

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

1 JONES DAY
HAROLD K. GORDON, ESQ.
2 (Admitted *Pro Hac Vice*)
hkgordon@jonesday.com
3 250 Vesey Street
New York, New York 10281
4 Telephone: (212) 326-3939

6 JONES DAY
7 JENNIFER D. BENNETT, ESQ.
(Admitted *Pro Hac Vice*)
8 jenniferbennett@jonesday.com
555 California Street, 26th Floor
9 San Francisco, California 94104
Telephone: (415) 626-3939

10 JONES DAY
11 COLLIN J. KURTENBACH, ESQ.
(Admitted *Pro Hac Vice*)
12 ckurtenbach@jonesday.com
110 North Wacker Drive, Suite 4800
13 Chicago, Illinois 60606
Telephone: (312) 782-3939

14 *Attorneys for Defendants*
15 *Light & Wonder, Inc. and LNW Gaming, Inc.*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

19 EVOLUTION MALTA LIMITED,
EVOLUTION GAMING MALTA
20 LIMITED, EVOLUTION GAMING
LIMITED and SIA EVOLUTION LATVIA,
21
22 Plaintiffs,

23 vs.

24 LIGHT & WONDER, INC. f/k/a
SCIENTIFIC GAMES CORP. and LNW
25 GAMING, INC. f/k/a SG GAMING, INC.,
26
27 Defendants,

JONES DAY
RYAN K. WALSH
(Admitted *Pro Hac Vice*)
rkwalsh@jonesday.com
LAURA KANOUSE VINING
(Admitted *Pro Hac Vice*)
lkanouse@jonesday.com
1221 Peachtree Street N.E., Suite 400
Atlanta, Georgia 30361
Telephone: (404) 521-3939

JONES DAY
RANDALL E. KAY, ESQ.
(Admitted *Pro Hac Vice*)
rekay@jonesday.com
4655 Executive Drive, Suite 1500
San Diego, California 92121
Telephone: (858) 314-1139

CAMPBELL & WILLIAMS
PHILIP R. ERWIN, ESQ. (11563)
pre@cwlawlv.com
710 South Seventh Street, Suite A
Las Vegas, Nevada 89101
Telephone: (702) 382-5222

CASE NO.: 2:24-cv-00993-CDS-NJK

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT [ECF NO. 86] PURSUANT
TO RULE 12(b)(6)**

TABLE OF CONTENTS

	Page
1 I. INTRODUCTION	1
2 II. BACKGROUND	2
3 A. The Asserted Patents	2
4 B. Procedural History	4
5 C. The FAC.....	4
6 1. The FAC Re-Packages The Same Section 101 Allegations That	
7 The Court Already Considered And Rejected	4
8 2. The FAC’s New § 101 Allegations.....	5
9 III. THE ASSERTED PATENTS ARE INVALID UNDER 35 U.S.C § 101.....	6
10 A. Legal Standard	7
11 B. <i>Alice</i> Step One – The Abstract Idea of Playing Roulette.....	8
12 1. Evolution’s Errata Undermines Its Claimed Technological	
13 Improvement Of Random Selection Before The Ball Lands.....	9
14 2. The Generic “Two-GUI” Limitation—Merely Displaying The	
15 Same Betting Screen Twice—Adds No Technological	
16 Improvement	11
17 3. The Purported “Remote Play” Is Absent From The Claims And	
18 Cannot Supply A Technological Improvement	12
19 4. Evolution’s Newly-Minted “Software-Improvement” Theory Fails	
20 Because The Asserted Patents Recite Only Results-Oriented,	
21 Functional Steps That Do Not Advance Any Technology	13
22 5. The FAC Is Replete With Case Law And Attorney Argument That	
23 Has No Bearing On The Claims Of The Asserted Patents	16
24 C. <i>Alice</i> Step Two – The Asserted Patents Still Claim Well-Known Gambling	
25 Concepts, None of Which Are Inventive Alone Or In Combination.....	18
26 D. The Dependent Claims Recite Only Conventional, Non-Inventive	
27 Elements In Furtherance Of The Abstract Idea	21
28 E. Claim 1 Of The ’014 Patent Is Representative	22
F. Compliance with Local Patent Rule 1-4(c).....	24
IV. CONCLUSION.....	24

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

TABLE OF AUTHORITIES

Page

1 **CASES**

2 *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*,

3 728 F.3d 1336 (Fed. Cir. 2013).....13, 16

4 *Aevoe Corp. v. AE Tech. Co.*,

5 No. 12-cv-00053-GMN-NJK, 2013 U.S. Dist. LEXIS 58665 (D. Nev. Apr. 23,

6 2013).....22

7 *Affinity Labs of Tex., LLC v. Amazon.com Inc.*,

8 838 F.3d 1266 (Fed. Cir. 2016).....10, 18, 21

9 *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*,

10 573 U.S. 208 (2014)..... passim

11 *Angel Techs. Grp., LLC v. Meta Platforms, Inc.*,

12 No. 2022-2100, 2024 WL 4212196 (Fed. Cir. Sept. 17, 2024)20

13 *Ass’n of Molecular Pathology v. Myriad Genetics, Inc.*,

14 569 U.S. 576 (2013).....7, 20

15 *ATLP by & through Taylor v. CoreCivic, Inc.*,

16 No. 2:21-cv-02072-JCM-EJY, 2023 WL 9232967 (D. Nev. Dec. 5, 2023)

17 *report and recommendation adopted*, 2:21-cv-02072-JCM-EJY, 2024 WL

18 1072016 (D. Nev. Mar. 11, 2024).....10

19 *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*,

20 827 F.3d 1341 (Fed. Cir. 2016).....19

21 *Beteiro, LLC v. DraftKings Inc.*,

22 104 F.4th 1350 (Fed. Cir. 2024)10, 14

23 *Bot M8 LLC v. Sony Corp. of Am.*,

24 465 F. Supp. 3d 1013 (N.D. Cal. 2020)8, 12

25 *BSG Tech LLC v. Buyseasons, Inc.*,

26 899 F.3d 1281 (Fed. Cir. 2018).....19

27 *CG Tech. Dev., LLC v. Bwin.party (USA), Inc.*,

28 No. 16-cv-00871-RCJ-VCF, 2016 WL 6089696 (D. Nev. Oct. 18, 2016).....17

ChargePoint, Inc. v. SemaConnect, Inc.,

920 F.3d 759 (Fed. Cir. 2019).....13

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

TABLE OF AUTHORITIES
(continued)

	Page
1 <i>Cleveland Clinic Found. v. True Health Diagnostics LLC,</i> 2 859 F.3d 1352 (Fed. Cir. 2017).....	23
3 <i>Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n,</i> 4 776 F.3d 1343 (Fed. Cir. 2014).....	22
5 <i>Contour IP Holding LLC v. GoPro, Inc.,</i> 6 113 F.4th 1373 (Fed. Cir. 2024)	17
7 <i>Data Scape Ltd. v. W. Digit. Corp.,</i> 8 No. SA CV 18-2285-DOC, 2019 WL 4145245 (C.D. Cal. May 17, 2019), <i>aff’d</i> , 816 F. App’x 461 (Fed. Cir. 2020).....	24
9 <i>DDR Holdings, LLC v. Hotels.com, L.P.,</i> 10 773 F.3d 1245 (Fed. Cir. 2014).....	18
11 <i>Dropbox, Inc. v. Synchronoss Techs., Inc.,</i> 12 371 F. Supp. 3d 668 (N.D. Cal. 2019), <i>aff’d</i> , 815 F. App’x 529 (Fed. Cir. 13 2020)	16, 17
14 <i>EcoServices, LLC v. Certified Aviation Servs., LLC,</i> 15 830 F. App’x 634 (Fed. Cir. 2020)	17
16 <i>Elec. Power Grp., LLC v. Alstom S.A.,</i> 17 830 F.3d 1350 (Fed. Cir. 2016).....	7, 11, 15, 20
18 <i>Enfish, LLC v. Microsoft Corp.,</i> 19 822 F.3d 1327 (Fed. Cir. 2016), <i>appeal dismissed</i> , No. 2023-1197, 2023 WL 20 2525057 (Fed. Cir. Mar. 15, 2023)	7
21 <i>Ericsson Inc. v. TCL Commc’n Tech. Holdings Ltd.,</i> 22 955 F.3d 1317 (Fed. Cir. 2020).....	17
23 <i>FairWarning IP, LLC v. Iatric Sys., Inc.,</i> 24 839 F.3d 1089 (Fed. Cir. 2016).....	18
25 <i>Gottschalk v. Benson,</i> 26 409 U.S. 63 (1972).....	8
27 <i>IBM Corp. v. Zillow Grp., Inc.,</i> 28 50 F.4th 1371 (Fed. Cir. 2022)	14
<i>In re Marco Guldenaar Holding B.V.,</i> 911 F.3d 1157 (Fed. Cir. 2018).....	7, 22

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

TABLE OF AUTHORITIES
(continued)

	Page
1 <i>In re Smith</i> ,	
2 815 F.3d 816 (Fed. Cir. 2016).....	8
3 <i>Maxon, LLC v. Funai Corp., Inc.</i> ,	
4 255 F. Supp. 3d 711 (N.D. Ill. 2017), <i>aff'd</i> , 726 F. App'x 797 (Fed. Cir. 2018)	22
5 <i>Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.</i> ,	
6 566 U.S. 66 (2012).....	7
7 <i>McRO, Inc. v. Bandai Namco Games Am. Inc.</i> ,	
8 837 F.3d 1299 (Fed. Cir. 2016).....	17
9 <i>Mobile Acuity Ltd. v. Blippar Ltd.</i> ,	
10 110 F.4th 1280 (Fed. Cir. 2024)	19, 23, 24
11 <i>Newdow v. Cong. of United States</i> ,	
12 435 F. Supp. 2d 1066 (E.D. Cal. 2006), <i>aff'd sub nom. Newdow v. Lefevre</i> ,	
13 598 F.3d 638 (9th Cir. 2010)	22
14 <i>NEXRF Corp. v. Playtika Ltd.</i> ,	
15 547 F. Supp. 3d 977 (D. Nev. 2021), <i>aff'd</i> , No. 2021-2147, 2022 WL 1513310	
16 (Fed. Cir. May 13, 2022)	passim
17 <i>O'Reilly v. Morse</i> ,	
18 56 U.S. 62 (1853).....	15
19 <i>Orcinus Holdings, LLC v. Synchronoss Techs., Inc.</i> ,	
20 379 F. Supp. 3d 857 (N.D. Cal. 2019), <i>aff'd sub nom. Dropbox, Inc. v.</i>	
21 <i>Synchronoss Techs., Inc.</i> , 815 F. App'x 529 (Fed. Cir. 2020).....	16, 17
22 <i>Packet Intel. LLC v. NetScout Sys., Inc.</i> ,	
23 965 F.3d 1299 (Fed. Cir. 2020).....	13
24 <i>Planet Bingo, LLC v. VKGS LLC</i> ,	
25 576 F. App'x 1005 (Fed. Cir. 2014)	8, 23
26 <i>RecogniCorp, LLC v. Nintendo Co., Ltd.</i> ,	
27 855 F.3d 1322 (Fed. Cir. 2017).....	17
28 <i>Sanderling Mgmt. Ltd. v. Snap Inc.</i> ,	
65 F.4th 698 (Fed. Cir. 2023)	1
<i>SAP Am., Inc. v. InvestPic, LLC</i> ,	
898 F.3d 1161 (Fed. Cir. 2018).....	14, 20, 21

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

TABLE OF AUTHORITIES
(continued)

	Page
1 <i>Savvy Dog Sys., LLC v. Pa. Coin, LLC,</i>	
2 No. 2023-1073, 2024 WL 1208980 (Fed. Cir. Mar. 21, 2024).....	19
3 <i>Scibetta v. Slingo, Inc.,</i>	
4 No. CV 16-8175, 2018 WL 466224 (D.N.J. Jan. 17, 2018)	7
5 <i>Skillz Platform Inc. v. AviaGames Inc.,</i>	
6 No. 21-cv-02436, 2022 WL 783338 (N.D. Cal. Mar. 14, 2022)	17
7 <i>Solutran, Inc. v. Elavon, Inc.,</i>	
8 931 F.3d 1161 (Fed. Cir. 2019).....	15
9 <i>Synopsys, Inc. v. Mentor Graphics Corp.,</i>	
10 839 F.3d 1138 (Fed. Cir. 2016).....	12, 13, 16
11 <i>Teliix Tech. LLC v. Affinity Network, Inc.,</i>	
12 636 F. Supp. 3d 1199 (D. Nev. 2022).....	7
13 <i>Trading Techs. Int’l, Inc. v. IBG LLC,</i>	
14 921 F.3d 1084 (Fed. Cir. 2019).....	11, 21
15 <i>Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC,</i>	
16 874 F.3d 1329 (Fed. Cir. 2017).....	11, 13, 20
17 <i>Ultramercial, Inc. v. Hulu, LLC,</i>	
18 772 F.3d 709 (Fed. Cir. 2014).....	15
19 <i>Univ. of Fla. Rsch. Found., Inc. v. Gen. Elec. Co.,</i>	
20 916 F.3d 1363 (Fed. Cir. 2019).....	20
21 <i>Vetnos, LLC v. Sideprize, LLC,</i>	
22 No. 23-cv-02746, 2024 WL 3843015 (N.D. Ga. July 9, 2024)	17
23 <i>Voip-Pal.Com, Inc. v. Apple Inc.,</i>	
24 375 F. Supp. 3d 1110 (N.D. Cal. 2019), <i>aff’d sub nom. Voip-Pal.com, Inc. v.</i>	
25 <i>Twitter, Inc.</i> , 798 F. App’x 644 (Fed. Cir. 2020).....	13
26 <i>Voip-Pal.Com, Inc. v. Apple Inc.,</i>	
27 411 F. Supp. 3d 926 (N.D. Cal. 2019), <i>aff’d</i> , 828 F. App’x 717 (Fed. Cir.	
28 2020)	18
<i>Wireless Discovery LLC v. Coffee Meets Bagel, Inc.,</i>	
654 F. Supp. 3d 347 (D. Del. 2023), <i>aff’d</i> , No. 2023-1583, 2024 WL 3336774	
(Fed. Cir. July 9, 2024)	21

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

TABLE OF AUTHORITIES
(continued)

Page

1 **STATUTES**

2 35 U.S.C. § 101..... passim

3 35 U.S.C. § 102.....21

4 35 U.S.C. § 103.....21

5 **RULES**

6
7 Fed. R. Civ. P. 12.....16, 17, 24

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

1 **I. INTRODUCTION**

2 Only months ago, the Court dismissed the patent counts of Evolution’s original complaint,
3 holding that all three asserted patents “are invalid under *Alice*” and expressing “doubt that
4 Evolution can amend around this problem.” ECF No. 76 (“Order”) at 15, 16 n.8.

5 The Court’s prior ruling turned on a single, immovable point: the claims are stated “merely
6 [as] results, and not means to achieve the results.” *Id.* at 11. The asserted patents “lack the
7 specificity necessary to show how [the claimed] components provide a concrete solution to the
8 problem addressed by the patent,” *id.* at 15, and the purported technological improvement—
9 randomly selecting one or more roulette positions and increasing the payouts for those positions,
10 ECF No. 1 (“Compl.”) ¶¶44–45, 69–70, 96–97—is “described and claimed too generically.” Order
11 at 15. Those findings do not depend on the pleadings; they flow from the intrinsic record. As the
12 Federal Circuit has made clear, “no amendment to a complaint can alter what a patent itself states.”
13 *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 706 (Fed. Cir. 2023).

14 Rather than heed the Court’s warning and focus on the remaining trade secret claims as the
15 parties approach the close of fact discovery, Evolution has instead returned with a sprawling First
16 Amended Complaint (“FAC”) the contents of which only underscore the invalidity of the Asserted
17 Patents.¹ Indeed, the FAC is bloated with improper attorney argument and case citations regarding
18 patent eligibility. Amidst that attorney argument, Evolution belatedly attempts to challenge that
19 Claim 1 of U.S. Patent No. 11,011,014 is representative of all of the asserted claims, after the Court
20 confirmed that Evolution conceded that point during briefing on the initial motion to dismiss. And
21 even after submitting the FAC, Evolution submitted what it calls an “errata” to the FAC the next
22 day, which purports to edit Evolution’s prior substantive allegations “to more accurately reflect
23 the scope of the various asserted patent claims.” ECF No. 94 at 1.

24 In the end, however, none of Evolution’s desperate attempts in the FAC can revive its
25 invalid patents. The patents say what they say, and what they say is fatal under *Alice*. Because
26 the FAC offers nothing that could change that conclusion, the Court should dismiss the patent

27 _____
28 ¹ The same day, Evolution also sought leave to file a Second Amended Complaint (“SAC”),
seeking to add a new plaintiff, and at least two new patents unrelated to the original patents. ECF
No. 90.

1 claims again—this time with prejudice.

2 **II. BACKGROUND**

3 **A. The Asserted Patents**

4 Evolution accuses L&W of infringing U.S. Patent Nos. 10,629,024 (the “’024 patent”),
5 11,011,014 (the “’014 patent”), and 11,756,371 (the “’371 patent”) (collectively, the “Asserted
6 Patents”). ECF No. 86 (“FAC”). The ’024 patent was filed February 5, 2019 and claims priority
7 to a provisional application filed February 5, 2018. The ’014 patent is a continuation of the ’024
8 patent, and the ’371 patent is a continuation of the ’014 patent. Each is titled “Systems, Methods,
9 and Media for Implementing Internet-Based Wagering” and shares a common specification.

10 The Asserted Patents purportedly disclose “[s]ystems, methods, and media for
11 implementing internet-based wager[ing].” ’014 patent² at 1:31–32. Specifically, the Asserted
12 Patents are directed to wagering on the century-old game of roulette, and all of the described
13 embodiments use three core components—a roulette wheel, a ball, and a hardware processor.

14 To play roulette, a dealer spins the wheel one direction and directs the ball to spin around
15 the wheel in the opposite direction. *Id.* at 3:3–6. The ball eventually falls into a position on the
16 wheel associated with a number. *Id.* at 3:6–8. If the player has placed a bet on that number, he or
17 she is paid a sum. If not, the bet amount belongs to the house.

18 In the purported invention of the Asserted Patents, the wheel and ball perform their
19 respective conventional roles while the hardware processor—which may be “any suitable”
20 processor for “controlling . . . a general-purpose computer,” (*id.* at 6:32–48)—acts as the dealer.
21 That is, the processor accepts player bets associated with a specific number (or numbers) on the
22 roulette wheel (*id.* at 8:19–28), determines whether the ball and wheel have been spun (*id.* at 8:29–
23 30), determines whether the ball has landed on the number selected by the player(s) (*id.* at 8:40–
24 41), and, if so, determines the payout amount (*id.* at 8:36–39) and indicates that the player is to be
25 paid (*id.* at 8:42–43). In short, the claimed processor applies the rules of roulette.

26 The Asserted Patents also require that the same generic processor randomly identify a
27 number on the roulette wheel before the ball falls into position on the wheel. *Id.* at 8:31–35. If
28

² All cites to the specification are with respect to the ’014 patent, attached as Exhibit 3 to the FAC.

1 this randomly identified number matches the number on which a player has placed a bet, and if the
 2 ball lands on that number on the roulette wheel, the player receives an increased payout. *Id.* at
 3 5:15–32. This randomly identified number is essentially a “multiplier” and is no different from
 4 countless others known by 2018 that increase a player’s payout.

5 Claim 1 of the ’014 patent below is representative of all claims.³

6 A system for wagering, comprising:
 a roulette wheel;

7 a ball configured to be used in the roulette wheel;

at least one hardware processor collectively configured to:

8 generate a first graphical user interface for presentation on a first player device
 of a first player;

9 generate a second graphical user interface for presentation on a second player
 device of a second player;

10 receive first bet information for a first bet on a spin of the roulette wheel via the
 first graphical user interface, the first bet information corresponding to only
 11 a single first position on the roulette wheel;

12 receive second bet information for a second bet on the spin of the roulette wheel
 via the second graphical user interface, the second bet information
 corresponding to only a single second position on the roulette wheel that is
 13 different from the single first position;

14 determine that the roulette wheel and the ball have been spun for the spin of the
 roulette wheel;

15 *randomly select a first selected position on the roulette wheel for the spin of the*
roulette wheel prior to the ball falling into an outcome position on the
roulette wheel, wherein the first selected position is the same as the single
 16 *first position;*

17 *determine a first payout for the first single position and a second payout for the*
single second position for the spin of the roulette wheel, wherein the first
payout is higher than the second payout;

18 determine that the ball has fallen in the single first position for the spin of the
 roulette wheel; and

19 indicate that the first player is to be paid at the first payout for the spin of the
 roulette wheel.

20 ’014 patent at 8:11–43 (emphases added indicating the purported innovation).
 21

22 As shown above, the claims use generic components (wheel, ball, processor) to perform
 23 steps specified in broad, results-oriented language, including at the alleged point of novelty
 24 (*e.g.*, “*determine a first payout*”). No new hardware or software for implementing the functional
 25 claim language is described in the Asserted Patents (much less required by their claims). And the
 26 alleged innovation of increasing the payout for a randomly selected position is an entrepreneurial
 27 tweak to conventional roulette rules, not a technical advancement worthy of patent protection.
 28

³ Evolution conceded claim 1 is representative in the initial motion to dismiss. Order at 8.

1 **B. Procedural History**

2 On May 28, 2024, Evolution filed its initial complaint alleging infringement of the Asserted
3 Patents and actions for trade secret misappropriation. *See* Compl. L&W moved to dismiss on July
4 24, 2024, showing that the Asserted Patents are invalid under 35 U.S.C. § 101.⁴ The Court agreed,
5 concluding on February 11, 2025, that the Asserted Patents are “invalid under *Alice*. Therefore,
6 L&W’s motion to dismiss must be granted.” Order at 15; *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*,
7 573 U.S. 208 (2014). The Court further noted, “***Because I find the patents invalid***, I do not address
8 the merits of whether two of the patent claims are time barred.” Order at 15 n.7 (emphasis added).

9 The Order granted Evolution leave to amend its complaint and replead the Asserted Patents
10 stating that such leave “should generally be denied only if allowing amendment would unduly
11 prejudice the opposing party,” but the Court noted that it was “unclear if the pleading deficiencies
12 can be cured by amend[ment],” and even went so far as to say that “[c]onsidering the plain
13 language of the claims in the patent, the Court has some doubt that Evolution can amend around
14 this problem.” *Id.* at 15–16; *id.* n.8. Nevertheless, on April 10, 2025, Evolution filed a nearly 70-
15 page FAC reasserting the ’024, ’014, and ’371 patents, and adding a new accused product. FAC.
16 The next day, on April 11, 2025, Evolution filed an errata to the FAC. ECF No. 94 (“Errata”) at
17 1. The errata did not correct ministerial errors and instead modified substantive allegations of the
18 FAC “to more accurately reflect the scope of the various asserted patent claims.” *Id.*

19 L&W now moves again to dismiss the patent-related counts (Counts III, IV, and V) in the
20 FAC because the claims of the Asserted Patents have not changed; the Asserted Patents are still
21 “invalid under *Alice*.” Order at 15.

22 **C. The FAC**

23 The following sections summarize the FAC’s allegations related to patent eligibility carried
24 over from the original complaint, and then describe the revisions contained in the FAC.

25 **1. The FAC Re-Packages The Same Section 101 Allegations That The**
26 **Court Already Considered And Rejected**

27 ⁴ L&W’s motion also showed that Evolution’s trade secret counts are subject to arbitration and/or
28 time-barred. ECF No. 34 at 14–22. On January 31, 2025, the Court asked L&W to refile as a
separate motion its motion on Evolution’s trade secret claims. ECF No. 72. That briefing was
completed on February 26, 2025. *See* ECF Nos. 74, 78, 79. That motion is currently pending.

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

1 In its original complaint, Evolution relied on three conclusory sets of allegations (Compl.
 2 ¶¶44–45, 69–70, 96–97), to contend that the claims overcome *Alice*. Evolution argued that the
 3 patents’ random selection of one or more positions and increased payouts for those positions
 4 “significantly improved existing technology for a roulette game” and pronounced—without any
 5 support—that these features were “neither well-known, routine, nor conventional.” *Id.*

6 Notwithstanding the Court’s prior ruling—which squarely rejected Evolution’s contention
 7 that the mere recitation of random-number selection and increased payouts amounted to a
 8 technological advance (Order at 14–15)—the FAC repeats the same refrain. *See, e.g.*, FAC ¶¶76–
 9 77, 80–81, 93. Yet, as before, Evolution points to no claim language reciting *how* the claimed
 10 processor allegedly accomplishes those functions and leaves unchallenged the Court’s observation
 11 that the random selection and increased payout limitations are framed in purely functional, results-
 12 oriented terms and therefore do not provide a technological advance. Order at 14–15.

13 **2. The FAC’s New § 101 Allegations**

14 The FAC includes roughly twenty pages (pp. 15–37), much of which is attorney argument,
 15 asserting that the claims are patent-eligible. The FAC identifies new alleged technological
 16 improvements and seeks to walk back Evolution’s previous concessions regarding the
 17 representativeness of claim 1 of the ’014 patent. These additions regarding alleged patent
 18 eligibility and other allegations are summarized in the chart below.

FAC Additions	What Was Pled (or Conceded) Before	What the FAC Still Lacks
Allegation that “ensuring ... random selection” takes place “before the ball has fallen in a position” is a technological improvement (FAC ¶76, Errata at 1)	Evolution argued that the patents “improved existing technology” via the claimed random position selection (Compl. ¶¶44–45, 69–70, 96–97), which the Court rejected (Order at 9–15).	Any factual allegations that the claims recite <i>how</i> the purported “random selection before ball lands” feature is achieved, any non-conclusory allegations that this feature is not well-known, routine, and conventional, and any factual allegations as to why this feature is not a necessary part of the abstract idea itself, such that it cannot supply an inventive concept
Allegation that multiplayer participation via electronic player	Evolution did not previously argue that the claimed use of first and second graphical	Any factual allegations that the claims recite <i>how</i> multiplayer participation is achieved, any non-conclusory

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

FAC Additions	What Was Pled (or Conceded) Before	What the FAC Still Lacks
devices is a technological improvement (FAC ¶76)	user interfaces (GUIs) for receiving bets is a technological improvement.	allegations that this feature is not well-known, routine, and conventional, and any factual allegations as to why this feature is not a necessary part of the abstract idea itself
Allegation that the claims enable remote gameplay, another purported technological improvement (FAC ¶¶77, 83)	Evolution did not previously argue that the claims enabled remote gameplay, nor that this is an alleged technological improvement.	Any factual allegations that the claims recite features for enabling remote gameplay, and any non-conclusory allegations that this feature is not well-known, routine, and conventional
Allegations that the claims provide a “specific technological software improvements” (FAC ¶¶52, 68, 76, 77, 80, 92, 93)	Evolution argued that the patents “improved existing technology” but did not identify any technology that was actually improved. ECF No. 66 at 2–6.	Any factual allegations that the claims recite algorithms or any other concrete software architectures for achieving the functions recited in the claims
Assertion that certain dependent claims recite “additional ... technological improvements,” <i>e.g.</i> , randomly selecting a second position (FAC ¶¶86–88)	Evolution previously conceded that the dependent claims “relate to the same abstract idea” as Claim 1 of the ’014 patent and any additional limitations “do not save the Asserted Patents.” Order at 8 n.6.	Any factual allegations that the claims recite <i>how</i> the various dependent-claim features are achieved, and any non-conclusory allegations that these features are not well-known, routine, and conventional

III. THE ASSERTED PATENTS ARE INVALID UNDER 35 U.S.C. § 101

Despite the attorney argument, inapposite case law, and unsupported assertions of technological solutions and improvements that pervade the FAC, the focus of the Section 101 inquiry—the claims—are unchanged since the Court held them “invalid under *Alice*” on February 11, 2025. Order at 15. The claims still recite the process of playing roulette using its well-known, conventional components—a ball and a wheel. This Court, not to mention the Federal Circuit, has repeatedly held that claims on wagering games without more are directed to ineligible abstract ideas. What’s more, the conventional ball and wheel are coupled with a generic processor to perform basic computer tasks, all of which are specified at a functional, results-oriented level (*e.g.*, “determine a payout”). ’014 patent at 6:32–48. Nowhere do the claims or the specification explain

1 how any of these steps are performed, and courts routinely hold that using generic processors to
 2 perform abstract ideas do not create inventive concepts. *See, e.g., Elec. Power Grp., LLC v. Alstom*
 3 *S.A.*, 830 F.3d 1350, 1354–55 (Fed. Cir. 2016) (claims calling for use of “a set of generic computer
 4 components” to perform abstract ideas held invalid under *Alice*). Even after two bites at the apple,
 5 Evolution cannot explain *why* the claims of the Asserted Patents constitute patent-eligible subject
 6 matter under 35 U.S.C. § 101. They do not, and should be dismissed again under *Alice*.

7 **A. Legal Standard**

8 35 U.S.C. § 101 defines patent-eligible subject matter as “any new and useful process,
 9 machine, manufacture, or composition of matter, or any new and useful improvement thereof.”
 10 “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice*, 573 U.S. at 216
 11 (quoting *Ass’n of Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

12 Under the Supreme Court’s two-step framework governing the eligibility inquiry, a court
 13 must first determine whether the invention is directed to an abstract idea. *Id.* at 217–18. If so, the
 14 court then determines whether the claim elements recite an “inventive concept” sufficient to
 15 transform the abstract idea into patent-eligible subject matter. *Id.* (quoting *Mayo Collaborative*
 16 *Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 72–73 (2012)). Comparing the claims at issue to
 17 claims previously found to be ineligible under § 101 is a common and Federal Circuit-approved
 18 approach. *Teliix Tech. LLC v. Affinity Network, Inc.*, 636 F. Supp. 3d 1199, 1207 (D. Nev. 2022)
 19 (Silva, J.) (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016), *appeal*
 20 *dismissed*, No. 2023-1197, 2023 WL 2525057, at *1 (Fed. Cir. Mar. 15, 2023)).

21 “Whether a patent is eligible under § 101 is a question of law that may be determined at
 22 the dismissal stage.” *NEXRF Corp. v. Playtika Ltd.*, 547 F. Supp. 3d 977, 986 (D. Nev. 2021),
 23 *aff’d*, No. 2021-2147, 2022 WL 1513310, at *1 (Fed. Cir. May 13, 2022); *see also Teliix Tech.*,
 24 636 F. Supp. 3d at 1206; *Scibetta v. Slingo, Inc.*, No. CV 16-8175, 2018 WL 466224, at *8 (D.N.J.
 25 Jan. 17, 2018) (collecting cases). Early resolution conserves judicial and party resources and
 26 “protects the public by expeditiously removing the barriers to innovation created by vague and
 27 overbroad patents.” *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1165 (Fed. Cir. 2018)
 28 (Mayer, J., concurring).

1 **B. Alice Step One – The Abstract Idea of Playing Roulette**

2 In granting L&W’s motion to dismiss the original complaint, the Court correctly concluded
 3 at *Alice* step one, that “the ’014 patent is directed to an abstract idea.” Order at 11. The Court
 4 cited Federal Circuit precedent and this district’s *NEXRF Corp.* decision holding that patents
 5 “‘directed toward rules for conducting a wagering game’ compare to other ‘fundamental economic
 6 practice[s]’ found abstract by the Supreme Court.” *Id.* at 10–11 (quoting *In re Smith*, 815 F.3d
 7 816, 818–19 (Fed. Cir. 2016)); *Planet Bingo, LLC v. VKGS LLC*, 576 F. App’x 1005, 1007–08
 8 (Fed. Cir. 2014); *NEXRF*, 547 F. Supp. 3d at 988. The Court recognized that, like the claims of
 9 these other cases, “Evolution’s ‘method for a roulette game’ is, at its core, a method of exchanging
 10 and resolving financial obligations based on probabilities,” *i.e.*, an abstract idea. Order at 11. As
 11 further support, the Court also recognized Evolution’s concession that the steps of the Asserted
 12 Patents can be carried out using existing computers. Order at 10–11 (citing *Planet Bingo*, 576 F.
 13 App’x at 1007, 1008 (claims for “managing a bingo game” directed to an abstract idea can be
 14 “carried out in existing computers”) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))).

15 The Court likewise recognized the functional, results-oriented nature of the claims,
 16 rejecting Evolution’s argument that the Asserted Patents are directed to “a patentable,
 17 technological improvement” over existing roulette games. Order at 11 (citing ECF No. 53 at 13).
 18 Specifically, in its original complaint, Evolution alleged without support that the claims’ random
 19 selection and increased payout constitutes a technological improvement sufficient to survive *Alice*.
 20 Compl. at ¶¶44–45, 69–70, 96–97. But, the Court properly recognized that the claims themselves
 21 do not “explain how any of the purported technological improvements work.” Order at 11 (quoting
 22 *NEXRF Corp.*, 547 F. Supp. 3d at 988). And “[w]ithout explanation as to *how* the graphical [user
 23 interfaces] or payouts are determined, these statements are merely results, and not means to achieve
 24 the results.” *Id.* (citing *Bot M8 LLC v. Sony Corp. of Am.*, 465 F. Supp. 3d 1013, 1021 (N.D. Cal.
 25 2020) (emphasis original)). The Court also stated that “Claim 1 of the ’014 patent will serve as
 26 the Representative Claim 1 for the purposes of this action,” citing L&W’s showing of
 27 representativeness (ECF No. 34 at 19), and Evolution’s failure to contest it. Order at 8.

28 The FAC (at ¶¶76–77, 80–81, 93) repeats the same allegations that the Court already

CAMPBELL & WILLIAMS
 ATTORNEYS AT LAW
 710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
 Phone: 702.382.5222 • Fax: 702.382.0540
 www.campbellandwilliams.com

1 rejected and offers no basis for the Court to reach a different conclusion. The FAC also pleads a
 2 host of newly minted assertions, summarized in Section II.C.2 above. But, as demonstrated in the
 3 sections that follow, these new allegations add no meaningful technological substance and do not
 4 cure the fundamental defect that the claims are directed to the abstract idea of playing roulette.

5 **1. Evolution’s Errata Undermines Its Claimed Technological**
 6 **Improvement Of Random Selection Before The Ball Lands**

7 Evolution’s FAC asserted that the alleged technological improvements of the Asserted
 8 Patents include “ensuring that the random selection of positions for multipliers takes place after
 9 the roulette wheel and ball have been spun, but before the ball has fallen in a position.” FAC ¶76;
 10 *see also* ¶70 (“[D]uring a narrow window of time—after the spinning of the wheel and ball, but
 11 before the ball lands on a position—Evolution’s software uses a random number generator to select
 12 a subset of the positions”), ¶77 (“[I]n the narrow window of time after the wheel and ball
 13 have been spun and before the ball lands, the innovative game software uses an algorithm to
 14 randomly or pseudo-randomly select one or more positions on the roulette wheel”).

15 Then, on April 11, 2025—the very next day—Evolution walked these statements back,
 16 filing an errata to the FAC “to more accurately reflect the scope of the various asserted patent
 17 claims.” Errata at 1. Now, instead of asserting that the Asserted Patents’ random position selection
 18 occurs “*after the spinning of the wheel and ball*, but before the ball lands on a position” (emphasis
 19 added), the errata, confirms that it need only occur sometime “before the ball lands”:

Page:Line	FAC (ECF No. 86)	Should Read
21:22	“after the spinning of the wheel and ball, but before the ball lands on a position”	“before the ball lands on a position”
24:18–19	“takes place after the roulette wheel and ball have been spun, but before the ball has fallen in a position”	“takes place before the ball has fallen in a position”
25:4–5	“after the wheel and ball have been spun and before the ball lands”	“before the ball lands”

26
 27 Errata at 1.

28 Evolution’s after-the-fact corrections are procedurally improper and substantively

1 revealing. Errata are reserved for the correction of clerical or typographical slips, not for rewriting
 2 the operative pleading to recast central factual contentions. *See, e.g., ATLP by & through Taylor*
 3 *v. CoreCivic, Inc.*, No. 2:21-cv-02072-JCM-EJY, 2023 WL 9232967, at *2 (D. Nev. Dec. 5, 2023)
 4 *report and recommendation adopted*, 2:21-cv-02072-JCM-EJY, 2024 WL 1072016, at *4 (D. Nev.
 5 Mar. 11, 2024) (“[A]n errata should only correct ministerial errors made in a previously filed
 6 document that is pending before the Court.”). It is telling that—after enjoying months to prepare
 7 the FAC following the Court’s February 11, 2025, Order —Evolution still managed to misstate
 8 what it now calls a central “technological improvement” of its supposed invention.

9 In any case, Evolution’s allegation that randomly selecting a roulette position before the
 10 ball drops is a technological improvement (FAC ¶¶70, 76, 77, as corrected in Evolution’s Errata)
 11 cannot save the claims. Nothing in the FAC supports the assertion that this feature is an
 12 improvement of any kind, much less a technological one. *See id.* Moreover, this feature is
 13 specified at a functional, results-oriented level. Representative claim 1 of the ’014 patent illustrates
 14 the problem precisely: the claim instructs a generic hardware processor to “randomly select a first
 15 selected position on the roulette wheel for the spin of the roulette wheel prior to the ball falling
 16 into an outcome position.” ’014 patent at 8:31-33. That language is quintessentially results-
 17 oriented. It supplies no algorithm, no sequence of concrete processing steps, and no hardware
 18 architecture capable of performing the claimed random position selection prior to the ball landing.
 19 In other words, the claim recites the desired *result*—random position selection before the ball
 20 lands—but is wholly silent as to *how* to achieve it. Merely reciting a result is not a technological
 21 improvement. *Beteiro, LLC v. DraftKings Inc.*, 104 F.4th 1350, 1356, 1359 (Fed. Cir. 2024)
 22 (claims “drafted using largely (if not entirely) result-focused functional language, containing no
 23 specificity about how the purported invention achieves those results” are invalid under *Alice*).

24 Indeed, in granting L&W’s motion to dismiss the original complaint, the Court already
 25 considered Evolution’s argument about the “random selection” feature, rejecting it as being
 26 “described and claimed too generically.” Order at 15 (the claimed random position selection
 27 “lack[s] the specificity necessary to show how” this feature provides “a concrete solution to the
 28 problem addressed by the patent”) (quoting *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838

1 F.3d 1266, 1271 (Fed. Cir. 2016)). The Court’s determination is consistent with Federal Circuit
 2 precedent, which has repeatedly rejected claims framed in exactly this functional, black-box
 3 manner. In *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, the Federal Circuit explained
 4 that claims drafted with “result-based functional language” without “sufficiently describ[ing] how
 5 to achieve [the claimed] results in a non-abstract way” cannot survive § 101. 874 F.3d 1329, 1337–
 6 38 (Fed. Cir. 2017). Likewise, in *Elec. Power Grp.*, the Federal Circuit found that claims
 7 describing “a process of gathering and analyzing information of a specified content, then
 8 displaying the results,” were “directed to an abstract idea.” 830 F.3d at 1354. The Federal Circuit
 9 held the claims invalid, emphasizing that “the essentially result-focused, functional character of
 10 claim language has been a frequent feature of claims held ineligible under § 101.” *Id.* at 1356.

11 Evolution’s alleged technological improvement of “ensuring that the random selection of
 12 positions for multipliers takes place before the ball has fallen in a position” falls squarely within
 13 that forbidden category; reciting this as a result without specifying how to do it. FAC ¶76; Errata
 14 at 1. As in *Two-Way Media* and *Elec. Power Grp.*, that is not a technological improvement.

15 **2. The Generic “Two-GUI” Limitation—Merely Displaying The Same**
 16 **Betting Screen Twice—Adds No Technological Improvement**

17 The FAC asserts that another alleged technological improvement of the Asserted Patents
 18 is “multiplayer participation through electronic player devices.” FAC ¶76. To be sure, some of
 19 the asserted claims recite, in purely functional terms, “generat[ing] a first graphical user interface
 20 for presentation on a first player device of a first player” and “generat[ing] a second graphical user
 21 interface for presentation on a second player device of a second player.” ’014 patent at 8:15–18.
 22 But these limitations do not describe any new GUI technology, any particular data structures, or
 23 any concrete implementation details. They are simply instructions to display the same betting
 24 screen twice—one to each participant—and, as such, amount to nothing more than “displaying
 25 information,” an activity the Federal Circuit has held is “well-understood, routine, [and]
 26 conventional” and therefore insufficient to overcome *Alice. Trading Techs. Int’l, Inc. v. IBG LLC*,
 27 921 F.3d 1084, 1093 (Fed. Cir. 2019). Further, the FAC fails to provide any factual support for
 28 its assertion that the use of two betting screens provides a technological improvement over the

1 prior art. *See* FAC ¶76.

2 Nor does the bare recital of two GUIs—as opposed to one—save the claims. The claims
3 speak only in results-oriented language: the processor must “generate” the first GUI, “generate”
4 the second GUI, and “receive” bet information through each. The claims do not describe any
5 technical architecture for managing multiple concurrent interfaces, synchronizing data between
6 them, or resolving latency, security, or bandwidth issues that might arise in a genuine multiplayer
7 system. In other words, the claims recite desired results, but do not explain how to achieve those
8 results, which is insufficient under *Alice. Bot M8 LLC*, 465 F. Supp. 3d at 1023, 1028 (invalidating
9 claims under § 101 that “only instruct[] a game operator to present new jackpot opportunities”
10 without explaining how to do so).

11 3. The Purported “Remote Play” Is Absent From The Claims And 12 Cannot Supply A Technological Improvement

13 Yet another purported technological improvement alleged in the FAC involves playing
14 roulette “from a remote location.” FAC ¶77; *see also id.* ¶83 (“The Asserted Patents thus provide
15 technological solutions ... that achieve improved systems and processes for playing the claimed
16 new roulette game in remote ... gaming environments.”). Evolution provides no support for its
17 assertion that remote gaming is a technological improvement (*see id.*), and more importantly,
18 remote game play appears nowhere in the claim language. Representative claim 1 of the ’014
19 patent recites three conventional components: a roulette wheel, a ball, and “at least one hardware
20 processor.” ’014 patent at 8:11-14. The processor is said to spin the wheel and ball, receive player
21 bets, “randomly select” a number, determine where the ball lands, and compute appropriate
22 payouts. *Id.* at 8:29-43. Neither claim 1 of the ’014 patent nor any other claim says *anything* about
23 networks, servers, the Internet, or any other infrastructure that might plausibly constitute a
24 technological advance for enabling remote roulette play.

25 Evolution cannot rely on unclaimed subject matter—whether described in the specification
26 or in the FAC—to survive *Alice*. Controlling precedent makes this clear. “The § 101 inquiry must
27 focus on the language of the [a]sserted [c]laims themselves.” *Synopsys, Inc. v. Mentor Graphics*
28 *Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016). A court cannot “import details from the specification

1 if those details are not claimed.” *Packet Intel. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1318
 2 (Fed. Cir. 2020) (Reyna, J., concurring-in-part and dissenting-in-part) (quoting *ChargePoint, Inc.*
 3 *v. SemaConnect, Inc.*, 920 F.3d 759, 769 (Fed. Cir. 2019)). *See also Two-Way Media*, 874 F.3d at
 4 1338–39 (holding that the claim—not specification—must supply an inventive concept);
 5 *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013)
 6 (“[T]he level of detail in the specification does not transform a claim reciting only an abstract
 7 concept into a patent-eligible system or method.”); *Voip-Pal.Com, Inc. v. Apple Inc.*, 375 F. Supp.
 8 3d 1110, 1145 (N.D. Cal. 2019), *aff’d sub nom. Voip-Pal.com, Inc. v. Twitter, Inc.*, 798 F. App’x
 9 644 (Fed. Cir. 2020) (“Here, however, attorney argument in the complaint cannot save the claims
 10 because the purported improvements have not been captured in the claim language.”).

11 Relatedly, Evolution argues that the claims address two supposed “problems” identified in
 12 the background section of the Asserted Patents: (1) players historically had to travel to a casino in
 13 order to experience roulette, and (2) Internet-based, computer-generated roulette interfaces
 14 allegedly “do not replicate in any way a real environment like is present in a casino.” FAC ¶¶83.
 15 But again, the claims do not address remote or Internet-based gaming. They therefore do not speak
 16 to (much less *solve*) the alleged problems of having to travel to a casino or else experience Internet-
 17 based gaming that does not replicate a casino environment.

18 Because the alleged remote-participation features (FAC ¶¶77, 83) are not recited in the
 19 claims, such features cannot establish eligibility. *Synopsys*, 839 F.3d at 1152 (“Our analysis
 20 focuses, as it must, on the Asserted Claims. Those claims are directed to an abstract mental process
 21 and contain no inventive concept. The claims are therefore invalid under 35 U.S.C. § 101.”).

22 **4. Evolution’s Newly-Minted “Software-Improvement” Theory Fails**
 23 **Because The Asserted Patents Recite Only Results-Oriented,**
 24 **Functional Steps That Do Not Advance Any Technology**

25 Evolution’s original complaint alleged—without elaboration—that the Asserted Patents
 26 “improve[] existing technology for a roulette game.” *See, e.g., Compl.* ¶¶44, 69, 96. That pleading
 27 never identified what “technology” was supposedly improved, how it was improved, or why any
 28 such improvement matters under § 101. Having been called on that omission before (ECF No. 66
 at 2–3), Evolution now characterizes the patents as claiming “specific technological software

1 improvements” and “innovative software.” FAC ¶¶52, 76–77, 80, 92–93. But the FAC’s new
 2 labels cannot mask the same fatal flaw: the claims never disclose, let alone claim, any software.
 3 The claims do not recite, for example, any concrete software architecture or specific algorithmic
 4 technique.⁵ They merely state the desired results in functional terms. “Claims of this nature are
 5 almost always found to be ineligible for patenting under Section 101.” *Beteiro*, 104 F.4th at 1356;
 6 *see also IBM Corp. v. Zillow Grp., Inc.*, 50 F.4th 1371, 1378 (Fed. Cir. 2022) (claims that are
 7 “result-oriented, describing required functions (presenting, receiving, selecting, synchronizing),
 8 without explaining how to accomplish any of the tasks” are invalid under *Alice*) (citation omitted).

9 Specifically, the FAC cites a list of steps to support its new software-improvement theory,
 10 but each step is nothing more than a statement of what is to be achieved, not how to achieve it:

- 11 • “randomly select[ing] a first selected position on the roulette wheel for the spin of the
 12 roulette wheel prior to the ball falling into a position on the roulette wheel, wherein
 13 the first selected position is the same as the first position” (¶80);
- 14 • “determin[ing] a first payout for first position and a second payout for the second
 15 position for the spin of the roulette wheel, wherein the first payout is higher than the
 16 second payout” (*id.*);
- 17 • “indicating that the first player is to be paid at the first payout for the spin of the
 18 roulette wheel” (*id.*);
- 19 • “generating, using at least one hardware processor, a first graphical user interface for
 20 presentation on a first player device of a first player” (¶85);
- 21 • “generating, using the at least one hardware processor, a second graphical user
 22 interface for presentation on a second player device of a second player” (*id.*);
- 23 • “randomly select[ing] a second selected position on the roulette wheel; and
 24

25 ⁵ The FAC repeatedly refers to “specific technological software improvements.” FAC at ¶¶52, 76,
 26 80, and 93. To the extent Evolution is referring to collections of functionally-claimed steps (*e.g.*,
 27 the steps of method claim 9 of the ’014 patent) as allegedly providing algorithms—which they do
 28 not—those steps improve no technology: Notwithstanding their execution, the hardware processor
 runs no faster than it did before, and the roulette wheel and ball operate as they always have. As
 explained herein, the alleged inventiveness of the claims over the prior art is insufficient to survive
Alice. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018) (advances in the
 realm of abstract ideas, “no matter how groundbreaking the advance,” are not protected.).

1 determin[ing] a payout for the second selected position that is different than the
 2 payout for the single first position (§86);

- 3 • “randomly or pseudo-randomly select[ing] a second selected position of the plurality
- 4 of positions on the roulette wheel to have a second increased payout for the spin of
- 5 the roulette wheel” (§87);
- 6 • “presenting a ‘first graphical user interface [that] includes a roulette board’ and
- 7 highlighting the first selected position on the board in response to the first selected
- 8 position being randomly selected” (§88);
- 9 • “caus[ing] the ball and the roulette wheel to automatically spin” (*id.*); and
- 10 • “clos[ing] bets when the roulette wheel and the ball are determined to have been
- 11 spun” (*id.*).

12 Each of these steps is claimed at the highest level of abstraction. The Asserted Patents do
 13 not describe or claim algorithms for any of these steps, much less unique algorithms for
 14 “encourag[ing] ‘the onward march of science,’” which might qualify for patent protection.
 15 *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 721 (Fed. Cir. 2014) (Mayer, J., concurring)
 16 (quoting *O’Reilly v. Morse*, 56 U.S. 62, 113 (1853)). Instead, the Asserted Patents describe the
 17 exact opposite of specific algorithms—*e.g.*, “randomly select[ing] one or more of the roulette
 18 wheel numbers” in “*any suitable manner*,” and “determin[ing] the increased payouts for the
 19 numbers selected,” where “[*a*]ny suitable payouts can be used.” ’014 patent at 4:58–61, 5:16–17
 20 (emphasis added). Such “result-focused, functional . . . claim language” improves no technology.
 21 *Elec. Power Grp.*, 830 F.3d at 1356.

22 Unable to point to any disclosed algorithm or architectural innovation, Evolution tries to
 23 re-label entrepreneurial concepts—*e.g.*, the idea of randomly selecting one or more positions for
 24 increased payouts—as a technical breakthrough. That gambit is foreclosed: “[I]n assessing patent
 25 eligibility, advances in non-technical disciplines,” such as gaming, “simply do not count.”
 26 *Ultramercial*, 772 F.3d at 721 (Mayer, J., concurring); *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d
 27 1161, 1166 (Fed. Cir. 2019). Evolution’s claimed “software” steps do not enhance processor
 28 performance, improve data handling, or solve a computer-centric problem; they merely apply well-

1 known computer functionality to execute a business-logic tweak to “enhance the ‘player’s
2 experience” and drive profits. ECF No. 53 at 9 (quoting ’024 patent at 4:56–5:30). Such
3 economic or psychological benefits may be laudable from a marketing perspective, but they are
4 legally irrelevant to a patent-eligibility analysis.

5 In short, the Asserted Patents still claim nothing more than the abstract idea of playing a
6 modified roulette game using conventional computer components. Dressing up that idea in the
7 language of “software improvements” cannot save the claims.

8 **5. The FAC Is Replete With Case Law And Attorney Argument That**
9 **Has No Bearing On The Claims Of The Asserted Patents**

10 “[Evolution’s] attorney arguments in the amended complaint do not create a factual dispute
11 precluding disposition of the instant case on a Rule 12 motion.” *Orcinus Holdings, LLC v.*
12 *Synchronoss Techs., Inc.*, 379 F. Supp. 3d 857, 882 (N.D. Cal. 2019), *aff’d sub nom. Dropbox, Inc.*
13 *v. Synchronoss Techs., Inc.*, 815 F. App’x 529 (Fed. Cir. 2020); *see also Dropbox, Inc. v.*
14 *Synchronoss Techs., Inc.*, 371 F. Supp. 3d 668, 700 (N.D. Cal. 2019), *aff’d*, 815 F. App’x 529
15 (Fed. Cir. 2020) (“Plaintiff’s attorney arguments do not create a factual dispute precluding
16 disposition of the instant case on a Rule 12 motion because Plaintiff’s attorney arguments are
17 attempting to manufacture a factual question.”).

18 Nevertheless, in a desperate effort to establish patentability of the Asserted Patents,
19 Evolution takes case law and attorney argument that was the backbone of its failed opposition to
20 L&W’s original motion to dismiss (*see* ECF No. 53), and styles it as twenty pages of “facts.” FAC
21 ¶¶52–107. Setting aside the impropriety of this approach, (*see Orcinus Holdings*, 379 F. Supp. 3d
22 at 882; *Dropbox, Inc.*, 371 F. Supp. 3d at 700), it has no bearing on the claims, which are the focal
23 point of the Section 101 analysis. *Synopsis*, 839 F.3d at 1149 (“The § 101 inquiry must focus on
24 the language of the Asserted Claims themselves.”); *Accenture*, 728 F.3d at 1345 (“[T]he important
25 inquiry for a § 101 analysis is to look to the claim.”).

26 The focus of the Section 101 inquiry is the claims, and the claims have not changed since
27 the Court found them “invalid under *Alice*.” Order at 15. Nothing that Evolution now says changes
28 the Court’s February 11, 2025, conclusion that these results-oriented claims do not explain *how* to

1 achieve any of the claimed functions, meaning they are not patent-eligible subject matter. *Id.* at
 2 11 (“Without explanation as to *how* the graphical [user interfaces] or payouts are determined, these
 3 statements are merely results, and not means to achieve the results.”); *id.* at 14 (“Like the *NEXRF*
 4 *Corp.* challenged patent, the features described in Claim 1 of the ‘014 patent are described and
 5 claimed generically because they describe *what* they can do and not *how* they can do it.”).

6 Moreover, the majority of case law and attorney argument that Evolution has incorporated
 7 into its FAC is duplicative of the case law and attorney argument that Evolution included in its
 8 opposition to L&W’s original motion to dismiss, and that the Court already considered and
 9 rejected. Compare ECF No. 53 at 7 (citing to (1) *McRO, Inc. v. Bandai Namco Games Am. Inc.*,
 10 837 F.3d 1299 (Fed. Cir. 2016); (2) *EcoServices, LLC v. Certified Aviation Servs., LLC*, 830 F.
 11 App’x 634 (Fed. Cir. 2020); and (3) *Contour IP Holding LLC v. GoPro, Inc.*, 113 F.4th 1373 (Fed.
 12 Cir. 2024)) with FAC ¶¶61 (citing same); compare ECF No. 53 at 8 (citing to (1) *Skillz Platform*
 13 *Inc. v. AviaGames Inc.*, No. 21-cv-02436, 2022 WL 783338 (N.D. Cal. Mar. 14, 2022); (2) *Vetnos,*
 14 *LLC v. Sideprize, LLC*, No. 23-cv-02746, 2024 WL 3843015 (N.D. Ga. July 9, 2024); and (3) *CG*
 15 *Tech. Dev., LLC v. Bwin.party (USA), Inc.*, No. 16-cv-00871-RCJ-VCF, 2016 WL 6089696 (D.
 16 Nev. Oct. 18, 2016)) with FAC ¶¶65–67 (citing same). Incorporating these legal arguments into a
 17 FAC rather than an opposition brief cannot change the Court’s conclusion that these patents are
 18 “invalid under *Alice*.” Order at 15; see *Orcinus Holdings*, 379 F. Supp. 3d at 882; *Dropbox, Inc.*,
 19 371 F. Supp. 3d at 693 (“Plaintiff’s attorney arguments in the amended complaint do not create a
 20 factual dispute precluding disposition of the instant case on a Rule 12 motion.”).⁶

21 The FAC (¶¶78, 94, 102) argues that the claims of the Asserted Patents are not broadly

22
 23 ⁶ The FAC (¶¶67, 79) argues that the asserted claims cannot be performed in the human mind, like
 24 those of *CG Tech*. This is wrong at least because humans have been randomly selecting numbers
 25 for decades, if not centuries, e.g., by rolling dice or picking numbers out of a hat, and determining
 26 a payout is simply math. ECF No. 66 at 5–6. Both are textbook examples of abstract ideas.
 27 *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one
 28 abstract idea (math) to another abstract idea ... does not render the claim non-abstract.”); *Ericsson*
Inc. v. TCL Comm’n Tech. Holdings Ltd., 955 F.3d 1317, 1327 (Fed. Cir. 2020) (“[W]e have
 repeatedly found unpatentable” processes that can be performed in the human mind). Evolution’s
CG Tech. case confirms this: the court said that determining “game outcomes” and “payouts”
 based on rules or algorithms are abstract because they “can be conducted in one’s mind.” No. 16-
 CV-00871, 2016 WL 6089696, at *4 (D. Nev. Oct. 18, 2016). The claims in *CG Tech*. survived
 because they “require[d] activity outside of one’s mind” (*id.*), but the claims here do not.

1 preemptive, allegedly like those of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259
 2 (Fed. Cir. 2014). But controlling authority holds that preemption is not a standalone test for
 3 eligibility, and that claims directed to abstract ideas remain ineligible even if they do not preempt
 4 all applications of the abstract idea. *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098
 5 (Fed. Cir. 2016) (“While preemption may signal patent ineligible subject matter, the absence of
 6 complete preemption does not demonstrate patent eligibility.”) (citation omitted); *see also, Voip-*
 7 *Pal.Com, Inc. v. Apple Inc.*, 411 F. Supp. 3d 926, 972 (N.D. Cal. 2019), *aff’d*, 828 F. App’x 717
 8 (Fed. Cir. 2020) (“[A] claim is not excused from the need to make an inventive contribution on
 9 top of the underlying abstract idea simply because its application of the abstract idea is narrow.”).

10 **C. *Alice* Step Two – The Asserted Patents Still Claim Well-Known Gambling**
 11 **Concepts, None of Which Are Inventive Alone Or In Combination**

12 The Court’s February 11, 2025, Order confirmed that the asserted claims do not contain an
 13 inventive concept that would transform the abstract idea into a patent-eligible application. Order
 14 at 14–15. Specifically, the Court compared the instant claims to those in *NEXRF Corp.*, whose
 15 claims “consisted of ‘a combination of generic computer elements performing conventional
 16 functions’” (Order at 14 (quoting *NEXRF Corp.*, 547 F. Supp. 3d at 989)), and found that “the
 17 features described in Claim 1 of the ’014 patent are described and claimed generically because
 18 they describe *what* they can do and not *how* they can do it.” *Id.* (emphasis original). The Court
 19 also disposed of Evolution’s argument that “random position selection and advanced payouts are
 20 inventive concepts” because “Evolution does not articulate how these advancements were [not]
 21 well-known, routine, or conventional,” and “[i]nstead, it merely concludes as such.” *Id.* The Court
 22 likewise noted that random position selection and advanced payout “are described and claimed too
 23 generically[,]” meaning they “lack the specificity necessary to show how these components
 24 provide a concrete solution to the problem addressed by the patent.” *Id.* at 15 (quoting *Affinity*
 25 *Labs of Tex.*, 838 F.3d at 1271).

26 The claims of the Asserted Patents have not changed since the Court’s February 11 Order,
 27 and nothing compels a different outcome now. For example, the new alleged technological
 28 improvements of (i) “ensuring ... random selection” takes place “before the ball has fallen in a

1 position” (FAC ¶76, Errata at 1), and (ii) multiplayer participation via electronic player devices
 2 (FAC ¶76) are necessary parts of the claimed abstract idea and thus cannot supply an inventive
 3 concept. *See, e.g., Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1294 (Fed. Cir. 2024); *Savvy*
 4 *Dog Sys., LLC v. Pa. Coin, LLC*, No. 2023-1073, 2024 WL 1208980, at *2, 4 (Fed. Cir. Mar. 21,
 5 2024); *BSG Tech LLC v. Buyseseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

6 As another example, in its *Alice* step two argument in the FAC, Evolution once again turns
 7 to the Federal Circuit’s decision in *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*,
 8 the same case it relied upon in opposing L&W’s original motion to dismiss, (*see* ECF No. 53 at
 9 14), to suggest that the instant claims are patentable. FAC ¶103; 827 F.3d 1341, 1350 (Fed. Cir.
 10 2016). But as the Court noted on February 11, Evolution’s “reliance on *Bascom Glob. Internet*
 11 *Servs., Inc.*, is unpersuasive because they fail to explain how the finding in *Bascom Glob. Internet*
 12 *Servs., Inc.*, actually applies to the ‘014 patent.” Order at 14.

13 In response, the FAC states that while the claims in the Asserted Patents and those in
 14 *Bascom* “include a generic ‘hardware processor,’” both sets of claims represent an “inventive
 15 application” because they “are a specific, discrete implementation of a new and improved
 16 wagering roulette game.” FAC ¶103. Per Evolution, these allegedly inventive aspects “include,
 17 for example, software steps for using, *e.g.*, a pseudo-random number generator, to randomly select
 18 one or more of the roulette wheel numbers, and determine the increased payouts for those randomly
 19 selected numbers.” *Id.* Even taken as true, these claimed “inventive concepts” still only “describe
 20 *what* they can do and not *how* then can do it.” Order at 14. That is fatal to their eligibility. *Id.*

21 Evolution then returns to the concepts of “randomly selected positions” and “increased
 22 payouts,” arguing that they are “a novel advancement” over “conventional table roulette games.”
 23 FAC ¶104. But these are the same alleged “inventive concepts” Evolution identified the first time
 24 in its failed opposition. *See* ECF No. 53 at 12; Order at 14–15. Coupling these non-inventive
 25 concepts with a “computerized system or process” (*see* FAC ¶104), which the patents explain is
 26 “any suitable hardware processor,” (’014 patent at 6:43–48), only affirms the claims recite “a
 27 combination of generic computer elements performing conventional functions.” Order at 14
 28 (citing *NEXRF Corp.*, 547 F. Supp. 3d at 989). The claims recite “merely results, and not means

1 to achieve the results.” Order at 11. Nothing more.

2 Evolution also suggests that receipt of “several prestigious awards” is evidence of inventive
 3 concepts (*see* FAC ¶¶71, 105), but that is not sufficient to establish patentability. *See SAP Am.*,
 4 898 F.3d at 1163 (“We may assume that the techniques claimed are ‘[g]roundbreaking, innovative,
 5 or even brilliant,’ but that is not enough for eligibility.”) (quoting *Myriad*, 569 U.S. at 591); *see*
 6 *also Univ. of Fla. Rsch. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1367 (Fed. Cir. 2019)
 7 (invalidating patents under Section 101 because even where the claimed subject matter is
 8 “laudable,” that “does not render it any less abstract”). And Evolution cites no authority suggesting
 9 that the alleged awards and industry praise establishes eligibility under Section 101. *See* FAC
 10 ¶¶71, 105; *Angel Techs. Grp., LLC v. Meta Platforms, Inc.*, No. 2022-2100, 2024 WL 4212196 at
 11 *6 (Fed. Cir. Sept. 17, 2024) (“Angel is also incorrect that the purported ‘industry praise’ it
 12 references shows an inventive concept.”); *Two-Way Media*, 874 F.3d at 1336 (holding that
 13 nonobviousness, and therefore secondary considerations, “[do] not bear on whether the claims are
 14 directed to patent-eligible subject matter under § 101”).

15 More important, however, is that Evolution does not explain which *claim elements*, the
 16 focal point of the Section 101 inquiry, are the recipients of such praise. It cannot be the ball or
 17 roulette wheel, as those have been known for centuries. So that leaves the processor, which is
 18 “configured to” perform a number steps to execute the game, but as this Court previously
 19 recognized, the results-oriented nature of the claims never explains *how* to perform these steps.
 20 Order at 14. Without an explanation, purely functional claim language does not show an inventive
 21 step. *Two-Way Media*, 874 F.3d at 1339; *Elec. Power Grp.*, 830 F.3d at 1356; *see also* Order at 11.

22 Lastly, Evolution points to the prosecution history as evidence that the alleged inventive
 23 concepts were not well-understood, routine, or conventional. FAC ¶106. It argues that the
 24 “claimed innovation of randomly selecting positions on [a roulette] wheel to receive increased
 25 payouts” enabled it to overcome the Yee prior art reference. *Id.* First, the Court has already
 26 rejected this argument: “Last, Evolution’s argument that the random position selection and
 27 advanced payouts are inventive concepts also fails because these features set forth in the claim are
 28 described and claimed too generically. Stated otherwise, they ‘lack the specificity necessary to

1 show how these components provide a concrete solution to the problem addressed by the patent.’”
 2 ECF No. 76 at 15 (quoting *Affinity Labs of Tex.*, 838 F.3d at 1271). And second, it is not “enough
 3 for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art,
 4 passing muster under 35 U.S.C. §§ 102 and 103.” *SAP Am.*, 898 F.3d at 1163.

5 “The claims of the patents say what they say.” *Wireless Discovery LLC v. Coffee Meets*
 6 *Bagel, Inc.*, 654 F. Supp. 3d 347, 359 (D. Del. 2023), *aff’d*, No. 2023-1583, 2024 WL 3336774
 7 (Fed. Cir. July 9, 2024). Evolution’s FAC does “not change the Court’s § 101 analysis.” *Id.*

8 **D. The Dependent Claims Recite Only Conventional, Non-Inventive Elements**
 9 **In Furtherance Of The Abstract Idea**

10 L&W explained in its original motion to dismiss (*see* ECF No. 34 at 11–13), and Evolution
 11 conceded by not challenging in its opposition (*see* Order at 8 n.6), that the dependent claims recite
 12 only conventional, non-inventive elements in furtherance of the abstract idea of playing roulette.
 13 Nothing about these claims has changed and Evolution’s attorney argument can be ignored.

14 Nevertheless, for the first time in its FAC, Evolution attempts to cast the dependent claims
 15 as “additional features and technological improvements” that make them different from
 16 “traditional roulette,” and thus allegedly patent-eligible. FAC ¶¶86–88. For support, Evolution
 17 points specifically to the steps of (1) “randomly select[ing] a second selected position on the
 18 roulette wheel; and determin[ing] a payout for the second selected position that is different than
 19 the payout for the single first position,” (2) “randomly or pseudo-randomly select[ing] a second
 20 selected position,” (3) “caus[ing] the ball and the roulette wheel to automatically spin,” and (4)
 21 “clos[ing] bets when the roulette wheel and the ball are determined to have been spun.” *Id.* at
 22 ¶¶86–88. However, Evolution does not even attempt to explain how these claimed additional
 23 features, which are performed by “any suitable hardware processor,” are technological
 24 improvements and not merely executing the abstract idea of playing roulette. They are not.

25 Evolution also points to a wheel sensor and first graphical user interface that includes a
 26 roulette board as alleged “technological improvements.” *Id.* at ¶88. But the Federal Circuit has
 27 already held that GUIs alone are not inventive (*see Trading Techs. Int’l.*, 921 F.3d at 1093), and
 28 Evolution cannot credibly maintain that a “wheel sensor,” which “can be implemented in any

1 suitable manner,” such as a camera (’014 patent at 3:11–16), renders the abstract idea patentable.
 2 See *In re Marco Guldenaar*, 911 F.3d at 1161 (“For example, a claim calling for a generic
 3 computer operating in conventional ways to perform an abstract idea lacks an inventive concept.”).
 4 Merely appending a generic camera to determine that the roulette wheel and ball have been spun
 5 is exactly the sort of “apply it with a computer” drafting that Supreme Court precedent deems
 6 insufficient. *Alice*, 573 U.S. at 223. Nothing in the claims explains how the camera detects spin
 7 state, how the data are processed, or how the processor discerns that the spin has begun.

8 The dependent claims merely limit the abstract idea and do not themselves contain
 9 inventive concepts that confer patentability. *Content Extraction & Transmission LLC v. Wells*
 10 *Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1349 (Fed. Cir. 2014) (“Thus, while these claims may
 11 have a narrower scope than the representative claims, no claim contains an ‘inventive concept’
 12 that transforms the . . . otherwise ineligible abstract idea.”).

13 **E. Claim 1 Of The ’014 Patent Is Representative**

14 In its Order finding the Asserted Patents “invalid under *Alice*,” the Court confirmed that
 15 Claim 1 of the ’014 patent is representative. Order at 8 (“In its motion to dismiss, L&W asserts
 16 that Claim 1 of the ’014 patent is representative of all of the claims. Evolution does not respond
 17 to this assertion, and therefore has conceded that Claim 1 of the ’014 patent is representative.”)
 18 (internal citation omitted). Evolution cannot relitigate what it already conceded. See *Aevoe Corp.*
 19 *v. AE Tech. Co.*, No. 12-cv-00053-GMN-NJK, 2013 U.S. Dist. LEXIS 58665, at *3 n.1 (D. Nev.
 20 Apr. 23, 2013) (finding that failure to respond to an argument results in acquiescence); *Newdow v.*
 21 *Cong. of United States*, 435 F. Supp. 2d 1066, 1070 n.5 (E.D. Cal. 2006), *aff’d sub nom. Newdow*
 22 *v. Lefevre*, 598 F.3d 638, 646 (9th Cir. 2010) (Court “interpret[ing] Plaintiff’s silence as a non-
 23 opposition to defendants’ motions [to dismiss] on these claims”); *Maxon, LLC v. Funai Corp.,*
 24 *Inc.*, 255 F. Supp. 3d 711, 716 (N.D. Ill. 2017), *aff’d*, 726 F. App’x 797, 800 (Fed. Cir. 2018)
 25 (concluding that patentee had “forfeit[ed] the point” where it did not respond to defendant’s
 26 argument that certain claims were representative of all claims for the Section 101 analysis).

27 But even if it could, the FAC’s conclusory assertions that each claim is unique and must
 28 be analyzed independently, (e.g., FAC ¶¶74, 137, 160, and 184), do not comport with the

1 applicable law. As the patent challenger, L&W has the “initial burden to make a prima facie
2 showing that the group of claims are ‘substantially similar and linked to the same’ ineligible
3 concept.” *Mobile Acuity*, 110 F.4th at 1290 (quoting *Cleveland Clinic Found. v. True Health*
4 *Diagnostics LLC*, 859 F.3d 1352, 1360 (Fed. Cir. 2017)). Here, L&W has done so.

5 Claim 1 of ’014 patent recites a *system* claiming: a ball, roulette wheel, and hardware
6 processor. ’014 patent at 8:11–43. Claim 9, a *method* using the same. *Id.* at 9:7–46. And claim
7 17, a *non-transitory computer-readable medium* reciting the same method as claim 9. *Id.* at 10:4–
8 35. The remaining Asserted Patents (the ’024 and ’371) are no different. *See* ’024 patent at 8:9–
9 36 (system claim 1); *id.* at 8:62–9:24 (method claim 8); *id.* at 9:46–10:24 (non-transitory medium
10 claim 15); ’371 patent at 8:15–36 (system claim 1); *id.* at 9:11–31 (method claim 11); *id.* at 10:1–
11 19 (non-transitory medium claim 21).

12 All independent claims across the Asserted Patents claim the same three components—a
13 ball, a roulette wheel, and a processor—directed to a system, method, or medium “for wagering.”
14 Further, there is no meaningful distinction between any of the system, method, or medium claims.
15 Each relies on the same components—ball, wheel, and processor—to play roulette. *See Planet*
16 *Bingo*, 576 F. App’x at 1007 (“[W]e agree with the district court that there is no meaningful
17 distinction between the method and system claims or between the independent and dependent
18 claims. The system claims recite the same basic process as the method claims, and the dependent
19 claims recite only slight variations of the independent claims.”) (internal citation omitted). And
20 as explained above, the generic, results-oriented dependent claims that rely on the same generic
21 processor do not change the calculus. As explained in its original motion (ECF No. 34), which
22 Evolution did not contest (ECF No. 53), claim 1 of the ’014 patent is representative of all claims.

23 L&W has shown that the asserted claims are “substantially similar and linked to the same
24 ineligible concept,” so “the burden shifts to [Evolution] to present non-frivolous arguments as to
25 why the eligibility of the identified representative claim cannot fairly be treated as decisive of the
26 eligibility of all claims in the group.” *Mobile Acuity*, 110 F.4th at 1290. Evolution cannot do so.

27 In its FAC, Evolution attempts to manufacture a dispute over representativeness, arguing
28 that “Evolution has accused PowerX of infringing the ’371 patent, but not the ’024 and ’014

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

1 patents” because “the ’014 and ’024 patents includes [sic] different limitations that are distinct
2 from what is claimed in the ’371 patent.” See FAC ¶¶74, 137, 160, and 184. The claims of the
3 three patents have slightly varying scopes, of course, but nowhere does Evolution address the
4 central inquiry underlying representativeness—whether any limitation not found in representative
5 claim 1 of the ’014 patent would have a material impact vis-à-vis Section 101. *Mobile Acuity*, 110
6 F.4th at 1290; see also *Data Scape Ltd. v. W. Digit. Corp.*, No. SA CV 18-2285-DOC (KESx),
7 2019 WL 4145245, at *4 (C.D. Cal. May 17, 2019), *aff’d*, 816 F. App’x 461 (Fed. Cir. 2020).
8 Moreover, whatever products Evolution has decided to accuse of infringing any given patent are
9 simply irrelevant to the question of representativeness. Accordingly, Evolution has not met its
10 obligation to make non-frivolous arguments in opposition to L&W’s representative claim showing.

11 **F. Compliance with Local Patent Rule 1-4(c)**

12 “A party moving to dismiss one or more claims as patent-ineligible under § 101 must
13 demonstrate in its motion, if appropriate, that there is no factual issue, claim construction or
14 otherwise, that the court need determine before deciding dismissal under 35 U.S.C. § 101.” LPR
15 1-4(c). As explained above, the claims of the Asserted Patents have already once been declared
16 “invalid under *Alice*.” Order at 15. Nothing about those claims has changed since the Court’s
17 Order, and nothing in Evolution’s FAC introduces a factual dispute or claim construction issue
18 that requires the Court’s attention before ruling on L&W’s new motion to dismiss. The three
19 components that form the backbone of each claim—ball, roulette wheel, and processor—are
20 conventional components with unambiguous meanings, and the claimed results-oriented functions
21 are the same as they were on February 11. Dismissal is appropriate.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Asserted Patents still recite patent-ineligible subject matter
24 under 35 U.S.C. § 101, and this Court should dismiss the Patent Claims (Counts III, IV, and V)
25 pursuant to Federal Rule of Civil Procedure 12(b)(6) with prejudice.

26
27
28

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 15th day of May, 2025.

CAMPBELL & WILLIAMS

By: /s/ Philip R. Erwin

PHILIP R. ERWIN, ESQ. (11563)
710 South Seventh Street
Las Vegas, Nevada 89101

JONES DAY

HAROLD K. GORDON, ESQ.
(Pro Hac Vice)

RYAN K. WALSH, ESQ.
(Pro Hac Vice)

JENNIFER D. BENNETT, ESQ.
(Pro Hac Vice)

RANDALL E. KAY, ESQ.
(Pro Hac Vice)

COLLIN J. KURTENBACH, ESQ.
(Pro Hac Vice)

LAURA KANOUSE VINING, ESQ.
(Pro Hac Vice)

*Attorneys for Defendants Light &
Wonder, Inc and LNW Gaming, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2025, I caused a true and correct copy of the foregoing **Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint [ECF No. 86] Pursuant To Rule 12(b)(6)** to be served via the United States District Court CM/ECF system on all parties or persons requiring notice.

/s/ Philip R. Erwin
An employee of Campbell & Williams

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
710 SOUTH SEVENTH STREET, SUITE A, LAS VEGAS, NEVADA 89101
Phone: 702.382.5222 • Fax: 702.382.0540
www.campbellandwilliams.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28