

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELECTRONIC ARTS INC.  
Petitioner,

v.

WHITE KNUCKLE GAMING, LLC  
Patent Owner.

U.S. Patent No. 8,540,575 to Athanasios Angelopoulos  
Issue Date: September 24, 2013  
Title: Method And System For Increased Realism In Video Games

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*Inter Partes* Review No.: Unassigned

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**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,540,575  
UNDER 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.1-.80, 42.100-.107**

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35 U.S.C. § 102(b) ..... 20-22  
35 U.S.C. § 103 ..... 1, 19-21, 40, 55  
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**Other Authorities**

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**Petitioner’s Exhibit List**

<i>EA Exhibit #</i>	<i>Description</i>
<b>1001</b>	U.S. Patent No. 8,540,575 (“the ’575 Patent”)
<b>1002</b>	U.S. Patent No. 8,540,575 File History (Part 1 of 2)
<b>1003</b>	U.S. Patent No. 8,540,575 File History (Part 2 of 2)
<b>1004</b>	Declaration of David Crane
<b>1005</b>	U.S. Patent No. 8,529,350 File History
<b>1006</b>	intentionally left blank
<b>1007</b>	FIFA 2001 Online – News Archive for September 2000, October 2000, November 2000, January 2001, March 2001, April 2001 and May 2001, archived at Wayback Machine on June 17, 2001 (“FIFA 2001 News - 1”)
<b>1008</b>	FIFA 2001 Online – News Archive for December 2000 and February 2001, archived at Wayback Machine on April 25, 2001 (“FIFA 2001 News - 2”)
<b>1009</b>	FIFA 2001 Online – News Archive for June 2001, archived at Wayback Machine on July 26, 2001 (“FIFA 2001 News - 3”)
<b>1010</b>	Declaration of Christopher Butler No. 1 <sup>1</sup>
<b>1011</b>	U.S. Pat. Pub. No. 2002/0155893 to Swanberg, <i>et al.</i> (“Swanberg”)
<b>1012</b>	FIFA-MRA, Support System – Installation, Loading Files (Games, Patches & Favorites), Launching the MRA, and Skins archived at Wayback Machine on March 3, 2001 (“FIFA MRA Support - 1”)
<b>1013</b>	FIFA-MRA, Support System – Features of the MRA, archived at Wayback Machine on April 22, 2001 (“FIFA MRA Support - 2”)
<b>1014</b>	FIFA-MRA, Support System – Patches, archived at Wayback Machine on April 23, 2001 (“FIFA MRA Support - 3”)
<b>1015</b>	EA Sports, Madden 2000 Downloads, archived at Wayback Machine on March 2, 2000 (“Madden 2000 Updates”)

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<sup>1</sup> The Declaration of Christopher Butler No. 1 (EA-1010) is submitted as an evidentiary declaration for Exhibit EA-1025. Exhibit A of EA-1010 is EA-1025.

<b><i>EA Exhibit #</i></b>	<b><i>Description</i></b>
<b>1016</b>	EA SPORTS Madden NFL(TM) 2000 Roster Update - Playoff Week 1 (01/07/00) ReadMe text file (“Playoff Week 1 Update”)
<b>1017</b>	Electronic Arts, Inc., Madden 2000 Reference Card (1999) (“Madden 2000 Card”)
<b>1018</b>	Electronic Arts, Inc., Madden 2000 Reference Manual (1999) (“Madden 2000 Manual”)
<b>1019</b>	EA SPORTS Madden NFL(TM) 2000 Roster Update – EA Super Bowl (01/28/00) ReadMe text file (“Super Bowl Update”)
<b>1020</b>	U.S. Pat. Pub. No. 2003/0234787 to Hines, <i>et al.</i> (“Hines”)
<b>1021</b>	Resume of Expert David Crane
<b>1022</b>	Listing of Patents and Patent Applications Related to the ’575 Patent
<b>1023</b>	EA Sports Australian Base Cricket World Cup 1999 Home Page, archived at Wayback Machine on February 29, 2000 (“Cricket 99 Main”)
<b>1024</b>	EA Sports Australian Base Home Page archived at Wayback Machine on May 11, 2000 (“EA Sports Main”)
<b>1025</b>	EA Sports Australian Base Cricket World Cup 1999 News Page, archived at Wayback Machine on June 6, 2000 (“Cricket 99 News”)
<b>1026</b>	“CRICKET WORLD CUP 99 UNOFFICIAL FAQ,” VERSION 1.0917, 17 September, 1999, archived at Wayback Machine on October 26, 2000 (“Cricket 99 FAQs”)
<b>1027</b>	Declaration of Christopher Butler No. 2 <sup>2</sup>
<b>1028</b>	Declaration of Ryan Ferwerda

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<sup>2</sup> The Declaration of Christopher Butler No. 2 (EA-1027) is submitted as an evidentiary declaration for Exhibits EA-1007 to EA-1009, EA-1023, EA-1024, and EA-1026. Exhibit A of EA-1027 includes EA-1007 to EA-1009, EA-1023, EA-1024, and evidentiary documents referenced in Exhibit EA-1004. Exhibit B of EA-1027 is EA-1026.

<b><i>EA Exhibit #</i></b>	<b><i>Description</i></b>
<b>1029</b>	Declaration of David Witts
<b>1030</b>	Nathan's File Collection web page archived at Wayback Machine on February 4, 2002
<b>1031</b>	FIFA-MRA, Support Home page, archived at Wayback Machine on February 4, 2001
<b>1032</b>	FIFA-MRA, Home page, archived at Wayback Machine on March 31, 2001
<b>1033</b>	FIFA-MRA, Support-About page, archived at Wayback Machine on April 10, 2001
<b>1034</b>	FIFA 2001 Online –News Archive Home page, archived at Wayback Machine on June 3, 2001
<b>1035</b>	FIFA 2001 Online –News Archive Home page, archived at Wayback Machine on October 21, 2001

## **I. INTRODUCTION**

Pursuant to 35 U.S.C. § 311 *et seq.* and 37 C.F.R. § 42.1 *et seq.*, Electronic Arts Inc. (“Petitioner” or “EA”) hereby petitions for an *inter partes* review of U.S. Patent No. 8,540,575 (“the ’575 Patent”). Petitioner respectfully submits that Claims 1-35 (the “Challenged Claims”) of the ’575 Patent are unpatentable under 35 U.S.C. § 103 in view of the prior art references discussed herein. This Petition demonstrates by a preponderance of the evidence that there is a reasonable likelihood that Petitioner will prevail with respect to at least one of these claims. Accordingly, it is respectfully requested that the Board institute an *inter partes* review of the ’575 Patent pursuant to 37 C.F.R. § 42.108.

## **II. OVERVIEW**

The Challenged Claims are unpatentable as obvious over the prior art. The claims are directed to a combination of conventional components to perform conventional functions that were well-known in the art of sports video games, including updating parameters that control the operation of sports video games after production and release. Specifically, it was well-known to provide updates for sports video games that included updated parameters for video game character performances in order to provide an accurate simulation of the performance of the corresponding real-life athlete. Choosing from a finite number of identified, updatable parameters is a predictable solution to providing a simulation of a real-

life gaming experience with a reasonable expectation of success and is therefore not invention, but rather an obvious combination of known features.

The Background of the '575 Patent acknowledges that prior art sports video games existed to simulate real-life sporting events and that these prior art video games simulated the real-life visual attributes of specific real-life athletes, uniforms, and stadiums, the real-life composition of specific teams, and the real-life performance in games or matches by such athletes, by storing corresponding visual, composition, and performance parameters on the video game medium. EA-1001, 1:7-22<sup>3</sup>, 1:23-31, 1:35-41, 1:48-61; EA-1004, ¶¶ 31-32. The '575 Patent also acknowledges that the performance parameters in these prior art video games “*cause* the different [video game] characters to replicate their real-life counterparts’ performance.” EA-1001, 1:20-22 (emphasis added), 1:26-31, 1:35-38, 1:52-56; EA-1004, ¶ 33. The Background identifies that a problem in these prior art games was that such visual and performance parameters were fixed at the time that the game was produced. EA-1001, 1:23-33; EA-1004, ¶ 34. However, the '575 Patent explains that the visual appearance of such real-life athletes, stadiums and uniforms, the composition of such real-life teams, and the performance in games or matches by such real-life athletes, may continue to change after the video game is produced and thus may not reflect the real-life

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<sup>3</sup> All citations to U.S. Patents are referenced by column: line numbers.

visual attributes and performance characteristics at the time the game is being played. EA-1001, 1:62-2:8; EA-1004, ¶ 34.

The identified solution to this problem was to provide the ability for a sports video game to receive updates for the visual and performance parameters so that the game reflected the real-life visual attributes, and the characters in the game reflected the real-life performance characteristics, at the time the game is being played. EA-1001, 2:11-21; EA-1004, ¶¶ 35-37. However, this problem had been already identified in prior art sports video game systems, and the same solution had already been described and demonstrated. EA-1004, ¶ 78. Accordingly, during prosecution, the Examiner cited several of such prior art systems. EA-1003, 103-113; §§ VI.B, F. In response to the rejections, the Applicant argued that while the cited art disclosed updating of team composition and team performance parameters annually, none of the cited art disclosed updating an individual character's performance parameters, more than once during a single sports season, in order to change the performance of the character in the game over the course of a season. EA-1002, 404-411, 60-70. Although the Examiner maintained obviousness rejections over the cited art, during an appeal, the BPAI overturned the rejections, finding that the Examiner had not identified where character performance parameters had been updated, more than once during a single sports season, so that the performance of the video game character more accurately simulated the

performance of the corresponding real-life athlete in the cited art and thus had failed to make a prima facie case of obviousness. *Id.*, 35-44.

However, as described in more detail below, the updating of character performance parameters in sports video games, and using those updated parameters so that the performance of the video game character more accurately simulates the performance of the corresponding real-life athlete, including during a single sports season, did exist in the prior art. EA-1004, ¶¶ 9, 32-33, 62-79, 96-144, 214-235, 265-269. Petitioner is a global leader in the video game industry. It makes some of the most popular sports games in the industry, including *Madden NFL* and *FIFA*. Petitioner submits five prior art publications describing, in part, the features of *Madden NFL* for updating character performance and team roster parameters weekly during a real-life NFL season, and using those updated parameters so that the video game rosters correspond to the real-life rosters and the performance of the video game characters more accurately simulates the performance of the corresponding real-life NFL athletes. EA-1015-1018; EA-1004, ¶¶ 96-127. Petitioner also submits an additional prior art printed publication written by users of *FIFA* that describes, in part, the features of *FIFA* for updating visual (e.g. appearance of stadiums or characters) and character performance parameters, during a real-life FIFA season, so that the *FIFA* game more closely simulated the real-life visual attributes, and the characters in the game more closely simulated the

real-life athlete's performance characteristics, at the time the game is being played. EA-1007-1009; EA-1027; EA-1004, ¶¶ 189-202. Petitioner further submits a prior art patent publication to Swanberg (EA-1011) that describes, in part, features for updating video game character performance parameters to more closely simulate changed athlete performance attributes during a real-life season, and a prior art publication to Hines (EA-1020) that describes, in part, features for collecting and storing updated basketball athlete performance parameters. *Id.*, ¶ 214-222, 263-69.

The combination of the publications describing the features of *Madden NFL*, the features of *FIFA*, Swanberg, and/or Hines, teach all of the limitations of the Challenged Claims. EA-1004, ¶ 9. These references are all directed to the same problem as the '575 Patent (providing a realistic video game experience) and propose the same solution (providing updated video game parameters to increase realism). *Id.*, ¶¶ 78, 96-127, 189-202, 214-222. Thus, it is simply a design choice to select from a finite number of identified, updatable video game parameters to achieve a predictable solution with a reasonable expectation of success and therefore this design choice of available features is not invention, but rather an obvious combination of known features. *Id.*, ¶¶ 45-46, 78, 202, 269; §§VI.A, F.

### **III. MANDATORY NOTICES UNDER 37 C.F.R. §42.8**

#### **A. Real Party-in-Interest (37 C.F.R. § 42.8(b)(1))**

The real party-in-interest in this Petition is Electronic Arts Inc.

**B. Related Matters (37 C.F.R. § 42.8(b)(2))**

**1. Judicial Matters**

As of the filing date of this Petition and to the best knowledge of Petitioner, the '575 Patent is involved in *White Knuckle Gaming, LLC v. Electronic Arts Inc.*, D. Utah, Case No. 1:15-cv-00150-JNP (filed on November 25, 2015).

**2. Administrative Matters:**

As of the filing date of this Petition and to the best knowledge of Petitioner, the '575 Patent is not involved in any administrative matters. A child patent of the '575 Patent (U.S. Pat. No. 8,529,350) is involved in IPR2015-01595 which was instituted by the Board on January 14, 2016. *See* IPR2015-01595, Paper 11.

**3. Related Patents**

As of the filing date of this Petition and to the best knowledge of Petitioner, the '575 Patent is related to U.S. Pat. No. 8,529,350 and U.S. Pat. App. Nos. 14/034,530, 14/790,902, and 14/991,913. *See* EA-1022.

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**D. Notice of Service Information (37 C.F.R. § 42.8(b)(4)):**

Please direct all correspondence to lead and back-up counsel at the above addresses. Petitioner consents to electronic service at the email addresses above.

**IV. GROUNDS FOR STANDING (37 C.F.R. § 42.104(A))**

Petitioner certifies that the Patent for which review is sought is available for *inter partes* review and that Petitioner is not barred or estopped from requesting an *inter partes* review of the Challenged Claims on the grounds identified herein. 37 C.F.R. § 42.104(a). This Petition is filed pursuant to 37 C.F.R. § 42.106(a).

**V. RELIEF REQUESTED (37 C.F.R. § 42.22(A))**

Petitioner respectfully requests institution of an *inter partes* review pursuant to 37 C.F.R. § 42.108 and cancellation of all claims of the '575 Patent.

**VI. REASONS FOR THE REQUESTED RELIEF**

As explained in §§ II and VII-VIII of this Petition and in the attached Declaration of Petitioner's Expert, David Crane, ("Crane," EA-1004), the systems and methods for updating video game parameters in sports video games described and claimed in the '575 Patent are obvious over the prior art. As detailed in §§ II and VII-VIII, this Petition and Crane explain where each element is found in the prior art and why each claim would have been obvious to a person of ordinary skill in the art ("POSA") at the time of the invention.

### **A. Summary of the '575 Patent**

The '575 Patent is related generally to “video games [that] attempt to recreate realistic situations” such as, “[f]or example video games simulating sports games and matches.” EA-1001, 1:6-8, EA-1004, ¶ 31. The '575 Patent acknowledges that prior art sports video games existed to play simulations of real-life sporting events and included and stored realistic visual video game parameters:

Many video games attempt to recreate realistic situations . . . [V]ideo games simulating sports games and matches . . . commonly even show actual leagues with correct teams. Hometowns may be shown, with realistic stadiums. Athletes' uniforms represent professional athletes' actual uniforms. Specific athletes are represented . . . including such details as jersey numbers, physical stature and even facial features.

*Id.*, 1:7-15, 1:48-52, 1:56-60, 1:38-41; 4:41-43; EA-1004, ¶ 31.

The '575 Patent acknowledges that it was also well known to include and store video game character performance parameters (e.g. batting, homerun, points scored, shots, or rushing yard, average, etc.) associated with real-life athlete or team performance characteristics and tendencies (e.g. hitting homeruns, basketball dunking, free-throw shooting) of real-life athletes:

The video game characters have characteristics approximating their real life counterparts. For example, the video game Shaquille may be very good at dunking the basketball but horrible at shooting free throws. *Id.*, 1:16-20; *see also* 1:26-31.

Performance characteristics are emulated. For example, in a baseball video game, an individual professional athlete's batting average may be used to influence a video game character's batting performance.

*Id.*, 1:52-56; *see also* 4:66-5:1, 5:4-5, 5:7-9, 5:13-15; EA-1004, ¶ 32.

The '575 Patent acknowledges that these performance parameters were used in these prior art games to change the performance of the video game characters and simulate the actual performance of the corresponding real-life athletes:

Parameters are stored on the video game medium that cause the different characters to replicate their real life counterparts' performance. *Id.*, 1:20-22, *see also* 1:26-31, 1:52-56.

[M]ore and more parameters are added to distinguish one character from another and to more accurately simulate the performance of real life athletes. *Id.*, 1:35-38; EA-1004, ¶ 33.

The specification of the '575 Patent identifies that the problem with these prior art sports video games was that these well-known video game parameters could not be updated between annual releases of the video game:

Video game producers typically produce professional sports video games once per year. The performance parameters and visual aspects are typically specified based on the most recent year . . . A problem with this system is that **the performance parameters and visual aspects of a video game are fixed at the time the video game is produced . . .** The problem remains that **visual aspects and performance characteristics of real life sports players, teams and environments change throughout the year.** *Id.*, 1:23-25, 1:31-35, 1:42-44 (emphasis added), 1:62-2:5; 4:52-55, 5:7-18; EA-1004, ¶ 34.

The Summary section of the '575 Patent identifies the solution to set the invention apart from these prior art sports video games and solve this problem was to implement systems and methods that record real-world events that may influence a video game attribute onto a server as updated parameters, and connect the video game to the server to download and store the updated parameters:

Accordingly, a system and method for updating parameters of a video game is provided. As events occur in the real world that may influence a game attribute, a parameter is recorded on a server. A video game player may connect to the server and download the parameter. The parameter is stored by the video game and changes an attribute of the video game. EA-1001, 2:11-16; EA-1004, ¶ 35.

The Summary of the '575 Patent describes that once the updated parameters are downloaded and stored on a video game machine, the corresponding visual attributes in the video game, and performance characteristics of video game characters, change. *Id.*, 2:14-16; 2:17-21; EA-1004, ¶ 36. The '575 Patent does not disclose *how* the updated parameters change these visual attributes or performance characteristics; rather it simply discloses that they do. EA-1004, ¶ 37.

Aspects of the preferred embodiments that generally correspond to features in the Challenged Claims are discussed below. The video game system includes a video game that is played in video game machine that communicates with a data server via a network. EA-1004, ¶ 38. In the preferred embodiment, the video game machine includes a central processing unit (CPU), a drive for receiving a

video game medium (e.g., CD/DVD disc), a user interface such as a video game controller to receive inputs while the user is playing the video game, a local memory (e.g., read only memory (ROM)), random access memory (RAM), and a modem to connect to the network, such as the Internet. EA-1001, FIGS. 1-3, 2:66, 3:4-5, 3:15-17, 3:34-36, 3:43-47, 3:51-54, 4:6-14, 4:23-29; EA-1004, ¶ 39. The data server stores updated video game parameters and connects to network to communicate these updated parameters to the video game machine. EA-1001, FIGS. 1-3, 2:64-66, 3:36-39, 3:51-62, 4:23-26, 5:3-4; EA-1004, ¶ 40.

Each of the embodiments of the '575 Patent discloses the following combination to enable more realistic video game play: (1) a data server communicating new or updated video game parameters over (2) a network to (3) a video game machine operating a video game. EA-1001, FIGS. 1-3, 2:11-21, 2:64-3:7, 3:51-4:6, 4:49-57, 4:64-5:6; EA-1004, ¶ 40-43. The '575 Patent describes that this same combination was used to request, download, and store in local memory of the CPU, various types of updated video game parameters including updated: (a) performance parameters for a particular athlete or a particular team (EA-1001, Abstract, 1:63-65, 2:1-3, 2:60-63, 2:67-3:2, 3:13-14, 3:57-65, 5:1-4, 5:9-11, 5:58-64, 6:11-13, 7:42-44), team parameters for a particular team or all teams (*Id.*, 1:64-65, 4:64-66, 7:40-42), stadium or field parameters (*Id.*, 1:66, 4:43-53), and other parameters (e.g., referees, announcers, etc.) (*Id.*, 1:66, 4:59-63). EA-1004, ¶ 44.

Although the Applicant argued the patentability of updating “character performance parameters” over updating other types of video game parameters, the ’575 Patent does not make any distinction that the updating of character performance parameters is more technologically challenging than updating other parameters such as team rosters. EA-1004, ¶ 45. Rather, the ’575 Patent treats all updated parameters the same and identifies *the exact same system architecture and method* for updating each of the different types of parameters. *Id.*, ¶ 45. Indeed, the ’575 Patent describes that the exact same system architecture and method used to change what is being *displayed* in the video game is also used to change the *performance* of video game characters and teams. *Id.*, ¶ 46.

## **B. Prosecution History**

As set forth in the specification, each of the initial independent claims of the ’575 Patent claimed the identical system architecture and method for updating each of the different types of disclosed parameters. EA-1003, 257-261; EA-1004, ¶ 80. In response to anticipation rejections of all claims, the Applicant limited the independent claims and argued that the type of updated parameters (“character performance parameters” and “team player parameters”) and the timing of such updating (during “a single sports season”), distinguished the cited art. EA-1003, 146-158. The Examiner finally rejected these features as obvious over NFL 2K1 GameFaqs on Dreamcast (EA-1005, 370-413) (“NFL 2K1”) in view of Madden

NFL 2003 Manual (*id.*, 414-434) (“Madden03”). EA-1003, 103-113. In response, the Applicant further narrowed the type of updated parameters in the independent claims to “character performance parameters” and argued that the timing and frequency of such updating (more than once during a single sports season) distinguished the prior art which described updating “stats” and “rosters” annually. *Id.*, 35-47, 2-13; *see also* EA-1002, 385-421. The Examiner rejected these features as obvious over NBA 2K1 Manual for Dreamcast (EA-1005, 435-452) (“NBA 2K1”) in view of NFL 2K1 and Nintendo Entertainment System’s Tecmo Super Bowl (“Tecmo Super Bowl”) (*id.*, 748-751). EA-1002, 303-315.

The Applicant appealed the Examiner’s rejections to the Board of Patent Appeals and Interferences (“BPAI”). *Id.*, 113-121, 126-279, 54-71, 287-291. On May 2, 2013, the BPAI reversed the Examiner and found, in part, that:

NBA 2K1 . . . explicitly discloses updating current rosters to the NBA game . . . NFL 2K1 . . . discloses connecting to the net to get the new update[d] [] rosters with new and improved stats . . . Tecmo Super Bowl . . . disclose[s] each team plays one game every week during the season and . . . a player’s data that includes player’s condition, record, and abilities. *Id.*, 38-42;

[T]here is no evidence of the alleged fact that merely because video game characters have attributes, as a result, the ‘roster’ update in NBA 2K1 changes those attributes . . . [and] there is inadequate evidence that the incorporation of updated stats [in NFL 2K1] changes

video game character performance parameters or the play of either the video game characters or the sports game. *Id.*, 39-40;

Tecmo Super Bowl includes abilities or attributes, such as “accuracy of passing” which is a type of video game character performance parameter . . . However, there is no evidence that a video game character’s abilities or attributes change. *Id.*, 40;

Thus, for the foregoing reasons, the . . . Examiner’s rejection lacks rational underpinning . . . The Examiner has not adequately explained how modifying NBA 2K1 with the teachings of NFL 2K1 and Tecmo Super Bowl would . . . satisfy[] . . . updating a video game to change the manner in which video game characters perform in the video game based on updated video game character performance parameters.*Id.*,42.

Further to this decision, the Examiner allowed the application leading to the ’575 Patent. *Id.*, 18-25. However, as set forth below, the “rational underpinning” that the BPAI found lacking in the Examiner’s combination of NBA2K1 with NFL2K1 and Tecmo Super Bowl is explicitly found in Petitioner’s combination of its *Madden NFL 2000* references and in Swanberg. §§ VI.F, VIII.A-VIII.D.

### **C. Claim Construction**

A proposed interpretation for certain claim terms is provided below. It is noted that this interpretation is applicable to the *inter partes* review sought herein only and should not be construed as constituting, in whole or in part, the Petitioner’s own interpretation of any claims for any other purposes, including any litigation. Accordingly, Petitioner expressly reserves the right to present an

interpretation of a claim term in other proceedings, which is different, in whole or in part, of that presented in this Petition. Petitioner asserts that the claim terms should be given their plain and ordinary meaning, but provides a meaning for the term below based on the antecedent basis of a claim term.

**1. “the at least weekly transmissions”**

This phrase is recited in Claims 24 and 25. A POSA would understand this phrase to mean “the at least daily transmissions” in claim 25. EA-1004, ¶ 95.

This construction is consistent with the language of claim 25 which recites, in part “at least a portion of *the updated transmissions are carried out at least daily* during at least a portion of the single sports season; and ***the at least weekly transmissions*** include video game character performance parameters based at least in part on real-life performances of the particular real-life athlete *that occurred at least within the prior day.*” EA-1001, 11:26-33 (emphasis added). In contrast, claim 24 recites, in part “at least a portion of *the transmissions are carried out at least weekly* during at least a portion of the single sports season; and ***the at least weekly transmissions*** include video game character performance parameters based at least in part on real-life performances of the particular real-life athlete *that occurred at least within the prior week.*” *Id.*, 11:18-25. Given the language of claim 25, and the usage of this phrase in claim 24, it is clear that the antecedent basis for “*the at least weekly transmissions*” is only provided by the earlier recited

phrase “a portion of the updated transmissions are carried out at least daily” and no other periodicity of transmissions is discussed in this claim. EA-1004, ¶¶ 91-95. Thus, a POSA would understand the phrase “the at least weekly transmissions” to mean “the at least daily transmissions” in the context of claim 25<sup>4</sup>. *Id.*, ¶ 95.

**D. Priority Date of the Challenged Claims**

The '575 Patent application (EA-1002, EA-1003) was filed on October 8, 2002 and does not claim priority to any other application. EA-1003, 237-280.

**E. Person of Ordinary Skill in the Art**

A POSA is a hypothetical person who is presumed to be aware of all pertinent prior art, thinks along conventional wisdom in the art, and is a person of ordinary creativity. With respect to the '575 Patent, a POSA in the October 8, 2002 timeframe would have had programming experience in the field of video games, including sports video games, and related software and game systems, and knowledge of the video game community literature concerning the same. EA-1004, ¶¶ 21-22. The experience and education levels may vary between persons of ordinary skill, with some persons having three years of experience, and others

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<sup>4</sup> To the extent the Board finds that “the at least weekly transmissions” in claim 25 is nonsensical and lacks clarity when read in light of the specification, then Petitioner submits claim 25 is indefinite. *See* IPR2015-01595, Paper 11, 5-7.

holding a Bachelor's degree in electrical engineering, electronic engineering, or computer science, but having only one to two years of experience. *Id.*

#### **F. State of the Art**

The following section describes the state of the art in sports video games as of the effective filing date, October 2002 (*see* § VI.D, *supra*). EA-1004, ¶¶ 47-79. The prior art references discussed in this section are not relied on by Petitioner as a grounds for invalidity. Instead these prior art references, and discussions of what was known to a POSA, provide a general description of the state of the art at the time of the invention, provide additional motivation to combine the primary references of Madden 2000 and Swanberg with the other references cited herein, and provide support for why a POSA would have a reasonable expectation of success in combining the teachings of the references. These additional prior art references identified in this section are exemplary in nature, relied upon by Mr. Crane, are properly included to provide factual support for his opinions, and can be properly considered by the Board to show the general state of the art, to identify motivation to combine the teachings of the primary references, to support reasonable expectation of success, to rebut any claims of unpredictability in the art, and to rebut any claims of unexpected results.

As of October 2002, the state of the art pertinent to the '575 Patent included realistic sports video games such as soccer, basketball, baseball, football, and

cricket games. EA-1004, ¶ 47. For example, the '575 Patent describes that basketball, baseball, and football sports video games that included realistic league and team composition, stadium, field, uniform, and character visual appearance, and character performance, video game parameters, were known in the prior art. § VI.A; EA-1004, ¶¶ 31,62. Regarding character performance parameters, the '575 Patent acknowledges that these types of parameters were used in prior art sports games to change the performance of the characters and simulate the actual performance of the corresponding real-life athletes. § VI.A; EA-1004, ¶¶ 33,63. The '575 Patent acknowledges that determining character performance parameters (e.g. homerun, batting, points scored, shots, or rush yards, average) and tendencies (e.g. hitting homeruns, free-throw shooting) using other performance parameters (e.g. home runs, at bats, games, points, shots, rush yards) was also known in the prior art. § VI.A; EA-1001, 1:26-31, 54-56, 4:66-5:16; EA-1004, ¶¶ 32,64.

At the time of the invention, a commonly known design constraint in sports video games including sports video game parameters was that such sports video game parameters required updating in order to be compatible, effective, and realistic. EA-1004, ¶ 67. It was widely known that sports video game parameter updates could be received over a network such as the Internet, for installation on the computer running such sports video game software. *Id.*, ¶ 68. Thus, the same

problem described in the '575 Patent was well known, and the same solution described in the '575 Patent was already utilized to solve this problem. *Id.*, ¶ 78.

For example, as evidenced by the prior art publications NFL2K1 (EA-1005, 370-413) and NBA2K1 (*id.*, 435-452), cited by the Examiner during prosecution of the application leading to the '575 Patent (§ VI.B; EA-1002, EA-1003), it was well known to store updated team composition and performance parameters in a database accessible over a network so that a user could download the updated parameters to their computer to increase realism in the video game being played:

From this menu, you can download the updated roster for your team. This is useful if you do not want to buy NFL 2K2 and you would like to get the new updated rosters with new and improved stats. *Id.*, 378 One of the other benefits to going online with NBA 2K1 is picking up the latest rosters. Don't worry about any last minute trades in the NBA. Just go online and download the most current roster to instantly update your game. *Id.*, 448; *see id.*, 53, 384; EA-1004, ¶ 69.

As a further example, Petitioner submits four prior art publications describing features of the 1999 version of Petitioner's video game called "Cricket World Cup" ("CWC 99") including the features for updating various video game parameters to increase realism in CWC 99. For example, an archived printout from Petitioner's website discloses CWC 99 included video game parameters relating to "Real teams, Real players, Real stadiums (including Lord's, The Oval, and Old Trafford) from the biggest event in the cricketing world." EA-1023, 1;

EA-1026, §§ 2.1, 4.10; EA-1027; EA-1004, ¶ 72. The prior art publications also disclose Petitioner's planned system for updating such parameters:

The most accurate and up to date team and player ratings available from PA Sports, the world's leading supplier of sporting statistics. For the PC version, these statistics will be updatable regularly via dedicated EA SPORTS 'Live' web sites enabling gamers to quickly download actual up to the minute world cup tournament statistics, including player injuries, form, team selections, and weather conditions. EA-1023, 1; EA-1027; EA-1004, ¶ 73.

The prior art publications from Petitioner's website also disclose that Petitioner hosted two video game parameter updates ("v1.0" and "v1.1") on servers supporting such websites to enable CWC 99 users to download such updates to their PCs over the Internet. EA-1024, 1; EA-1025, 1-2; EA-1010; EA-1004, ¶ 74. The v1.0 update included parameter updates such as "updates to actual CWC squads including updated player photos, commentary, profiles and stats," and the v1.1 update included parameter updates such as "all player stats updated to reflect their performance during the World Cup." EA-1025, 1-2; EA-1010; EA-1004, ¶ 74-77. As shown by these examples, the same problem described in the '575 Patent—that video game parameters could not be updated between annual releases of a video game—and the identical solution described in the '575 Patent—using a combination of a data server communicating updated video game parameters over a network to a video game machine operating a video game—was well-known to

solve such a problem and achieve more realistic gameplay. EA-1004, ¶ 78. It was also well-known that any realistic sports video game that is downloading updated character performance parameters does so for the purpose of more accurately simulating the actual performance of the real-life athlete. *Id.*

Thus, at the time of the invention of '575 Patent, the state of the art of sports video games was fairly well-developed including the development, distribution, and use of sports video games with realistic video game parameters such as realistic character, stadium, field, team, and uniform, visual parameters, and character and team performance parameters, the downloading of updated video game parameters over a network, and the updating of such sports video games using the downloaded parameters to achieve more realistic gameplay. *Id.*, ¶ 79.

## **VII. IDENTIFICATION OF CHALLENGES**

### **A. Challenged Claims**

All 35 claims of the '575 Patent are challenged in this Petition.

### **B. Statutory Grounds for Challenges**

The Challenges are set forth in detail below and summarized as follows:

<b>Ground</b>	<b>Claims</b>	<b>Basis</b>	<b>Reference</b>
1	1-3, 5-6, 8, 11-12, 14-17, 22-25, 27-31	103	Madden 2000 Manual; Madden 2000 Card; Madden 2000 Updates; Playoff Week 1 Update; Super Bowl Update
2	4, 7, 9-10, 21	103	Madden 2000 Manual; Madden 2000 Card; Madden 2000 Updates; Playoff Week 1 Update; Super Bowl Update; FIFA 2001 News

3	1-3, 11-12, 23-31	103	Swanberg
4	13, 18-20, 32-35	103	Swanberg; Hines

**Challenge 1:** Claims 1-3, 5-6, 8, 11-17, 22-25, and 27-31 are obvious under 35 U.S.C. § 103 over Petitioner’s user manual (EA-1018) (“Madden 2000 Manual”), reference card (EA-1017) (“Madden 2000 Card”), archived Madden 2000 Downloads web page (“Madden 2000 Updates”) (EA-1015), Playoff Week 1 Update text file (“Playoff Week 1 Update”) (EA-1016) downloaded from Madden 2000 Updates, and EA Super Bowl Update text file (“Super Bowl Update”) (EA-1019) downloaded from Madden 2000 Updates. All of these written prior art references are related to the operation of the 2000 version of Petitioner’s Madden NFL game for PCs (“*Madden NFL 2000*”) and will be collectively referred to as the “*Madden NFL 2000* References”. Madden 2000 Manual and Madden 2000 Card have copyright dates of 1999 and were distributed publicly at least as early as August 1999 with each copy of *Madden NFL 2000*. EA-1018, 40; EA-1017, 15; EA-1028, ¶ 5. Thus, these documents are printed publications at least as early as August 1999, and are therefore available as prior art under 35 U.S.C. § 102(b). The Madden 2000 Updates website, the links thereon, and the various zip files (including Playoff Week 1 Update and Super Bowl Update) that are selected for download from such links, were publicly available during the 2000 NFL season as of the dates identified on Madden 2000 Updates, which is currently available through the Wayback Machine with an archived date of March 2, 2000. EA-1015,

1; EA-1016; EA-1019; EA-1027; EA-1028, ¶¶ 7-11; EA-1004, ¶¶ 110-125. Thus, Madden 2000 Updates, Playoff Week 1 Update, and Super Bowl Update, are printed publications at least as early as March 2000, and are thus available as prior art at least under 35 U.S.C. § 102(b). None of these references were cited, applied by, or disclosed to, the Examiner during prosecution of the '575 Patent.

**Challenge 2:** Claims 4, 7, 9-10, and 21 are obvious under 35 U.S.C. § 103 over Petitioner's *Madden NFL 2000* references in view of a prior art publication written by users of Petitioner's *FIFA 2001* game for PCs (EA-1007 - EA-1009) ("FIFA 2001 News"). FIFA 2001 News is a collection of web pages from a news archive of the publicly accessible FIFA 2001 Online website between September 2000 and June 2001, currently available through the Wayback Machine with archived dates of April 25, 2001 (EA-1008), June 17, 2001 (EA-1007), and July 26, 2001 (EA-1009). EA-1027; EA-1029, ¶¶ 15-18. Thus, FIFA 2001 News is collectively a printed publication at least as early as July 2001, and is available as prior art at least under 35 U.S.C. § 102(b). FIFA 2001 News was not cited, applied by, or disclosed to, the Examiner during prosecution of the '575 Patent.

**Challenge 3:** Claims 1-3, 11-12, and 23-31 are obvious under 35 U.S.C. § 103 over Swanberg (EA-1011). Swanberg is U.S. Pat Pub. No. 2002/0155893 titled "Computerized Trading Card System", published on October 24, 2002, filed on March 21, 2002 as a continuation-in-part of, and claims priority to, Application

No. 09/472,042, filed on December 27, 1999. EA-1011, 1. As such, Swanberg is therefore available as prior art at least by March 21, 2002 under 35 U.S.C.

§ 102(e). Swanberg was not cited, applied by, or disclosed to, the Examiner during prosecution of the '575 Patent.

**Challenge 4:** Claims 13, 18-20, and 32-35 are obvious under 35 U.S.C. § 103 over Swanberg in view of Hines (EA-1020). Hines is U.S. Pat Pub. No. 2002/0155893 titled "Athletic Exchange Information System" published on December 25, 2003 and was filed on June 19, 2002 and is thus available as prior art at least under 35 U.S.C. § 102(e). EA-1020, 1. Hines was not cited, applied by, or disclosed to, the Examiner during prosecution of the '575 Patent.

**Statement of Non-Redundancy of the Grounds.** Petitioner submits that Grounds 1-2 (the "Madden Grounds"), and Grounds 3-4 (the "Swanberg Grounds"), are not redundant because: (1) the statutory bases are different (the Swanberg Grounds rely on prior art under § 102(e) while the Madden Grounds rely on prior art under § 102(b)), (2) there is no overlap in prior art, (3) Grounds 3 and 4 include claims not challenged in Ground 1 or 2, and Grounds 1 and 2 include claims not challenged in Grounds 3 or 4, (4) the Madden Grounds rely on non-patent publications where the Patent Owner may attempt to attack their priority date and public availability, and (5) Swanberg and Hines are published patent applications where the Patent Owner may attempt to swear behind their filing date.

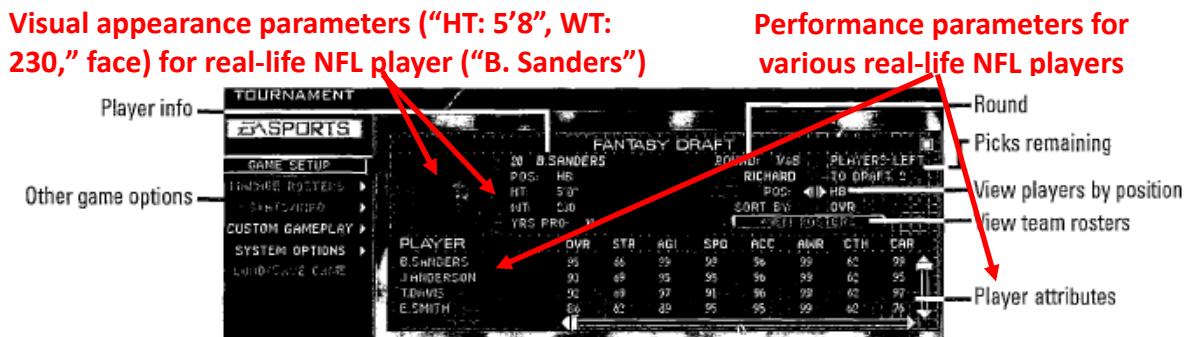
## VIII. IDENTIFICATION OF HOW THE CHALLENGED CLAIMS ARE UNPATENTABLE

### A. Challenge 1: Claims 1-3, 5-6, 8, 11-12, 14-17, 22-25, and 27-31 are Unpatentable over the *Madden NFL 2000* References

Claims 1-3, 5-6, 8, 11-12, 14-17, 22-25, and 27-31 are rendered obvious by the *Madden NFL 2000* References. EA-1004, ¶¶ 96-186.

#### 1. Madden 2000 Manual

Madden 2000 Manual describes a realistic video game simulating real-life NFL football gameplay while being played on a computer. EA-1004, ¶ 99. As shown in the below annotated excerpt, Madden 2000 Manual describes features of character parameters representing particular real-life NFL players, including visual appearance, and performance parameters based on each NFL player's respective particular appearance and performance in real-life, in *Madden NFL 2000*:

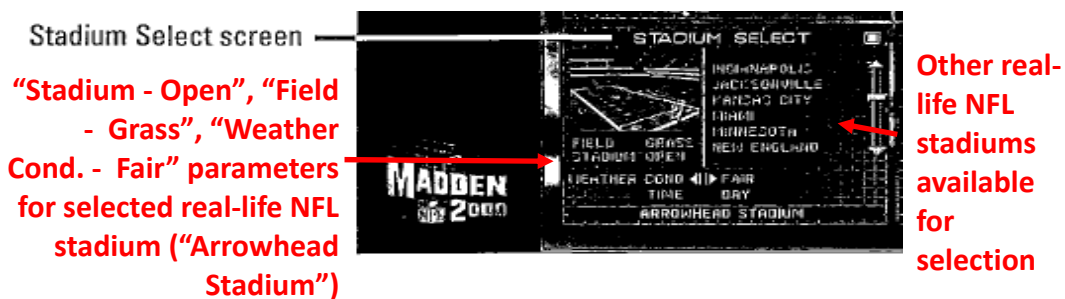


EA-1018 at 28 (annotated above), 13 ("C. Batch"), 19 ("player detail"), 26 ("player attributes"), 29 ("K. Stewart"), 32 ("rating abbreviations" for player attributes including Catching Ability, Ball Carrying Ability, Throwing Accuracy, Kicking Accuracy, etc.); EA-1004, ¶ 100. A POSA understands, as acknowledged by the '575 Patent, that these player attributes or ratings are used to change the

performance of the video game characters to simulate the actual performance of the corresponding real-life NFL athletes. §§ VI.A, VI.F; EA-1004, ¶¶ 101, 105.

Madden 2000 Manual also describes rules based on video game settings, options and modes selected by the user (EA-1018 at 7-8, 17-21, 22-29) and other types of downloadable video game parameters to control the operation of the video game such as, for example, team parameters based on real-life NFL teams (*id.* at 9-10 (“rating categories for the selected teams” (e.g., Redskins, Cowboys)), *id.* at 28 (“team rosters”), *id.* at 8, 31-32 (“Manage Rosters: “These changes take effect when you load a saved roster: view roster . . . trade player . . . sign player . . . release player”) included in *Madden NFL 2000*. EA-1004, ¶¶ 102, 104-105.

As illustrated in another excerpt (below), the reference also describes the selectable features of stadium (EA-1018 at 8-9) and selectable field parameters (*id.* at 20) representing particular real-life NFL stadiums (*id.* at 18-19), fields in such stadiums (*id.* at 20), weather (*id.* at 38-39), and the simulated effect of weather, on such stadiums, fields and gameplay, included in *Madden NFL 2000*:



EA-1018 at 9 (annotated above), 14, 31; EA-1004, ¶ 103.

## 2. Madden 2000 Card

Madden 2000 Card teaches the computer system hardware and software requirements and recommended configuration, including computer operating system, processor speed, RAM and ROM size, CD-ROM drive speed, controller type, modem/Internet connection speed, network configuration, procedures for using such a controller to install, start, and troubleshoot *Madden NFL 2000* on the computer. EA-1017 at 1-12; EA-1004, ¶ 109.

## 3. Madden 2000 Updates Including Playoff Week 1 Update and Super Bowl Update

Madden 2000 Updates is an archived webpage that identifies “Playoff Round Rosters” and “Madden NFL(TM) 2000 roster[s]” posted weekly by Petitioner, during the 2000 NFL season, for *Madden NFL 2000*, including Playoff Week 1 Update and Super Bowl Update, that were available for download from the Petitioner’s website to a user’s PC over the Internet. EA-1015, 1; EA-1027; EA-1028, ¶¶ 7-8, 10-11; EA-1004, ¶¶ 110-116.

Download the latest Playoff Round Rosters now!

<a href="#">PlayoffWeek1.zip (429kb)</a>	01/06/00
<a href="#">PlayoffWeek2.zip (429kb)</a>	01/20/00
<a href="#">PlayoffWeek3.zip (429kb)</a>	01/20/00
<a href="#">EASuperBowl.zip (429kb)</a>	01/28/00

Download the latest Madden NFL(TM) 2000 roster now!

<a href="#">EAWeek8.zip (427kb)</a>	11/04/99
<a href="#">EAWeek9.zip (427kb)</a>	11/08/99
<a href="#">EAWeek10.zip (428kb)</a>	11/12/99
<a href="#">EAWeek11.zip (428kb)</a>	11/18/99
<a href="#">EAWeek12.zip (428kb)</a>	12/03/99
<a href="#">EAWeek13.zip (428kb)</a>	12/03/99
<a href="#">EAWeek14.zip (428kb)</a>	12/09/99
<a href="#">EAWeek15.zip (4.28kb)</a>	12/22/99
<a href="#">EAWeek16.zip (428kb)</a>	12/22/99

Playoff Week 1 Update describes “[t]his Roster [Update] is the first with adjusted rosters *and player abilities* leading into the NFL playoffs. *Each week the roster file will be updated to denote player performance in each eligible teams*

*playoff game,*” and is “current as of 01/07/2000” and Super Bowl Update describes “this Roster [Update] includes adjusted rosters *and player abilities including performance during the NFL playoffs,*” and is “current as of 01/28/2000”. EA-1016, 2 (emphasis added); EA-1019, 2 (emphasis added); EA-1004, ¶ 117-123. Playoff Week 1 Update and Super Bowl Update describe that the Updates are saved to the directory structure of *Madden NFL 2000*, and selected and loaded into *Madden NFL 2000* in the “Manage roster” menu during execution of the game. EA-1016, 2; EA-1019, 2; EA-1018, 8, 31-32, 34; EA-1004, ¶ 124. A POSA understands, as acknowledged by the ’575 Patent, that these downloaded and installed “adjusted player abilities” changed the manner in which the characters performed in *Madden NFL 2000* to more closely simulate the actual performance of the corresponding real-life NFL athletes during NFL games. EA-1004, ¶ 125.

#### **4. The Combinability of the *Madden NFL 2000* References**

The *Madden NFL 2000* References describe features and operation of the *Madden NFL 2000* video game system, and whose teachings are intended to be combined to allow full functionality and realism of the video game. *Id.*, ¶ 126-127. Because the references are written to be combined, evidence of the reasonableness of the combination, predictably of the solution and probability of success is firmly and undisputedly established. *Id.*

**Claim 1: [1.0] *A game medium configured to provide a sports video game in conjunction with a video game machine,***

Madden 2000 Manual in view of Madden 2000 Card discloses this limitation. EA-1004, ¶¶ 128-129. Madden 2000 Manual describes the features (e.g. rules, parameters) of *Madden NFL 2000*. § VIII.A.1; EA-1004, ¶ 128. Madden 2000 Card describes that *Madden NFL 2000* is stored on a CD-ROM that “must be in the [CD-ROM drive of the PC] to install or run the game,” requires “32 MB RAM” and “at least 50 MB free hard disk space,” and includes various program files loaded into RAM for playing the game. § VIII.A.2; EA-1017 at 1, 4-7, 9; EA-1004, ¶ 128.

**[1.0.1] *the sports video game including video game rules and video game character parameters, the video game character parameters including video game character performance parameters associated with individual video game characters, [1.0.2] the game medium being configured to cause the video game machine to perform a method comprising:***

Madden 2000 Manual in view of Madden 2000 Card discloses these limitations. § VIII.A.4 [1.0]; EA-1004, ¶ 130. Madden 2000 Manual describes video game rules and parameters of *Madden NFL 2000* including visual appearance and performance parameters of individual video game characters that simulate the particular appearance and performance of real-life NFL players (e.g., physical appearance such as height, weight, face, and performance attributes) as being included on the CD-ROM. §§ VIII.A.1-2; EA-1004, ¶ 130.

**[1.1] *loading video game data stored by the game medium into a random access memory of the video game machine for playing the video game,***

Madden 2000 Manual in view of Madden 2000 Card discloses this limitation. §§ VIII.A.1-2, 4 [1.0]; EA-1004, ¶ 131.

**[1.1.1] the video game data including the video game rules and a particular video game character performance parameter associated with a particular individual video game character associated with a particular real-life sports athlete, [1.1.2] wherein the particular video game performance parameter is based at least in part on a real-life performance of the particular real-life sports athlete playing in one or more real-life sporting events, [1.1.3] the particular video game character performance parameter affecting the manner in which the particular individual video game character performs in the sports video game;**

Madden 2000 Manual in view of Playoff Week 1 Update discloses these limitations. § VIII.A.1 (e.g., performance attributes (e.g. Speed, Catching Ability, Ball Carrying Ability, etc.) of real-life athletes B. Sanders, J. Anderson, T. Davis, E. Smith), 3 (disclosing character performance parameters denote real-life player performances in real life NFL games); [1.0.1]; EA-1004, ¶¶ 132-133. Madden 2000 Manual and Playoff Week 1 Update each disclose performance parameters of individual characters that are based in part on real-life performances of the particular real-life athletes in real-life NFL games. EA-1004, ¶ 132. These parameters are used to change the performance of the video game characters to simulate the actual performance of the corresponding real-life NFL athletes in simulated football games in *Madden NFL 2000*. *Id.*

**[1.2] during a single sports season, receiving a series of updated video game character performance parameters from a data server via a network including the Internet, [1.2.1] wherein each of the updated video game character performance parameters in the series is based at least in part on one or more**

***different real-life performances of the particular real-life sports athlete in one or more sporting events performed during the single sports season;***

The combination of Madden 2000 Updates, Playoff Week 1 Update, and Super Bowl Update discloses these limitations. EA-1004, ¶¶ 134-136. Madden 2000 Updates discloses a series of weekly updates available for download from Petitioner's website during the 2000 NFL season, including Playoff Week 1 Update and Super Bowl Update, whereby a user would provide an input to his/her PC using a controller (e.g., keyboard, mouse, gamepad) to connect the PC to this website over the Internet and to select a link to download an update to the PC. § VIII.A.3; EA-1015, 1; EA-1004, ¶ 134. Playoff Week 1 Update and Super Bowl Update disclose that these weekly updates include updated team rosters and character performance parameters that are based in part on real-life NFL team roster changes and different performances, and/or a performance tendency, of particular, corresponding, real-life athletes in real-life NFL games. § VIII.A.3; EA-1016, 1; EA-1019, 1; EA-1004, ¶ 134. None of these references expressly disclose storing each of the series of updated rosters and character performance parameters on a data server. EA-1004, ¶ 135. However, as the updates are downloadable from a data server over the Internet, the updates are, by definition, stored on a data server including a storage medium. § VI.F; EA-1004, ¶ 135.

***[1.3] updating the sports video game with each of the updated video game character performance parameters received, wherein each update changes the manner in which the particular individual video game character performs in the***

***sports video game such that the particular individual video game character more closely simulates real-life performance attributes of the particular real-life athlete in the sports video game; and***

The combination of Madden 2000 Manual, Playoff Week 1 Update, and Super Bowl Update discloses these limitations. § VIII.A.4, [1.2]-[1.21.]; EA-1004, ¶¶ 137-138. Madden 2000 Manual discloses a user controller input in the “Manage Rosters” menu of *Madden NFL 2000* executing on his/her PC loads a “Roster File” saved on the PC into the game. EA-1018 at 8, 31-32; EA-1004, ¶ 137. Playoff Week 1 Update and Super Bowl Update disclose this same method is used to load each Update that is saved within the directory structure of *Madden NFL 2000* on the PC, including respective updated performance parameters for various video game characters, into the game. EA-1016, EA-1019; EA-1004, ¶ 137. A POSA understands, as acknowledged by the ’575 Patent, that each of these downloaded and installed Updates, including “adjusted player abilities”, changed the manner in which particular individual characters performed in *Madden NFL 2000* to more closely simulate the actual performance attributes of the corresponding real-life NFL athlete during NFL regular season and playoff games. EA-1004, ¶ 137.

***[1.4] enabling a user to control the particular individual video game character in the sports video game using a video game controller connected to the video game machine.***

Madden 2000 Manual in view of Madden 2000 Card discloses this limitation. EA-1004, ¶ 139. Madden 2000 Manual discloses that a user of *Madden*

*NFL 2000* uses a controller (e.g., keyboard, mouse, gamepad) to provide inputs to control particular individual video game characters while playing the game, and *Madden 2000 Card* describes that such controller is connected to the PC. EA-1017 at 4-6, 8, 13-16, EA-1018 at 2, 9; §§ VIII.A.1-2; EA-1004, ¶ 139.

***Claim 23: [23.0] A method performed by a computer server for updating a video game character parameter of an individual sports video game character in a sports video game played on a video game machine during a single sports season, the sports video game character representing a particular real-life athlete in the sports video game, the method performed by the computer server comprising the following acts:***

See §§ VIII.A.1-4 [1.0], [1.0.1], [1.1.1], [1.2]-[1.2.1]; EA-1004, ¶¶ 140-141. It is well-known to a POSA that the conventional technique for storing downloadable updates, such as the updates disclosed in *Playoff Week 1 Update* and *Super Bowl Update*, and making them accessible for download over the Internet, such as at Petitioner's website disclosed in *Madden 2000 Updates*, is on a computer server including a storage medium. *Id.*, ¶ 141; §§ VI.F; VIII.A.3, 4, [1.2]-[1.2.1].

***[23.1] during a single sports season, storing a plurality of updated video game character performance parameters on a storage medium of the computer server, [23.1.1] wherein each of the updated video game character performance parameters is based at least in part on a performance of the particular real-life athlete performing in one or more real-life sporting events of the single sports season;***

See §§ VIII.A.1, 3 [1.0.1], [1.1.1], [1.2]-[1.2.1], [23.0]; EA-1004, ¶ 142.

***[23.2] communicating with a video game machine to establish a network connection over the Internet; and within the single sports season, [23.3] transmitting the plurality of updated video game performance parameters to the video game machine in a plurality of transmissions over the network,***

See §§ VIII.A.3 [1.2]-[1.2.1] (weekly transmissions), [23.0]; EA-1004, ¶ 143.

**[23.3.1] *thereby enabling the video game machine to (i) receive the plurality of updated video game performance parameters within the single sports season, and (ii) change the sports video game play based on changes in the updated video game performance parameters, such that the particular individual video game character of the sports video game more closely simulates the real-life performance of the particular real-life athlete during the single sports season.***

See §§ VIII.A.3 [1.2]-[1.3], [23.0]; EA-1004, ¶ 144.

**Claim 31: [31.0] *A method as in claim 23, further comprising: [31.1] storing a second plurality of updated video game character performance parameters, [31.1.1] each of the second plurality of updated video game character performance parameters based at least in part on performance statistics of a second particular real-life athlete performing in one or more real-life sporting events of the single sports season, [31.1.2] each of the second updated video game character performance parameters being based at least in part on different performance statistics from the same second particular athlete and from the same single sports season; and***

See §§ VIII.A.3 [1.0.1], [1.1.1], [1.2]-[1.2.1], [23.0] (storing); EA-1004, ¶¶ 145-

147. A POSA would understand that the combination of the *Madden NFL 2000*

References discloses communicating and loading updated performance parameters

for various individual video game characters on various NFL teams (including

opposing teams) that are based at least in part on different real-life performance

statistics of the particular, corresponding real-life athletes in real-life playoff games

during the 2000 NFL season. §§ VI.A, F, VIII.A.1-4; EA-1004, ¶ 146.

**[31.2] *within the single sports season, transmitting the second plurality of updated video game character performance parameters to the video game machine in a plurality of transmissions over the network.***

See §§ VIII.A.3 [1.2]-[1.2.1] (weekly), [23.0], [31.0]-[31.1.2]; EA-1004, ¶ 148.

**Claim 2:** [2.0] *A game medium as in claim 1, wherein receipt of the updated video game performance parameters in the series occurs at least weekly during at least a portion of the single sports season, such that the particular video game character simulates current real-life performance attributes of the particular real-life athlete on an at least weekly basis.*

See § VIII.A.3-4 [1.2]-[1.3]; EA-1004, ¶¶ 149-150.

**Claim 24:** [24.0] *A method as in claim 23, wherein, at least a portion of the transmissions are carried out at least weekly during at least a portion of the single sports season; and the at least weekly transmissions include video game character performance parameters based at least in part on real-life performances of the particular real-life athlete that occurred at least within the prior week.*

See § VIII.A.3-4 [1.2]-[1.3]; EA-1004, ¶¶ 151-152.

**Claim 3:** [3.0] *A game medium as in claim 1, wherein receipt of an the updated video game performance parameters in the series occurs at least daily during at least a portion of the single sports season, such that the particular video game character simulates current real-life performance attributes of the particular real-life athlete on an at least daily basis.*

See § VIII.A.3-4, [1.2]-[1.3]. A POSA would recognize that there are several acceptable frequencies for communicating updated character performance parameters as a simple matter of design choice rather than invention and would be motivated to communicate such parameters more frequently, for example, for a baseball video game as a real-life baseball season has more regular season games (162) than an NFL season (16) and as doing so would have the predictable benefit of achieving increased realism in the game. §§ VI.A, VI.F; EA-1004, ¶¶ 153-154.

**Claim 25:** [25.0] *A method as in claim 23, wherein: at least a portion of the updated transmissions are carried out at least daily during at least a portion of the single sports season; and the at least weekly transmissions include video game character performance parameters based at least in part on real-life*

*performances of the particular real-life athlete that occurred at least within the prior day.*

See the discussion above with respect to Claim 3. § VI.C, EA-1004, ¶¶ 155-157.

**Claim 5:** [5.0] *A game medium according to claim 1, the game medium being further configured to cause the video game machine to perform the method further comprising: receiving an input from the user using the video game controller, the input directing the video game machine to connect to the data server via the internet to receive the new video game character performance parameter.*

See §§ VIII.A.1-4, [1.0], [1.2]-[1.2.1], [1.4]; EA-1004, ¶¶ 158-159.

**Claim 6:** [6.0] *A game medium according to claim 1, wherein the video game enables a user to choose, or to not choose, an updated video game character performance parameter.*

The combination of the *Madden NFL 2000* References discloses that a user can choose whether to download the disclosed Updates from Petitioner's website, and can choose to only run *Madden NFL 2000* with selected Updates. EA-1004, ¶¶ 160-161; §§ VIII.A.1-4, [1.2]-[1.3].

**Claim 8:** [8.0] *A game medium according to claim 1, the game medium being further configured to cause the video game machine to perform the method further comprising: [8.1] receiving a change in a video game team parameter from a data server via the network, wherein the video game team parameter corresponds to a real-life trade of a real-life athlete between two real-life teams during a single sports season; and [8.2] changing a video game team in the video game based on the video game team parameter received to reflect the trade of the real-life athlete in the sports video game.*

The combination of the *Madden NFL 2000* References discloses downloading weekly updates to the directory structure of *Madden NFL 2000* on the PC, including updated team roster updates that are based on real-life NFL team roster

changes, from Petitioner’s website during the 2000 NFL season, and loading these saved updates into *Madden NFL 2000*. § VIII.A.3-4; EA-1015, 1; EA-1016; EA-1019; EA-1018 at 8-10, 28, 31-32; EA-1004, ¶¶ 162-163. A POSA would understand the disclosed *Madden NFL 2000* updated team rosters included video game team parameters based on real-life athletes signed, released, and traded by real-life NFL teams. §§ VIII.A.1, 3-4, VI.F; EA-1004, ¶¶ 102, 162-163.

**Claim 11:** [11.0] *A game medium according to claim 1, wherein the updated video game character performance parameters are each associated with a real-life performance tendency of the particular real-life athlete in the real-life performances during the single sports season.*

See § VIII.A.1, 3-4; [1.2]-[1.3] (performance tendency); EA-1004, ¶¶ 164-165.

**Claim 12:** [12.0] *A game medium according to claim 1, wherein at least one of the updated video game character performance parameters is associated with a performance of a real-life opponent of the real-life athlete in a real-life sports event during the single sports season.*

See §§ VIII.A.3 (e.g. “Each week the roster file will be updated to denote *player performance* in each eligible teams playoff game” during 2000 NFL season) (emphasis added), 4; [1.2]-[1.3], [31.1.1]. A POSA would understand that the described Updates include updated character performance parameters based in part on performances of real-life athletes on opposing teams in real-life playoff games during the 2000 NFL season. § VIII.A.3, [1.2]-[1.2.1]; EA-1004, ¶ 166-167.

**Claim 30:** [30.0] *A method as in claim 23, wherein each of the updated video game character performance parameters are based at least in part on one or more different real-life sporting events against different opponents by the particular real-life athlete during the single sports season.*

See the discussion with respect to limitation [12.0]. EA-1004, ¶¶ 168-169.

**Claim 14:** [14.0] *A game medium according to claim 1, wherein at least one of the updated video game character performance parameters is associated with a completion percentage of a real-life performance of the real-life athlete in a real-life sports event during a single sports season.*

See §§ VIII.A.1, 3-4 [1.2]-[1.3]; EA-1004, ¶¶ 170-172. A POSA understands that completion percentage, field goal percentage, and rush yards, are specific, known mathematical statistics used in football and respectively related to quarterback passing, placekicker kicking, and running back running. EA-1004, ¶ 172. Madden 2000 Manual discloses other specific, known mathematical statistics used in football and respectively related to quarterback passing, placekicker kicking, and running back running (e.g. “Throwing Accuracy”, “Throwing Power”, “Kicking Accuracy”, “Kicking Power”, “Ball Carrying Ability”, “Ability to Break Tackles”, “Agility”, “Speed”, “Acceleration”). § VIII.A.1; EA-1004, ¶ 172. Thus, it is a simple matter of design choice to select from a finite number of known mathematical statistics used for a specific sport, and/or a specific player position, to yield predictable results of increased realism in sports video games because doing so would involve nothing more than applying a known technique to a known device ready for improvement. §§ VI.A, F; EA-1004, ¶ 172. No patentability resides in choosing one statistic over another. *Id.*

**Claim 16:** [16.0] *A game medium according to claim 15, wherein at least one of the updated video game character performance parameters is associated with a*

***field goal percentage of a real-life performance of the real-life athlete in a real-life sports event during the single sports season.***

See the discussion above with respect to claim 14. EA-1004, ¶¶ 173-174, 180.

**Claim 17: [17.0] *A game medium according to claim 15, wherein at least one of the updated video game character performance parameters is associated with rush yards of a real-life performance of the real-life athlete in a particular real-life sports event during a single sports season.***

See the discussion above with respect to claim 14. EA-1004, ¶¶ 175-176, 180.

**Claim 22: [22.0] *A game medium according to claim 1, wherein, wherein at least one of the plurality of updated video game character performance parameters is based on: a current points scored average by the particular real-life athlete in a particular real-life sports event during the single sports season; a field goal percentage of a real-life performance of the particular real-life athlete in a particular real-life sports event during the single sports season; a rush yards of a real-life performance of the particular real-life athlete in a particular real-life sports event during a single sports season; a free-throw completion percentage of the particular real-life athlete in a particular real-life sports event during the single sports season; a shots average of the particular real-life athlete in a particular real-life sports event during the single sports season; or a completion percentage of the particular real-life athlete in a particular real-life sports event during the single sports season.***

See the discussion above with respect to claim 14. EA-1004, ¶¶ 177-178.

**Claim 15: [15.0] *A game medium according to claim 1, wherein the sports video game is a football sports video game including video game football stadiums, video game football teams, and video game characters associated with real-life football stadiums, real-life football teams, and real-life football athletes respectively.***

See § VIII.A.1 (NFL stadiums, teams, athletes), 3 [1.0.1]-[1.1.1]; EA-1004, ¶ 180.

**Claim 27: [27.0] *A method as in claim 23, wherein each of the updated video game performance parameters is associated with a different real-life performance of a the particular real-life athlete during a single real-life game of the single sports season.***

See §§ VIII.A.3 (e.g. Playoff Week 1 Update: “Each week the roster file will be updated to denote player performance in each eligible teams playoff game”), 4, [1.2]-[1.3], [14.0]; EA-1004, ¶¶ 181-182.

**Claim 28:** [28.0] *A method as in claim 23, wherein the updated video game performance parameters are each associated with the performance of: a particular real-life basketball player; a particular real-life football player; or a particular real-life soccer player.*

See § VIII.A.3 [1.0.1] (NFL players), [1.2]-[1.3], [14.0]; EA-1004, ¶¶ 183-184.

**Claim 29:** [29.0] *A method as in claim 23, wherein the particular real-life athlete is a real-life professional athlete that plays for a real-life professional team.*

See § VIII.A.3 [1.0.1] (NFL players), [1.2]-[1.3]; EA-1004, ¶¶ 185-186.

**B. Challenge 2: Claims 4, 7, 9-10, and 21 are Unpatentable over the Madden NFL 2000 References in view of FIFA 2001 News**

Claims 4, 7, 9-10, and 21 are obvious under 35 U.S.C. § 103 over the *Madden NFL 2000* References in view of *FIFA 2001 News*. EA-1004, ¶¶ 187-213. These dependent claims are directed to the additional limitations of updating visual aspects of the video game (claims 4, 9-10), automatic downloading (claim 7), and soccer video games (claim 21). Related to soccer video games, *FIFA 2001 News* describes various types of parameters included in *FIFA 2001* such as, for example, athlete performance parameters and visual parameters of stadiums, fields, athletes, and uniforms, and team roster parameters, to simulate the real-life rosters of particular real-life teams, visual appearance of particular real-life teams, stadiums, fields, athletes, uniforms, and the performance of particular real-life

players. EA-1007, 2 (“teams that will be featured in FIFA 2001 . . . [identified teams].”), 2-3, (“excellent closeups of Barthez . . . Arsenal’s Thierry Henry, and a few others.”), 3 (“PC stadia shots”), 5, (“some of the start [*sic*] football players that will feature in FIFA 2001 . . . Edgar Davids, Paul Scholes and Lothar Mattheaus”); 16 (“FIFA 2001 will have . . . a number of realistic licensed stadiums to choose from.”); EA-1004, ¶¶ 193-196. Related to updating visual aspects, FIFA 2001 News describes updates, during the 2000-2001 regular season of the various European leagues and the UEFA Champions league, to reflect real-life changes in: (a) player uniform and appearance (e.g., Nov. 5, 2000 “updates [to] the FA Premier League jerseys so that . . . [they] now have sponsors’ logos on their shirts” (EA-1007, 30), Apr. 23, 2001 “[u]pdated player names, numbers, faces . . . (for [identified European leagues, MLS, and international teams]) (*id.*, 88)), (b) stadium attributes such as changes in the appearance of advertising boards and fan seating in stadiums (e.g., “Regular and Champions League” advertising boards or “adboards” for the stadiums in *FIFA 2001* on Dec. 6, 2000 (EA-1008, 20), (*id.*, 44), “Premiership Ad Boards” on Mar. 25, 2001 (EA-1007, 60), “current Manchester United adboards,” on April 12, 2001 (*id.*, 97), March 9, 2001 “Manchester Unity patch” including “stadiums with home and away fans. Properley [*sic*] segregated”, “adboards and updated stadia” (*id.*, 73-74)), (c) field attributes such as changes in the visual appearance of turf at the fields in stadiums

(e.g., Feb. 6, 2001 Manchester United patch with “New Pitch” (EA-1008, 44), Dec. 27, 2000 turf patch to the Nou Camp stadium and field (EA-1007, 4), Mar. 25, 2001 new grass turfs for the field of the Wembley and Stade de France stadiums (right) (*id.*, 60). EA-1004, ¶¶ 197-199. Related to automatic downloading, FIFA 2001 News describes, similar to the system of the ’575 Patent, an architecture for updating *FIFA 2001* where a user controller input to a PC running *FIFA 2001* “automatically connect[s]” the PC “to the EA server” to download updated video game parameters which are “automatically install[ed] . . . in the FIFA 2001 directory” on the PC. EA-1007, 37 (Jan. 28, 2001); EA-1004, ¶ 200.

**1. Motivation to Combine the *Madden NFL 2000* References and FIFA 2001 News**

As acknowledged by the ’575 Patent, there is no technological difference between updating “character performance parameters” over other types of video game parameters (e.g. visual parameters of stadiums, fields, or players), and there are no specific technology changes needed to accommodate one sport (e.g. football) over another (e.g. soccer, baseball, basketball). §§VI.A, F; EA-1004, ¶¶ 44-46, 202. Thus, it is simply a design choice to select from a finite number of identified, updatable parameters that are relevant to a selected sport to yield predictable results of increased realism in sports video games because doing so would involve nothing more than applying a known technique to a known device ready for improvement. EA-1004, ¶¶ 201-202.

**Claim 4:** [4.0] *A game medium according to claim 1, the game medium being further configured to cause the video game machine to update visual aspects of the video game during a single sports season, wherein the updated visual aspects are based on a change in a real-life visual aspect of a real-life athlete, stadium, or field during a single sports season.*

See §§ VIII.A.1 [1.2]-[1.3], VIII.B (updates to visual appearance aspects of particular real-life athletes, uniforms on such athletes, and advertising boards, turfs, fan seating, etc. in particular real-life stadiums and fields, and based on a change in a visual aspect of a corresponding real-life stadium, field, or athlete, during the real-life seasons of the various leagues); EA-1004, ¶¶ 203-204. As set forth above, these references are readily combinable to achieve increased realism. § VIII.B.1; EA-1004, ¶ 205.

**Claim 9:** [9.0] *A game medium according to claim 1, the game medium being further configured to cause the video game machine to perform the method further comprising: [9.1] receiving an updated video game stadium parameter from a data server via the network including the Internet, [9.1.1] wherein the video game stadium parameter corresponds to an attribute of a real-life stadium; and [9.2] changing a stadium parameter in the video game based on the updated video game stadium parameter received.*

See the discussion above with respect to limitation [4.0]. EA-1004, ¶¶ 206-207.

**Claim 10:** [10.0] *A game medium according to claim 9, wherein the updated video game stadium parameter is associated with an appearance of the stadium that has changed at least once during a single sports season.*

See the discussion above with respect to limitation [4.0]. EA-1004, ¶¶ 208-209.

**Claim 7:** [7.0] *A game medium according to claim 1, the game medium being further configured to cause the video game machine to perform the method periodically and automatically in response to an input received from the user using the video game controller.*

See § VIII.A.1, 3 [1.2]-[1.3], VIII.B. The *Madden NFL 2000* References disclose periodically (weekly) downloading and installing the series of updated character performance parameters into *Madden NFL 2000* in response to an input received from the user using a controller (e.g., keyboard, mouse, gamepad), during the 2000-2001 NFL season. §§ VIII.A.1, 3, [1.2]-[1.3]; EA-1004, ¶ 211. FIFA News discloses automatic downloading and installing. § VIII.B; EA-1004, ¶ 211. It would have been obvious to a POSA to use the architecture taught in FIFA 2001 News to automatically download and install these updates in response to such a user input to achieve the predictable benefit of simplifying the updating process for users of *Madden NFL 2000*. §§ VIII.A.1, 3, [1.2]-[1.4], VIII.B; EA-1004, ¶ 211. As set forth above, these references are readily combinable, and a POSA would also be motivated to do so because FIFA 2001 News already explicitly discloses using this architecture to automatically update other video game parameters, and because doing so would involve nothing more than applying a known technique to a known device ready for improvement to achieve these predictable benefits.

§§ VI.F, VIII.A.1, 3, VIII.B; EA-1004, ¶¶ 78-79, ¶¶ 210-211.

***Claim 21: [21.0] A game medium according to claim 1, wherein the sports video game is a soccer sports video game including video game soccer stadiums, video game soccer teams, and video game soccer characters associated with real-life soccer stadiums, real-life soccer teams, and real-life soccer athletes respectively.***

See §§ VIII.A.1, 3 [1.0.1], [1.1.1] (real-life NFL stadiums, teams, characters),

VIII.B (real-life FIFA stadiums, teams, characters); EA-1004, ¶¶ 212-213. As set

forth above, these references are readily combinable to achieve increased realism in any sports video game including soccer. §§ VI.F, VIII.B.1; EA-1004, ¶ 213.

**C. Challenge 3: Claims 1-3, 11-12, and 23-31 are Unpatentable over Swanberg**

Claims 1-3, 11-12, and 23-31 are rendered obvious by Swanberg. EA-1004, ¶¶ 214-262. Swanberg discloses an electronic gaming system, where a smart trading card maintains statistics that relate to actual performance of a particular real-life player(s) (e.g. athlete(s)) represented by the trading card. EA-1011, ¶¶ 0030, 0032, 0040, 0083-0084; EA-1004, ¶ 217. Similar to the '575 Patent, the particular player's statistics are updated and stored in a database of a remote computer game server on a regular, frequent basis to reflect the current, real life statistics based on the player(s)'s actual performance in real-life games. *Id.*, ¶¶ 0040-0041, 0043, 0048, 0059, 0085-0086, 0095; EA-1001, FIGS. 3, 5:19-27, 5:55-64, 6:10-13; EA-1004, ¶ 217. These updated player's statistics are regularly transferred (e.g. downloaded) from the remote server over the Internet to a user's local computer connected to a smart card reader to update the corresponding video game character's statistics in the non-volatile RAM of the trading card. *Id.*, FIG. 2, ¶¶ 0032, 0036, 0041, 0048, 0050, 0085-0086, 0095; EA-1004, ¶ 218. Game software (e.g. sports video game software) on a CDROM is installed on the local computer, and includes rules based on options selected by the user to, for example, allow the computer to communicate with the smart card reader, allow the computer

and remote server to read and write information (e.g. updated player performance statistics) to the trading card, and execute the game. *Id.*, FIGS. 2, 4, 16, ¶¶ 0050, 0052-0053, 0040-0041, 0048, 0095; EA-1004, ¶ 219. If the user wants to play an arcade-style or fantasy sports game, the most current statistics of the real-life player(s) identified on the trading card will be downloaded onto the trading card from the remote server such that, when game play begins, the corresponding character(s) will perform in the game based upon their updated individual statistics loaded onto the card. *Id.*, FIG. 16, ¶¶ 0083-0084, 0086, 0095; EA-1004, ¶ 220. For example, if a real-life athlete (e.g. “Roger Clemens”) has “had a bad week”, then the corresponding video game character (e.g. “virtual Roger Clemens”) will not perform in the game “as well as before”. *Id.*, ¶ 0095; EA-1004, ¶ 221. Swanberg describes that the game can be a “major league” sports game with major league teams and players such as a baseball game or basketball game. *Id.*, ¶¶ 0005, 0010, 0043, 0083-0084; EA-1004, ¶ 221.

**Claim 1: [1.0] *A game medium configured to provide a sports video game in conjunction with a video game machine,***

Swanberg teaches this limitation. EA-1004, ¶ 223. Swanberg describes that the trading cards are read/writable media which store information in RAM (e.g. particular statistics of real-life athlete(s) identified on the card) that is updated by a local computer when a user selects an option to connect to a remote server, and is read by the local computer when it loads game software, installed from a CD-

ROM, into memory to play the game (e.g. sports video game). § VIII.C; EA-1011, FIGS. 1-2, 4, ¶¶ 0002, 0005, 0007, 0010, 0032-0033, 0035, 0039, 0050, 0052-0053; EA-1004, ¶ 223. A POSA would understand that Swanberg's local computer system, including the local computer in communication with the trading card and the remote server, is a video game machine. EA-1004, ¶ 224.

**[1.0.1] *the sports video game including video game rules and video game character parameters, the video game character parameters including video game character performance parameters associated with individual video game characters, [1.0.2] the game medium being configured to cause the video game machine to perform a method comprising:***

Swanberg discloses these limitations. EA-1004, ¶ 225. Swanberg discloses a sports video game including video game rules (§ VIII.C) and parameters, including performance parameters (i.e. performance statistics) of individual video game character(s) that simulate the particular performance of the corresponding real life athlete(s) identified by the trading card (e.g., for a baseball game, runs, errors made, hits, catches, strikeouts, walks, etc.). § VIII.C, [1.0]; EA-1011, FIG. 16, ¶¶ 0040-0041, 0048, 0050, 0059, 0083, 0085-0086, 0095; EA-1004, ¶ 225.

**[1.1] *loading video game data stored by the game medium into a random access memory of the video game machine for playing the video game,***

Swanberg teaches this limitation. § VIII.C [1.0], [1.0.1]. It would have been obvious to a POSA to load Swanberg's video game data, such as rules and particular performance parameters of individual character(s), into random access memory of Swanberg's video game machine for playing the game as it was well

known to load and execute such games in such type of memory and thus doing so would involve nothing more than applying a known technique to a known architecture to yield predictable results. §§ VIII.C; VI.F; EA-1004, ¶ 226.

**[1.1.1] the video game data including the video game rules and a particular video game character performance parameter associated with a particular individual video game character associated with a particular real-life sports athlete, [1.1.2] wherein the particular video game performance parameter is based at least in part on a real-life performance of the particular real-life sports athlete playing in one or more real-life sporting events, [1.1.3] the particular video game character performance parameter affecting the manner in which the particular individual video game character performs in the sports video game;**

Swanberg discloses these limitations. § VIII.C (e.g. performance statistics (e.g. runs, errors made, hits, etc.) of real-life athletes (e.g. Roger Clemens)), [1.0.1]; EA-1004, ¶ 227. Swanberg discloses performance statistics of individual characters loaded onto a trading card that are based at least in part on real-life performances of the corresponding real life athletes in real-life major league sports games (e.g. Major League Baseball), and that affect the manner in which the individual characters perform in the interactive video game (e.g. the individual players on an actual major league team or the various individual players (including players on the same or opposing real-life teams) on a fantasy team). § VIII.C, [1.0.1], EA-1011, ¶¶ 0040, 0048, 0059, 0083-0085, 0095-0096; EA-1004, ¶ 227.

**[1.2] during a single sports season, receiving a series of updated video game character performance parameters from a data server via a network including the Internet, [1.2.1] wherein each of the updated video game character performance parameters in the series is based at least in part on one or more**

***different real-life performances of the particular real-life sports athlete in one or more sporting events performed during the single sports season;***

Swanberg discloses these limitations. EA-1004, ¶ 228. Swanberg discloses that particular real-life athletes' performance parameters are updated and stored in a database of a remote computer game server on a regular, frequent basis to reflect the current, real life statistics based on the athletes' actual performances in real-life games, and that the updated athlete performance parameters for each athlete are received, downloaded to, and updated on, the trading card on a regular basis so that, during game play, the corresponding individual video game characters will perform in the game based upon these updated statistics. § VIII.C (e.g. receiving and updating real-life Roger Clemens' performance statistics after "a bad week of pitching" causes "virtual Roger Clemens" to "not pitch as well as before"), [1.0.1], [1.1.1]-[1.1.3]; EA-1004, ¶ 228 . A POSA would understand that the purpose of Swanberg's "frequent" and "regular" updates is to update performance parameters that have changed. EA-1004, ¶ 229 . In the sporting world, a real life athlete's performance statistics have the potential to change based on the athlete's performance during a single game or over several games during a season. *Id.*

***[1.3] updating the sports video game with each of the updated video game character performance parameters received, wherein each update changes the manner in which the particular individual video game character performs in the sports video game such that the particular individual video game character more closely simulates real-life performance attributes of the particular real-life athlete in the sports video game; and***

See EA-1004, ¶ 230; § VIII.C, [1.0.1], [1.1.1]-[1.2.1].

**[1.4] *enabling a user to control the particular individual video game character in the sports video game using a video game controller connected to the video game machine.***

Swanberg teaches this limitation. EA-1004, ¶ 231. A POSA would understand that Swanberg teaches controlling a particular video game character (e.g. the pitching of a virtual Roger Clemens) in an arcade-style game using a video game controller (e.g. keyboard) connected to the video game machine. § VIII.C, [1.0], [1.1.1]-[1.2.1]; EA-1011, FIGS. 2, 14, ¶¶ 0035 (display and keyboard are connected to the local computer “to permit the interactive playing of a game related to the contents of the trading card”), 0086 (user can “play an arcade style baseball games using the players on the Team Card” where “[t]he abilities of the players on the card could reflect the current statistics of the corresponding live player”), 0005, 0095; EA-1004, ¶ 231.

**Claim 23: [23.0] *A method performed by a computer server for updating a video game character parameter of an individual sports video game character in a sports video game played on a video game machine during a single sports season, the sports video game character representing a particular real-life athlete in the sports video game, the method performed by the computer server comprising the following acts:***

See § VIII.C (remote computer game server), [1.0], [1.1.1]-[1.2.1]; EA-1004, ¶ 232.

**[23.1] *during a single sports season, storing a plurality of updated video game character performance parameters on a storage medium of the computer server,***  
**[23.1.1] *wherein each of the updated video game character performance parameters is based at least in part on a performance of the particular real-life***

*athlete performing in one or more real-life sporting events of the single sports season;*

See § VIII.C (remote server database), [1.2]-[1.2.1], [23.0]; EA-1004, ¶ 233.

**[23.2]** *communicating with a video game machine to establish a network connection over the Internet; and within the single sports season, [23.3] transmitting the plurality of updated video game performance parameters to the video game machine in a plurality of transmissions over the network,*

See § VIII.C, [1.0], [1.2]-[1.2.1], [23.0]; EA-1004, ¶ 234.

**[23.3.1]** *thereby enabling the video game machine to (i) receive the plurality of updated video game performance parameters within the single sports season, and (ii) change the sports video game play based on changes in the updated video game performance parameters, such that the particular individual video game character of the sports video game more closely simulates the real-life performance of the particular real-life athlete during the single sports season.*

See § VIII.C, [1.0], [1.2]-[1.3]; EA-1004, ¶ 235.

**Claim 31:** **[31.0]** *A method as in claim 23, further comprising: [31.1] storing a second plurality of updated video game character performance parameters, [31.1.1] each of the second plurality of updated video game character performance parameters based at least in part on performance statistics of a second particular real-life athlete performing in one or more real-life sporting events of the single sports season, [31.1.2] each of the second updated video game character performance parameters being based at least in part on different performance statistics from the same second particular athlete and from the same single sports season; and*

See § VIII.C, [1.0], [1.1.1] (second athlete), [1.2]-[1.2.1]; EA-1004, ¶ 237.

**[31.2]** *within the single sports season, transmitting the second plurality of updated video game character performance parameters to the video game machine in a plurality of transmissions over the network.*

See § VIII.C, [1.1.1]-[1.2.1] (regular updates), [31.0]-[31.1.2]; EA-1004, ¶ 238.

**Claim 2:** **[2.0]** *A game medium as in claim 1, wherein receipt of the updated video game performance parameters in the series occurs at least weekly during*

*at least a portion of the single sports season, such that the particular video game character simulates current real-life performance attributes of the particular real-life athlete on an at least weekly basis.*

See § VIII.C, [1.2]-[1.3] (updates occur on a “regular” and/or “frequent” basis); EA-1011, ¶ 0048; EA-1004, ¶¶ 239-240. A POSA would recognize that there are several acceptable frequencies for communicating updated character performance parameters as a simple matter of design choice rather than invention and would be motivated to communicate such parameters weekly (e.g. for a football video game as real-life football games are played weekly during the season), or more frequently such as daily, (e.g. for a baseball or basketball video game as the seasons have more games (baseball: 162; basketball: 82) than other seasons (football: 16)) and as doing so would have the predictable benefit of achieving increased realism. §§ VI.A, VI.F; EA-1004, ¶ 240.

**Claim 24:** [24.0] *A method as in claim 23, wherein, at least a portion of the transmissions are carried out at least weekly during at least a portion of the single sports season; and the at least weekly transmissions include video game character performance parameters based at least in part on real-life performances of the particular real-life athlete that occurred at least within the prior week.*

See the discussion above for limitation [2.0]. EA-1004, ¶¶ 241-242.

**Claim 3:** [3.0] *A game medium as in claim 1, wherein receipt of an the updated video game performance parameters in the series occurs at least daily during at least a portion of the single sports season, such that the particular video game character simulates current real-life performance attributes of the particular real-life athlete on an at least daily basis.*

See the discussion above for limitation [2.0]. EA-1004, ¶¶ 243-244.

**Claim 25:** [25.0] *A method as in claim 23, wherein: at least a portion of the updated transmissions are carried out at least daily during at least a portion of the single sports season; and the at least weekly transmissions include video game character performance parameters based at least in part on real-life performances of the particular real-life athlete that occurred at least within the prior day.*

See the discussion above for limitation [2.0]. EA-1004, ¶¶ 245-247; § VI.C.1.

**Claim 11:** [11.0] *A game medium according to claim 1, wherein the updated video game character performance parameters are each associated with a real-life performance tendency of the particular real-life athlete in the real-life performances during the single sports season.*

See § VIII.C, [1.1.1]-[1.1.3]; [1.2]-[1.3] (e.g. receiving and updating real-life

Roger Clemens' performance statistics after "a bad week of pitching" causes

"virtual Roger Clemens" to "not pitch as well as before"); EA-1004, ¶¶ 248-249.

**Claim 12:** [12.0] *A game medium according to claim 1, wherein at least one of the updated video game character performance parameters is associated with a performance of a real-life opponent of the real-life athlete in a real-life sports event during the single sports season.*

See § VIII.C, [1.1.1]-[1.1.3] (opposing team), [1.2]-[1.2.1]; EA-1004, ¶¶ 250-251.

**Claim 30:** [30.0] *A method as in claim 23, wherein each of the updated video game character performance parameters are based at least in part on one or more different real-life sporting events against different opponents by the particular real-life athlete during the single sports season.*

See § VIII.C, [1.1.1]-[1.1.3], [1.2]-[1.2.1] (over several games); EA-1004, ¶ 253.

**Claim 26:** [26.0] *A method as in claim 23, wherein the server is further configured to receive a request for an updated video game character performance parameter originating at the video game machine and: verify that a payment has been made for the requested updated video game character performance parameter; or receive authorization to execute a payment for the transfer of the updated video game character performance parameter.*

See § VIII.C, [1.0], [1.1.1]-[1.1.3], [1.2]-[1.2.1], [23.0] (remote computer game server). Swanberg discloses trading or selling a trading card to others, “at [its] enhanced value”, when the trading card increases in value due to the updated video game character performance parameters of the player(s) represented in the trading card and downloaded from the remote server. EA-1011, ¶¶ 0004, 0040, 0083, 0085, 0087-0094; EA-1004, ¶ 255. Swanberg also discloses that the remote server can prevent two users from using the same trading card, for example to download updated performance parameters, if “a previous user trades or otherwise grants access to the [ ] card to a subsequent user” such as by requiring the previous user to deactivate the card once the transaction is satisfactorily completed. *Id.*, ¶¶ 0009, 0046, 0057, 0061, 0083; EA-1004, ¶ 255. A POSA would understand that Swanberg’s disclosure of verifying that trades or sales of trading cards have been properly completed before permitting the subsequent user from using the traded or sold card necessarily involves verifying that agreed upon consideration (e.g. a payment) has been made for the trading card, and that the previous user’s deactivation of the traded or sold card provides such verification and authorization for the remote server to allow the subsequent user to, for example, download updated performance parameters to the card. EA-1004, ¶ 256.

***Claim 27: [27.0] A method as in claim 23, wherein each of the updated video game performance parameters is associated with a different real-life performance of a the particular real-life athlete during a single real-life game of the single sports season.***

See §§ VIII.C, [1.1.1]-[1.1.3], [1.2]-[1.2.1] (during single game); EA-1004, ¶ 258.

***Claim 28: [28.0] A method as in claim 23, wherein the updated video game performance parameters are each associated with the performance of: a particular real-life basketball player; a particular real-life football player; or a particular real-life soccer player.***

See § VIII.C (real-life athlete can be a basketball player), [1.1.1]-[1.1.3], [1.2]-[1.2.1]; EA-1011, Abstract, ¶¶ 0005, 0010, 0083; EA-1004, ¶¶ 259-260.

***Claim 29: [29.0] A method as in claim 23, wherein the particular real-life athlete is a real-life professional athlete that plays for a real-life professional team.***

See § VIII.C, [1.1.1]-[1.1.3] (e.g. Roger Clemens); EA-1004, ¶¶ 261-262.

**D. Challenge 4: Claims 13, 18-20, and 32-35 are obvious under 35 U.S.C. § 103 over Swanberg in view of Hines**

Claims 13, 18-20, and 32-35 are rendered obvious under 35 U.S.C. § 103 over Swanberg in view of Hines. EA-1004, ¶¶ 263-292. These dependent claims are directed to the additional limitations of basketball video games and specific performance parameters in basketball video games. Hines discloses a system for generating real-life basketball athlete performance statistics (e.g. “points scored in a game, rebounds made in a game, free-throws made and attempted, shots taken and made, etc.” in a basketball game) for a plurality of athletes based on the athletes’ performance in “real-time game events”, and transmitting the statistics to a remote data repository that stores the statistics so that they are accessible to a plurality of selected users over a network (e.g. the Internet). EA-1020, Abstract,

FIGS. 1, 5 (“Total FG/FGA, 3-Pt FG/FGA, Rebound, PF, Pts, A, TO, Bk, S, Min”), ¶¶ 0006, 0014-0015, 0021, 0023, 0025; EA-1004, ¶ 267.

### **1. Motivation to Combine Swanberg and Hines**

As set forth in § VIII.B1, and acknowledged by the '575 Patent, there are no specific technology changes needed to accommodate one sport (e.g. baseball) over another (e.g. basketball). §§ VI.A, F; EA-1004, ¶ 269. Thus, it is simply a design choice to select from a finite number of specific, known mathematical statistics in each of a finite number of sports to yield predictable results of increased realism in sports video games because doing so would involve nothing more than applying a known technique to a known device ready for improvement. EA-1004, ¶ 269. No patentability resides in choosing one statistic that is relevant to a specific sport over another statistic that is relevant to a different sport. *Id.*

**Claim 18: [18.0] *A game medium according to claim 1, wherein the sports video game is a basketball sports video game including video game basketball courts, video game basketball teams, and video game basketball characters associated with real-life basketball courts, real-life basketball teams, and real-life basketball athletes respectively.***

*See* § VIII.C (updating character performance parameters in basketball sports video game with “major league” players and teams), [1.1.1]-[1.1.3]. Hines discloses storing updated real-life basketball athlete performance statistics (e.g. “free-throws made and attempted”, “shots made and attempted”, “points scored in a game”) based on “real time game events” in a remote database accessible over the Internet.

§ VIII.D; EA-1004, ¶ 271. The '575 Patent acknowledges that basketball sports video games including realistic league and team composition, stadium, uniform, and athlete appearance, and athlete performance, video game parameters, were known in the prior art. §§ VI.A, VI.F; VIII.C-D; EA-1004, ¶ 272. A POSA would be motivated to update basketball character performance parameters corresponding to particular real-life athletes because doing so would involve nothing more than applying a known technique to a known device ready for improvement to yield predictable results of increased realism in such games. *Id.*

**Claim 19: [19.0] *A game medium according to claim 18, wherein at least one of the updated video game character performance parameters is associated with a free-throw completion percentage of a real-life performance of the real-life athlete in a real-life sports event during the single sports season.***

See the discussion above with respect to limitation [18.0]. EA-1004, ¶¶ 273-274.

A POSA understands that free-throw completion percentage, shots average, and points scored average, are specific, known mathematical statistics used in basketball and respectively related to free-throw shooting, shots taken, and points scored. Hines discloses other specific, known mathematical statistics used in basketball and respectively related to free-throw shooting, shots taken, and points scored (e.g. “free-throws made and attempted”, “shots made and attempted”, and “points scored in a game”). As set forth above, Swanberg and Hines are readily combinable to achieve increased realism in basketball sports video games.

§§ VIII.D.1, VI.A, F; EA-1004, ¶¶ 269, 273-274.

**Claim 20:** [20.0] *A game medium according to claim 18, wherein at least one of the updated video game character performance parameters is associated with a shots average of a real-life performance of the real-life athlete in a real-life sports event during the single sports season.*

See the discussion above with respect to limitation [19.0]. EA-1004, ¶¶ 275-276.

**Claim 13:** [13.0] *A game medium according to claim 1, wherein at least one of the updated video game character performance parameters is associated with a points scored average of a real-life performance of the real-life athlete in a real-life sports event during the single sports season.*

See the discussion above with respect to limitation [19.0]. EA-1004, ¶¶ 277-278.

**Claim 32:** [32.0] *A game medium configured to provide a basketball sports video game in conjunction with a video game machine,*

See §§ VIII.C, [1.0]; VIII.D, [18.0]; EA-1004, ¶ 279.

[32.0.1] *the basketball sports video game including video game rules and basketball video game character parameters, the basketball video game character parameters including video game character performance parameters [32.0.2] the game medium being configured to cause the video game machine to perform a method comprising:*

See §§ VIII.C, [1.0.1]-[1.0.2], VIII.D, [18.0], [32.0]; EA-1004, ¶ 280.

[32.1] *loading video game data stored by the game medium into a random access memory of the video game machine for playing the basketball video game,*

See §§ VIII.C, [1.1], VIII.D, [18.0], [32.0]; EA-1004, ¶ 281.

[32.1.1] *the video game data including the video game rules and a particular basketball video game character performance parameter associated with a particular basketball video game character associated with a particular real-life basketball sports athlete, [32.1.2] wherein the particular basketball video game performance parameter is based at least in part on a real-life basketball performance of the particular real-life basketball sports athlete playing in one or more real-life basketball sporting events, [32.1.3] the particular basketball video game character performance parameter affecting the manner in which the*

*particular basketball video game character performs in the basketball sports video game;*

*See §§ VIII.C, [1.1.1]-[1.1.3], VIII.D, [18.0], [32.0]; EA-1004, ¶ 282.*

*[32.2] during a single basketball sports season, receiving a series of updated video game basketball character performance parameters from a data server via a network including the Internet, [32.2.1] wherein each of the updated basketball video game character performance parameters in the series is based at least in part on one or more different real-life performances of the particular real-life basketball sports athlete performed during the single sports season;*

*See §§ VIII.C, [1.2]-[1.2.1], VIII.D, [18.0], [32.0]; EA-1004, ¶ 283.*

*[32.3] updating the basketball sports video game with each of the updated basketball video game character performance parameters received, wherein each update changes the manner in which the particular basketball video game character performs in the basketball sports video game such that the particular basketball video game character more closely simulates real-life basketball performance attributes of the particular real-life basketball athlete in the sports video game; and*

*See §§ VIII.C, [1.3], VIII.D.1, [18.0], [32.0]; EA-1004, ¶ 284.*

*[32.4] enabling a user to control the particular video game basketball character in the basketball sports video game using a video game controller connected to the basketball video game machine,*

*See §§ VIII.C, [1.4], VIII.D, [18.0], [32.0]; EA-1004, ¶ 285.*

*[32.5] wherein: the basketball sports video game includes video game basketball courts, video game basketball teams, and video game basketball characters associated with real-life basketball courts, real-life basketball teams, and real-life basketball athletes respectively; [32.5.1] and at least one of the updated video game character performance parameters is associated with a free-throw completion percentage of a real-life performance of the real-life athlete in a real-life sports event during the single sports season.*

*See § VIII.D, [18.0], [19.0]; EA-1004, ¶ 286.*

**Claim 33:** [33.0] *A game medium according to claim 32, wherein at least one of the updated video game character performance parameters is associated with a shots average of a real-life performance of the real-life athlete in a real-life basketball sports event during the single basketball sports season.*

See § VIII.D, [18.0], [19.0], [20.0]; EA-1004, ¶ 287-288.

**Claim 34:** [34.0] *A game medium as in claim 32, wherein receipt of the updated basketball video game performance parameters in the series occurs at least weekly during at least a portion of the single basketball sports season, such that the particular basketball video game character simulates current real-life performance attributes of the particular real-life basketball athlete on an at least weekly basis.*

See §§ VIII.C [1.1.1], [1.2]-[1.3], [2.0]; VIII.D [18.0], [32.0]; EA-1004, ¶ 289-290.

**Claim 35:** [35.0] *A game medium as in claim 32, wherein receipt of an the updated basketball video game performance parameters in the series occurs at least daily during at least a portion of the single basketball sports season, such that the particular video game character simulates current real-life performance attributes of the particular real-life basketball athlete on an at least daily basis.*

See §§ VIII.C, [1.1.1], [1.2]-[1.3], [2.0]-[3.0]; VIII.D, [18.0], [32.0]; EA-1004, ¶  
¶ 291-292.

## **IX. CONCLUSION**

For the reasons set forth above, Petitioner has established a reasonable likelihood of prevailing with respect to all claims of the '575 Patent and requests the Board institute *inter partes* review and then cancel all claims as unpatentable.

Respectfully submitted,

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Dated: February 18, 2016

**CERTIFICATION OF SERVICE ON PATENT OWNER**

Pursuant to 37 C.F.R. §§ 42.6(e), 42.8(b)(4) and 42.105, the undersigned certifies that on the 18th day of February 2016, a complete and entire copy of this Petition for *Inter Partes* Review of U.S. Patent No. 8,540,575 and all supporting exhibits were served via Federal Express, postage prepaid, to the Patent Owner by serving the correspondence address of record for the '575 Patent:

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