

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Inter Partes Review No.: Unassigned

**DECLARATION OF DAVID P. CRANE IN SUPPORT OF PETITION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 8,540,575**

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I. Introduction

1. I am over the age of eighteen (18) and otherwise competent to make this declaration.

2. I have been engaged as an expert witness on behalf of Petitioner Electronic Arts Inc. (“EA” or “Petitioner”) in the above-captioned Petition for *Inter Partes* Review. I am being compensated for my time in connection with this matter at my standard consulting rate, which is \$400 per hour. My compensation is in no way dependent on the outcome of this *Inter Partes* review.

3. This petition for *Inter Partes* Review involves U.S. Patent No. 8,540,575 (“the ’575 Patent”) (EA-1001). The ’575 Patent is entitled “Method And System For Increased Realism In Video Games,” and lists Athanasios Angelopoulos as the inventor.

4. The ’575 Patent issued September 24, 2013, from U.S. Patent Application No. 10/266,795 which was filed October 8, 2002. EA-1002; EA-1003.

5. For the purposes of this *Inter Partes* Review, I have been instructed to assume that the effective filing date of the Claims of the ’575 Patent challenged by the Petitioner in this *Inter Partes* Review is the earliest possible priority date, i.e., the October 8, 2002 filing date of U.S. Patent Application No. 10/266,795.

6. I understand that according to USPTO records, the '575 Patent is currently assigned to White Knuckle Gaming, LLC ("White Knuckle" or "Patent Owner").

7. 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" and describes systems and methods of further increasing realism in such sports video games by communicating updated video game parameters to a video game machine over a network. EA-1001, 1:14-16, 2:20-25. I am familiar with the technology described in the '575 Patent as of the earliest possible priority date of October, 2002.

8. In preparing this Declaration, I have reviewed the '575 Patent (EA-1001), the file history of the '575 Patent (EA-1002; EA-1003), the non-provisional child patent application U.S. Pat. App. Ser. No. 10/266,795 (EA-1005) now issued as U.S. Pat. No. 8,529,350 (the "'350 Patent"), the Patent Trial and Appeal Board's January 14, 2016 Institution Decision in IPR2015-01595 regarding the '350 Patent¹, and each of the documents cited herein, and I have considered these

¹ I am also engaged by EA as an expert witness in IPR2015-01595 and prepared a declaration in support of EA's petition in such IPR. *See, e.g.*, IPR2015-01595, Exhibit EA-1003 to EA's Petition, Paper 15.

documents in light of the general knowledge in the art as of October 8, 2002. In formulating my opinions, I have relied upon my experience in the relevant art. I have also considered the viewpoint of a person of ordinary skill in the art (“POSA”) of video games, including sports video games, and related software and video game systems, as of October 8, 2002.

9. I have been asked to provide my technical expertise, analysis, insights and opinions regarding the ’575 Patent and relevant references that form the basis of the grounds of rejection set forth in the accompanying Petition for Inter Partes Review of the ’575 Patent. As described in detail below, I offer the following opinions in this Declaration:

- A POSA would have found the invention of Claims 1-3, 5-6, 8, 11-12, 14-17, 22-25, and 27-31 of the ’575 Patent to be obvious over Petitioner’s *Madden NFL 2000* Reference Manual for its *Madden NFL 2000* video game (EA-1018) (“Madden 2000 Manual”) in view of Petitioner’s *Madden NFL 2000* Reference Card (EA-1017) (“Madden 2000 Card”), Petitioner’s archived *Madden NFL 2000* Downloads web page (EA-1015) (“Madden 2000 Updates”), Petitioner’s Playoff Week 1 Update text file downloaded from Madden 2000 Updates (EA-1016) (“Playoff Week 1 Update”), and further in view of Petitioner’s EA Super Bowl Update text file

downloaded from Madden 2000 Updates (EA-1019) (“Super Bowl Update”). 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 I will collectively refer to them in this Declaration as 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. The *Madden NFL 2000* References teach each element of Claims 1-3, 5-6, 8, 11-12, 14-17, 22-25, and 27-31 and, 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.

- A POSA would have found the invention of Claims 4, 7, 9-10, and 21 of the ’575 Patent to be obvious over the *Madden NFL 2000* References in view of a prior art publication written by users of Petitioner’s *FIFA 2001* video game (EA-1007 – EA-1009) (“FIFA 2001 News”). FIFA 2001 News in view of the *Madden NFL 2000* References teaches each element of Claims 4, 7, 9-10, and 21 and a

POSA would have been motivated to combine the teachings of these references.

- A POSA would have found the invention of Claims 1-3, 11-12, and 23-31 of the '575 Patent to be obvious over U.S. Pat Pub. No. 2002/0155893 (EA-1011) ("Swanberg"). Swanberg teaches each element of Claims 1-3, 11-12, and 23-31.
- A POSA would have found the invention of Claims 13, 18-20, and 32-35 of the '575 Patent to be obvious over Swanberg in view of U.S. Pat Pub. No. 2002/0155893 (EA-1020) ("Hines"). Swanberg in view of Hines teaches each element of Claims 13, 18-20, and 32-35, and a POSA would have been motivated to combine the teachings of these references.

II. List of Documents I Considered in Forming My Opinions

10. In formulating my opinions, I have considered the following documents:

Exhibit No.	Title
EA-1001	U.S. Patent No. 8,540,575 ("the '575 Patent")
EA-1002	U.S. Patent No. 8,540,575 File History (Part 1 of 2)
EA-1003	U.S. Patent No. 8,540,575 File History (Part 2 of 2)
EA-1005	U.S. Patent No. 8,529,350 File History

Exhibit No.	Title
EA-1006	intentionally left blank
EA-1007	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”)
EA-1008	FIFA 2001 Online – News Archive for December 2000 and February 2001, archived at Wayback Machine on April 25, 2001 (“FIFA 2001 News - 2”)
EA-1009	FIFA 2001 Online – News Archive for June 2001, archived at Wayback Machine on July 26, 2001 (“FIFA 2001 News - 3”)
EA-1010	Declaration of Christopher Butler No. 1 ²
EA-1011	U.S. Pat. Pub. No. 2002/0155893 to Swanberg, <i>et al.</i> (“Swanberg”)
EA-1012	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”)
EA-1013	FIFA-MRA, Support System – Features of the MRA, archived at Wayback Machine on April 22, 2001 (“FIFA MRA Support - 2”)
EA-1014	FIFA-MRA, Support System – Patches, archived at Wayback Machine on April 23, 2001 (“FIFA MRA Support - 3”)
EA-1015	EA Sports, Madden 2000 Downloads, archived at Wayback Machine on March 2, 2000 (“Madden 2000 Updates”)

² 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.

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

Exhibit No.	Title
EA-1027	Declaration of Christopher Butler No. 2 ³
EA-1028	Declaration of Ryan Ferwerda
EA-1029	Declaration of David Witts
EA-1030	Nathan's File Collection web page archived at Wayback Machine on February 4, 2002
EA-1031	FIFA-MRA, Support Home page, archived at Wayback Machine on February 4, 2001
EA-1032	FIFA-MRA, Home page, archived at Wayback Machine on March 31, 2001
EA-1033	FIFA-MRA, Support-About page, archived at Wayback Machine on April 10, 2001
EA-1034	FIFA 2001 Online –News Archive Home page, archived at Wayback Machine on June 3, 2001
EA-1035	FIFA 2001 Online –News Archive Home page, archived at Wayback Machine on October 21, 2001

³ The Declaration of Christopher Butler No. 2 (EA-1027) is submitted as an evidentiary declaration for Exhibits EA-1007 to EA-1009, EA-1011 to EA-1015, EA-1023, EA-1024, EA-1026, and EA-1030 to EA-1035. Exhibit A of EA-1027 includes EA-1007 to EA-1009, EA-1011 to EA-1015, EA-1023, EA-1024, and EA-1030 to EA-1035. Exhibit B of EA-1027 is Exhibit EA-1026.

III. My Background and Qualifications

11. My expertise qualifies me to do the type of analysis required in this case in the field of video games, including sports video games, and related software and video game systems. Of particular relevance, in my 38-year career in video games, I have founded several game companies, designed and programmed over 80 commercial game products, and developed a wealth of experience and knowledge in video game programming including developing updates for video game software. As detailed in my CV, I have over 40 years of experience in engineering, with 38 years at the forefront of video game design and development. Throughout my career I have developed more than 30 sports video games.

12. Throughout the remainder of this Declaration, I will refer to the field of video games, including sports video games, and related software and video game systems, as the “relevant field” or the “relevant art.” In formulating my opinions, I have relied upon my training, knowledge, and experience in the relevant art. A copy of my current curriculum vitae is provided as EA-1021, and it provides a comprehensive description of my academic and employment history, including a list of video game product publications for at least the last 38 years, and a list of all other cases in which, during the previous 4 years, I have testified as an expert at trial or by deposition.

13. I started in the relevant art as a student at DeVry Institute of Technology, Phoenix, Arizona (“DeVry”) where I earned a Bachelor of Science in Electronic Engineering Technology in 1975.

14. My formal studies at DeVry included grounding in all areas of electronic circuitry, including analog and digital circuits, as well as computer programming. I built my first computer – an unbeatable Tic-Tac-Toe computer – at the age of 14, and graduated high school with the ability to program IBM mainframe computers in 3 languages. While in college, I was the lead hardware designer and project leader on a fully digital Tic-Tac-Toe playing custom hardware project. This design featured 72 discrete integrated circuits and an innovative display using polarized light to separate light output into Xs and Os. In the same timeframe, I designed the first programmable electronic drum machine, and a digital clock that never needed setting, designed to receive a time standard over the AC power line.

15. In 1977, I began my career in the video game industry when I joined Atari Inc. (“Atari”), where I designed and developed games that generated approximately \$15 million in sales revenues for the company. In 1979, I co-founded Activision, Inc. (“Activision”), the first third-party developer and distributor of video game cartridges. Activision grew to over \$300 million in value

in three years, and is now one of the largest third-party video game publishers in the world, with a market capitalization of approximately \$15 billion.

16. During my tenure at Activision, I designed and programmed many hit games with unit sales over 500,000. One such example is the game Pitfall!™ which sold over 3,500,000 copies and generated over \$50 million in wholesale revenues. At Activision, I performed or oversaw all of Activision's research on game consoles, and designed and built a custom development computer system for each console. I personally handled all functional design, circuit design, system engineering, printed circuit board layout and manufacturing specification, and soldered and wired the development system prototype before handing the design off for replication. From Activision's inception in 1979, until I left the company in 1987, I served as the company's primary technologist in the operation of the game consoles for which we published games.

17. After leaving Activision in 1987, I founded a series of small game publishing companies, performing the same two main functions: first, becoming the company's primary hardware technologist on a particular game console, then, designing and programming award-winning games. Throughout this process, I have developed particular expertise in over 20 video game consoles or systems, including the Atari 2600, Atari 5200, Atari 7800, Atari 400, Atari 800, Magnavox Odyssey II, Mattel Intellivision, Colecovision, Apple II, MS-DOS, Commodore

C64, Commodore C128, Nintendo NES, Nintendo SNES, Nintendo Game Boy, Nintendo DS, Sega Master System, Sega Genesis, Sega CD, Sony Playstation, Nokia Series 60 feature phones, LG VX4400, LG VX6000, Apple iPhone, Apple iPod touch, and Apple iPad.

18. In my 38 years of experience in video games, I have designed and programmed over 80 commercial game products generating over \$400 million in revenues. I have developed games on a large percentage of video game systems invented, from the early days of Atari and Magnavox through to present-day systems such as the Microsoft Xbox Platform. I have acquired extensive experience in designing and developing video games including designing and developing updates for video game software and using a network connection interface to make such updates available to users.

19. In addition to gaining expertise through educational training, professional experiences, and research experiences described above, I have kept abreast of the relevant field. I am a regular speaker and/or panelist at video game industry trade events such as the D.I.C.E. Summit (Design, Innovate, Communicate & Entertain), and GDC (Game Developers Conference). I have spoken at gatherings of game business executives (such as at the Pepperdine University Graziadio School of Business and Management), and I am featured annually at the Classic Gaming Expo. I have been profiled in national press

publications including Forbes Magazine and Newsweek, and I have been interviewed by such diverse publications as television's 20/20 News Magazine and the G4 Television Network. Furthermore, I have collaborated with, or have communicated with, many of the programmers, developers, and researchers in the field of video games, including sports video games.

20. I have received many other awards for my work and career. Most recently, I received one of the Academy of Interactive Arts and Sciences lifetime honors: The Pioneer Award, celebrating my foundational and continuing work in the creation and development of the video game business. This singular honor, presented to me in 2010 was the inaugural award in a new category. I was the first to receive this award out of everyone who had ever worked in the video game industry throughout its entire history. Additional awards include Game Designer of the Year (twice), the prestigious 2003 Game Developer Choice Award for contribution to the field, and the Lifetime Achievement Award in Video Games from Classic Gaming Expo. In addition to these personal honors, many of the individual games that I have developed have also received numerous awards.

IV. Person of Ordinary Skill in the Art (POSA)

21. I am familiar with the knowledge and capabilities of one of ordinary skill in the art. For example, my work as a video game designer and programmer, video game console designer and engineer, researcher, and founder of several

successful video game publishing companies, and my direct collaborations with industry designers, programmers, and engineers during that period, allowed me to become personally familiar with the level of skill of individuals and the general state of the art. Unless otherwise stated, my testimony below refers to the knowledge of one of ordinary skill in the art as of October 2002, as I have been instructed to assume is the earliest possible effective filing date of the '575 Patent. *See* Section VI.D.

22. I have been informed and understand that a Person of Ordinary Skill in the Art (“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, in my opinion, a POSA in October 2002 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. The experience and education levels may vary between persons of ordinary skill, with some persons having three years of relevant experience, and others holding a Bachelor’s degree in electrical engineering, electronic engineering, or computer science, but having only one to two years of relevant experience.

V. Relevant Legal Standards

23. I am not a lawyer and will not provide any legal opinions. Although I am not a lawyer, I have been informed and understand that certain legal standards are to be applied by technical experts in forming opinions regarding the meaning and validity of patent claims. I have been asked to provide my opinions regarding whether the claims of the '575 Patent are anticipated or would have been obvious to a person having ordinary skill in the art at the time of the alleged invention, in light of the prior art.

24. I have been informed and understand that, to anticipate a claim under 35 U.S.C. § 102, a reference must teach every element of the claim either expressly or inherently to a person having ordinary skill in the relevant art.

25. Further, I have been informed and understand that a patent claim is not patentable under 35 U.S.C. § 103 if the differences between the patent claim and the prior art are such that the claimed subject matter as a whole would have been obvious at the time the claimed invention was made to a person having ordinary skill in the relevant art. Obviousness, as I have been informed and understand, is based on the scope and content of the prior art, the differences between the prior art and the claim, the level of ordinary skill in the art, and, to the extent that they exist, certain objective indicia of non-obviousness.

26. I understand that objective indicia can be important evidence regarding whether a patent is obvious or nonobvious, if it has an appropriate nexus to the claimed invention, i.e., is a result of the merits of a claimed invention (rather than the result of design needs or market-pressure advertising or similar activities). Such indicia include: commercial success of products covered by the patent claims; a long-felt need for the invention; failed attempts by others to make the invention; copying of the invention by others in the field; unexpected results achieved by the invention as compared to the closest prior art; praise of the invention by the infringer or others in the field; the taking of licenses under the patent by others; expressions of surprise by experts and those skilled in the art at the making of the invention; and the patentee proceeded contrary to the accepted wisdom of the prior art.

27. I have been informed that whether there are any relevant differences between the prior art and the claimed invention is to be analyzed from the view of a person of ordinary skill in the relevant art at the time of the invention. As such, my opinions below as to a person of ordinary skill in the art are as of the time of the invention, even if not expressly stated as such; for example, even if stated in the present tense.

28. In analyzing the relevance of the differences between the claimed invention and the prior art, I have been informed that I must consider the impact, if

any, of such differences on the obviousness or non-obviousness of the invention as a whole, not merely some portion of it. The person of ordinary skill faced with a problem is able to apply his or her experience and ability to solve the problem and also look to any available prior art to help solve the problem.

29. I have been informed that a precise teaching in the prior art directed to the subject matter of the claimed invention is not needed. I have been informed that one may take into account the inferences and creative steps that a person of ordinary skill in the art would have employed in reviewing the prior art at the time of the invention. For example, if the claimed invention combined elements known in the prior art and the combination yielded results that were predictable to a person of ordinary skill in the art at the time of the invention, then this evidence would make it more likely that the claim was obvious. On the other hand, if the combination of known elements yielded unexpected or unpredictable results, or if the prior art teaches away from combining the known elements, then this evidence would make it more likely that the claim that successfully combined those elements was not obvious.

30. I have been informed and understand that there are recognized, exemplary, rationales for combining or modifying references to show obviousness of claimed subject matter. Some of the rationales include the following: combining prior art elements according to known methods to yield predictable

results; simple substitution of one known element for another to yield predictable results; use of a known technique to improve a similar device (method or product) in the same way; applying a known technique to a known device (method or product) ready for improvement to yield predictable results; choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art; and some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art teachings to arrive at the claimed invention.

VI. The '575 Patent

A. Description

31. 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. The '575 Patent acknowledges that prior art sports video games existed to play simulations of real-life sporting events and included and stored realistic league, team, stadium, uniform, and athlete, visual video game parameters:

Many video games attempt to recreate realistic situations. For example, video games simulating sports games and matches are

popular. They commonly even show actual leagues with correct teams. [*sic*] hometowns may be shown, with realistic stadiums. Athletes' uniforms represent professional athletes' actual uniforms. Specific athletes are represented. *Id.* at 1:7-15.

[T]he realism of the visual aspects of players, teams and stadiums is continually increased. For example, the ivy on the outfield wall of Wrigley Field in Chicago may be shown in a baseball video game. *Id.* at 1:38-41.

[S]ports video games frequently attempt to emulate professional sport details. Actual professional athletes are shown, frequently including such details as jersey numbers, physical stature and even facial features. *Id.* at 1:48-52.

Frequently, actual professional teams are provided for video game play. For example, in a basketball video game, players can play the Los Angeles Lakers versus the Chicago Bulls, complete with rosters, players and even a stadium. *Id.* at 1:56-60.

For example, the game may display Wrigley Field for play by the Chicago Cubs and Fenway Park for play by the Boston Red Socks [*sic*]. *Id.* at 4:41-43.

32. The '575 Patent also acknowledges that it was well known to include and store, in these prior art sports simulation video games, 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:

[T]he realism goes far beyond just images. The video game characters have characteristics approximating their real life counterparts. For example, the video game Shaquille [*sic*] may be very good at dunking the basketball, but horrible at shooting free throws. *Id.* at 1:16-20.

For example, Barry Bonds of the San Francisco Giants baseball team had a homerun average of $(73 \text{ homeruns}) / (476 \text{ at bats}) = 15.3 \text{ percent}$ during the 2001 season. This average can be used to set a video game parameter so that the video game character Barry Bonds has a similar tendency to hit homeruns. *Id.* at 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.* at 1:52-56.

For example, Mike Bibby of the Sacramento Kings, during the 2001-2002 regular season averaged 13.7 points and 12.3 shots attempted per game . . . A video game player can play a basketball video game with a Mike Bibby character. *Id.* at 4:66-5:1, 5:4-5.

As another example, the 2000-2001 Chicago Bears' opponents scored an average of 22.2 points per game with an average of 114.2 rushing yards per game . . . video games played during the 2001-2002 season . . . reflected the statistics from the 2000-2001 season. *Id.* at 5:7-9, 5:13-15.

33. 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.* at 1:20-22.

[Barry Bonds' homerun average during the 2001 season] can be used to set a video game parameter so that the video game character Barry Bonds has a similar tendency to hit homeruns. *Id.* at 1: 26-31.

[I]n a baseball video game, an individual professional athlete's batting average may be used to influence a video game character's batting performance. *Id.* at 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.* at 1:35-38.

34. 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.* at 1:23-25, 1:31-35, 1:42-44.

A major problem with this system is that professional sports change in many ways. Athletes' performances change over the course of a season, or even a day. Additionally, athletes may be traded from team to team, or become injured. Stadia may change. Sports announcers may change. This leaves a video game behind, in an unrealistic state . . . This is unsatisfying for video game players. They want to play a video game that matches the professional sport performance characteristics, look and feel. *Id.* at 1:62-2:5.

For example, in 2002, Ted Williams' number, '9', was displayed in the leftfield grass of Fenway Park after the start of the season. Baseball video games were already produced. So the video game fields did not have the number on the field, failing to duplicate real life. *Id.* at 4:52-55.

As another example, the 2000-2001 Chicago Bears' opponents scored an average of 22.2 points per game with an average of 114.2 rushing yards per game. The 2001-2002 Chicago Bears' opponents scored an average of 12.7 points per game with an average of 82.1 rushing yards per game. This change was not reflected in video games played during the 2001-2002 season. At that time, the newest video games reflected

the statistics from the 2000-2001 season. Thus, the Chicago Bears on the video games played poorly, whereas the Chicago Bears on the real football field played very well. This dichotomy between video game and real life is frustrating to many video game players. *Id.* at 5:7-18.

35. The Summary section of the '575 Patent identifies that 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. *Id.* at 2:11-16.

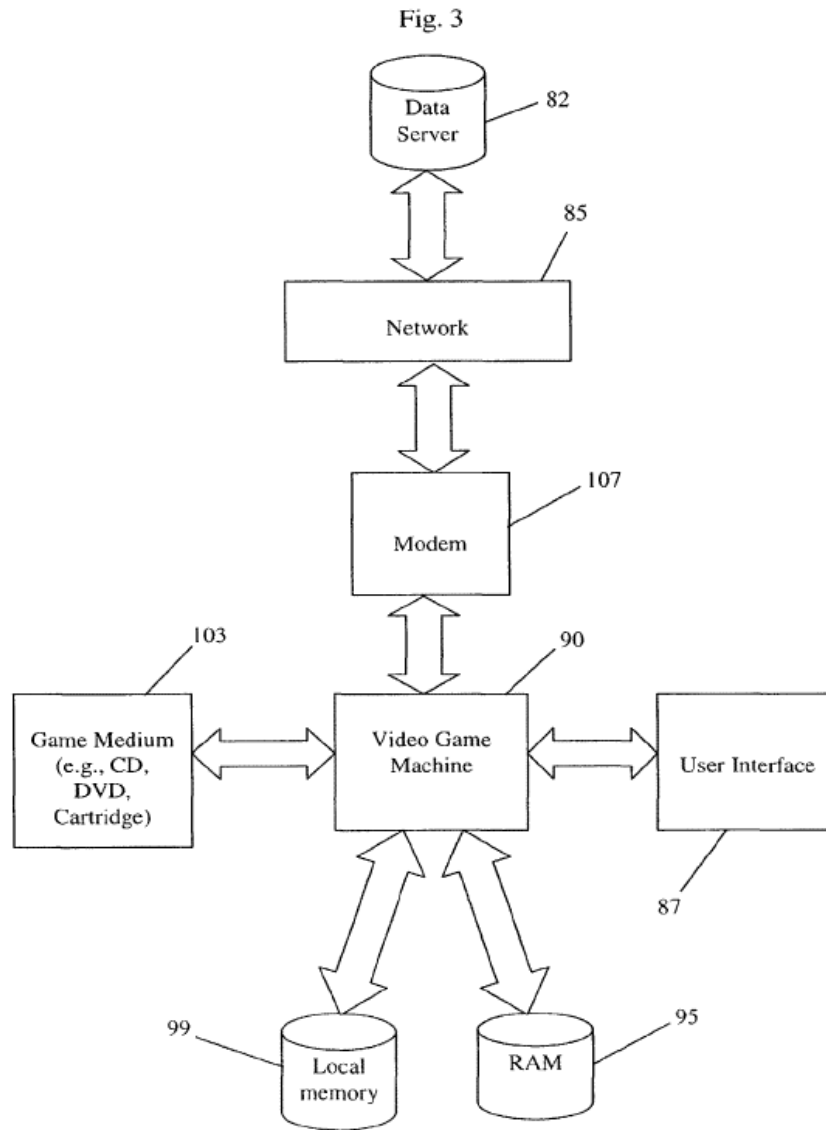
36. The Summary of the '575 Patent describes that once the updated parameters are downloaded and stored on a video game machine, the corresponding visual attributes in the video game, and performance characteristics of video game characters, change:

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. *Id.* at 2:14-16.

[F]or example, the new performance characteristics of the rising star may be recorded on the server as improved performance parameters. When these parameters are downloaded by the video game player, the video game incorporates the star-like qualities of the rising star. *Id.* at 2: 17-21.

37. The '575 Patent does not disclose *how* the updated parameters change these visual attributes or performance characteristics; rather it simply discloses that they do.

38. In the preferred embodiments of the '575 Patent, a video game system includes a video game that is played in video game machine 90 that communicates with a data server 82 via a network 85. *Id.* at Figure 3 (below):



39. In the preferred embodiment, video game machine 90 includes a central processing unit (CPU) with an integrated or separate coprocessor (CP), an integrated or separate drive for receiving a video game medium 103 (e.g. CD/DVD disc or cartridge), a user interface 87 such as a video game controller to receive inputs while the user is playing the video game, a local memory 99 (e.g., read only

memory (ROM)), RAM⁴ 95, and an integrated or separate modem 107 to connect to network 85, such as the Internet. *Id.* at Figures 1-3 (above), 2:64-66, 3:36-39, 3:51-62, 4:23-26, 5:3-4.

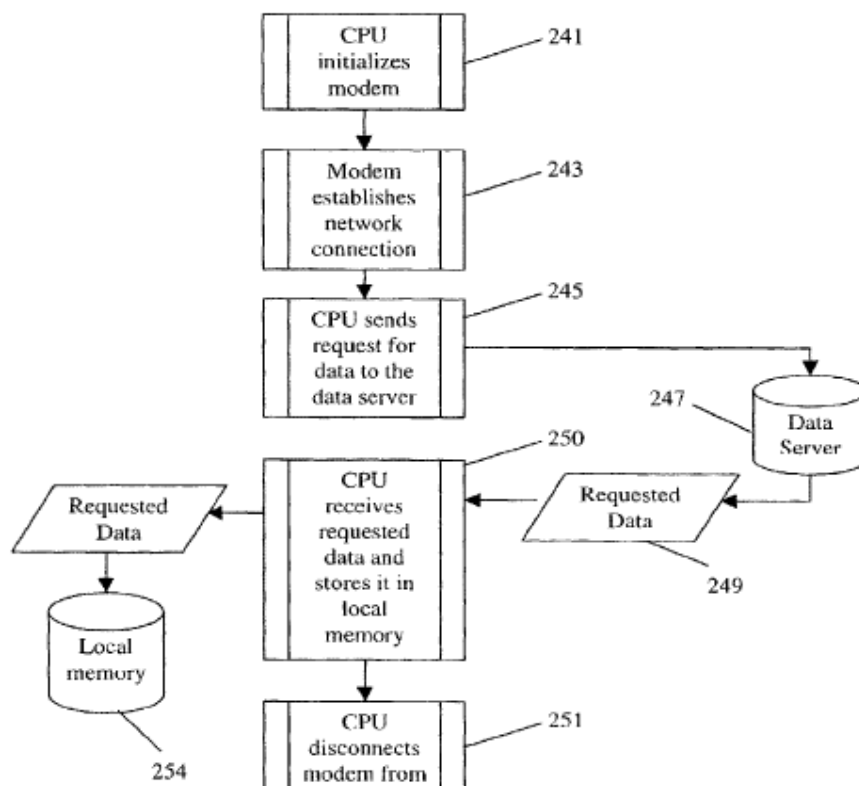
40. Data server 82 stores updated video game parameters and connects to network 85 to communicate these updated video game parameters to video game machine 90. *Id.* at Figures 1-3, 2:64-66, 3:36-39, 3:51-62, 4:23-26, 5:3-4.

41. A user can manually initiate a download of a selected set of updated video game parameters or, “if autoupdate is enabled,” the video game machine can automatically initiate the download. *Id.* at Figures 7, 13, 5:40-44, 7:38-45.

Referring to Figure 8 (excerpt below), video game machine (CPU) 90: (1) initiates modem 107 to establish a network connection, (2) sends a request for the updated video game parameters 249 over the network to data server 247, (3) receives the updated video game parameters 249 over the network, and (4) stores the new video game parameters 249 in local memory 254. *Id.* at Figure 8, 5:61-6:9.

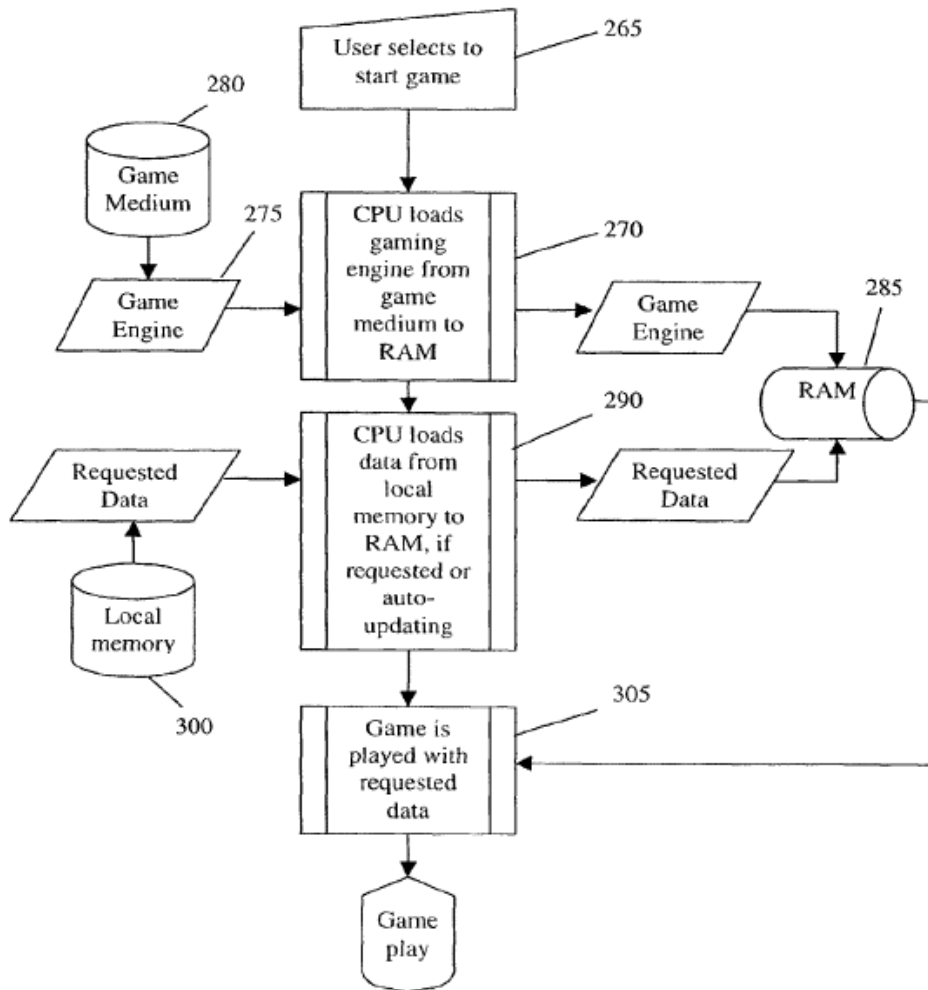
⁴ A POSA understands “RAM,” as described in the specification of the ’575 Patent, to be a well-understood acronym for conventional random access memory. Section VI.C.1.

Fig. 8



42. Referring to Figure 9 (below), when the video game is played on video game machine (CPU) 90: (1) “CPU loads the game engine 275 from the game medium 280 into RAM 285, and (2) “CPU loads the requested data from local memory 300 into RAM 285,” so that “updated statistics, such as new player performance parameters resulting from current, real professional games can be used to play a more realistic video game.” *Id.* at Figure 9, 6:4-13.

Fig. 9



43. 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 video game. *Id.* at Figures 1-3, 2:11-21, 2:64-3:7, 3:51-4:6, 4:49-57, 4:64-5:6; *see* Section VI.A at ¶¶ 38-43.

44. 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 parameter(s) for a particular athlete or a particular team (*Id.* at 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.* at :64-65, 4:64-66, 7:40-42), stadium or field parameter(s) (*Id.* at 1:66, 4:43-53), and other updated parameter(s) (e.g. referee's statistics, sports announcers, etc.) (*Id.* at 1:66, 4:59-63).

45. Although the Applicant argued the patentability of updating “character performance parameters” over updating other types of video game parameters (Section VI.C *supra*), 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. 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.

46. 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.

B. Background of the Relevant Art

47. As of October 2002, the state of the art pertinent to the '575 Patent included realistic sports video games, such as realistic soccer, basketball, baseball, football, and cricket sports video games. For example, as described in Section

VI.A, the '575 Patent describes that basketball, baseball, and football sports video games were known in the prior art.

48. A person of ordinary skill in the relevant art working in the field of video games, including sports video games, and related software and game systems, would have been familiar with certain common concepts and related components including, but not limited to: computer hardware, software, firmware and input/output devices; computer networks and networking devices; realistic sports video games, and downloading updated video game parameters over the Internet to achieve increased realism.

1. Computer Hardware, Software, Firmware, and Input/Output devices

49. In broad terms, typical, conventional computers consist of the following components:

50. CPU (or central processing unit) – The CPU is the brain of the computer, which processes data, performs calculations and controls the other components of the system. Computers are sometimes referred to by what CPU they have (e.g. Intel, Motorola) and how fast the CPU runs (e.g. 250MHz or 250,000,000 cycles per second).

51. Memory – Computer memory is an area of storage (with millions of individual cells, or storage locations), which holds the data that the CPU processes as well as the current “program” which the computer is running, or executing. The

program is the sequence of steps or operations that define the task the computer is undertaking. There are generally two types of memory, volatile or non-volatile. Volatile memory holds data temporarily while the memory is powered. For example, the random access memory (“RAM”) in a conventional computer is volatile. When the computer is shut off, the memory erases, or loses, the data. Non-volatile memory holds data even when it does not have power. Read-only-memories (“ROM”) such as hard drives, DVDs and CDs are conventional examples of non-volatile memory. For example, a user can remove a hard drive from a computer, put the hard drive in a new computer, and it still has the data.

52. Software – Originally, computers were composed only of physical circuits, known as hardware,⁵ that were programmed by physically configuring wires (like a telephone switch board operator). While these early computers were built, or “hard wired,” to do one task, conventional computers can perform a theoretically infinite amount of tasks just by having a user load a new computer program into memory. Such conventional computers cannot perform a task or function without having a program loaded into their memory. Computer programs are referred to as the computer’s software. The term “*software*” comes from the

⁵ Hardware is the tangible components of a computing system, such as vacuum tubes, wires, circuit boards and other discrete components.

fact that they can be modified much more easily than hardware, and new programs can be loaded by the user at any time, as opposed to the earlier, “hard” wired computers that were built to perform only one task. Users typically purchased software on non-volatile memory (cartridge, disk, DVD-ROM, CD-ROM, etc.) or downloaded software over the Internet to be stored in the computer’s non-volatile memory (e.g., hard drive).

53. In the late 1970’s, personal computers (PCs) became commercial products (such as the Apple II in 1977). In some PCs, a bootstrap loader and other basic input and output programs were permanently stored in non-volatile memory (ROM). These programs recorded indelibly in ROM were no longer “soft” enough to be modified, but could be changed by replacing one socketed ROM with another ROM containing another version of the program. Because they are intimately bonded with the hardware, these programs are called firmware.⁶

54. Conventional video game consoles are commercial computers and include personal computers (e.g., Apple II, Macintosh, IBM PC, Atari ST, Amiga, MS-DOS, Commodore C64, Commodore C128, etc.) that run a wide variety of software including video game software, and computers that predominantly run video game software (e.g., Atari 2600, Atari 5200, Atari 7800, Atari 400, Atari

⁶ Generally, firmware refers to CPU instructions stored in a programmable ROM.

800, Magnavox Odyssey II, Mattel Intellivision, Colecovision, Nintendo NES, Sony Playstation, etc.).

55. The '575 Patent describes the video game machine in the preferred embodiment as a conventional computer including conventional components in a conventional configuration and also states that “[i]t will be understood by those of skill in the art that other configurations of video game machines are possible.”

EA-1001, 3:24-42, 3:52-58, Figure 2, FIGS. 8, 9 (and accompanying text “CPU,” “local memory,” “RAM,” etc.); Section VI.A.

56. Typically, video game software, just like other software, was commercially sold on a memory or storage medium such as a cartridge or disk (e.g., CD-ROM, DVD-ROM). The '575 Patent describes the video game storage medium in the preferred embodiment as conventional. EA-1001, 4:41-42.

57. Computers need a way to get information into and out of the system. Thus, conventional computers are typically packaged with input and output (or I/O) devices. Input devices allow a user to input some sort of information to the computer. For example, users typically play video games on conventional video game consoles using a controller input device such as, for example, a keyboard, mouse, joystick, or gamepad. Output devices give the computer a way to output information to a user. Examples of output devices are displays, audio speakers, and printers.

2. Computer Networks and Networking Devices

58. In addition to working standalone, conventional computers were capable of connecting to networks such as the Internet, and transmitting and receiving data over such networks, and this capability was widely used. This technical configuration is sometimes referred to as a client/server architecture or connection. In this usage, a computer at home is called the “client” and the remote computer that the home computer is connecting to is referred to as the “server.”

59. Conventional networking devices (e.g., modems) were either integrated within, or externally connected to, client computers (e.g., using a null modem cable or a USB/High speed serial cable), and widely used to enable client computers to connect to, communicate with, and receive data over the Internet from, servers including, as discussed in more detail in Section VI.C.4, updates to video game parameters for video games played on the client computers. Section VI.C.4. Computers with conventional networking devices were also widely used to enable multi-player gaming where a user playing a video game on a remote computer at the other end of a network transmission could control a game character in the same video game running on a local computer as if he or she were in the same room with the user at the local computer (and vice versa). *See, e.g.*, EA-1002, 384 (NFL 2K1 “Network/Online Play”); *id.* at 447-448 (NBA 2K1 “Network Play,” “Network Features,” “Network Options”); *id.* at 491-492, 504-508

(Madden02 “Online Franchise,” “Remote”); EA-1011, 20⁷ (*FIFA 2001* “Multiplayer”); EA-1026, 2 (*FIFA 2001* “Required for Multiplayer Games”); EA-1018, 34-37 (*Madden NFL 2000* “Remote Play”); EA-1017, 2 (*Madden NFL 2000* “Required for Multiplayer Games”).

60. Servers perform many functions, including serving web pages over a network (e.g. the Internet) to computers at home, storing data for such web pages and data for downloading by computers at home over a network, communicating with data repositories to enable data storage and retrieval of stored data, and transmitting requested content to computers at home over a network including requested updates to video game parameters. Section VI.C.4.

61. The ’575 Patent describes the data server, network, and networking device in the preferred embodiment as conventional. EA-1001, 3:6-7, 3:41-42, 3:61-63, 4:33-39.

3. Realistic Video Games

62. Video games, including sports video games such as soccer, basketball, baseball, football, and cricket sports video games, that were programmed to simulate real-life in a virtual environment were well known. For example, as described in Section VI.A, the ’575 Patent describes that basketball, baseball, and

⁷ The citations to Exhibit EA-1011 are referenced to the exhibit page numbers.

football sports video games that included realistic league and team composition, stadium, field, uniform, athlete visual appearance, and athlete performance, video game parameters, were known in the prior art. Section VI.A.

63. 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. Section VI.A.

64. The '575 Patent also 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. Section VI.A.

65. Further by way of example, the applicant submitted several video game manuals, and publications written by users of such video games, as prior art publications during prosecution of the '575 Patent for football (e.g., EA-1005, 344-434, 453-454, 460-515, 655-688, 748-757), basketball (e.g., *id.* at 435-452), baseball (e.g., *id.* at 455-458), and hockey (e.g., *id.* at 655-709) video games, and that describe various realistic parameters and rules included in such video games.

66. Typically, sports video game software, just like other video game software, was commercially sold on a memory or storage medium such as a

cartridge or disk (e.g., CD-ROM, DVD-ROM) on which the conventional sports video game parameters, rules, and programs were stored for loading and executing in memory (e.g., RAM) of a computer. *See, e.g.*, EA-1005, 438 (NBA 2K1), 657 (NFL Fever 2002), 742 (4th and Inches), EA-1017, 7 (*Madden NFL 2000*). The '575 Patent describes the sports video game storage medium in the preferred embodiment as conventional. EA-1001, 4:41-42.

4. Downloading Updated Video Game Parameters Over the Internet

67. At the time of the invention of the '575 Patent, 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 (e.g., maintain compatibility with changes in computer operating systems), effective (e.g., fix bugs), and realistic (e.g., respond to real world sports events).

68. It was also widely known at the time of the invention 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.

69. For example, as evidenced by the prior art publications NFL 2K1 GameFAQs on Dreamcast (EA-1005 at 370-413) ("NFL2K1") and NBA 2K1 Manual for Sega Dreamcast (*id.* at 435-452) ("NBA2K1"), cited by the Examiner during prosecution of the application leading to the '575 Patent (Section VI.C; EA-

1002, EA-1003), it was well known at the time of the invention 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:

Customize

In season game mode, you can customize many things, like players, teams, plays, and you can even download the roster update from this menu. EA-1005, 377.

Download

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 . . . You also need net access setup on your Dreamcast for this to work. *Id.* at 378; *see also, e.g. id.* at 379-380 (“Stats”).

Connecting

As stated before, connecting to the NFL 2K1 servers is easy. All you have to do is select the Network menu, add in all your Internet info, and dial-up. *Id.* at 384.

COACH’S FILE Updated Rosters

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.* at 448; *see also id.* at 53.

70. Another example is disclosed in publications describing the features of the 1999 version (“CWC 99”) of Petitioner’s cricket sports video game called “Cricket World Cup.” I have reviewed the Declarations of Christopher Butler from the Internet Archive (EA-1010, EA-1027) and understand that various printouts from Petitioner’s website for CWC 99 (EA-1023 – EA-1025) were archived in the Internet Archive’s records on February 29, 2000, May 11, 2000, and June 11, 2000 respectively, and are currently publicly accessible through the Internet Archive’s Wayback Machine. EA-1027; EA-1010. I also understand from the Declarations of Christopher Butler that a printout from the website of a user of CWC 99 (EA-1030), and a zip file downloaded from that website and containing the text file “Cricket World Cup 99 Unofficial FAQ, Version 1.0917” dated, and having a last modified date of, September 17, 1999, and written by the user of CWC 99 (EA-1026), were archived in the Internet Archive’s records on February 4, 2002 and October 26, 2000 respectively, and are currently publicly accessible through the Internet Archive’s Wayback Machine. EA-1027 at 1-2.

71. I have been informed and understand that all of these five documents are printed publications and prior art to the ’575 Patent at least under 35 U.S.C. § 102(b).

72. These prior art publications describe the features of CWC 99, including the features for updating various video game parameters to increase

realism. For example, one archived printout from Petitioner’s website for CWC 99 discloses that the video game included various video game parameters relating to “accurately modelled stadia, physics, pitch and weather conditions,” and “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-1027. The archived text file also discloses video game parameters included in CWC 99 to increase realism:

Cricket World Cup 99 . . . is the official game for the World Cup . . . The countries Australia, India, Pakistan, South Africa, Sri Lanka, West Indies, New Zealand, Zimbabwe, Bangladesh, Kenya and Scotland all make their way to England (also playing) to hit balls around an oval with sticks. EA-1026, § 2.1; EA-1027.

===

4.10 Which cricket grounds can you play on?

===

In total, there are 21 stadia. This was increased from the original 6 that was announced at the start. The first version of this FAQ stated that there were only going to be 12 grounds. EA have decided to include all of them. The grounds are -

- * Amsterdam
- * Bristol
- * Canterbury
- * Cardiff
- * Chelmsford

- * Chester-Le-Street
- * Derby
- * Dublin
- * Edgbaston
- * Edinburgh
- * Headingley
- * Hove
- * Leicester
- * Lords
- * Northampton
- * Old Trafford
- * Southampton
- * Taunton
- * The Oval
- * Trent Bridge
- * Worcester

EA-1026, § 4.10; EA-1027.

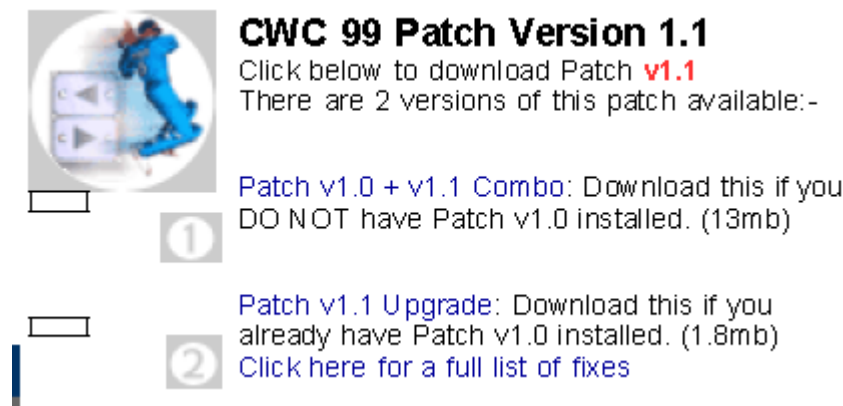
73. The same archived printout from Petitioner's website for CWC 99 also discloses Petitioner's planned system for updating such video game parameters:

Realism

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.

74. Two of the archived printouts from Petitioner’s website for CWC 99 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-1027.



The Cricket World Cup Patch v1.0 is now available to download from the Cricket [support page](#).

EA-1025, 1-2; EA-1010.



The Cricket World Cup Patch v1.1 is now available to download from the Cricket [support page](#).

EA-1025, 1; EA-1010.

75. One of the archived printouts from Petitioner's website for CWC 99 discloses that the v1.0 update included video game parameter updates such as character appearance and performance parameters:

A brief list of the enhancements included in this patch are:

- Updates to actual CWC squads including updated player photos, commentary, profiles and stats.

EA-1025, 1-2; EA-1010.

76. The same archived printout from Petitioner's website for CWC 99 also discloses that the v1.1 update included video game parameter updates such as character performance parameters based on real-life athlete performances in the actual Cricket World Cup in 1999:

The list of enhancements included in this patch are:

- All player stats updated to reflect their performance during the World Cup

EA-1025, 1; EA-1010.

77. The archived text file also discloses that CWC 99 was completed, beta-tested, and produced on May 2, 1999, before the start of the real-life Cricket World Cup in 1999 on May 14, 1999. EA-1026, § 4.13. It was well known, and is

a matter of public record, that the real-life 1999 Cricket World Cup took place between May 14, 1999 and June 20, 1999⁸.

78. As shown by these examples, and the examples described below, 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. 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.

79. 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

⁸ See, e.g., <http://www.espncricinfo.com/ci/engine/series/61046.html>;

https://en.wikipedia.org/wiki/1999_Cricket_World_Cup.

game parameters over a network, and the updating of such sports video games using the downloaded parameters to achieve more realistic gameplay.

C. Prosecution History of the '575 Patent

80. As set forth in the specification, each of the initial independent claims of the '575 Patent as filed claimed the identical system architecture and method for updating each of the different types of disclosed parameters. EA-1003, 257-261.

81. During prosecution, 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. *Id.* at 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”). *Id.* at 103-113.

82. 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.* at 35-47, 2-13; *see also* EA-1002 at 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.* at 748-751). EA-1002 at 303-315.

83. The Applicant appealed the Examiner’s rejections to the Board of Patent Appeals and Interferences (“BPAI”). *Id.* at 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.* at 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.* at 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.* at 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.* at 42.

84. Following the BPAI’s decision, the Examiner allowed the application leading to the ’575 Patent. *Id.* at 18-25.

85. However, as detailed in Sections VI.C and VIII.A-VIII.D, 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.

D. Priority Date of Claims

86. As discussed in Section VI.C, the ’575 Patent application (EA-1002, EA-1003) was filed on October 8, 2002 and does not claim priority to any other application. EA-1002 at 237-280; EA-1001 at 1.

87. For the purposes of this *Inter Partes* Review, I have been instructed to assume that the effective filing date of each of the Challenged Claims is October 8, 2002.

VII. Claim Construction

88. I have been informed and understand that in order to properly evaluate the '575 Patent, the terms of the claims must first be interpreted. I have also been informed and understand that claim terms are given their ordinary and accustomed meaning as would be understood by one of ordinary skill in the relevant art unless the inventor, as a lexicographer, has set forth a special meaning for a term.

89. In order to construe the claims, I have reviewed the entirety of the '575 Patent (EA-1001) and its prosecution history (EA-1002, EA-1003). Consistent with these standards, I propose the below interpretation for certain claim terms.

A. “the at least weekly transmissions”

90. This term appears in dependent Claims 24 and 25. *See, e.g.*, claim 24, phrase [24.0]; claim 25, phrase [25.0].

91. I have been informed and understand that a rule of claim drafting known as “antecedent basis” states that claim elements are identified throughout a claim by designating the element with an indefinite article “a” on its first appearance in the claim and thereafter employing a definite article such as “the” or “said.” I have also been informed and understand that errors in claim drafting do not render a claim indefinite under 35 U.S.C. § 112 when the meaning of the claim

would be reasonably certain to a POSA when viewed in light of the claim language and specification.

92. The language of the claims provides substantial guidance as to the meaning of this term. Claim 25 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).

93. 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*.
EA-1001, 11:18-25 (emphasis added).

94. There is no explicit antecedent for the claim phrase “the at least weekly transmissions” in claim 25. However, given the language of claim 25 and the usage of this phrase in claim 24, a POSA would recognize that it is clear from the claim language that the only antecedent for the claim element “the at least weekly transmissions” could be the earlier recited claim element “a portion of the

updated transmissions are carried out at least daily.” A POSA would also recognize that the only periodicity of transmissions discussed in claim 25 is “daily”—no other periodicity of transmissions is discussed.

95. Accordingly, it is my opinion that a POSA would understand the phrase “the at least weekly transmissions” to mean “the at least daily transmissions” in claim 25.

VIII. Challenge #1: Claims 1-3, 5-6, 8, 11-12, 14-17, 22-25, and 27-31 are Obvious under 35 U.S.C. § 103 over the *Madden NFL 2000* References

A. The *Madden NFL 2000* References Teach Every Element of Claims 1-3, 5-6, 8, 11-12, 14-17, 22-25, and 27-31

1. Madden 2000 Manual

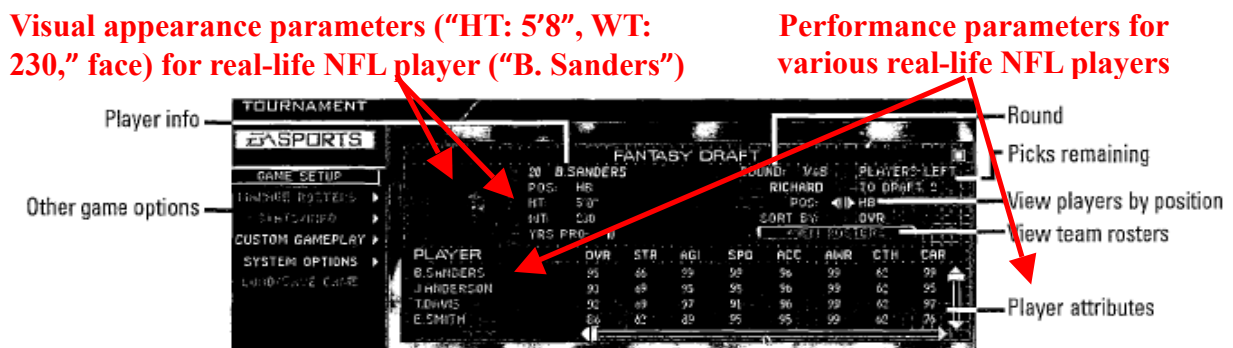
96. Madden 2000 Manual is Petitioner’s reference manual for the 2000 version of Petitioner’s *Madden NFL* game for PCs (“Madden 2000 game” or “*Madden NFL 2000*”) and has a copyright date of 1999. EA-1018, 1, 40.

97. I have reviewed the Declaration of Ryan Ferwerda and understand that the Madden 2000 Manual was distributed and otherwise made publicly available by Petitioner as it was enclosed with each copy of the Madden 2000 game. EA-1028, ¶ 5.

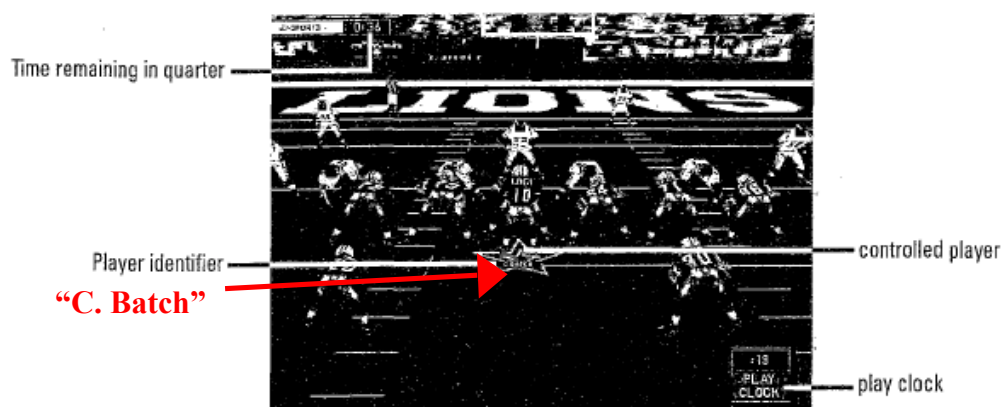
98. I have been informed and understand that the Madden 2000 Manual is a printed publication and is available as prior art under 35 U.S.C. § 102(b). Madden 2000 Manual was not cited or applied by the Examiner during the prosecution of the ’575 Patent.

99. Madden 2000 Manual describes a realistic video game simulating real-life NFL football gameplay while being played on a computer. *See* EA-1018.

100. As shown, for example, in the annotated excerpt below, 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); *see also id.* at 19 ("player detail").



Id. at 13 (annotated above); *see also id.* at 29 ("K. Stewart").

RATING ABBREVIATIONS

OVR	Overall
STR	Strength
AGI	Agility
SPD	Speed
ACC	Acceleration
AWR	Awareness
CTH	Catching Ability
CAR	Ball Carrying Ability
THP	Throwing Power
THA	Throwing Accuracy
KPW	Kicking Power
KAC	Kicking Accuracy
BTK	Ability to Break Tackles
TAK	Tackling Ability
IMP	Importance to Team
PBK	Pass Blocking
RBK	Run Blocking
INJ	Injury Resistance
POT	Potential

Id. at 32; *see also id.* at 28 (illustrated player attributes for video game characters include OVR, STR, AGI, SPD, ACC, AWR, CTH, CAR, etc. as annotated above).

101. 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. Section VI.A at ¶¶ 32-33; Section VI.B, ¶¶ 62-64, 78.

102. As shown, for example, in the excerpt below, Madden 2000 Manual also describes the features of other types of downloadable video game parameters to control the operation of the video game such as, for example, team parameters

(e.g. visual appearance, roster composition, etc.) based on real-life NFL teams, included in *Madden NFL 2000*:

MANAGE ROSTERS

Trade, sign, or release players to and from your roster or create, edit or delete a player. You can also re-arrange your depth chart and draft new players to your team.

ROSTER INFO View information about managing a team roster.

LOAD/SAVE/DELETE Load, update, or erase a Roster File.

MANAGE ROSTERS

☐ These changes take effect when you load a saved roster.

VIEW ROSTER View a team's current roster or edit a player.

TRADE PLAYER Make a one-on-one trade between any two teams.

SIGN PLAYER Sign a player from the free agent pool.

RELEASE PLAYER Release a player to the free agent pool.

DEPTH CHART Re-arrange the order of a depth chart.

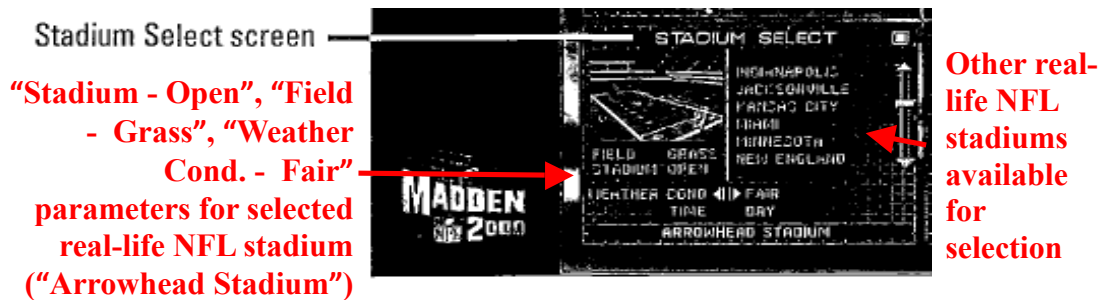
CREATE PLAYER Create custom players and add them to the free agent list or to a specific team.

If you edit a current player, this counts as one custom player.

DELETE PLAYER Delete a created player.

Id. at 8, 31-32; *see also id.* at 9-10 (“rating categories for the selected teams” (e.g. Redskins, Cowboys)), 28 (“team rosters”).

103. As shown in another annotated excerpt below, *Madden 2000 Manual* 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); *see also id.* at 14 (showing stadium goal posts, stands, yardage and team name painting on field, etc.), 31.

Stadium Select

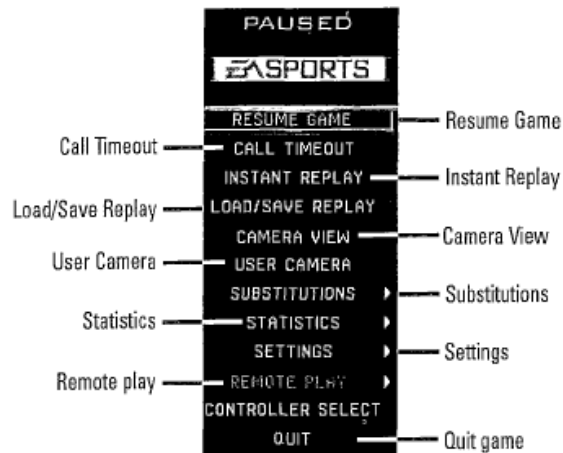
Select a NFL stadium to play in. You can also choose the weather conditions and game time.

Id. at 18; *see also id.* at 19 ("stadium detail"), 20 ("field detail", "weather effect"); 38-39.

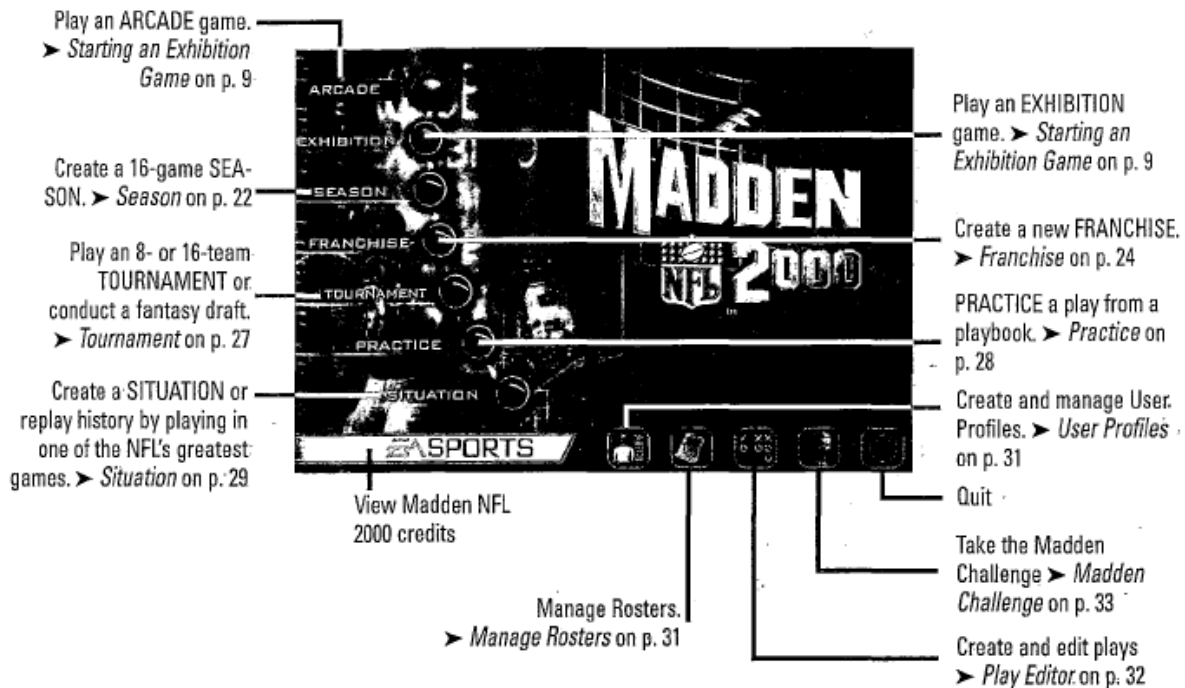
104. Madden 2000 Manual also describes rules for the Madden 2000 game, and describes that such rules are based on video game settings, options and modes selected by the user using a controller as shown, for example, in the excerpts below:

PAUSE MENU

View game information in a variety of categories and re-adjust the game settings and options. During the game, press **START** to reach the Pause menu.

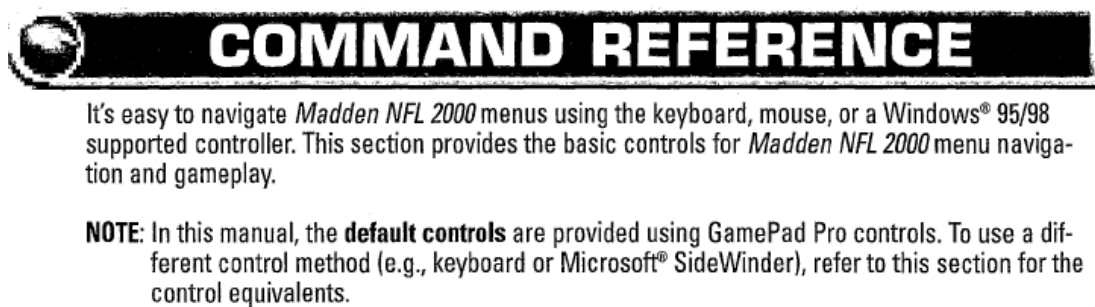


Id. at 17-18.



Id. at 7; *see also id.* at 8 (“setup box”), 18-21 (“Game Options Menu”); 22-29 (“Game Modes”).

105. Madden 2000 Manual also describes how a user navigates various menus of the Madden 2000 game, and controls the video game characters described in Madden 2000 Manual for *Madden NFL 2000* (Section VIII.A.1, ¶ 100), by providing inputs using various supported controllers including, for example, a keyboard, a mouse, a Gamepad Pro, and a Microsoft Sidewinder Gamepad as shown, for example, in the excerpts below:



Id. at 4 *see also id.* at 10 (“controller select screen”)

CONVERSION TABLE		
GAMEPAD PRO	SIDEWINDER	KEYBOARD
D-Pad	D-Pad	Arrow Keys
Button 1	X	
Button 2	A	
Button 3	B	
Button 4	Y	
Button 5	Left Trigger	
Button 6	Right Trigger	
Button 7	Z	
Button 8	C	
Button 9/SELECT	M	
Button 10/START	START	Space Bar

Id. at 5.

RUNNING

ACTION	GAMEPAD PRO	SIDEWINDER	KEYBOARD
Speed burst/Head down	Button 2	A	
Dive/QB slide	Button 1	X	
Jump/Hurdle	Button 4	Y	
Spin	Button 3	B	
Stiff arm	Button 8	C	
Juke left/right	Button 5/6	Left/Right Trigger	/
Lateral the ball	Button 7	Z	

⇒ To break a wrap tackle, press Button 1, 2, 3, or 4 when a defender has you in his grasp.

PASSING

ACTION	GAMEPAD PRO	SIDEWINDER	KEYBOARD
View available receivers	Button 2	A	
Pass to the receiver with corresponding control symbol	Button 1, 2, 3, 5, or 6	X, A, B, Left Trigger, or Right Trigger	, , , , or
Throw ball away	Button 4	Y	
Route-based passing	Button 7 + receiver symbol	Z + receiver symbol	+ receiver symbol
Pump fake (once only)	Button 8 + passing symbol of the receiver you want to fake to	C + passing symbol of the receiver you want to fake to	+ passing symbol of the receiver you want to fake to

⇒ To throw a bullet pass, hold down the button that corresponds to the targeted receiver. To throw a lob pass, tap the button.

Id. at 14; *see also id.* at 9, 13 (“controlled player”), 15-16.

2. Madden 2000 Card

106. Madden 2000 Card is Petitioner’s install guide for the Madden 2000 game and has a copyright date of 1999. EA-1017, 1, 15.

107. I have reviewed the Declaration of Ryan Ferwerda and understand that the Madden 2000 Card was distributed and otherwise made publicly available

by Petitioner as it was enclosed with each copy of the Madden 2000 game. EA-1028, ¶ 6.

108. I have been informed and understand that the Madden 2000 Card is a printed publication and is available as prior art under 35 U.S.C. § 102(b). Madden 2000 Card was not cited or applied by the Examiner during the prosecution of the '575 Patent.

109. Madden 2000 Card provides further description for 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, and procedures for using such a controller to provide inputs to install, start, and troubleshoot, the Madden 2000 game described in Madden 2000 Card on the computer as shown, for example, in the excerpts below:

MINIMUM CONFIGURATION

- ☐ Windows® 95 or Windows 98 (Windows NT and Windows 2000 are not supported)
- ☐ 133 MHz or faster Intel® Pentium® or AMD® K6™ processor, or 200 MHz processor with supported 3D accelerator
- ☐ 32 MB RAM
- ☐ 8x or faster CD-ROM drive (1200K/second transfer rate) using 32-bit Windows 95/98 driver
- ☐ High Color (16-bit) capable 2 MB PCI or AGP video card with DirectX™ 7.0a compliant driver.
- ☐ 30 MB free hard disk space plus space for saved games (additional space required for Windows swap-file and DirectX 7.0 installation).
- ☐ DirectX 7.0a compatible sound card; Keyboard; Mouse

EA-1017, 1; *see also id.* at 1-2.

STARTING THE GAME

1. Start the Windows 95/98 operating system.
2. Start the *Madden NFL 2000* launcher.
3. Choose your desired graphics API (D3D, Glide, Non-Accelerated).
 - ☐ If you selected D3D, choose your desired graphics board (2D/3D Card, 3D Accelerator).
4. Click "Play" to begin *Madden NFL 2000*.

Id. at 6; *see also id.* at 4-5.

RECEIVE "FILE NOT FOUND" ERROR MESSAGE WHEN INSTALLING OR RUNNING THE GAME

- ☐ Make sure the CD is in the CD drive. The CD must be in the drive to install or run the game.

Id. at 7.

MEMORY PROBLEMS

Madden NFL 2000 requires 32 MB RAM and Virtual Memory ENABLED. We advise letting Windows 95/98 manage the amount of virtual memory automatically (the default setting) and having *at least* 50 MB free hard drive space after installation.

Id. at 9; *see also id.* at 8-9, 10-12.

3. Madden 2000 Updates

110. Madden 2000 Updates (EA-1015) is a printout of a web page from Petitioner's publicly available website

http://www.easports.com/99/madden2000/downloads_pc.cfm (hereinafter

"Madden 2000 Updates website"). EA-1027; EA-1028, ¶¶ 7-8.

111. I have reviewed the Declarations of Christopher Butler and understand that the printout of the web page from the Madden 2000 Updates website was archived in the Internet Archive's records on March 2, 2000 (EA-

1015), and is currently publicly accessible through the Internet Archive's Wayback Machine. EA-1027.

112. I have also reviewed the Declaration of Ryan Ferwerda, understand that the Madden 2000 Updates website, and the links thereon, were publicly available. EA-1028, ¶ 8. Based on my review of the Declaration of Ryan Ferwerda, I also understand that the various zip files that are selected for download from the links on the Madden 2000 Updates website were, and continue to be, publicly available for download from the server. *Id.* at ¶¶ 7-8. Based on my review of the Declaration of Ryan Ferwerda, I also understand that the Uniform Resource Locator (URL) addresses on the server from where the zip files may be downloaded to a user's computer over the Internet were made publicly accessible on the same date as the dates shown in the printout of the web page from the Madden 2000 Updates website (EA-1015). *Id.* at 10-11; EA-1015, 1.

113. I have been informed and understand that Madden 2000 Updates is a printed publication and is available as prior art under 35 U.S.C. § 102(b). Madden 2000 Updates was not cited or applied by the Examiner during the prosecution of the '575 Patent.

114. I downloaded the zip files from each of the URL addresses identified in paragraph 10 of the Declaration of Ryan Ferwerda and reviewed the contents of each of the downloaded zip files. EA-1028, ¶ 10. Based on my review, I can

confirm that each of the *.zip files includes a *.DAT file and a *.txt file with the same base filename as the *.zip file in which they are contained. For example, the PlayoffWeek1.zip file contains a PlayoffWeek1.DAT file and a PlayoffWeek1.txt file (EA-1016, 2). EA-1016, 1. Additionally, for example, the EASuperBowl.zip file contains an EASuperBowl.DAT file and an EASuperBowl.txt file (EA-1019, 2). EA-1016, 1. Based on my review, I can also confirm that the filename of each of the zip files (e.g. "PlayoffWeek1.zip", "EASuperBowl.zip") is the same name shown for the respective links (e.g. "PlayoffWeek1.zip", "EASuperBowl.zip") in the printout of the web page from the Madden 2000 Updates website (EA-1015). *Id.* at ¶¶ 10-11; EA-1015, 1. Based on my review, I can also confirm that the last modification date/time for each of the respective *.DAT files and *.txt files in each of the downloaded zip files is prior to the dates that the Uniform Resource Locator (URL) addresses on the server were made publicly accessible, and specifically are as follows:

- PlayoffWeek1.DAT: 1/6/2000, 9:22 AM; PlayoffWeek1.txt: 1/6/2000, 9:34 AM (EA-1016, 1)
- PlayoffWeek2.DAT: 1/11/2000, 12:05 PM; PlayoffWeek2.txt: 1/13/2000, 9:23 AM
- PlayoffWeek3.DAT: 1/20/2000, 9:41 AM; PlayoffWeek3.txt: 1/19/2000, 11:20 AM

- EASuperBowl.DAT: 1/26/2000, 4:51 PM; EASuperBowl.txt:
1/27/2000, 10:22 AM (EA-1019, 1)
- EAWeek8.DAT: 11/3/1999, 6:31 PM; EAWeek8.txt: 11/3/1999,, 6:41
PM
- EAWeek9.DAT: 11/4/1999, 2:25 PM; EAWeek9.txt: 11/4/1999,
12:57 PM
- EAWeek10.DAT: 11/11/1999, 3:47 PM; EAWeek10.txt: 11/12/1999,
5:47 PM
- EAWeek11.DAT: 11/18/1999, 3:43 PM; EAWeek11.txt: 11/18/1999,
3:43 PM
- EAWeek12.DAT: 11/23/1999, 9:40 AM; EAWeek12.txt: 11/23/1999,
2:20 PM
- EAWeek13.DAT: 12/2/1999, 9:40 AM; EAWeek13.txt: 12/1/1999,
3:56 PM
- EAWeek14.DAT: 12/9/1999, 10:00 AM; EAWeek14.txt: 12/7/1999,
12:05 PM
- EAWeek15.DAT: 12/16/1999, 9:23 AM; EAWeek15.txt: 12/15/1999,
4:41 PM
- EAWeek16.DAT: 12/21/1999, 11:08 AM; EAWeek16.txt:
12/21/1999, 11:31 AM. EA-1028 at ¶¶ 10-11; EA-1015, 1.

115. It was well known, and is a matter of public record, that the 2000 real-life regular NFL season took place between September 3, 2000 and December 25, 2000⁹, the real-life NFL playoffs took place between December 30, 2000 and January 14, 2000¹⁰, and the real-life Super Bowl took place on January 28, 2000¹¹.

116. As shown in the excerpt below, Madden 2000 Updates further describes the latest video game “Playoff Round Rosters” updates and “Madden NFL(TM) 2000 roster[s]” updates posted weekly by Petitioner, during the single, real-life 2000 NFL regular season, Playoffs, and Super Bowl, to Petitioner’s publicly available website, and whereby a user would provide an input to his/her PC using a controller to connect the PC to this website over the Internet and to select a link to download an update to the PC:

⁹ See, e.g., <http://www.nfl.com/schedules/2000/REG1>;
<http://www.nfl.com/schedules/2000/REG17>;
https://en.wikipedia.org/wiki/2000_NFL_season.

¹⁰ See, e.g., <http://www.nfl.com/schedules/2000/POST>;
https://en.wikipedia.org/wiki/2000_NFL_season.

¹¹ *Id.*

Download the latest Playoff Round Rosters now!

PlayoffWeek1.zip (429kb)	01/06/00
PlayoffWeek2.zip (429kb)	01/20/00
PlayoffWeek3.zip (429kb)	01/20/00
EASuperBowl.zip (429kb)	01/28/00

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

EAWeek8.zip (427kb)	11/04/99
EAWeek9.zip (427kb)	11/08/99
EAWeek10.zip (428kb)	11/12/99
EAWeek11.zip (428kb)	11/18/99
EAWeek12.zip (428kb)	12/03/99
EAWeek13.zip (428kb)	12/03/99
EAWeek14.zip (428kb)	12/09/99
EAWeek15.zip (4.28kb)	12/22/99
EAWeek16.zip (428kb)	12/22/99

EA-1015, 1; *see also* Section VI.B.2; Section VIII.A.1, ¶¶ 104-105; Section VIII.A.2, ¶ 109.

4. Playoff Week 1 Update and Super Bowl Update

117. Playoff Week 1 Update (EA-1016) is a printout of the text file (PlayoffWeek1.txt) downloaded from the PlayoffWeek1.zip link on the publicly available Madden 2000 Updates website. Section VIII.A.3, ¶¶ 114-116; EA-1028, ¶¶ 7-8, 10-11; EA-1016, 1-2; EA-1015, 1.

118. Super Bowl Update (EA-1019) is a printout of the text file (EASuperBowl.txt) downloaded from the EASuperBowl.zip link on the publicly available Madden 2000 Updates website. Section VIII.A.3, ¶¶ 114-116; EA-1028, ¶¶ 7-8, 10-11; EA-1019, 1-2; EA-1015, 1.

119. As set out in Section VIII.A.3 above, I have reviewed the Declaration of Ryan Ferwerda, and understand that the PlayoffWeek1.zip file and the EASuperBowl.zip file that are respectively selected for download from the PlayoffWeek1.zip link and EASuperBowl.zip link on the Madden 2000 Updates website was, and continues to be, publicly available from the server. EA-1028 at ¶¶ 8, 10-11. Based on my review of the Declaration of Ryan Ferwerda, I also understand that the Uniform Resource Locator (URL) address on the server from where the PlayoffWeek1.zip file may be downloaded to a user's computer over the Internet (<ftp://ftp.ea.com/pub/easports/patches/madden2000/PlayoffWeek1.zip>) was made publicly available on January 6, 2000, the same date as the date shown in Madden 2000 Updates (EA-1015). *Id.* at 10-11; EA-1015, 1 (Section VIII.A.3, ¶¶ 114-116). Further based on my review of the Declaration of Ryan Ferwerda, I understand that the Uniform Resource Locator (URL) address on the server from where the EASuperBowl.zip file may be downloaded to a user's computer over the Internet (<ftp://ftp.ea.com/pub/easports/patches/madden2000/EASuperBowl.zip>) was made publicly available on January 28, 2000, the same date as the date shown in Madden 2000 Updates (EA-1015). *Id.* at 10-11; EA-1015, 1 (Section VIII.A.3, ¶¶ 114-116).

120. I have been informed and understand that Playoff Week 1 Update is a printed publication and is available as prior art under 35 U.S.C. § 102(b). Playoff

Week 1 Update was not cited or applied by the Examiner during the prosecution of the '575 Patent.

121. I have also been informed and understand that Super Bowl Update is a printed publication and is available as prior art under 35 U.S.C. § 102(b). Super Bowl Update was not cited or applied by the Examiner during the prosecution of the '575 Patent.

122. Playoff Week 1 Update describes that the Update is “current as of 01/07/2000” and updates video game team composition, and character performance, parameters so that changes in the real-life NFL team rosters, and changes in the performances of real-life NFL athletes, during the real-life NFL season, are simulated in *Madden NFL 2000*:

This 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.* EA-1016, 2 (emphasis supplied).

All prior roster changes that were made by the user will be lost if you update to this roster . . . This roster reflects the real NFL rosters, this is why these changes occur. *Id.*

123. Super Bowl Update describes that the Update is “current as of 01/28/2000” and also updates video game team composition, and character performance, parameters so that changes in the real-life NFL team rosters, and

changes in the performances of real-life NFL athletes, during the real-life NFL playoffs of the real-life NFL season, are simulated in *Madden NFL 2000*:

This Roster [Update] includes adjusted rosters and **player abilities** including *performance during the NFL playoffs*. *Each week the roster file will be updated to denote **player** performance in each eligible teams playoff game*. EA-1019, 2 (emphasis supplied).

All prior roster changes that were made by the user will be lost if you update to this roster . . . This roster reflects the real NFL rosters, this is why these changes occur. *Id.*

124. Playoff Week 1 Update and Super Bowl Update describe that the Updates are saved to the directory structure of *Madden NFL 2000*, and that the user respectively provides an input with the controller connected to the computer to select and load the respective update file (e.g. PlayoffWeek1.DAT, EASuperBowl.DAT) into *Madden NFL 2000* in the “Manage roster” menu (Section VIII.A.1, ¶¶ 102, 105)) during execution of the game. EA-1016, 2; EA-1019, 2; *see also* EA-1018, 8, 31-32, 34, Section VIII.A.1, ¶¶ 102, 104-105.

125. 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.

Section VI.A, ¶ 33; Section VI.B.3, ¶ 63; Section VI.B.4, ¶ 78; Section VIII.A.1, ¶ 101; EA-1016; EA-1019.

B. Detailed Invalidity Analysis

126. As detailed below, the *Madden NFL 2000 References* disclose every element of Claims 1-5, 7-9, 11-12, 14-17, 20, 22 and 23 of the '575 Patent alone or in combination with the knowledge, skill and creativity of one of ordinary skill in the relevant art. Each of the limitations of these claims are disclosed by these references and any potential distinction that may be argued by the Patent Owner would have been obvious.

127. Importantly, the *Madden NFL 2000 References* are contemporaneous publications that 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. 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.

Claim 1: [1.0]¹² A game medium configured to provide a sports video game in conjunction with a video game machine,

128. Madden 2000 Manual in view of Madden 2000 Card discloses this limitation. Madden 2000 Manual describes the features (e.g. rules, parameters) of

¹² Throughout this Declaration, the citation to claim elements is to [claim.element].

Madden NFL 2000. See Section VIII.A.1, ¶¶ 96-105. 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. Section VIII.A.2, ¶¶ 106-109; EA-1017 at 1, 4-7 (procedures for “installing the game” and “starting the game”), 7 (“CD Problems”), 9.

129. As set out above, Madden 2000 Manual and Madden 2000 Card are contemporaneous publications that 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. 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. Section VIII.B, ¶ 127. Therefore, Madden 2000 Manual in view of Madden 2000 Card discloses these limitations.

[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:

130. Madden 2000 Manual in view of Madden 2000 Card discloses these limitations. As set out in Section VIII.B [1.0], Madden 2000 Manual in view of

Madden 2000 Card describes the *Madden NFL 2000* game stored on a CD-ROM to run the *Madden NFL 2000* game on a PC. See Section VIII.A.1, 2; Section VIII.B [1.0]; see also Section VI.B.1. 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. See Section VIII.A.1, ¶¶ 99-101, 104, Section VIII.A.2, ¶ 109; Section VIII.B, ¶¶ 127, 129. Therefore, Madden 2000 Manual in view of Madden 2000 Card discloses these limitations.

[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,

131. Madden 2000 Manual in view of Madden 2000 Card discloses this limitation as set out above. Section VIII.B [1.0]; Section VIII.A.1, ¶¶ 99-104, 104, Section VIII.A.2, ¶ 109; Section VIII.B, ¶¶ 127, 129.

[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;

132. Madden 2000 Manual in view of Playoff Week 1 Update discloses these limitations. As set out in Sections VIII.A.1 and VIII.A.4, 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. Section VIII.A.1, ¶¶ 100-101; Section VIII.A.4, ¶¶ 122, 125. Madden 2000 Manual discloses the video game data of *Madden NFL 2000* includes video game rules (Section VIII.A.1, ¶ 104) and particular video game character performance parameters of individual characters associated with the actual performance of particular real-life NFL athletes (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) in real-life NFL games. Section VIII.A.1, ¶¶ 100-101. Playoff Week 1 Update discloses character performance parameters denote real-life player performances of real-life athletes in real life NFL games. Section VIII.A.4, ¶¶ 122, 125. These character performance 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*. Section VIII.A.1, ¶¶ 100-101; Section VIII.A.4, ¶¶ 122, 125.

133. As set out above, Madden 2000 Manual and Playoff Week 1 Update are contemporaneous publications that 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. 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. Section VIII.B, ¶ 127. Therefore, Madden 2000 Manual in view of Playoff Week 1 Update discloses these limitations.

[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;

134. The combination of Madden 2000 Updates, Playoff Week 1 Update, and Super Bowl Update discloses these limitations. 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. Section VIII.A.3, ¶¶ 110-116; EA-1015, 1. 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. Section VIII.A.4, ¶¶122-123; EA-1016, 1; EA-1019, 1.

135. None of these references expressly disclose storing each of the series of updated rosters and character performance parameters on a data server.

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. *See* Section VI.B.2; Section VI.B.4.

136. As set out above, Madden 2000 Updates, Playoff Week 1 Update, and Super Bowl Update are contemporaneous publications that 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. 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. Section VIII.B, ¶ 127. Therefore, the combination of Madden 2000 Updates, Playoff Week 1 Update, and Super Bowl Update discloses these limitations.

[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

137. The combination of Madden 2000 Manual, Playoff Week 1 Update, and Super Bowl Update discloses these limitations. As set out in Section VIII.A.1, 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. Section VIII.A.1, ¶¶ 104-105; EA-1018 at 8, 31-32. As set out in Section VIII.A.4, 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. Section VIII.A.4, ¶¶ 122-124; EA-1016, EA-1019. 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. Section VI.A, ¶ 33; Section VI.B, ¶¶ 63, 78; Section VIII.A.1, ¶¶ 100-101; Section VIII.A.1, ¶¶ 122-123, 125.

138. As set out above, Madden 2000 Manual, Playoff Week 1 Update, and Super Bowl Update are contemporaneous publications that 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. 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. Section VIII.B, ¶ 127. Therefore, the combination of Madden 2000 Manual, Playoff Week 1 Update, and Super Bowl Update discloses these limitations.

[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.

139. Madden 2000 Manual in view of Madden 2000 Card discloses this limitation. Madden 2000 Manual discloses that a user of *Madden NFL 2000* uses a controller (e.g., keyboard, mouse, Gamepad Pro, Microsoft Sidewinder Gamepad) to provide inputs to navigate all the various menus of the game, and control particular individual video game characters while playing the game, and Madden 2000 Card describes that such controller is connected to the PC. Section VIII.A.1, ¶ 105, Section VIII.A.2, ¶ 109; EA-1017 at 4-6, 8, 13-16, EA-1018 at 2, 9; Section VIII.B, ¶¶ 127, 129.

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:

140. The combination of the *Madden NFL 2000* references discloses this limitation as set out above. Section VIII.B [1.0], [1.0.1], [1.1.1], [1.2]-[1.2.1], ¶ 127.

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. Section VIII.3-4; Section VIII.B [1.2]-[1.2.1]; Section VI.B.2; Section VI.B.4.

[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;

142. The combination of the *Madden NFL 2000* references discloses these limitations as set out above. Section VIII.B [1.0.1], [1.1.1], [1.2]-[1.2.1], [23.0], ¶ 127.

[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,

143. The combination of the *Madden NFL 2000* references discloses these limitations as set out above. Section VIII.B [1.2], [1.2.1] (weekly transmissions), [23.0], ¶ 127.

[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.

144. The combination of the *Madden NFL 2000* references discloses these limitations as set out above. Section VIII.B [1.2]-[1.3], [23.0], ¶ 127.

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

145. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

146. The combination of the *Madden NFL 2000* references discloses these limitations as set out above. Section VIII.B [1.0.1], [1.1.1], [1.2]-[1.2.1], [23.0] (storing), ¶ 127.

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. Section VIII.A.1, ¶¶ 100-101; Section VIII.A.4, ¶¶ 122-123, 125; Section VI.A, ¶¶ 32-33; Section VI.B.3, ¶¶ 63-64; Section VI.B.4, ¶¶ 73, 75-79.

[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.

148. The combination of the *Madden NFL 2000* references discloses this limitation as set out above. Section VIII.B [1.2]-[1.2.1] (weekly transmissions within the single NFL season), [23.0], [31.0]-[31.1.2], ¶ 127.

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.

149. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

150. The combination of the *Madden NFL 2000* references discloses the limitations of Claim 2 as set out above. Section VIII.B [1.2]-[1.3], ¶ 127.

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.

151. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

152. The combination of the *Madden NFL 2000* references discloses the limitations of claim 24 as set out above. Section VIII.B [1.2]-[1.3], ¶ 127.

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.

153. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

154. The combination of the *Madden NFL 2000* references discloses the limitations of Claim 3. Section VIII.B [1.2]-[1.3], ¶ 127. 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. See

Section VI.A, ¶¶ 31-33; Section VI.B, ¶¶ 47-48; Section VI.B.3, ¶¶ 62-65; Section VI.B.4.

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.

155. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

156. As set out in Section VII.A, it is my opinion that a POSA would understand the phrase “the at least weekly transmissions” to mean “the at least daily transmissions” in claim 25. Section VII.A, ¶¶ 90-95.

157. As set out above for Claim 3, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 25. Section VIII.B [1.2]-[1.3], [3.0], ¶ 127.

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.

158. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

159. The combination of the *Madden NFL 2000* references discloses the limitations of Claim 5. Section VIII.B [1.2]-[1.2.1], ¶ 127; Section VIII.A.1, ¶ 104; Section VIII.A.2, ¶ 100; Section VIII.A.3, ¶ 116; Section VI.B.2.

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.

160. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

161. As set out in Section VIII.B [1.2]-[1.3], 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. See Section VIII.B [1.2]-[1.3], ¶ 127.

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.

162. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

163. As set out in Section VIII.B [1.2]-[1.3], 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*. Section VIII.B [1.2]-[1.3], ¶ 127; Section VIII.A.1, ¶¶ 102, 104; Section VIII.A.3, ¶¶ 114-116; Section VIII.A.4, ¶¶ 119, 122-124; EA-1015, 1; EA-1016; EA-1019; EA-1018 at 8-10, 28, 31-32. 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. *Id.*; see also Section VIII.A.1, ¶¶ 31, 45-46; Section VIII.B, ¶¶ 47-48; Section VIII.B.3, ¶¶ 62, 65; Section VIII.B.4, ¶¶ 69, 78-79.

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.*

164. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

165. As set out in Section VIII.B [1.2]-[1.3], the combination of the *Madden NFL 2000* References discloses the limitations of Claim 11. Section

VIII.B [1.2]-[1.3] (performance tendency); *see also* Section VI.A, ¶ 32; Section VI.B.3, ¶ 64.

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.

166. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. *See* Section VIII.B [1.0]-[1.4].

167. As set out in Section VIII.B [1.2]-[1.3] and [31.1.1], the combination of the *Madden NFL 2000* References discloses the limitations of Claim 12. *See* Section VIII.B [1.2]-[1.3], [31.1.1], ¶ 127; Section VIII.A.4 (Playoff Week 1 Update and Super Bowl Update both disclose “Each week the roster file will be updated to denote *player performance in each eligible teams playoff game*” during 2000 NFL season) (emphasis added). A POSA would understand that the described Updates include updated character performance parameters based in part on performances of real-life NFL athletes on opposing NFL teams in real-life playoff games during the 2000 NFL season. *See also* Section VIII.B [1.2]-[1.2.1], [31.1.1].

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.

168. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

169. As set out above for Claim 12, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 30. Section VIII.B [1.2]-[1.2.1], [31.1.1], [12.0], ¶ 127.

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.

170. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

171. As set out in Section VIII.B [1.2]-[1.3], the combination of the *Madden NFL 2000* References discloses the limitations of Claim 14. See Section VIII.B [1.2]-[1.3], ¶ 127; Section VIII.A.1, ¶¶ 100-101; Section VIII.A.4, ¶¶ 122-123, 125; Section VI.A, ¶¶ 32-33, 45-46; Section VI.B.3, ¶¶ 63-64; Section VI.B.4, ¶¶ 73, 75-79.

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. See Section VI.A, ¶¶ 32-33; Section VI.B.3, ¶¶ 63-64; Section VI.B.4, ¶¶ 78-79. *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”). See Section VIII.A.1, ¶¶ 100-101. 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. *Id.*; see also Section VI.A, ¶¶ 32-33, 45-46; Section VI.B.3, ¶¶ 63-64; Section VI.B.4, ¶¶ 73, 75-79. 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.

173. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claims 1 and 15 as set out above and below. See Section VIII.B [1.0]-[1.4], [15.0].

174. As set out above for Claim 14, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 16. See Section VIII.B [14.0], ¶ 127, ¶ 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.

175. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claims 1 and 15 as set out above and below. See Section VIII.B [1.0]-[1.4], [15.0].

176. As set out above for Claim 14, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 17. See Section VIII.B [14.0], ¶ 127, ¶ 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.

177. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

178. As set out above for Claim 14, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 22. See Section VIII.B [14.0], ¶ 127.

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.

179. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

180. As set out above, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 15. See Section VIII.A.1, ¶¶ 99-103 (video game football stadiums, teams, characters associated with real-life NFL stadiums, teams, athletes); Section VIII.A.4, ¶¶ 122-123, 125; Section VIII.B [1.0.1]-[1.1.1], ¶ 127.

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.

181. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

182. As set out above, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 27. See Section VIII.B [1.2]-[1.3], [14.0], ¶ 127; Section VIII.A.4 (e.g. Playoff Week 1 Update: “Each week the roster file will be updated to denote player performance in each eligible teams playoff game”; Super Bowl Update: “Each week the roster file will be updated to denote player performance in each eligible teams playoff game.”)

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.

183. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

184. As set out above, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 28. See Section VIII.B [1.0.1] (particular NFL players), [1.2]-[1.3], [14.0], ¶ 127; Section VIII.A.1, ¶¶ 100-101; Section VIII.A.3, ¶¶ 122-123, 125.

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.

185. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 23 as set out above. See Section VIII.B [23.0]-[23.3.1].

186. As set out above, the combination of the *Madden NFL 2000* references discloses the limitations of Claim 28. See Section VIII.B [1.0.1] (real-

life NFL athletes on real-life NFL teams), [1.2]-[1.3], [14.0], ¶ 127; Section VIII.A.1, ¶¶ 100-102; Section VIII.A.3, ¶¶ 122-123, 125.

IX. Challenge #2: 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

187. As detailed below, 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.

188. Claims 4, 7, 9-10, and 21 are dependent upon Claim 1 and 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).

A. *Madden NFL 2000* References in view of FIFA 2001 News Teaches Every Element of Claims 4, 7, 9-10, and 21

1. FIFA 2001 News

189. FIFA 2001 News (EA-1007 – EA-1009) is a collection of printouts of web pages from a news archive of the publicly accessible website www.fifa2001.com (“FIFA 2001 website”) written by users of the 2001 version of Petitioner’s *FIFA* game for PCs (“FIFA 2001 game” or “*FIFA 2001*”). EA-1027; EA-1029, ¶¶ 15-18.

190. I have reviewed the Declarations of Christopher Butler and understand that printouts of the home page of the monthly news archives of the FIFA 2001 website were archived in the Internet Archive’s records on June 3, 2001 (EA-1034) and October 21, 2001 (EA-1035) respectively, and are currently publicly accessible through the Internet Archive’s Wayback Machine. EA-1027, 1.

Based on my review of the Declarations of Christopher Butler, I also understand from the printouts of web pages of the news archives of the FIFA 2001 website for September 2000, October 2000, November 2000, January 2001, March 2001, April 2001 and May 2001 (EA-1007), for December 2000 and February 2001 (EA-1008), and for June 2001 (EA-1009), were archived in the Internet Archive's records on June 17, 2001 (EA-1007), April 25, 2001 (EA-1008), and July 26, 2001 (EA-1009), respectively, and are currently publicly accessible through the Internet Archive's Wayback Machine. *Id.*

191. I have reviewed the Declaration of David Witts, understand that the FIFA 2001 website was publicly available and accessible to the public without restriction, and also understand that the dates shown in the printouts of the web pages from this news archive identify the dates that users of the FIFA 2001 game made postings to the FIFA 2001 website. EA-1029, ¶¶ 15-18.

192. I have been informed and understand that FIFA 2001 News is collectively a printed publication and is available as prior art under 35 U.S.C. § 102(a). FIFA 2001 News was not cited or applied by the Examiner during the prosecution of the '575 Patent.

193. It was well known, and is a matter of public record, that the real-life qualifying season for the 2002 FIFA World Cup took place between September 2000 and November 2001 for the Union of European Football Associations

(UEFA),¹³ between March 2000 and November 2001 for CONMEBOL (Confederación Sudamericana de Fútbol),¹⁴ between April 2000 and July 2001 for CAF (Confederation of African Football),¹⁵ between November 2000 and October

¹³ *See, e.g.,*

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/europe/index.html>;

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/europe/index.html>.

¹⁴ *See, e.g.,*

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/southamerica/index.html>;

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/southamerica/index.html>.

¹⁵ *See, e.g.,*

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/africa/index.html>;

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/africa/index.html#3876>.

2001 for the AFC (Asian Football Confederation),¹⁶ and between March 2000 and November 2001 for CONCACAF (Confederation of North, Central American and Caribbean Association Football),¹⁷ and that the 2002 FIFA World Cup took place between May 31, 2002 and June 30, 2002.¹⁸ It was also well known, and is a matter of public record, that real-life seasons for each of the various European leagues (e.g., English Premier League¹⁹, German League (Bundeliga)²⁰, Spanish

¹⁶ *See, e.g.,*

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/asia/index.html>;

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/asia/index.html#3862>.

¹⁷ *See, e.g.,*

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/nccamerica/index.html>;

<http://www.fifa.com/worldcup/archive/koreajapan2002/groups/preliminaries/nccamerica/index.html>.

¹⁸ *See, e.g.,* <http://www.fifa.com/worldcup/archive/koreajapan2002/index.html>.

¹⁹ *See, e.g.,* <http://www.rsssf.com/tablese/eng01.html> (“Premiership”);

https://en.wikipedia.org/wiki/2000%E2%80%9301_FA_Premier_League.

Premeira League (La Liga)²¹, French League (LNF)²², Italian League (Serie A)²³), started between July and September, 2000 and ended in May 2001, and the real-life season of the Champions League of UEFA took place between July 2000 and May 2001²⁴.

194. Related to soccer video games, as shown in various examples below, FIFA 2001 News discloses various types of video game parameters included in *FIFA 2001* such as, for example, video game parameters of visual attributes of

²⁰ See, e.g., https://en.wikipedia.org/wiki/2000%E2%80%9301_Bundesliga.

²¹ See, e.g., https://en.wikipedia.org/wiki/2000%E2%80%9301_La_Liga.

²² See, e.g., http://www.ligue1.com/ligue1/calendrier_resultat#sai=69&jour=1

(Week 1 – Week 34, 2000-2001)

²³ See, e.g., https://en.wikipedia.org/wiki/2000%E2%80%9301_Serie_A;

<http://www.rsssf.com/tables/ital01.html>.

²⁴ See, e.g.,

<http://www.uefa.com/uefachampionsleague/season=2000/matches/round=1465/index.html>;

<http://www.uefa.com/uefachampionsleague/season=2000/matches/round=1531/index.html>.

stadiums or fields to simulate the visual appearance of particular real-life stadiums or fields:

We now know that FIFA 2001 will have . . . a number of realistic licensed stadiums to choose from, awesome realistic crowd chants plus much much more. EA-1007, 16.

I have uploaded the PC stadia shots from the official EA SPORTS FIFA 2001 site to our own PC Screen Shots page (sections 3-4), check them out (some samples are below)! *Id.* at 3.



[T]he Official FIFA 2001 website has opened. It is packed with new info such as . . . stadium images (see some of them below) and more detailed info on the game. *Id.* at 4.



IGNPC has made it's [sic] final say on FIFA 2001 game . . . as in many other reviews, they note a larger pitch²⁵: 'The field is really noticeably bigger this time around which will allow for more thinking and more strategic decisionmaking. And for most soccer fans looking for a more realistic experience, that is a good thing.' *Id.* at 10 (emphasis in original).

SportPlanet's, Humberto 'Salty' Dominguez, has pieced together a hands-on-preview of FIFA 2001 . . . when I read this preview, I felt my body fill with enthrallment as passages like: '*... by far the closest approximation of association football within the realm of electronic gaming*' and '*The playing field has, after so many prayers, finally been enlarged.*' *Id.* at 12 (emphasis in original).

CGO's FIFA 2001 Preview . . . displays an array on [sic] new screen shots. Two of the shots can be seen below. *Id.* at 10.



²⁵ It is well known that “pitch” is a term synonymous with “field” in international sports.

195. FIFA 2001 News also describes, for example, visual parameters of teams and team uniforms, and team roster parameters, to simulate the visual appearance, and composition, of particular real-life teams and team uniforms:

[T]he International teams that will be featured in FIFA 2001 . . . are Algeria Argentina, Australia, Austria, Bahrain, Belgium, Bolivia, Brazil, Bulgaria, Cameroon, Canada, Chile, China PR, Colombia, Croatia, Cyprus, Czech Rep., Denmark, England, Egypt, Estonia, Finland, France, Ghana, Germany, Greece, Holland, Hong Kong, Hungary, Iceland, Iran, Iraq, Ireland Rep., Israel, Italy, Jamaica, Japan, Jordan, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Mauritius, Mexico, Morocco, New Zealand, Nigeria, Northern Ireland, Norway, Palestine, Paraguay, Peru, Poland, Qatar, Romania, Russia, San Marino, Saudi Arabia, Scotland, Singapore, Slovakia, Slovenia, South Africa, Spain, Switzerland, Sweden, Taiwan, Thailand, Tunisia, Turkey, UAE, Ukraine, Uruguay, USA, Wales, and Yugoslavia. That's quite a lot of teams! Remember there are 17 leagues including the new Korean and Austrian leagues the International teams that will be featured in FIFA 2001. *Id.* at 2.

I have just updated the FIFA 2001 Information Page. We have . . . a list of the 17 featured leagues of FIFA 2001. A more noticable [*sic*] addition is that the previous 50 international teams, have been updated to over 60 teams! *Id.* at 2.

All 17 Leagues Announced

Finally EA have named the 17 leagues that will feature in FIFA 2001. They are England, France, German, Italy, Spain, Holland, Belgium,

Sweden, Denmark, Norway, Scotland, Greece, Israel, Austria, Brazil, Korea and MLS. *Id.* at 3.

FIFA World has said that the matches that come with the game, matches [include] . . . Manchester U. vs Arsenal. *Id.* at 8.

You can see a variety of different teams kits²⁶ in close detail. Two can be seen below with the rest waiting for you in our Screen Shots section. *Id.* at 9.



196. FIFA 2001 News also describes, for example, visual parameters of athletes and uniforms, athlete performance parameters, to simulate the visual appearance of particular real-life soccer athletes, their particular uniforms, and the performance of particular real-life soccer athletes:

[S]creenshots have been released . . . They include . . . excellent closeups of Barthez and a player from an MLS team, Arsenal's

²⁶ It is well known that “kit” is a term synonymous with “uniform” in international sports.

Thierry Henry, and a few others (2 of which are shown below) *Id.* at 2-3.



[S]ome of the start [*sic*] football players that will feature in FIFA 2001 . . . Edgar Davids, Paul Scholes and Lothar Mattheaus. *Id.* at 5.

I've just found out that there are some absolutely fantastic FIFA 2001 (US) movies taken . . . you get to hear the OOPS system in action (arguing players, celebrating players, etc.), and see some great stuff. *Id.* at 15.

One of the longest serving and most respected members of the FIFA community, Treebeard, needs our support . . . In an email to me today he had this to say: *'Over the past few years I have provdided [*sic*] updates as a free service to FIFA gamers and the response has usually been excellent . . . each roster release is subsequently built upon and they are never final until the release of a new FIFA game. The updates are done in my own spare time. 10 hours was spent this past weekend updating many of the international teams . . . If people says [*sic*] player ratings are incorrect, bear in mind that they are the EA ratings . . . and I am more than happy to update them and accomodate [*sic*] suggestions where possible.'* *Id.* at 116 (emphasis in original).

197. Related to updating visual aspects, as shown in various examples below, 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 stadium attributes such as changes in the visual appearance of advertising boards and fan seating in stadiums (Section IX.A.1, ¶¶ 193-194):

- December 6, 2000: “Regular and Champions League adboards (see screenshot below)” for the stadiums in the FIFA 2001 game. EA-1008, 20.



- March 25, 2001: “New Downloads. 38 new FIFA 2001, FIFA 98 and FIFA 99 downloads were added today to the Downloads Centre. Let's concentrate on the new FIFA 2001 downloads. They are . . . Premiership Ad Boards.” EA-1007, 60.
- April 12, 2001: “Manchester United Mega Patch. Over at the MRA site, Steven Grbavac has released his brand new Manchester United Mega Patch which includes . . . current Manchester United adboards.” *Id.* at 97.

- March 9, 2001: “To start off to celebrate the return of the Manchester derby, we bring you the Manchester Unity Patch. This brings you what everybody has been screaming out for, stadiums with home and away fans. Properley [*sic*] segregated !! . . . It includes . . . adboards and updated stadia on the menu screens . . . He also sent us two screenshots of their Manchester Unity Patch. Here have a look.” *Id.* at 73-74 (screenshots below).



198. Additionally 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 the field attributes such as changes in the visual appearance of turf at the fields in stadiums (Section IX.A.1, ¶¶ 193-194):

- February 6, 2001: “Red Devil Mega Patch. Finally, guys over Soccered.com released their long waited patch for one of the most popular teams in the world - Manchester United. This patch includes

everything you can just imagine and even more . . . New Pitch.” EA-1008, 44.

- December 27, 2000: “FIFA 2001 Online brings you another great update of Downloads for you . . . turf and snow patch” to the Nou Camp stadium and field. EA-1007, 4.
- March 25, 2001: new grass turfs for the field of the Wembley and Stade de France stadiums (screenshot below). *Id.* at 60.



199. Further related to updating visual aspects, FIFA 2001 News also describes updates to reflect real-life changes in player uniform and physical visual appearance, during the 2000-2001 regular season of the various European leagues and the UEFA Champions league (Section IX.A.1, ¶¶ 193, 196):

- November 5, 2000: “First Ever FIFA 2001 Patch . . . This file, made by myself, updates the FA Premier League jerseys so that: - ...Arsenal (Sega Dreamcast), - Leeds United (Strongbow), - Liverpool Carlsberg), - Manchester City (Eidos), - Tottenham Hotspur

(Holsten)...all now have sponsors' logos on their shirts (home and away).” EA-1007, 30.

- March 16, 2001: “Extreme World Update. A comprehensive list of features . . . within version 1 of the Extreme World Update . . . includes . . . latest player appearances (hair, face and skin) for pretty much every player in the game.” *Id.* at 68.
- April 23, 2001: “Ultimate Roster Patch. Edwin Sturuss has released version 1 of his Ultimate Roster Patch exclusively over at the MRA site. It features a Roster with . . . [u]pdated player names, numbers, faces, skills, attributes, line-ups (for Germany, Italy, England, Belgium, Scotland, Spain, France, Holland, MLS, Austria, Denmark, Sweden, Norway and some international teams.” *Id.* at 88.
- February 6, 2001: “Red Devil Mega Patch. Finally, guys over Soccered.com released their long waited patch for one of the most popular teams in the world - Manchester United. This patch includes everything you can just imagine and even more . . . all kits for present season.” EA-1008, 44.

200. Related to automatic downloading, similar to the system of the '575 Patent, and as illustrated in the excerpt (below), FIFA 2001 News also describes an architecture for updating *FIFA 2001* where a user controller input (e.g. “click[s]

on . . . Check for Update”) to his/her 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 (January 28, 2001).

To get this update known as "FIFA Build 141" you need to click on Start >> Programs >> EA SPORTS >> FIFA 2001 >> Check For Update. You will then be automatically connected to the EA server and the download will start. It will automatically install itself but to double check it is recommended you click on the "version.txt" in the FIFA 2001 directory and it should read "FIFA build 141".

B. Detailed Invalidity Analysis

201. As detailed below, the *Madden NFL 2000* References in view of FIFA 2001 News disclose every element of Claims 4, 7, 9-10, and 21 of the ‘575 Patent alone or in combination with the knowledge, skill and creativity of one of ordinary skill in the relevant art. Each of the limitations of these claims is taught by these references and any potential distinction that may be argued by the Patent Owner would have been obvious.

202. Importantly, 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). *See* Section VI.A, ¶¶ 35-37, 44-46; Section VI.B.3, ¶¶ 62; Section VI.B.4. 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.

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.

203. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. *See* Section VIII.B [1.0]-[1.4].

204. As set out above, the combination of the *Madden NFL 2000* references and FIFA 2001 News discloses the limitations of Claim 4. *See* Section VIII.B [1.2]-[1.3]; Section IX.A.1, ¶¶ 193-194, 196-199 (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); Section IX.B, ¶ 202.

205. As set out above, the *Madden NFL 2000* references and FIFA 2001 News are readily combinable to achieve increased realism. See Section IX.B, ¶ 202.

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.

206. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

207. As set out above for Claim 4, the combination of the *Madden NFL 2000* references and FIFA 2001 News discloses the limitations of Claim 9. See Section IX.B [4.0], ¶ 202.

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.

208. The combination of the *Madden NFL 2000* references and FIFA 2001 News discloses all of the limitations of Claims 1 and 9 as set out above. See Section VIII.B [1.0]-[1.4]; Section IX.B [9.0].

209. As set out above for Claim 4, the combination of the *Madden NFL 2000* references and FIFA 2001 News discloses the limitations of Claim 10. See Section IX.A, ¶ 198 (turf and snow); Section IX.B [4.0], ¶ 202.

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.

210. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. See Section VIII.B [1.0]-[1.4].

211. As set out in Section VIII.B [1.2]-[1.3], 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. Section VIII.B [1.2]-[1.3], Section VIII.A.1, ¶¶ 99-101; Section VIII.A.3, ¶¶ 115-116; Section VIII.A.4, ¶¶ 122-125. FIFA News discloses automatic downloading and installing of updated video game parameters. Section IX.A, ¶ 200. It would have been obvious to a POSA to use the architecture taught in FIFA 2001 News to automatically download and install such updated character performance parameters in response to such a user input to achieve the predictable benefit of simplifying the updating process for users of *Madden NFL 2000*. Section VIII.B [1.2]-[1.3], Section VIII.A.1, ¶¶ 99-101; Section VIII.A.3, ¶¶ 115-116; Section VIII.A.4, ¶¶ 122-125; Section IX.A, ¶ 200. As set out 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. *Id.*; *see also* Section IX.B, ¶¶ 78-79, 202.

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.*

212. The combination of the *Madden NFL 2000* references discloses all of the limitations of Claim 1 as set out above. *See* Section VIII.B [1.0]-[1.4].

213. As set out above, the combination of the *Madden NFL 2000* references and FIFA 2001 News discloses the limitations of Claim 21. *See* Section VIII.A.1, ¶¶ 99-103 (video game football stadiums, teams, characters associated with real-life NFL stadiums, teams, athletes); Section VIII.A.4, ¶¶ 122-123, 125; Section VIII.B [1.0.1]-[1.1.1]; Section IX.A.1, ¶¶ 194-199, Section IX.B, ¶ 202. As set out above, these references are readily combinable to achieve increased realism in any sports video game including soccer. Section IX.B, ¶ 202.

X. Challenge #3: Claims 1-3, 11-12, and 23-31 are Obvious under 35 U.S.C. § 103 over Swanberg

214. As detailed below, Claims 1-3, 11-12, and 23-31 are obvious under 35 U.S.C. § 103 over Swanberg.

A. Swanberg Teaches Every Element of Claims 1-3, 11-12, and 23-31

1. Swanberg

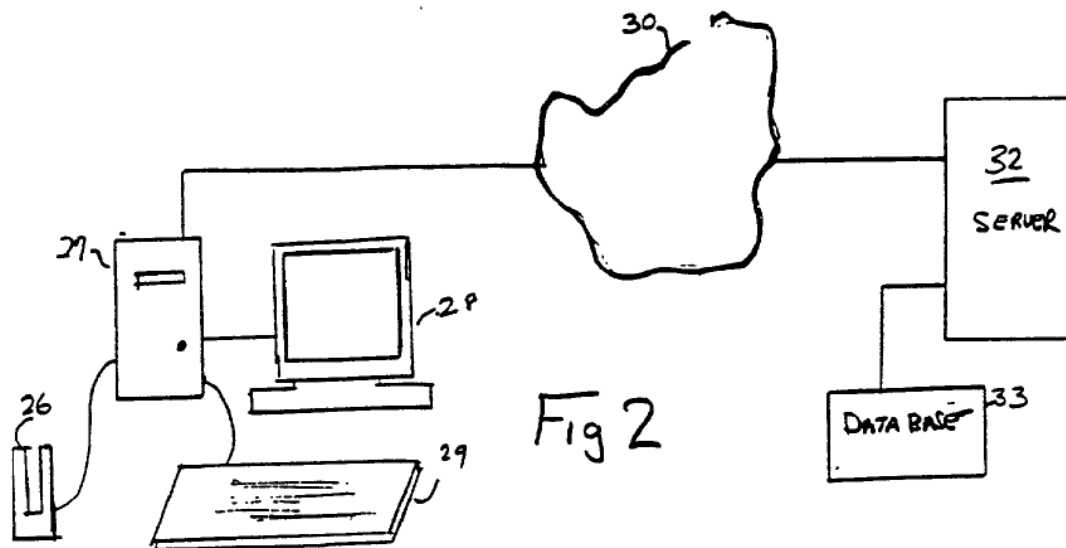
215. Swanberg (EA-1011) is U.S. Patent Publication No. 2002/0155893, titled “Computerized Trading Card System”, published on October 24, 2002, filed on March 21, 2002 as a continuation-in-part of, and claims priority to, Application No. 09/472,042, filed on December 27, 1999. EA-1011, 1.

216. I have been informed and understand that Swanberg is available as prior art under 35 U.S.C. § 102(e). Swanberg was not cited, applied by, or disclosed to, the Examiner during prosecution of the ’575 Patent.

217. 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. 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, Figures 3, 5:19-27, 5:55-64, 6:10-13.

218. 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

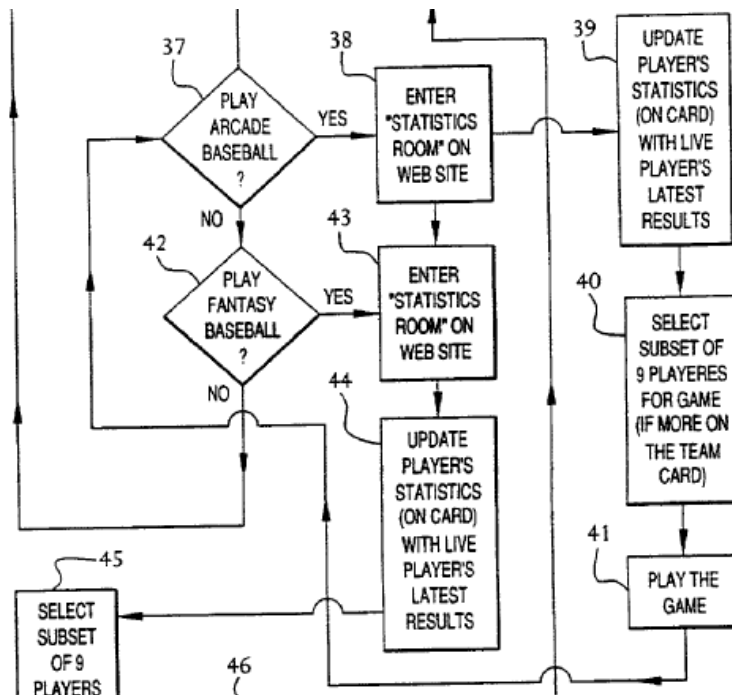
character's statistics in the non-volatile RAM of the trading card. EA-1011, Figure 2 (below), ¶¶ 0032, 0036, 0041, 0048, 0050, 0085-0086, 0095.



219. 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.*, Figure 2 (above), 4, 16, ¶¶ 0050, 0052-0053, 0040-0041, 0048, 0095.

220. 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.*, Figures 2 (above), 16 (excerpt below for arcade game), ¶¶ 0083-0084, 0086, 0095.



221. 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.

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.

B. Detailed Invalidity Analysis

222. As detailed below, Swanberg teaches every element of Claims 1-3, 11-12, and 23-31 of the '575 Patent alone or in combination with the knowledge, skill and creativity of one of ordinary skill in the relevant art. Each of the

limitations of these claims are taught by these references and any potential distinction that may be argued by the Patent Owner would have been obvious.

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

223. Swanberg teaches this limitation. 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). Section X.A.1, ¶¶ 217-219; EA-1011, Figures 1-2, 4, ¶¶ 0002, 0005, 0007, 0010, 0032-0033, 0035, 0039, 0050, 0052-0053.

224. 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. *Id.*; see also Section VI.B.1. Therefore, Swanberg teaches this limitation.

[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:

225. Swanberg discloses these limitations. As set out in Section X.A.1, Swanberg discloses a sports video game including video game rules (Section X.A.1, ¶ 219) 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.). Section X.A.1, ¶¶ 217-219; Section X.B [1.0]; EA-1011, Figure 16, ¶¶ 0040-0041, 0048, 0050, 0059, 0083, 0085-0086, 0095. Therefore, Swanberg discloses these limitations.

[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,

226. Swanberg teaches this limitation. 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. Section X.B [1.0], [1.0.1]; Section X.A.1, ¶¶ 217-219; Section VI.B.1. Therefore, Swanberg teaches this limitation.

[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;

227. Swanberg discloses these limitations. See Section X.A.1, ¶¶ 217-218, 220-221 (e.g. performance statistics (e.g. runs, errors made, hits, etc.) of real-life athletes (e.g. Roger Clemens)); Section X.B [1.0.1]. 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). Section X.A.1, ¶¶ 217-218, 220-221; Section X.B [1.0.1]; EA-1011, ¶¶ 0040, 0048, 0059, 0083-0085, 0095-0096. Therefore, Swanberg discloses these limitations.

[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;

228. Swanberg discloses these limitations. 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. Section X.A.1, ¶¶ 217-218, 220-221 (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].

229. A POSA would understand that the purpose of Swanberg's "frequent" and "regular" updates is to update performance parameters that have changed. 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. Therefore, Swanberg discloses these limitations.

[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

230. As set out above in Section X.B [1.2]-[1.2.1], Swanberg discloses these limitations. See Section X.B [1.2]-[1.2.1], ¶¶ 228-229; Section X.A.1, ¶¶ 217-218, 220-221.

[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.

231. Swanberg teaches this limitation. 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. Section X.B [1.0], [1.1.1]-[1.2.1]; EA-1011, Figures 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; Section VI.B.1, ¶¶ 54, 57. Therefore, Swanberg teaches this limitation.

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:

232. Swanberg teaches this limitation as set out above. See Section X.B [1.0], [1.1.1]-[1.2.1]; Section X.A.1, ¶¶ 217-218 (remote computer game server).

[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;

233. Swanberg discloses these limitations as set out above. See Section X.B [1.2]-[1.2.1]; Section X.A.1, ¶¶ 217-218, 220-221 (remote server database).

[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,

234. Swanberg discloses these limitations as set out above. See Section X.B [1.0], [1.2]-[1.2.1], [23.0]; Section X.A.1, ¶¶ 217-218, 220-221.

[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.

235. Swanberg discloses these limitations as set out above. See Section X.B [1.0], [1.2]-[1.3]; Section X.A.1, ¶¶ 217-218, 220-221.

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

236. Swanberg teaches all of the limitations of Claim 23 as set out above.

See Section X.B [23.0]-[23.3.1].

237. Swanberg teaches these limitations as set out above. See Section X.B [1.0], [1.1.1] (second athlete), [1.2]-[1.2.1]; Section X.A.1, ¶¶ 217-218, 220-221.

[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.

238. Swanberg discloses this limitation as set out above. See Section X.B [1.1.1]-[1.2.1] (regular updates), [31.0]-[31.1.2]; Section X.A.1, ¶¶ 218, 220-221.

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.

239. Swanberg teaches all of the limitations of Claim 1 as set out above. See Section X.B [1.0]-[1.4].

240. Swanberg teaches the limitations of Claim 2. See Section X.B [1.2]-[1.3] (updates occur on a “regular” and/or “frequent” basis); EA-1011, ¶ 0048. 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. See Section VI.A, ¶¶ 31-33; Section VI.B, ¶¶ 47-48; Section VI.B.3, ¶¶ 62-65; Section VI.B.4.

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.

241. Swanberg teaches all of the limitations of Claim 23 as set out above. See Section X.B [23.0]-[23.3.1].

242. As set out above for Claim 2, Swanberg teaches the limitations of Claim 24. See Section X.B [2.0].

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.

243. Swanberg teaches all of the limitations of Claim 1 as set out above. See Section X.B [1.0]-[1.4].

244. As set out above for Claim 2, Swanberg teaches the limitations of Claim 3. *See* Section X.B [2.0].

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.*

245. Swanberg teaches all of the limitations of Claim 23 as set out above. *See* Section X.B [23.0]-[23.3.1].

246. As set out in Section VII.A, it is my opinion that a POSA would understand the phrase “the at least weekly transmissions” to mean “the at least daily transmissions” in claim 25. Section VII.A, ¶¶ 90-95.

247. As set out above for Claim 2, Swanberg teaches the limitations of Claim 25. *See* Section X.B [2.0].

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.*

248. Swanberg teaches all of the limitations of Claim 1 as set out above. *See* Section X.B [1.0]-[1.4].

249. Swanberg discloses the limitations of Claim 11. *See* Section X.B [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”); Section X.A.1, ¶¶ 220-221.

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.*

250. Swanberg teaches all of the limitations of Claim 1 as set out above.

See Section X.B [1.0]-[1.4].

251. Swanberg discloses the limitations of Claim 12. See Section X.B [1.1.1]-[1.1.3] (opposing team), [1.2]-[1.2.1]; Section X.A.1, ¶¶ 217, 220-221.

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.*

252. Swanberg teaches all of the limitations of Claim 23 as set out above.

See Section X.B [23.0]-[23.3.1].

253. Swanberg discloses the limitations of Claim 30. See Section X.B [1.1.1]-[1.1.3], [1.2]-[1.2.1] (over several games); Section X.A.1, ¶¶ 217, 220-221.

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.*

254. Swanberg teaches all of the limitations of Claim 23 as set out above. *See* Section X.B [23.0]-[23.3.1].

255. Swanberg teaches the limitations of Claim 26. *See* Section X.B [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. 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.

256. 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.

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.*

257. Swanberg teaches all of the limitations of Claim 23 as set out above.

See Section X.B [23.0]-[23.3.1].

258. Swanberg discloses the limitations of Claim 27. See Section X.B [1.1.1]-[1.1.3], [1.2]-[1.2.1] (during single game).

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.*

259. Swanberg teaches all of the limitations of Claim 23 as set out above.

See Section X.B [23.0]-[23.3.1].

260. Swanberg discloses the limitations of Claim 28. See Section X.B [1.1.1]-[1.1.3], [1.2]-[1.2.1] (real-life athlete can be a basketball player); Section X.A.1, ¶ 221; EA-1011, Abstract, ¶¶ 0005, 0010, 0083.

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.*

261. Swanberg teaches all of the limitations of Claim 23 as set out above.

See Section X.B [23.0]-[23.3.1].

262. Swanberg discloses the limitations of Claim 29. *See* Section X.B [1.1.1]-[1.1.3] (e.g. Roger Clemens); Section X.A.1, ¶ 221.

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

263. As detailed below, Claims 13, 18-20, and 32-35 are obvious under 35 U.S.C. § 103 over Swanberg in view of Hines (EA-1020).

264. Claims 13, 18-20, and 32-35 are directed to the additional limitations of the additional limitations of basketball video games and specific performance parameters in basketball video games.

A. Swanberg in view of Hines Teaches Every Element of Claims 13, 18-20, and 32-35

1. Hines

265. Hines (EA-1020) is U.S. Patent Publication No. 2002/0155893 titled “Athletic Exchange Information System,” published on December 25, 2003, and was filed on June 19, 2002. EA-1020, 1.

266. I have been informed and understand that Hines is available as prior art under 35 U.S.C. § 102(e). Hines was not cited, applied by, or disclosed to, the Examiner during prosecution of the ’575 Patent.

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

Visitor: Visit		Total		3-Pt		FT		Rebound			PF	Pts	A	TO	Bk	S	Min
		FG	FGA	FG	FGA	FT	FTA	O	D	Tl							
10	NoName	1-	2	0-	1	0-	0	0-	0	0	0	2	4	0	0	0	16
42	NoName	11-	14	0-	0	7-	11	0-	2	2	2	20	1	2	0	1	16
44	NoName	1-	4	0-	1	0-	0	0-	2	2	2	2	2	1	0	3	16
50	NoName	2-	5	0-	0	0-	0	1-	3	4	3	4	0	1	0	2	10
52	NoName	0-	1	0-	0	1-	2	0-	0	0	1	1	0	0	0	0	14
32	NoName	0-	0	0-	0	0-	0	0-	0	0	0	0	1	0	0	0	2
12	NoName	0-	0	0-	0	0-	0	0-	0	0	0	0	0	0	0	0	1
Team		0-	0	0-	0	0-	0	0-	0	0	0	0	0	0	0	0	0
VT Visit		15-	26	0-	2	8-	13	1-	7	8	8	38	14	4	0	0	
FG Totals 1st Half		15-	26	57%		2nd Half		0-	0	--%		Game	15-	26	57%		
3PT Totals 1st Half		0-	2	0%		2nd Half		0-	0	--%		Game	0-	2	0%		
FT Totals 1st Half		8-	13	61%		2nd Half		0-	0	--%		Game	8-	13	61%		
Dead Ball Rebounds																	8

Home: Home		Total		3-Pt		FT		Rebound			PF	Pts	A	TO	Bk	S	Min
		FG	FGA	FG	FGA	FT	FTA	O	D	Tl							
04	NoName	0-	0	0-	0	0-	0	0-	0	0	3	0	2	3	0	1	16
24	NoName	6-	9	4-	5	1-	2	1-	0	1	0	17	2	1	0	2	16
30	NoName	0-	0	0-	0	0-	0	0-	0	0	1	0	0	0	0	1	7
34	NoName	2-	7	1-	4	0-	0	0-	2	2	1	5	4	2	0	0	16
40	NoName	1-	3	0-	0	2-	3	1-	4	5	5	4	0	0	1	0	16
14	NoName	1-	1	0-	0	0-	0	0-	0	0	0	2	1	0	0	0	10
00	NoName	0-	3	0-	3	0-	0	0-	0	0	0	0	0	0	0	0	9
Team		0-	0	0-	0	0-	0	0-	0	0	0	0	0	0	0	0	0
HM Home		10-	23	5-	12	3-	5	2-	6	8	10	28	9	6	1	4	
FG Totals 1st Half		10-	23	43%		2nd Half		0-	0	--%		Game	10-	23	43%		
3PT Totals 1st Half		5-	12	41%		2nd Half		0-	0	--%		Game	5-	12	41%		
FT Totals 1st Half		3-	5	60%		2nd Half		0-	0	--%		Game	3-	5	60%		
Dead Ball Rebounds																	7

B. Detailed Invalidity Analysis

268. As detailed below, Swanberg in view of Hines teaches every element of Claims 13, 18-20, and 32-35 of the ‘575 Patent alone or in combination with the knowledge, skill and creativity of one of ordinary skill in the relevant art. Each of

the limitations of these claims is taught by these references and any potential distinction that may be argued by the Patent Owner would have been obvious.

269. As set out in Section IX.B, 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). *See* Section VI.A, ¶¶ 35-37, 44-46; Section VI.B.3, ¶¶ 62; Section VI.B.4; Section IX.B, ¶ 202. 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. *See* Section VI.A, ¶¶ 32-33, 44-46; Section VI.B, ¶¶ 47-48; Section VI.B.3, ¶¶ 62-65; Section VI.B.4, ¶¶ 78-79. No patentability resides in choosing one statistic that is relevant to a specific sport over another statistic that is relevant to a different sport. *See 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.

270. Swanberg teaches all of the limitations of Claim 1 as set out above. *See* Section X.B [1.0]-[1.4].

271. As set out above, the combination of Swanberg and Hines discloses the limitations of Claim 18. *See* Section X.B [1.1.1]-[1.1.3], [28.0] (updating character performance parameters in basketball sports video game with “major league” players and teams); Section XI.A, ¶ 267; Section XI.B, ¶ 269. 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. *See* Section XI.A, ¶ 267.

272. 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. *See* Section VI.A, ¶¶ 31-32; Section VI.B, ¶ 47; Section VI.B.3, ¶¶ 62, 65; Section XI.B, ¶ 269. 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.* As set out above, these references are readily combinable to achieve increased realism in basketball sports video games. *See* Section XI.B, ¶ 269. Therefore, the combination of Swanberg and Hines discloses these limitations.

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.

273. The combination of Swanberg and Hines discloses the limitations of Claims 1 and 18. *See* Section X.B [1.0]-[1.4]; XI.B [18.0].

274. As set out above for Claim 18, the combination of Swanberg and Hines discloses the limitations of Claim 19. *See* Section XI.B [18.0]; Section XI.B, ¶ 269. 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. *See* Section VI.A, ¶¶ 31-33; Section VI.B, ¶ 47; Section VI.B.3, ¶¶ 62-65; Section VI.B.4, ¶¶ 78-79. 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”). *See* Section XI.A, ¶ 267. As set out above, Swanberg and Hines are readily combinable to achieve increased realism in basketball sports video games. *See* Section XI.B, ¶ 269.

Therefore, the combination of Swanberg and Hines discloses these limitations.

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.

275. The combination of Swanberg and Hines discloses the limitations of Claims 1 and 18. *See* Section X.B [1.0]-[1.4]; XI.B [18.0].

276. As set out above for Claim 19, the combination of Swanberg and Hines discloses the limitations of Claim 20. *See* Section XI.B [19.0]; Section XI.B, ¶ 269.

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.

277. The combination of Swanberg and Hines discloses the limitations of Claims 1 and 18. *See* Section X.B [1.0]-[1.4]; XI.B [18.0].

278. As set out above for Claim 19, the combination of Swanberg and Hines discloses the limitations of Claim 13. *See* Section XI.B [19.0]; Section XI.B, ¶ 269.

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

279. The combination of Swanberg and Hines discloses this limitation as set out above. *See* Section X.B [1.0]; Section XI.B [18.0], ¶ 269.

[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:

280. The combination of Swanberg and Hines discloses these limitations as set out above. *See* Section X.B [1.0.1]-[1.0.2]; Section XI.B [18.0], ¶ 269.

[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,

281. The combination of Swanberg and Hines discloses this limitation as set out above. *See* Section X.B [1.1]; Section XI.B [18.0], [32.0], ¶ 269.

[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;

282. The combination of Swanberg and Hines discloses these limitations as set out above. *See* Section X.B [1.1.1]-[1.1.3]; Section XI.B [18.0], [32.0], ¶ 269.

[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;

283. The combination of Swanberg and Hines discloses these limitations as set out above. *See* Section X.B [1.2]-[1.2.1]; Section XI.B [18.0], [32.0], ¶ 269.

[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

284. The combination of Swanberg and Hines discloses these limitations as set out above. See Section X.B [1.3]; Section XI.B [18.0], [32.0], ¶ 269.

[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,

285. The combination of Swanberg and Hines discloses this limitation as set out above. See Section X.B [1.4]; Section XI.B [18.0], [32.0], ¶ 269.

[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.

286. The combination of Swanberg and Hines discloses these limitations as set out above. See Section XI.B [18.0], [19.0], ¶ 269.

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.

287. The combination of Swanberg and Hines discloses the limitations of Claim 32. *See* Section XI.B [32.0]-[32.5.1]; ¶ 269.

288. The combination of Swanberg and Hines discloses these limitations as set out above. *See* Section XI.B [18.0], [19.0], [20.0], ¶ 269.

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.*

289. The combination of Swanberg and Hines discloses the limitations of Claim 32. *See* Section XI.B [32.0]-[32.5.1]; ¶ 269.

290. The combination of Swanberg and Hines discloses these limitations as set out above. *See* Section X.B [1.1.1], [1.2]-[1.3], [2.0]; Section XI.B [18.0], [32.0], ¶ 269.

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.*

291. The combination of Swanberg and Hines discloses the limitations of Claim 32. *See* Section XI.B [32.0]-[32.5.1]; ¶ 269.

292. The combination of Swanberg and Hines discloses these limitations as set out above. *See* Section X.B [1.1.1], [1.2]-[1.3], [2.0]-[3.0]; Section XI.B [18.0], [32.0], ¶ 269.

XII. Conclusion and Declaration

293. The findings and opinions set forth in this declaration are based on my work and examinations to date. I may continue my examinations. I may also receive additional documentation and other factual evidence over the course of this litigation that will allow me to supplement and/or refine my opinions. I reserve the right to add to, alter, or delete my opinions and my declaration upon discovery of any additional information. I reserve the right to make such changes as may be deemed necessary.

294. In signing this declaration, I recognize that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case and that cross-examination will take place within the United States. If cross-examination is required of me, I will appear for cross-examination within the United States during the time allotted for cross-examination.

295. I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true,

and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on: February 17, 2016

By: 
David Crane