

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Electronic Arts Inc.  
Petitioner

v.

White Knuckle Gaming, LLC  
Patent Owner

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Case: IPR2016-00634  
Patent 8,540,575 B2

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

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## PETITIONER'S EXHIBIT LIST

<i>EA Exhibit</i>	<i>Description</i>
<b>1001</b>	U.S. Patent No. 8,540,575 (“the ‘575 Patent”)
<b>1002</b>	U.S. Patent No. 8,540,575 File History (Part 1 of 2)
<b>1003</b>	U.S. Patent No. 8,540,575 File History (Part 2 of 2)
<b>1004</b>	Declaration of David Crane
<b>1005</b>	U.S. Patent No. 8,529,350 File History
<b>1006</b>	<i>intentionally left blank</i>
<b>1007</b>	FIFA 2001 Online – News Archive for September 2000, October 2000, November 2000, January 2001, March 2001, April 2001, and May 2001, archived at Wayback Machine on June 17, 2001 (“FIFA 2001 News – 1”)
<b>1008</b>	FIFA 2001 Online – News Archive for December 2000 and February 2001, archived at Wayback Machine on April 25, 2001 (“FIFA 2001 News – 2”)
<b>1009</b>	FIFA 2001 Online – News Archive for June 2001, archived at Wayback Machine on July 26, 2001 (“FIFA 2001 News – 3”)
<b>1010</b>	Declaration of Christopher Butler No. 1 <sup>1</sup>
<b>1011</b>	U.S. Pat. Pub. No. 2002/01155893 to Swanberg, <i>et al.</i> (“Swanberg”)
<b>1012</b>	FIFA-MRA, Support System – Installation, Loading Files (Games, Patches & Favorites) Launching the MRA, and Skins archived at Wayback Machine on March 3, 2001 (“FIFA MRA Support – 1”)
<b>1013</b>	FIFA-MRA, Support System – Features of the MRA, archived at Wayback Machine on April 22, 2001 (“FIFA MRA Support – 2”)
<b>1014</b>	FIFA-MRA, Support System – Patches, archived at Wayback Machine on April 23, 2001 (“FIFA MRA Support – 3”)
<b>1015</b>	EA Sports, Madden 2000 Downloads, archived at Wayback Machine on March 2, 2000 (“Madden 2000 Updates”)
<b>1016</b>	EA Sports Madden 2000 NFL(TM) 2000 Roster Updates – Playoff Week 1 (01/07/00) ReadMe text file (“Playoff Week 1 Update”)
<b>1017</b>	Electronic Arts, Inc., Madden 2000 Reference Card (1999) (“Madden 2000 Card”)

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

<b>1018</b>	Electronic Arts, Inc., Madden 2000 Reference Manual (1999) (“Madden 2000 Manual”)
<b>1019</b>	EA Sports Madden NFL(TM) 2000 Roster Update – EA Super Bowl (01/28/00) ReadMe text file (“Super Bowl Update”)
<b>1020</b>	U.S. Pat. Pub. No. 2003/0234787 to Hines, <i>et al.</i> (“Hines”)
<b>1021</b>	Resume of Expert David Crane
<b>1022</b>	Listing of Patents and Patent Applications Related to the ‘575 Patent
<b>1023</b>	EA Sports Australian Base Cricket World Cup 1999 Home Page, archived at Wayback Machine on February 29, 2000 (“Cricket 99 Main”)
<b>1024</b>	EA Sports Australian Base Home Page archived at Wayback Machine on May 22, 2000 (“EA Sports Main”)
<b>1025</b>	EA Sports Australian Base Cricket World Cup 1999 News Page, archived at Wayback Machine on June 6, 2000 (“Cricket 99 News”)
<b>1026</b>	“Cricket World Cup 99 Unofficial FAQ,” Version 1.0917, 17 September, 1999, archived at Wayback Machine on October 26, 2000 (“Cricket 99 FAQs”)
<b>1027</b>	Declaration of Christopher Butler No. 2 <sup>2</sup>
<b>1028</b>	Declaration of Ryan Ferwerda

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

## **I. INTRODUCTION**

Rather than addressing the relevant teachings of the prior art references, White Knuckle's Patent Owner's Response ("POR") focuses on *other* teachings in those references and then characterizes the references as being limited solely to those other teachings. White Knuckle alternatively offers *other* documents from years later which purportedly tout the advantages of video game updates. White Knuckle then asks the Board to assume that these later documents are the first public disclosure of the invention's features, which leads, in circular fashion, to the conclusion that the Board may simply disregard the specific teachings of EA's earlier prior art. Neither of these approaches address the specific teachings of the prior art offered in the Petition. Nor does White Knuckle provide expert testimony to rebut the record evidence showing a skilled artisan's understanding of the prior art and motivation to combine references. On this record, EA respectfully urges the Board issue a final decision invalidating all challenged claims.

## **II. WHITE KNUCKLE'S ARGUMENTS ABOUT "RELATED ART" AND THE "PROBLEM ADDRESSED BY THE '575 PATENT" ARE IRRELEVANT**

### **A. The Prior Art References Disclose What They Disclose**

White Knuckle attempts to distract from the prior art by alleging that *other* documents disclose that its purported invention was not known. (POR 9-12.)<sup>3</sup>

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<sup>3</sup> In addition to being irrelevant, the other documents are inadmissible as hearsay because White Knuckle cites to them for the truth of their statements.

Those arguments are red herrings. Whatever the other documents disclose, they cannot undo the prior art's teachings.

Further, none of the documents cited by White Knuckle contradict the prior art's teachings. For example, White Knuckle mischaracterizes Pisanich (WK-2202<sup>4</sup>) as demonstrating that "at the time of the '575 invention, video games did not update based on real world events as they occur." (POR 10). To the contrary, Pisanich on its face discloses *real-time* video game updates based on real-world events. (WK-2202-1 ("Title: INTEGRATION OF REAL-TIME DATA INTO A GAMING APPLICATION").) Pisanich thus does not contradict the Madden References' express disclosure of weekly updates based on players' real-life performances.

White Knuckle next cites to documents regarding database updates in FIFA 07 (POR 10 (citing WK2215-1)), dynamic daily updates in NBA Live 09 (POR 11 (citing WK-2218)), and "living rosters" in NBA 2K9 (POR 11 (citing WK-2221, WK-2225)). White Knuckle suggests that because dynamic updating features of those later games were successful and touted as prominent features, Madden 2000 must not have had such features. (POR 11.) But the articles White Knuckle relies on discuss *real-time* updates and updates provided *from third-parties who provide scouting information to the NBA*, neither of which are claimed in the '575 patent.

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<sup>4</sup> The pages of WK-2002 are mislabeled as "EA-1006," which was the exhibit's number in IPR2015-01595.

(e.g., WK-2221 (“delivering constant updates to player ratings and player tendencies”); WK-2218 (“The game is changing daily based on statistical information and tendencies being tracked and downloaded from Synergy Sports Technology”).) The articles therefore do not contradict (let alone discuss) the Madden References’ teachings of weekly updates to players’ real-life performances throughout a season.

### **B. The Updates Were Not Only To Fix “Bugs”**

White Knuckle also argues that at the time of the invention, video game updates were “patches” to fix “bugs” (POR 12-14) and characterizes the Madden Updates as being “‘patches’ that update the video game ‘roster.’” (*Id.* 13.) White Knuckle’s attorney argument cannot transform what the evidence discloses: a series of updates to game character performance parameters during a season based on the performance of real-life athletes. While EA-1016 states that the update brings rosters into alignment with actual team rosters (POR 13), as shown below the roster updates include updating character performance parameters based on real-life performance:

```
EAPlayoff 1.txt
EA SPORTS Madden NFL(TM) 2000 Roster Update - Playoff Week 1
-----
01/07/00

# NOTE #- This Roster 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.
All teams that have been eliminated will remain unchanged, but available for use.
Let the playoffs begin....
```

**Figure 1: Excerpt from EA-1016-2 (Highlights Added)**

### III. WHITE KNUCKLE MISCHARACTERIZES THE PRIOR ART

#### A. The Madden References Teach More Than Just Aligning Rosters

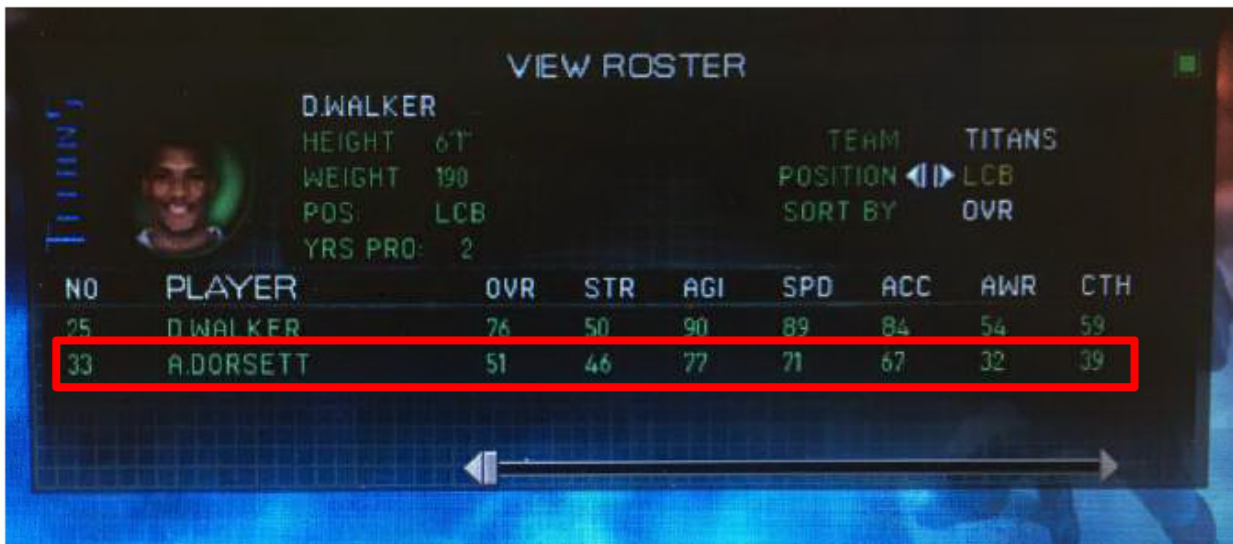
White Knuckle argues that the “Madden References are concerned with fixing ‘rosters’ in a sports video game” (POR 14), implying that those references do not teach updating video game character performance parameters. As shown above, the Playoff Week 1 Update discloses updating “*player abilities*,” and that “[e]ach week the roster file will be updated *to denote player performance* in each eligible team[’]s playoff game.” (EA-1016-2.)<sup>5</sup> Not only are the references explicit as to this feature, Mr. Crane also confirms that a skilled artisan would understand that EA-1016 describes “updates [to] video game team composition, and character performance, parameters so that changes in the real-life NFL team rosters, and changes in the performance of real-life NFL athletes, during the real-life NFL season, are simulated in *Madden NFL 2000*.” (EA-1004 ¶122; *see also* WK-2234 83:17-84:14.)

White Knuckle also cites to screenshots from the Madden 2000 game itself as purportedly showing that “the Madden Updates dealt with solving a problem with rosters, not creating [a] dynamic video game.” (POR 15-16.) But the Madden game is not prior art in this IPR, and thus screenshots from that game do not alter what the prior art documents disclose. But even if those screenshots were

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<sup>5</sup> Emphasis added throughout unless otherwise indicated.

relevant (which they are not), they actually confirm that the updates *did* update in-game character performance based on real-life performance. For example, exhibits WK-2231 and WK-2232 purportedly show screenshots from the game after the Playoff Week 1 and Super Bowl Updates. As shown in the excerpt from WK-2231 below, going into the playoffs, the performance parameters for the Titans' Anthony Dorsett included an overall (OVR) performance parameter of 51, a speed (SPD) performance parameter of 71, and an acceleration (ACC) performance parameter of 67.



**Figure 2: Excerpt from WK-2231-4 (Annotated)**

The Titans went to the Super Bowl in the 1999 playoffs. Thus, as shown in the excerpt from WK-2232 below, Dorsett's performance parameters going into the Super Bowl were updated based on his real-life performance in the playoffs.



**Figure 3: Excerpt from WK-2232-3 (Annotated)**

Mr. Ferwerda, a prior Development Manager at EA for the Madden game (EA-1028 ¶1), explained that the Titans “would see performance improvements from Playoff Week 1 to the Super Bowl.” (WK-2235 43:6-44:11.) Mr. Ferwerda confirmed that those changed performance parameters would cause the game to more closely simulate the real-life athlete’s performance:

5	Q	Mr. Ferwerda, what affect would the changed
6		numbers have on the game itself if a player was playing?
7	A	Just to clarify: In game?
8	Q	In game.
9	A	It can have a pretty profound affect on how the
10		players perform differently. Player attributes, again,
11		based on my experience, are used to differentiate player
12		performance based on positions, how they played,
13		et cetera. All of these attributes, ratings, or however
14		you want to refer to them, all control specific things on
15		the field and how they play differently.

**Figure 4: Excerpt from WK-2235 (45:5-15)**

## **B. Swanberg Teaches More Than Updating A “Trading Card”**

White Knuckle mischaracterizes the games disclosed in Swanberg as only being “played using a website” (POR 17) to support its argument that Swanberg does not teach a game medium that is itself configured to perform the method steps (POR 30). White Knuckle’s mischaracterization is irrelevant because the claims of the ‘575 patent only require the video game medium to be configured to cause the game machine to perform the method steps—they do not require the game to be stored locally. Its argument also ignores Swanberg’s disclosure that the game could *also* be loaded directly on a user’s computer. (EA-1011 ¶¶[0049] (“The present invention . . . *may also be loaded directly on a local user’s computer system.*”), [0030], [0050]; WK-2234 122:20-123:21.)

White Knuckle next argues that the “abilities” on the Swanberg card are not comprised solely of those of real-life players, but instead comprise a combination of real and “not-real abilities.” (POR 17-18.) This argument is irrelevant because the challenged claims do not require updating solely “real” abilities. Instead, the challenged claims require a video game character to have a performance parameter “based at least in part” on the performance of a real-life athlete. (EA-1001 claims 1, 23, 32.) Thus, Swanberg discloses the claim limitation even if the abilities comprise real and “not-real” abilities. Further, Swanberg also discloses that “the most current results” of real-life players will be loaded on a “Team Card” and that

when play begins, “the players on the Team Card will perform based upon” those statistics. (EA-1011 ¶[0095].) Swanberg therefore discloses a video game where the in-game players’ performances are updated based on the real-life athletes’ performances. (*Id.* (“if Roger Clemens has a bad week of pitching, then the ‘virtual Roger Clemens’ will not pitch as well as before.”).)

#### **IV. THE CLAIMS ARE OBVIOUS IN VIEW OF THE MADDEN REFERENCES**

##### **A. The Madden References Teach A Series Of Updated Video Game Character Performance Parameters**

White Knuckle argues that the Madden References do not teach a “series of updated video game character performance parameters” based on performances of “a particular real-life sports athlete.” (POR 20.) Its arguments, however, fail to address the Madden References’ relevant teachings.

The Madden 2000 Updates document excerpted below illustrates a series of weekly updates throughout a football season, including the playoffs. (EA-1015.)

Download the latest Playoff Round Rosters now!	
<a href="#">PlayoffWeek1.zip (429kb)</a>	01/06/00
<a href="#">PlayoffWeek2.zip (429kb)</a>	01/20/00
<a href="#">PlayoffWeek3.zip (429kb)</a>	01/20/00
<a href="#">EASuperBowl.zip (429kb)</a>	01/28/00
Download the latest Madden NFL(TM) 2000 roster now!	
<a href="#">EAWeek8.zip (427kb)</a>	11/04/99
<a href="#">EAWeek9.zip (427kb)</a>	11/08/99
<a href="#">EAWeek10.zip (428kb)</a>	11/12/99
<a href="#">EAWeek11.zip (428kb)</a>	11/18/99
<a href="#">EAWeek12.zip (428kb)</a>	12/03/99
<a href="#">EAWeek13.zip (428kb)</a>	12/03/99
<a href="#">EAWeek14.zip (428kb)</a>	12/09/99
<a href="#">EAWeek15.zip (4.28kb)</a>	12/22/99
<a href="#">EAWeek16.zip (428kb)</a>	12/22/99

**Figure 5: Excerpt from EA-1015**

As shown below, each of the updates includes adjusted player abilities denoting player performance in each eligible team’s playoff game. (EA-1019-2.)

```

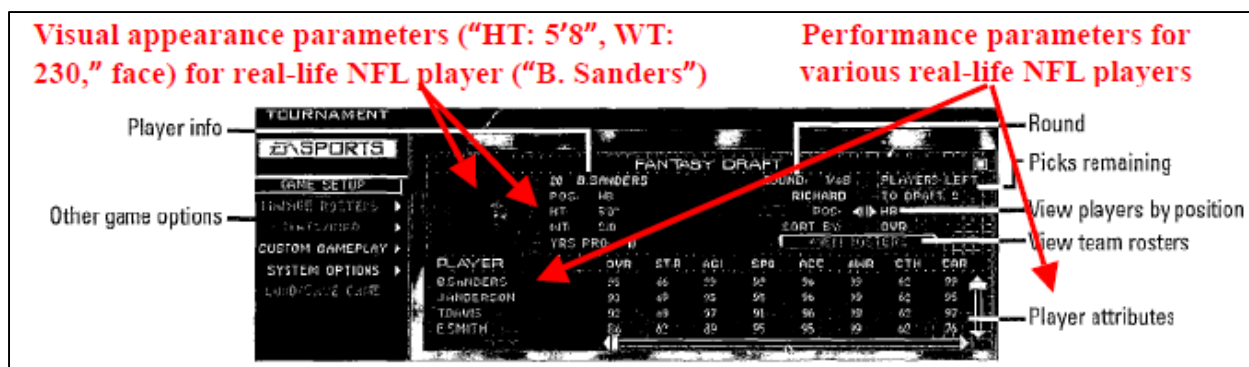
                                EASuperBowl.txt
EA SPORTS Madden NFL(TM) 2000 Roster Update - EA Super Bowl
-----
01/28/00

# NOTE #- This Roster 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.
All teams that have been eliminated will remain unchanged, but available for use.

```

**Figure 6: Excerpt from EA-1019-2 (Highlights Added)**

The following Madden 2000 Manual annotated excerpt shows “attributes” for a “particular real-life sports athlete.” (EA-1004 ¶100 (excerpting EA-1018-28); WK-2234.)



**Figure 7: EA-1004 ¶100 (Excerpting EA-1018-28 with Annotations)**

Those “attributes” correspond to the below list of performance parameters. (EA-1018-32.) Mr. Crane testified that a skilled artisan would understand that the “player attributes” shown in the screenshot above correspond to the “rating abbreviations” shown below. (WK-2234 86:3-20.) He went on to explain that a skilled artisan would understand that those updated “attributes” or “ratings” are parameters that affect the artificial intelligence of the computer player in the game to simulate the real-life player’s performance. (WK-2234 86:21-89:17, 91:15-92:21.)<sup>6</sup>

<sup>6</sup> And, as mentioned elsewhere, White Knuckle’s misguided attempt to bring the actual Madden game into this IPR only confirms the straightforward teachings of the references and Mr. Crane’s interpretation of them.

### **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

**Figure 8: EA-1018-32**

These combined references disclose a series of updated video game parameters based on the real-life performances of athletes on the teams that advanced to the Super Bowl. White Knuckle ignores this evidence.

White Knuckle further incorrectly argues that the Madden Updates only identify one player, Kordell Stewart. (POR 20-21 (citing EA-1016-2).) In making this argument, White Knuckle ignores the exhibit's express disclosure that "[e]ach week the roster file will be updated to denote player performance *in each eligible team[']s playoff game.*" (EA-1016-2.) The separate disclosure regarding Stewart's position change is immaterial.

White Knuckle next argues that EA provides no evidence that Stewart's abilities were updated more than once because Stewart's abilities in the game did

not change between Playoff Week 1 and the Super Bowl. (POR 21.) But the Madden References—the prior art at issue—disclose updating player performance parameters each week based on real-life player performance. (EA-1015, EA-1016, EA-1019; EA 1004 ¶134.) Whether or not Stewart’s in-game abilities were updated in the Super Bowl Update is immaterial to what the prior art documents disclose, teach, or suggest to a skilled artisan.

Further, Stewart played for the Steelers, a team that did not make the 1999 playoffs. The “Madden Updates” file explains that “[a]ll teams that have been eliminated will remain unchanged, but available for use.” (EA-1016-2.) Thus, because Stewart played for an eliminated team, it is unsurprising that his performance parameters remained the same during the 1999 playoffs.

In contrast, Anthony Dorsett played for the Titans, a team that went to the Super Bowl that year. As shown in Figures 2 and 3 above, Dorsett’s character’s in-game performance parameters were updated throughout the playoffs based on Dorsett’s real-life performances. (WK-2231-4, WK-2232-3.) Thus, not only does the prior art at issue disclose a series of updates to in-game player parameters based on real-life player performance, but White Knuckle’s exhibits confirm that the Madden game operated that way.

White Knuckle also complains that Mr. Crane did not analyze the binary data for updating the Madden game. (POR 22.)<sup>7</sup> But, again, the game is not the prior art being considered in this review. Further, Mr. Crane explained that there was no reason to analyze the data because the Madden Updates documents (EA-1016 and EA-1019) “describe what types of parameters are changed.” (WK-2234 92:23-94:13.)

Lastly, White Knuckle argues that claim 23 requires a *plurality* of updated video game character performance parameters, and therefore that the claim requires “more than one updated performance parameter” for a particular real life-athlete. (POR 22.) The Super Bowl Update document discloses updates of “player abilities” “[e]ach week.” (EA-1019-2.) As illustrated by the Madden 2000 Manual, and as explained by Mr. Crane, those abilities include “strength,” “agility,” and “speed” (among others). (EA-1018-32; WK-2234 86:3-89:17, 91:15-92:21.) Thus, the Madden References disclose a *plurality* of updated video game character parameters.

**B. The Madden References Teach The Series Of Updates Being Based On Different Real-Life Performances Of The Athlete Performing During The Season**

White Knuckle’s argument that there is no evidence that the Madden updates had player ratings or abilities that changed based on performances of real-life

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<sup>7</sup> Mr. Crane *did* analyze the Madden Updates documents (EA-1016, EA-1019) at issue in this IPR. (EA-1004 ¶¶114-125.)

athletes during the single sports season (POR 23) is directly contradicted by the prior art references at issue. For example, the Super Bowl Update expressly discloses that “[e]ach week the roster file will be updated to denote player performance in each eligible team[’]s playoff game.” (EA-1019-2.) Accordingly, the evidence establishes that the in-game players’ performance parameters were updated weekly to reflect their performance in the real-life playoff games during the 1999 season.

White Knuckle next repeats its argument that the only evidence of players’ ratings being updated is the ratings for Stewart and Dorsett. (POR 23.) Because White Knuckle cites no evidence, its arguments are presumably based on the actual game. But, again, the prior art references at issue are the Madden References, and they disclose that the players’ performance parameters are updated each week based on the performance during the NFL playoffs. (EA-1010-2.) Further, although irrelevant, White Knuckle’s own exhibits establish that in the Madden game, a plurality of performance parameters were updated for Dorsett based on his real-life playoff performance. (WK-2231-4, WK-2232-3.)

**C. The Madden References Teach Simulating Real-Life Performance Attributes Of The Real-Life Athlete**

White Knuckle argues that the Madden References do not teach simulating performance attributes of a real-life athlete, but instead only teach bringing the

rosters into alignment with the actual NFL team rosters. (POR 24-25 (citing EA-1016-02).) Once again, the art at issue refutes White Knuckle's argument.

Specifically, the Madden Updates expressly disclose that each week, they update the player abilities, including player performance during the NFL playoffs. (EA-1016-02, EA-1019-02.) Further, Mr. Crane's testimony established that a skilled artisan would understand that those "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*." (EA-1004 ¶132, WK-2234 86:3-89:17, 91:15-92:21.) And, even if White Knuckle's extraneous Madden game exhibits were relevant, Mr. Ferwerda confirmed that in the Madden game, the changed in-game performance parameters affected how the players perform based on the real-life athletes' performances. (WK-2235 45:5-15.) White Knuckle provides no evidence to the contrary.

White Knuckle next argues that the Madden References do not *necessarily* disclose that the players' updated abilities more closely simulate the performance attributes of real-life athletes. (POR 25-26.) In its argument, White Knuckle incorrectly portrays EA's argument as one of inherency, but it is not. The relevant issue is what the Madden References disclose to a skilled artisan. And White Knuckle offers no evidence to rebut that the Playoff Week 1 Update and Super

Bowl Update documents disclose that the player abilities were updated each week to denote real-life player performance in the playoffs. (EA-1016-2, EA-1019-2.) Further, Mr. Crane confirmed that a skilled artisan would understand those references as disclosing that the in-game player attributes are updated to simulate the performance of the real-life players. (EA-1004 ¶132.) Because the Madden Updates directly disclose the claim limitation to a skilled artisan, EA does not need to rely on inherency.

**D. The Madden References Render Claims 2, 5, 12, And 30 Obvious**

White Knuckle argues that there is no evidence that the Madden Updates were received on a weekly basis, and therefore that the Madden Updates do not render obvious Claim 2. (POR 27.) Once again, the Madden Super Bowl Update file directly contradicts White Knuckle’s assertion, because it discloses weekly updates to performance parameters: “*Each week* the roster file will be updated *to denote player performance* in each eligible team[’]s playoff game.” (EA-1019-2.) In addition, the updates were released weekly. (EA-1015 (“PlayoffWeek1.zip,” “PlayoffWeek2.zip,” etc.)) Mr. Crane confirmed that a skilled artisan would understand that the Madden 2000 Updates document “discloses a series of weekly updates for download from Petitioner’s website during the 2000 NFL season.” (EA-1004 ¶134.) White Knuckle fails to address the express disclosure of the Madden Update files or Mr. Crane’s testimony and provides no rebuttal evidence.

White Knuckle’s argument about Mr. Ferwerda’s knowledge of when the actual game updates were packaged (POR 27) is irrelevant to what the prior art documents teach to a skilled artisan.

White Knuckle next argues that the Madden References do not disclose the “video game medium” configured to perform the method steps, and therefore do not render obvious Claim 5. (POR 27.) But White Knuckle mischaracterizes the claims by using an ellipsis to omit the portion reciting “receiving *an input from the user* using a game controller, the input directing the video game machine to” and then argues that the claim requires automatic updating without any user involvement. (POR 27-28.) Thus, the claims expressly require a user input to cause the machine to connect to the data server to receive the updates. The excerpt from the Madden 2000 Updates below shows that the video game machine could receive an input from a user using the video game controller (e.g., keyboard or mouse) and then connect to the website to download a selected update. (EA-1015.) The Madden Update files explain that each update includes the latest real-life character performance parameters. (EA-1016-2, EA1019-2.) Thus, the Madden References disclose this claim limitation.

Download the latest Playoff Round Rosters now!	
<a href="#">PlayoffWeek1.zip (429kb)</a>	01/06/00
<a href="#">PlayoffWeek2.zip (429kb)</a>	01/20/00
<a href="#">PlayoffWeek3.zip (429kb)</a>	01/20/00
<a href="#">EASuperBowl.zip (429kb)</a>	01/28/00
Download the latest Madden NFL(TM) 2000 roster now!	
<a href="#">EAWeek8.zip (427kb)</a>	11/04/99
<a href="#">EAWeek9.zip (427kb)</a>	11/08/99
<a href="#">EAWeek10.zip (428kb)</a>	11/12/99
<a href="#">EAWeek11.zip (428kb)</a>	11/18/99
<a href="#">EAWeek12.zip (428kb)</a>	12/03/99
<a href="#">EAWeek13.zip (428kb)</a>	12/03/99
<a href="#">EAWeek14.zip (428kb)</a>	12/09/99
<a href="#">EAWeek15.zip (4.28kb)</a>	12/22/99
<a href="#">EAWeek16.zip (428kb)</a>	12/22/99

**Figure 9: Excerpt from EA-1015**

White Knuckle lastly argues that EA’s challenges to Claims 12 and 30 fail, by mischaracterizing EA’s analysis of the Madden References as a “flawed inherency argument.” (POR 28.) It is not. Claims 12 and 30 require updating performance parameters associated with “a performance of a real-life opponent.” The Madden References disclose updating player performance parameters each week for “each eligible team[’]s playoff game.” (EA-1016-2, EA-1019-2.) A skilled artisan would understand that those updates would include an update for a real-life opponent—each remaining team in the playoffs was an opponent the prior week and will be an opponent the current week. (EA-1004 ¶¶166-169.) The evidence therefore discloses this claim limitation.

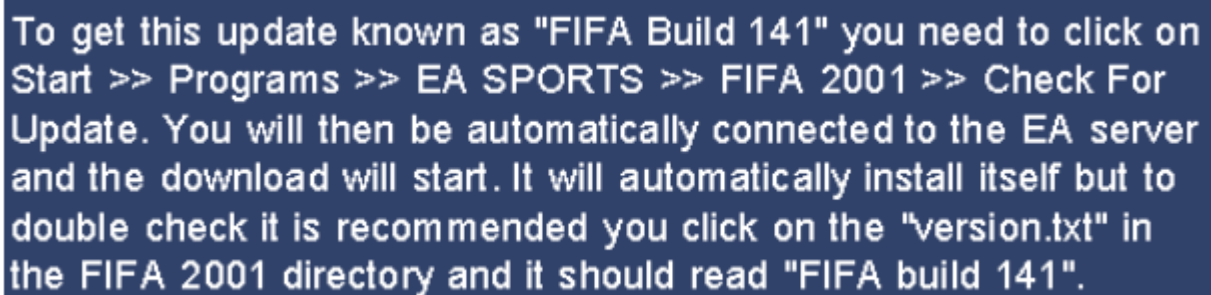
**E. A Skilled Artisan Would Have Been Motivated To Combine The Madden References**

White Knuckle misrepresents that EA relies on the actual functionality of the Madden game and the intended use of the Madden Updates as a basis for combining the references. (POR 29 (citing Pet. 28).) The Madden References are documents directed to providing a realistic football gaming experience by updating in-game player performance parameters based on real-life performances. (Pet. 25-28.) A skilled artisan would have realized the benefit of combining the Madden References from the references themselves, as they describe features of the same video game system. The Madden References explain that the game received weekly updates so that in-game characters would accurately simulate the performance of the real-life NFL athletes they portray. Mr. Crane's testimony confirms that a skilled artisan would understand that the Madden References' teachings are intended to be combined to allow full functionality and realism of the video game. (EA-1004 ¶127.)

**V. THE CLAIMS ARE OBVIOUS IN VIEW OF THE MADDEN REFERENCES AND FIFA NEWS**

White Knuckle argues that claims 4, 7, 9-10, and 21 are not obvious solely based on their dependence from claim 1, but does not address claims 4, 9 and 21 on the merits. (POR 29-32) By not specifically addressing these claims in its response, White Knuckle waived any additional arguments regarding them. (Scheduling Order (Paper 9) at 3.)

White Knuckle argues that neither the Madden References nor FIFA News teaches a video game that is itself configured to cause the video game machine to update, and that these references therefore do not invalidate Claim 7. (POR 29-31.) White Knuckle's argument lacks merit because Claim 7 requires that the update be "in response to an input received from the user," and FIFA 2001 News discloses game software itself that automatically updates in response to an input received from the user. As shown below, the reference describes an architecture that causes the video game (file path "Programs >> EA SPORTS >> FIFA 2001 >> Check For Update") to perform an automatic update in response to an input received from a user (e.g., "click on ... Check for Update"). (EA-1007-37; EA-1004 ¶200.) As discussed above, the Madden References disclose periodic updating. A skilled artisan would have been motivated to combine the automatic updating in response to an input received from a user disclosed in FIFA 2001 News with the periodic updating disclosed in the Madden References. (EA-1004 ¶¶202, 210-211.)

A screenshot of text from EA-1004 ¶ 200, displayed on a dark blue background with white text. The text describes the process of updating the game software, mentioning the file path "Start >> Programs >> EA SPORTS >> FIFA 2001 >> Check For Update" and the automatic installation of the update.

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".

**Figure 10: EA-1004 ¶ 200 (excerpt from EA-1007, page 37)**

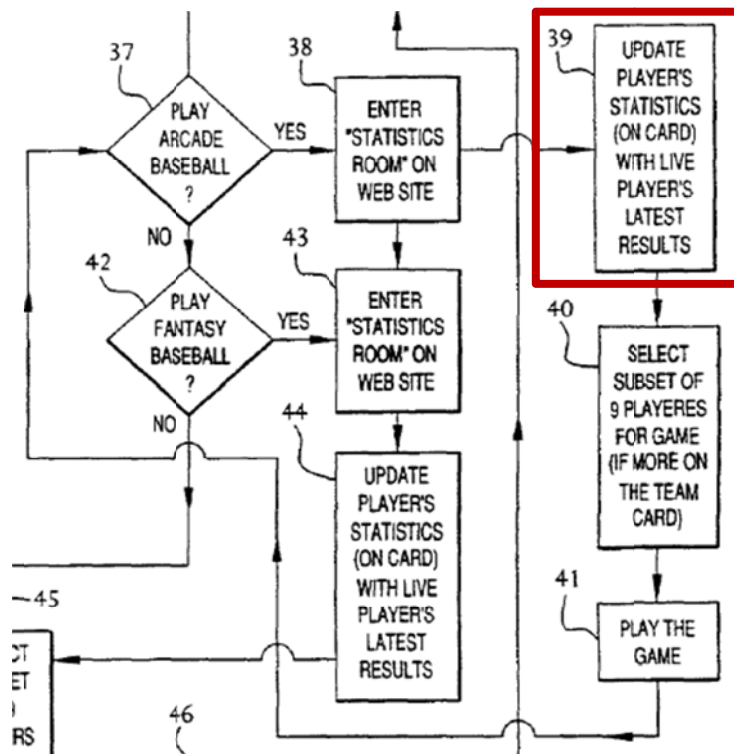
White Knuckle provides no evidence to rebut Mr. Crane’s opinion that a skilled artisan would have found it obvious to use the architecture taught in FIFA 2001 News to automatically download and install the updates disclosed in the Madden References. (EA-1004 ¶211.)

Turning to Claim 10, White Knuckle attacks FIFA 2001 News individually, arguing that it fails to disclose updating a stadium appearance parameter at least once “during the single season.” (POR 32.) *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (nonobviousness cannot be established by attacking a reference individually when a challenge is predicated upon a combination of references). White Knuckle’s argument is unfounded because FIFA 2001 News discloses updating a video game stadium parameter based on a real-life change. (EA-1008-20; EA-1007-60, 73-74; *see also* IPR2015-01595 Final Written Decision (Paper 38) at 7-8.) The Madden References disclose the desire to update parameters to reflect real life and a system for providing weekly updates throughout a sports season. (EA-1015; EA-1016.) It would have been obvious for a skilled artisan to combine the Madden References’ teachings regarding updates during a sports season with FIFA 2001 News’s teachings regarding updating parameters associated with the appearance of a stadium to make the game more closely reflect real-life developments. (EA-1004 ¶¶203-205, 208-209.)

## **VI. THE CLAIMS ARE OBVIOUS IN VIEW OF SWANBERG**

**A. Swanberg Teaches A Series Of Updated Video Game Character Performance Parameters For The Particular Real-Life Sports Athlete During A Sports Season**

White Knuckle argues that Swanberg’s disclosure of updating an arcade-style game with the “most current results” and its Roger Clemens example do not disclose a “series of updates” because “one update is not a series.” (POR 33.) But, as shown below, Swanberg discloses updating an in-game player’s statistics with a real-life player’s latest statistics *each time* the user wants to play the arcade-style game. (EA-1011, Figure 16.)



**Figure 11: EA-1011 Figure 16 (Cropped and Annotated)**

Specifically, Swanberg teaches as follows: if a user wants to play an arcade-style game, the “most current results of the live players” will be loaded onto the “Team

Card.” (EA-1011 ¶[0095].) When game play begins, the players on the Team Card perform according to those updated statistics. (*Id.*)

[0095] If the user wants to play the arcade-style game 237, he will first enter a statistics room 238 where the most current results of the live players will be loaded onto the Team Card 239. If the Team Card contains more than 9 players (for baseball), the user will select the 9 to play with at this time 240. When the game play begins 241, the players on the Team Card will perform based upon the statistics loaded in step 239. For example, if Roger Clemens has had a bad week of pitching, then the “virtual Roger Clemens” will not pitch as well as before. It is also possible to update the players’ statistics based upon the skill of the user playing the game. In the above example, if the user through playing the arcade game pitched very well, the “virtual Roger Clemens” would get “better” at pitching.

**Figure 12: Excerpt from EA-1011 (¶[0095] with highlights)**

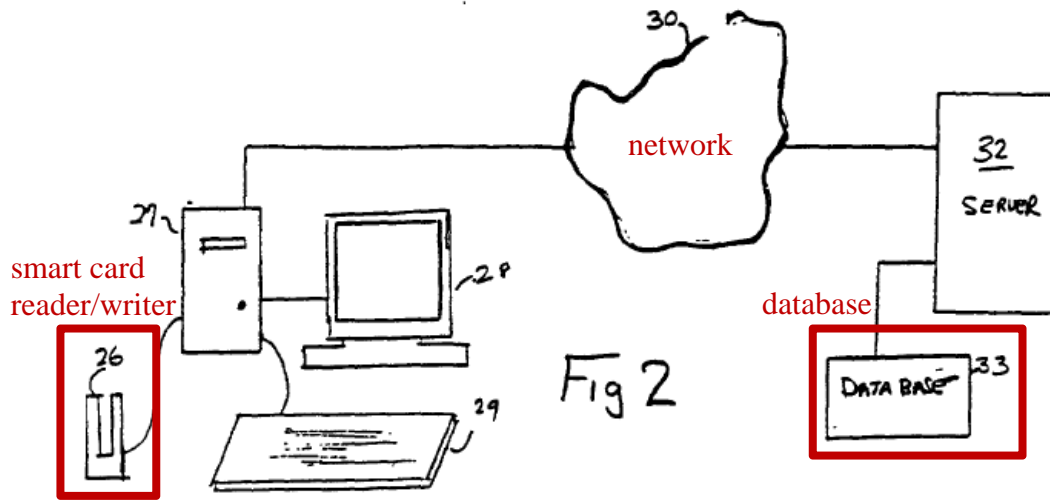
Because an athlete’s performance varies throughout a season, Swanberg discloses a series of updated video game character performance parameters for the athlete during a season. (EA-1011 ¶[0095].)<sup>8</sup>

White Knuckle next complains that the “frequent” updating referenced in Swanberg is related to updating the database, not the frequency with which the video game is being updated. (POR 33 (citing EA-1011 ¶[0048].) But, as illustrated below, Swanberg also discloses that the updated player’s statistics are regularly transferred from the remote server over the Internet to a user’s local computer connected to a smart card reader to update the corresponding game

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<sup>8</sup> Swanberg also discloses updating a plurality of performance parameters in each update. (EA-1011 ¶[0059] (“runs, errors made, hits, and catches”).)

character’s statistics. (EA-1011 ¶[0095] (“the most current results of the live players will be loaded onto the Team Card”); *see also* EA-1011 ¶¶[0032], [0036], [0041], [0048]; EA-1004 ¶¶218, 227.)



**Figure 13: EA-1011 Figure 16 (Annotated)**

White Knuckle additionally argues that Swanberg does not teach the “series of updated performance parameters” being based on “different real life performances” of an athlete. (POR 33.) A skilled artisan would understand that updating with “the most current results of the live players” throughout a season would include updates based on different real-life performances. (EA-1004 ¶228.) Swanberg’s disclosure that the “virtual Roger Clemens” will “not pitch as well as before” based on a “bad week of pitching” from real-life Roger Clemens confirms as much—a “bad week” indicates that there were earlier updates from prior real-life performances. (EA-1011 ¶[0095].)

**B. Swanberg Teaches A Game Medium Configured To Perform The Claimed Method Steps**

White Knuckle asserts that because an embodiment in Swanberg discloses a video game running on a server, the game medium is not configured to perform the various steps of claim 1. (POR 34.) White Knuckle never explains the alleged connection between these two propositions, but regardless, its argument is irrelevant because the '575 patent claims do not require the video game to be running on a local computer.

White Knuckle's argument also fails because Swanberg discloses that the game *may also* be loaded directly on the local computer. (EA-1011 ¶¶[0049] (“The present invention . . . *may also be loaded directly on a local user's computer system.*”), [0030] (“... *to a local* or remote *computer that is executing a game program*”), [0050].) Mr. Crane confirmed that Swanberg discloses a local game to a skilled artisan. (WK-2234 122:20-123:21.)

Further, even in an embodiment where the video game is provided on the remote server, the local “game medium” would still perform the various claim limitations. The game software installed on the local computer loads game software, and then interacts with the server and smart card to receive current updates when a user selects to play an arcade-style game, loads those to the card, and updates the video game characters so that they simulate current real-life athletes. (EA-1011 Figures 2, 16, ¶¶[0040]-[0041], [0049]-[0052], [0095].) White Knuckle provides no explanation of how Swanberg's system somehow works

without the game software on the local computer being loaded and performing the updating.

Moreover, Mr. Crane's declaration establishes that a skilled artisan would have found it obvious to load Swanberg's video game software onto a local computer and use that software to update the players' performance parameters so that the characters in the game more closely simulate their current real-life counterparts. (EA-1004 ¶¶226-231.) White Knuckle even elicited testimony from Mr. Crane establishing that a skilled artisan would have found it obvious to divide tasks between the server and local computer—that it is a simple design decision to have a local client and a server component. (WK-2234 119:14-120:21.) Thus, had Swanberg not disclosed that the local computer performed the updating, a skilled artisan would have found such a modification from Swanberg to be obvious. White Knuckle ignores the evidence from Swanberg and Mr. Crane's testimony and provides no rebuttal evidence.

**C. A Skilled Artisan Would Have Been Motivated To Combine Swanberg And Hines**

White Knuckle argues that a skilled artisan would not be motivated to combine Swanberg and Hines because the statistics in Hines are from real-life basketball teams while the basketball teams of Swanberg are “created” from players from various real-life teams. (POR 36.) But Swanberg does not disclose that the teams *must* be comprised of players from various teams. To the contrary,

Swanberg’s disclosure that teams do “not necessarily correspond[] to actual major league teams” teaches a skilled artisan that the teams *may* correspond to real-life teams. (EA-1011 ¶¶[0084]; EA-1004 ¶¶[221, 227].)

White Knuckle’s argument further lacks merit because it attacks Swanberg alone, not the combined teachings of the two references. Hines discloses storing updated real-life basketball athlete performance statistics (e.g., “points scored in a game, rebounds, free-throws made and attempted”) based on “real time game events” in a remote database accessible over the Internet. (EA-1020 ¶¶[0006], [0014]-[0015], [0021], [0023], [0025].) A skilled artisan would have found it obvious to use the detailed statistics from Hines to update the in-game players in Swanberg because Swanberg itself teaches the desire to have “the most current results of the live players” so that “the players ... will perform based on the statistics.” (EA-1011 ¶¶[0084], [0095].) Mr. Crane confirmed that it would have been an obvious design choice for a skilled artisan to use the Hines’s detailed statistics with Swanberg’s video game system, and White Knuckle offers no expert testimony to the contrary. (EA-1004 ¶[269].)

## **VII. WHITE KNUCKLE’S “SECONDARY CONSIDERATIONS” EVIDENCE DOES NOT SHOW NON-OBVIOUSNESS**

White Knuckle’s secondary consideration arguments focus on the “Dynamic DNA” in NBA Live 09 and “Living Rosters” in NBA 2K9. White Knuckle asserts that those “technologies and their video games incorporated the claimed feature of

a[n] in-game updating of player attributes during the season to reflect real life player performance during a sports season.” (POR 37.) But the evidence shows that such updating was already known. Evidence of industry praise, copying, and commercial success “focused on conventional features in the prior art” are not probative of non-obviousness. *ClassCo, Inc. v. Apple, Inc.*, 838 F.3d 1214, 1220 (Fed. Cir. 2016). The Madden references establish that updating player attributes to reflect real-life athletes’ performances was long known. Further, White Knuckle’s evidence even establishes that *real-time* in-game updating, which is not claimed in the ‘575 patent, was known in the prior art. (WK-2202 48:7-15 (“enabling the use of real-time data to influence and drive a gaming experience”), 7:10 (“football game”), Fig. 2.) Therefore, even if the praise, copying, and commercial success were due to the updating of player performance parameters, it would not evidence non-obviousness.

Further, White Knuckle argues that a nexus is presumed because it alleges that NBA Live 09 and NBA 2K9 are covered by the ‘575 patent. (POR 46.) But that presumption is rebutted when the “evidence shows the proffered objective evidence was due to extraneous factors other than the patented invention”—as is the case here. *WBIG, LLC v. Kohler Co.*, 829 F.3d 1317, 1329-1330 (Fed. Cir. 2016) (quotes and citation omitted).

For example, the success of NBA Live 09 was attributable in part to its system for *real-time* updates, “Dynamic DNA.” (WK-2216 (“new feature allows players to have access to *constantly updating* stats”); WK-2220-1 (“[r]eal-time updates on ... statistics”).) The articles further tout that the real-time updates are more accurate than previously used because they come from Synergy Sports Technology’s statistics, the “same company that 23 NBA teams are using to scout their opponents.” (WK-2218-3; WK-2219-2 (“powered by the premier analytics provider using NBA data”); WK-2220-2 (“It’ll be insanely accurate if Synergy is involved”).) The game’s success was also related to new features, including “[n]ew pick-and-roll controls,” “improved fake-out moves,” and a “new play-calling system.” (WK-2216-1.) The ‘575 patent claims do not recite real-time updates, “dynamic” updates, updates with statistics from a third-party or the other new game features. The evidence expressly recognizes that the praised improvements are *not* based on updating the players’ ratings as recited in the ‘575 patent claims. (WK-2220 (“I was expecting the game to just update the players['] ratings but this is even bigger than that.”).)<sup>9</sup>

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<sup>9</sup> White Knuckle also claims a nexus exists between the ‘575 patent claims and FIFA 09 (POR 47), but it does not address FIFA 09 in its arguments regarding industry praise, copying, or commercial success. (*Id.* 38-45.) FIFA 09’s praise and success related to many features unrelated to the ‘575 patent, including dynamic updates from a “global network of scouts” (WK-2207), a new online “club” mode (WK-2213-4), “new animation sequences” (*Id.*), and “all-new collision and shielding systems” (*Id.*).

The NBA 2K9 articles likewise praise the *real-time* updating and *other features* unrelated to the purported invention of the '575 patent. (WK-2221-1 (“In addition to delivering *constant updates* to player ratings and player tendencies, Living Rosters will also offer exclusive access to *unlockable animation packages.*”)) And the 2K9 articles brag about the improvement being the quality of the information from “the NBA 2K Insider – a real person working behind the scenes, pouring over the stats and spreadsheets” rather than the ability to provide updated statistics. (WK-2221-01.)

Not only are the improvements in NBA Live 09 and 2K9 not attributable to the '575 patent claims, but the evidence does not show that either game copied White Knuckle's work. (POR 41-43.) “Copying requires duplication of features of the patentee's work based on access to that work, lest all infringement be mistakenly treated as copying.” *Institut Pasteur & Universite Pierre Et Marie Curie v. Focarino*, 738 F.3d 1337, 1347-48 (Fed. Cir. 2013) (citation omitted). White Knuckle's speculative “evidence” that NBA 2K9 copied Live 09 is irrelevant to the obviousness of the '575 patent claims. (WK-2222-01.)

Finally, even if entitled to any weight, White Knuckle's evidence of secondary considerations is insufficient to overcome the strong showing of obviousness made out by the evidence of the combined disclosures of the prior art. *See Süd-Chemie, Inc. v. Multisorb Techs., Inc.*, 554 F.3d 1001, 1009 (Fed. Cir.

2009) (“[E]vidence of unexpected results and other secondary considerations will not necessarily overcome a strong prima facie showing of obviousness.”).

### **VIII. CONCLUSION**

EA respectfully requests that the Board invalidate all challenged claims.

Respectfully submitted,

Dated: March 17, 2017

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**CERTIFICATE OF WORD COUNT**

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Reply comprises 5,575 words, excluding parts exempted by 37 C.F.R. § 42.24(c), and thus complies with the type-volume limitation of 5,600 words.

Respectfully submitted,

/Gerard M. Donovan/

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), I certify that on March 17, 2017, a true and correct copy of the foregoing **PETITIONER’S REPLY TO PATENT OWNER’S RESPONSE** was served via email upon the following attorney of record for Patent Owner:

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