:3-14.

Second, the Kido and Baron references applied in the Petition confirm that the plain and ordinary meaning of “payout” is not limited to rates like “49:1.” Kido describes, for example, an “amount indicator 15 [that] displays a jackpot (JP) amount

that is a *special payout*.” EX1007, ¶[0129], Fig. 3. Kido’s jackpot amount is a “payout” that does not depend on the amount wagered; it is a progressive pot that accumulates over rounds of play until it is awarded to a player. *See id.*, ¶[0119] (awarding “as a *payout*, the game value stored in the accumulated game value memory”). Baron likewise discloses a “payout” equal to the amount accumulated in a progressive pot (*e.g.*, \$2,500) that does not vary in relation to the amount wagered, stating that “the amount of the *payout* may be ... an entire amount of the progressive pot.” EX1008, ¶[0045]. Kido and Baron’s progressive payouts are used in the references’ respective roulette games, refuting the POPR’s contention that “[i]n roulette, the ‘payout’ for a bet [necessarily] refers to the amount a player will win in relation to the amount wagered[.]” POPR, 15.

Third, the POPR conflates “payouts” (as claimed) with “payout rates” (not claimed). Amounts “typically written in odds format such as 35:1” are payout *rates* indicating how much a player will win in relation to what the player bet, whereas a payout is simply the amount paid to a player. Kido, for instance, differentiates between “payouts” and “payout rates” in its specification. *See, e.g.*, EX1007, ¶[0114] (“the payout calculating unit 114 calculates a *payout* ... based on the payout *rate*”); *see also id.*, ¶[0091] (“awarding a *payout*, based on the game value placed as a bet and a *rate* relating to a bet type”) (emphasis added). Likewise, Evolution’s own evidence refers to values like “35 to 1” as being “payout rates.”

EX2033. If Evolution wanted to limit its alleged invention to roulette games having different payout *rates*, then it could have claimed it as such. Instead, Evolution disclosed that “[a]ny suitable payouts can be used” and claimed its game broadly. EX1001, 5:16-17. As such, Kido anticipates or renders the alleged invention obvious.¹

The POPR (at 16-18) cites extrinsic evidence referring to rates like “35:1” as “payouts,” but such evidence is “less reliable” than the intrinsic record. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005). In any case, such extrinsic evidence merely confirms that roulette payouts *can* be expressed in a rate format (like 35:1) but does not suggest that the broader, plain and ordinary meaning of “payout” (*e.g.*, an amount paid to someone) is improper.

In sum, Evolution's construction of “payout” should be rejected.

II. THE POPR'S “SPIN OF THE ROULETTE WHEEL” ARGUMENTS MISREPRESENT BARON'S DISCLOSURE

Evolution argues the claims require operations performed for a single “spin of the roulette wheel,” and Baron allegedly “cannot meet that limitation because

¹ Although L&W focused on Kido's embodiments using the “accumulated prog bonus” as disclosing the first and second payouts, the Petition also cites to Kido's use of different payout rates, exactly like embodiments in the '014 patent. Pet., 33 n.2, (citing EX1007, Figs. 8-9, ¶¶[0172]-[0173], [0195]-[0207] (normal payout rate of 35:1 for straight bets, but a higher 71:1 payout rate on straight bets hitting a “star bonus”)).

Baron's game requires three spins of a roulette wheel: one for each of its three wheels." POPR, 38. The POPR misleadingly cites to Baron's Figure 4, depicting three roulette wheels, in advancing this argument. *Id.*, 21. But the Petition never cites this figure of Baron. Instead, the Petition relies on Baron's Figure 6 depicting table 400 containing a single roulette wheel 406. Pet., 53.

The Petition (at 61) further cites Baron's description of generating "[a] plurality of roulette outcomes" for a given round of roulette. EX1008, ¶¶[0028], [0039]. One of the outcomes is a "primary roulette outcome" generated by "introducing a [ball] into a physical, spinning roulette wheel and permitting the [ball] to come to rest on a roulette outcome." *Id.*, ¶¶[0039]-[0040]. The other outcomes are "ancillary outcomes" "generated utilizing a random number generator (*e.g.*, operated by a control circuit)." *Id.*, ¶[0041]. The Petition cites this disclosure against the claims, explaining that Baron's ancillary outcomes are generated prior to the ball falling into a position on the roulette wheel and during the course of a single round of roulette. *See* Pet., 61-62. Baron thus satisfies "randomly select a first selected position ... for the spin of the roulette wheel" because it discloses generating ancillary outcomes with a random number generator (*e.g.*, control circuit) during the course of a single round of roulette in which a single roulette wheel (*e.g.*, wheel 406 of Figure 6) is spun a single time. *See* Pet., 60-63.

Accordingly, Evolution's attorney argument that "Baron's game requires spinning three different roulette wheels" is factually wrong. POPR, 4, 38-39. Evolution's argument does not address the citations and arguments set forth in the Petition, including those related to Baron's table 400 having the single wheel 406 that is spun a single time per round of play. Instead, the POPR improperly considers portions of Baron in isolation (*e.g.*, the Figure 4 depiction of a table 200 with three wheels 204) while ignoring the reference's broader teachings cited in the Petition. Accordingly, the POPR violates the principle that "[a] reference must be considered for everything it teaches[.]" *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1076 (Fed. Cir. 2015).

Even in the context of Figure 4, Baron explains that "the gaming table 200 may include *one or more* physical roulette wheels." EX1008, ¶[0068]. The POPR's argument that Baron can use "virtual roulette wheels" to randomly generate outcomes is unavailing because the Petition does not rely on such virtual wheels. POPR, 39. Instead the Petition cites (i) the physical wheel 406 of Baron's Figure 6 for generating a primary roulette outcome, and (ii) the "random number generator (*e.g.*, operated by a control circuit)" (EX1008, ¶[0041]) for generating ancillary roulette outcomes. Pet., 60-61. Evolution has no answer to these showings, and its suggestion that L&W relied on "virtual roulette wheels" in Baron to show unpatentability is simply not true.

Respectfully submitted,

Dated: November 21, 2025

/Joshua R. Nightingale/

Joshua R. Nightingale
Reg. No. 67,865
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 394-7950
jrnightingale@jonesday.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies the foregoing document, PETITIONER'S
AUTHORIZED REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE,
was served via electronic mail on the date below, upon the following:

Thomas A. Broughan III
tbroughan@sidley.com

Ching-Lee Fukuda
clfukuda@sidley.com

Sharon Lee
sharon.lee@sidley.com

SidleyEvolution@sidley.com

Respectfully submitted,

Dated: November 21, 2025

/Joshua R. Nightingale/

Joshua R. Nightingale
Reg. No. 67,865
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 394-7950
jrnightingale@jonesday.com