

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 *****

4 ELECTRONIC ARTS, INC.,

5 Petitioner,

6 vs.

CASE NO. IPR2016-00634

7 WHITE KNUCKLE GAMING, LLC,

8 Patent Owner.

9 _____/

10
11 DEPOSITION OF DAVID P. CRANE
12 VOLUME II

13
14
15 November 17, 2016
16 9:43 a.m.

17
18 Reed Smith, LLP

19 101 Second Street, Suite 1800

20 San Francisco, California

21
22
23
24 Taken Before DEANNE M. GOYKE Certified Shorthand Reporter
25 State of California C.S.R. License No. 11413



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NO.	DESCRIPTION	PAGE
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(None were marked.)



DEPOSITION OF DAVID P. CRANE

Pursuant to Notice of Taking Deposition, and on Thursday, November 17, 2016, commencing at the hour of 9:43 a.m., at Reed Smith, LLP, 101 Second Street, Suite 1800, San Francisco, California, 94105, before me, DEANNE M. GOYKE, a duly qualified Certified Shorthand Reporter of the State of California, personally appeared DAVID CRANE, produced as a witness in the above-entitled action, who, being first placed under oath, was thereupon examined as a witness in said action.

ANDREW S. HANSEN, Attorney at Law, of WHITE KNUCKLE IP, LLC, 282 Maxine Circle, Bountiful, Utah, 84010, was present on behalf of the Patent Owner, White Knuckle Gaming, LLC.

JOHN P. BOVICH, Attorney at Law, of the LAW OFFICES OF REED SMITH, LLP, 101 Second Street, Suite 1800, San Francisco, California, 94105, was present on behalf of the Petitioner, Electronic Arts, Inc.

Also present: David Jones



1 DAVID P. CRANE,
2 Called as a Witness and after being
3 first placed under oath by a Certified
4 Shorthand Reporter, testified as
5 follows:

6
7 EXAMINATION BY MR. HANSEN
8 BY MR. HANSEN:

9 Q. Okay. So I'd like to start with --

10 MR. BOVICH: Can we do appearances?

11 MR. HANSEN: Oh, yeah.

12 MR. BOVICH: Go ahead.

13 MR. HANSEN: Andrew Hansen for White Knuckle
14 Gaming.

15 MR. BOVICH: So John Bovich for petitioner.
16 And, David, just for the record.

17 MR. JONES: David Jones, White Knuckle
18 Gaming.

19 MR. BOVICH: Thanks.

20 MR. HANSEN: Are we ready?

21 MR. BOVICH: Yeah.

22 MR. HANSEN: Okay.

23 BY MR. HANSEN:

24 Q. David, I'd like to start by talking about
25 your understanding of what an ordinary -- a person of



1 ordinary skill in the art is, and for future reference
2 in the deposition I'll be coming them a POSA. So
3 what's your understanding of POSA?

4 A. That's a section of my declaration. It's
5 right there. You want to point me to the declaration
6 to start?

7 Q. Okay. Is it -- okay. Sure. So is a POSA
8 someone who has programming experience in the field of
9 video games?

10 MR. BOVICH: Do you -- can you give him a
11 copy?

12 MR. HANSEN: Oh, yeah, sure. Sorry.

13 BY MR. HANSEN:

14 Q. You don't have a copy, do you? This will be
15 on page 14. This is in paragraph 22, about four lines
16 down. "With respect to the 575 patent, in my opinion,
17 a POSA in October 2002 would have had programming
18 experience in the field of video games," correct?

19 A. Correct.

20 Q. A POSA would also have relevant programming
21 experience or -- scratch -- strike that -- would have a
22 bachelor's degree in electrical engineering, electronic
23 engineering or computer science, correct?

24 A. That's one of the options. As I point out,
25 you can replace a degree with extra experience.



1 Q. But at a minimum they would have a degree in
2 one of those fields or some programming experience?

3 A. As I explain it here, it -- the education
4 level may vary. Again, for example, if you have the
5 bachelor's degree you might have only one or two years
6 of relevant experience; whereas, I offer up three years
7 of relevant experience as kind of a standard. So it
8 can change.

9 Q. Okay. Let's discuss a bit about EA sports
10 video games in general. You're familiar with Madden,
11 FIFA, NBA Live and Cricket World Cup. Are those
12 familiar to you?

13 A. Yes.

14 Q. Madden is a simulated football game,
15 correct?

16 MR. BOVICH: Objection, outside of scope.

17 THE WITNESS: Madden NFL 2000 is a football
18 game.

19 BY MR. HANSEN:

20 Q. NBA Live is a basketball game?

21 MR. BOVICH: Same objection.

22 THE WITNESS: Correct.

23 BY MR. HANSEN:

24 Q. Cricket World Cup is a cricket game?

25 MR. BOVICH: Same objection.



1 THE WITNESS: Yes.

2 BY MR. HANSEN:

3 Q. A simulated cricket game. And, likewise,
4 the other references I made to Madden and NBA Live and
5 Cricket, these are simulated games in the sense that
6 the video game has characters in them that simulate
7 real life players and teams?

8 MR. BOVICH: Same objection.

9 THE WITNESS: They are video game in the
10 genre of sport simulation.

11 BY MR. HANSEN:

12 Q. Okay. I'd like to talk about your
13 background for understanding how these sports work.
14 Have you ever played on a team that competed in
15 football or basketball or soccer or cricket?

16 MR. BOVICH: Same objection, also outside
17 the scope of the depo.

18 THE WITNESS: I was a tennis player growing
19 up. I didn't play football. I did play some
20 basketball. I never played cricket or soccer.

21 BY MR. HANSEN:

22 Q. Did you play on a team?

23 MR. BOVICH: Same objection.

24 THE WITNESS: In -- yes, in both basketball
25 and tennis.



1 BY MR. HANSEN:

2 Q. Okay. Have you produced a simulated sports
3 video game?

4 A. I have.

5 Q. Which ones?

6 A. Many. I believe in my background I say --

7 Q. Tennis, correct?

8 A. -- 20, 40. Simulated sports games are a
9 big part of video game development, and as you know
10 I've developed somewhere between 80 and 100 video games
11 and many of them were sports games.

12 Q. Can you tell us off the top of your head
13 some examples of team sports video games that were a
14 simulation of a real life team or player.

15 MR. BOVICH: Object to the form.

16 THE WITNESS: You know, off the top of my
17 head I've done -- Amazing Tennis comes to mind. I'm
18 trying to remember if doubles were played there. I
19 don't believe so. I've done games for volleyball and
20 field goal kicking and ice hockey and field hockey and,
21 you know, arcade simulations of passing and -- you
22 know, when you've done nearly a hundred games over 40
23 years, it's hard to remember all of them offhand.

24 Q. Fair enough. So -- but you feel comfortable
25 in saying that you have experience in simulated sports



1 video -- producing simulated sports video games?

2 A. I do. I have personal experience in
3 producing simulated sports games.

4 Q. Did those simulated sports games have player
5 performance parameters?

6 A. Yes.

7 Q. And what would -- can you give us examples
8 of player performance parameters in those video games?

9 A. Certainly depends on the video game. The
10 goal in making a video game fun to play is to create
11 characters in the game that are challenging, difficult
12 to compete against, but not too difficult. So every
13 game that has an AI, artificial intelligence, player
14 character in it has to have player parameters, how fast
15 is this player going to run, how hard is this player
16 going to kick. And, again, every game has to have
17 those, and the sports simulations that I've done
18 certainly had those kinds of parameters.

19 Q. So tennis, for instance, which you developed
20 a game for that's fairly well renowned, would have had
21 those parameters in it, correct?

22 A. Correct.

23 MR. BOVICH: Object to the form.

24 BY MR. HANSEN:

25 Q. Do you consider the organization of players



1 on a team to be a parameter of the video game?

2 A. The organization of players on a team in a
3 football game a player's position would be an element
4 of organization of the player on the team and his
5 position is going to be treated differently by the
6 code, and certainly that would be a player parameter.
7 A player performance parameter tends to be more
8 specific as to, again, speed of running, how hard they
9 kick. In the Amazing Tennis game, for example, you
10 played against up to 16 different players and each one
11 of them had different skill sets, different abilities,
12 different capabilities, and while they were being
13 played in essence by the same artificial intelligence
14 character in that case they had completely different
15 player parameters.

16 Q. Which caused the players to perform
17 differently in the game, correct?

18 A. That's correct.

19 Q. All right. Have you ever -- let's stick
20 with tennis. Did you ever produce an update to that
21 video game?

22 A. I don't believe so. Amazing Tennis was
23 produced in ROM, which is much harder to update than
24 games done on the PC, which are very easy to update and
25 commonly updated.



1 Q. Have you ever created an update to a sports
2 video game?

3 A. Again, with all the games that I've done I
4 have probably updated parameters in a video game.
5 Sitting here right now I can't recall which one that
6 might be.

7 Q. Okay. You've done a lot of programming.
8 I'm sure it's hard to remember everything.

9 How would you -- if you had to have created
10 an update to tennis -- which you mentioned just a
11 minute ago that it was on ROM so it would be somewhat
12 more difficult to update. If you had written an update
13 to your tennis game, how would you distribute it or how
14 would you get it to end-users to update it?

15 MR. BOVICH: Object to the form, outside the
16 scope.

17 THE WITNESS: In that hypothetical there's
18 very little doubt that I would have used the same
19 technique that video games and other computer software
20 have used for almost decades, which is updating over
21 the internet.

22 BY MR. HANSEN:

23 Q. Okay. So what would you create to send over
24 the internet?

25 MR. BOVICH: Same objection.



1 THE WITNESS: It would be a packet of data.

2 BY MR. HANSEN:

3 Q. And what would that data do?

4 A. Again --

5 MR. BOVICH: Same objection.

6 THE WITNESS: -- in this hypothetical it
7 would presumably modify some player parameters in the
8 game.

9 BY MR. HANSEN:

10 Q. Okay. I'd like to talk a bit about how a
11 video game producer actually creates a video game.
12 Have you reviewed any documentation related to the
13 development of Madden 2000.

14 A. Documentation related to the development of?

15 MR. BOVICH: I'm going to object, outside
16 the scope. I think we're getting close to privilege.
17 I'll let him answer, but I think you're getting close
18 to privileged information.

19 MR. HANSEN: So the question of whether he
20 looked at it or not is not privileged. The information
21 itself could be privileged.

22 MR. BOVICH: No, I think whether he has is
23 privileged too. I'm going to let him answer, but I
24 think you're getting close to the line.

25 THE WITNESS: Again, you're talking about



1 information relative to the development of the game,
2 which of course was done back in 1999 or whatever.

3 BY MR. HANSEN:

4 Q. Let me be a little more specific. As a
5 programmer do you generally expect to have a video game
6 design document when you produce a video game?

7 A. Sometimes yes. Sometimes no.

8 Q. And what would be the circumstances under
9 which you would -- would have a video game design
10 document?

11 MR. BOVICH: Same objection, outside the
12 scope.

13 THE WITNESS: Typically you will end up with
14 a video game design document in the case where you are
15 not funding the game yourself and you have to go out
16 and find someone to fund the development of the game.
17 A potential investor likes to be able to understand
18 what the game is going to be about down to some level
19 of detail, and with a game design document you can
20 provide both that information and you can provide the
21 confidence to that investor that you know what has to
22 go into a game to make it work.

23 BY MR. HANSEN:

24 Q. So would a person of ordinary skill in the
25 art looking at the complexity of Madden 2000 expect



1 Electronic Arts to have created a video game design
2 document?

3 MR. BOVICH: Objection, outside the scope.

4 THE WITNESS: I think a game of the
5 complexity of Madden 2000, NFL 2000, would benefit from
6 having a design document, but again it's not
7 necessarily a guarantee.

8 BY MR. HANSEN:

9 Q. Okay. Can you explain whether the video
10 game would have been created using source code? Or to
11 ask the question more specifically do you -- is it your
12 understanding that Madden 2000 would have been written
13 using source code?

14 MR. BOVICH: Object to the form, outside the
15 scope.

16 THE WITNESS: Certainly. Source code is the
17 human readable aspect of programming that gets compiled
18 into machine-readable format. So any programming
19 begins with source code.

20 BY MR. HANSEN:

21 Q. Okay. Would you -- would a POSA expect that
22 source code to have comments in it that are not read by
23 the machine but are intended to convey information to
24 the programmer reviewing the source code?

25 MR. BOVICH: Same objection.



1 THE WITNESS: A POSA would certainly expect
2 there to be comments and a POSA might be disappointed.
3 Programming techniques vary from programmer to
4 programmer. Some comment very well, some comment not
5 at all.

6 BY MR. HANSEN:

7 Q. Have you ever reviewed source code for a
8 video game that simulated a sports video game that had
9 no comments in the source code?

10 MR. BOVICH: Same objection.

11 THE WITNESS: I have reviewed source code
12 for an entire game that had no comments in the source.
13 I don't recall what the game was, so I can't say for
14 certain that it was a sports simulation video game.
15 But I have actually encountered a programmer who
16 programmed without comments in his source code.

17 BY MR. HANSEN:

18 Q. Is that typical?

19 A. No.

20 Q. Okay. So has that happened multiple times
21 or would you say that was an anomaly?

22 MR. BOVICH: Object to the form.

23 THE WITNESS: I remember one example, and
24 I've reviewed a lot of source code so it's certainly
25 not common.



1 BY MR. HANSEN:

2 Q. Okay. The source code that you have written
3 for sports video games did you consider it company
4 confidential information?

5 MR. BOVICH: Object to the form, outside the
6 scope.

7 THE WITNESS: I did.

8 BY MR. HANSEN:

9 Q. Okay. I'd like to talk now about sports
10 video game forums. Is it your understanding that a
11 sports video game forum on the internet or on the web
12 are written by users of the video game to convey
13 information about the video game?

14 MR. BOVICH: Object to the form.

15 THE WITNESS: Well, that's certainly hard to
16 say. It's -- but forums and blogs are typically --
17 about games are typically written by fans, but they
18 often include comments from the company themselves,
19 from people who have left the company and have more
20 knowledge, specific knowledge, than your average fan.
21 So it's hard to generalize on what information would be
22 in those kinds of websites.

23 Q. Okay. In your opinion, what's the purpose
24 of an on-line sports video game forum?

25 MR. BOVICH: Object to the form, asked and



1 answered.

2 THE WITNESS: Again, it's -- it varies, but
3 it can be fans reaching out to fans, fans hoping for a
4 response from the company. It's basically an after-
5 market, typically I suppose, kind of a reach out from
6 players, fans and others.

7 BY MR. HANSEN:

8 Q. Okay. So you've mentioned that on on-line
9 forums there -- sports video game forums that the
10 producers will sometimes comment, the fans will
11 sometimes comment, correct?

12 A. Correct.

13 Q. Would you agree that the audience for an
14 on-line sports forum is typically the users of the
15 sports video game?

16 MR. BOVICH: Object to the form.

17 THE WITNESS: Well, you ask typically. It's
18 hard to say. I wouldn't limit it to users. I would
19 include media. I would include potential purchasers
20 reviewing aspects of the game to decide whether or not
21 to buy it. So more than just the players or users are
22 going to be involved in reading those sites.

23 BY MR. HANSEN:

24 Q. Would a person posting on a forum expect the
25 person reading the post to have a computer programming



1 background or experience in computer programming?

2 MR. BOVICH: Object to the form, calls for
3 speculation.

4 THE WITNESS: I don't know what that post
5 really expect.

6 BY MR. HANSEN:

7 Q. Okay. Assuming that the person posting is a
8 person of ordinary skill in the art, computer
9 programmer, a producer of the video game, is the
10 intended audience a POSA, a computer programmer?

11 MR. BOVICH: So just objection, calls for
12 speculation.

13 THE WITNESS: The best thing I can try to
14 get around this question and figure out what it is
15 you're asking is if you post on a website you have no
16 idea who's going to be reading your post, so you would
17 not assume that it's going to be any particular group.

18 BY MR. HANSEN:

19 Q. Do you agree that a -- that the people
20 posting on these forums have an audience in mind?

21 MR. BOVICH: Objection, calls for
22 speculation.

23 THE WITNESS: To the extent that you would
24 normally not make a post unless you expected people
25 that had some similar interest to read it, but anybody



1 who's posting to the internet very well knows that they
2 have no idea who their audience is going to be.

3 BY MR. HANSEN:

4 Q. So you don't think that the people posting
5 on these forums have any idea who might read this post?

6 MR. BOVICH: Same objection.

7 THE WITNESS: That's correct. If they're
8 wise, you assume anybody's going to read this.

9 BY MR. HANSEN:

10 Q. When you develop a video game do you have an
11 understanding of who your customers -- potential
12 customers are?

13 MR. BOVICH: Object to the form, outside the
14 scope.

15 THE WITNESS: I usually have a rough idea of
16 the target market I'm designing to.

17 BY MR. HANSEN:

18 Q. And let's be specific. Say, for instance,
19 with tennis, did you expect your target customers to
20 have a computer programming background?

21 MR. BOVICH: Same objection.

22 THE WITNESS: I was designing the game for
23 game players whether they had a programming background
24 or not.

25 BY MR. HANSEN:



1 Q. Did you expect your game players on average
2 to be educated and capable of programming a video game?

3 MR. BOVICH: Same objection.

4 THE WITNESS: I never gave that a second
5 thought.

6 BY MR. HANSEN:

7 Q. If you were designing a video game today,
8 would you expect your customers to have a programming
9 background?

10 MR. BOVICH: Same objection, outside the
11 scope.

12 THE WITNESS: If I were designing a video
13 game today, I would design it with a particular target
14 in mind. I wouldn't require my players to have a
15 programming background, unless the video game happened
16 to have programming aspects, which some do. But I
17 would actually hope that my game reached a greater
18 target audience than the one I was targeting -- or a
19 greater audience than the one I was targeting.

20 BY MR. HANSEN:

21 Q. Okay. So is it -- is it fair to say that
22 you would program a video game in a way that people who
23 both had a computer programming background and didn't
24 have a computer programming background could use the
25 video game?



1 MR. BOVICH: Object to the form. Same
2 objection as the last question, also misstates
3 testimony.

4 THE WITNESS: It is fair to say that.
5 BY MR. HANSEN:

6 Q. Okay. On these forums is it true that a
7 person of ordinary skill in the art would expect people
8 posting on these forums to make posts that are
9 understandable by both people who don't have a
10 background in computer programming -- well, that --
11 strike that. Let me restate it.

12 Because the people in the forum expect at
13 least a significant number of people in the forum to
14 not have a computer programming, wouldn't the person
15 writing the post write it in a way that someone who
16 doesn't have a computer programming experience would
17 understand it?

18 MR. BOVICH: Object to the form, calls for
19 speculation.

20 THE WITNESS: I've already stated that I
21 can't even as a POSA tell you what's in the mind of a
22 poster to a fan website. And your question includes an
23 assumption of what that poster believes, something
24 along the lines of a majority of people would not have
25 programming expertise, and I don't have any way to



1 determine that he thought that in the first place or
2 what his target was in writing a post.

3 BY MR. HANSEN:

4 Q. All right. Let's turn to your Exhibit 16.
5 I have a copy here for you.

6 MR. BOVICH: Do you have one for me?

7 MR. HANSEN: I do.

8 MR. JONES: Which one is this page?

9 MR. HANSEN: This is -- I actually only have
10 two copies of it.

11 MR. JONES: I've got this.

12 MR. HANSEN: Yeah, but this is Exhibit 16.

13 It shows --

14 MR. JONES: Why don't you give him this. Do
15 you need both? I have the other one too.

16 BY MR. HANSEN:

17 Q. Exhibit 16 describes an update to sports
18 video game Madden 2000, correct?

19 A. Correct.

20 Q. Is it your understanding that a POSA at
21 Electronic Arts created this update?

22 MR. BOVICH: Can I get the question back.

23 (Whereupon, the record was read.)

24 MR. BOVICH: Object to the form, calls for
25 speculation.



1 THE WITNESS: I believe that this was
2 created by Electronic Arts, but there's no indication
3 of who or what that person -- what capabilities that
4 person had.

5 BY MR. HANSEN:

6 Q. On page one the document shows two files,
7 correct?

8 A. Correct.

9 Q. One's a DAT file and one's a TXT file,
10 correct?

11 A. Correct.

12 Q. Why are there two files?

13 MR. BOVICH: Object to the form, calls for
14 speculation.

15 THE WITNESS: Having not generated these
16 files, I can't tell you exactly why there would be two
17 files. I can speculate that this often happens. When
18 you open a website or download a particular set of
19 files there's often a dot TXT file, and a POSA would
20 understand to immediately look at that TXT file for
21 instructions or characterization of what the other file
22 might be.

23 BY MR. HANSEN:

24 Q. So the TXT file would you -- do you consider
25 that to be a read-me file?



1 A. That would be my first assumption when I saw
2 a TXT file, it was a read-me file and that I should
3 look at it.

4 Q. Okay. And then the DAT file is the data
5 that actually gets installed or otherwise causes the
6 change in the video game, correct?

7 A. Well, to get to this point you will have had
8 to go to Electronic Arts' website, which identifies the
9 zip file as an update, then you will have had to have
10 downloaded it. So at that point, yes, you know that
11 the contents of this zip file is an update to Madden
12 NFL 2000.

13 Q. Does the -- do you agree that the text file,
14 this TXT file, doesn't actually change anything in the
15 video game?

16 MR. BOVICH: Object to the form.

17 BY MR. HANSEN:

18 Q. It doesn't change files in the video game
19 specifically.

20 A. That's a correct statement.

21 Q. And is it your understanding that the DAT
22 file would change files in the Madden 2000 video
23 game -- change data, excuse me, data in the 2002 Madden
24 game?

25 A. Yes, I believe the DAT file would contain



1 data that made changes to the Madden 2000 football
2 game.

3 Q. Okay. Do you know what data the DAT file
4 changed in the video game?

5 MR. BOVICH: Object to the form, outside the
6 scope.

7 THE WITNESS: Again, to get to this point
8 you would have had to download this file from an
9 Electronic Arts' website, which describes what in fact
10 each update contains.

11 BY MR. HANSEN:

12 Q. Did the website describe it or did the text
13 file describe it?

14 A. There's a description in the website to
15 begin with, then there's more information in the text
16 file.

17 Q. So based on the website or the text file,
18 what data changed in the video game?

19 MR. BOVICH: Object to the form, outside the
20 scope.

21 THE WITNESS: One thing very clearly stated
22 in the text file is that there is a -- this is the
23 first with adjusted rosters and player abilities
24 leading into the NFL playoffs. So it tells us that
25 there's going to be a roster change, and the way they



1 define roster it includes player abilities and it
2 brings the rosters into alignment with the actual NFL
3 team rosters.

4 BY MR. HANSEN:

5 Q. So if there was a trade in the real life NFL
6 the previous week before this update was posted on EA's
7 servers, would you expect the DAT file to change the
8 roster file to reflect the change in the trade between
9 one team and another team?

10 A. Yes. The new roster would contain traded-in
11 players, it would not contain traded-out players, and
12 it would contain the player parameters, player
13 abilities for each of the players on the roster at that
14 point.

15 Q. Okay. Can you turn to paragraph 100 of your
16 declaration. It's on page 51.

17 A. I have it.

18 Q. So in this paragraph you show a screenshot
19 of what appears to be Madden 2000 -- Madden NFL 2000
20 video game, correct?

21 A. Correct.

22 Q. And it has annotations on the screenshot.
23 Above the black screen it says "Visual appearance
24 parameters, height five-eight, weight 230, face, for
25 real life NFL players B. Sanders." Do you see that,



1 there's two arrows pointing down?

2 A. Yes.

3 Q. Those are annotations, correct?

4 A. They are.

5 Q. And then on the right side or adjacent to
6 that text is "Performance parameters for various
7 real-life NFL players" with two more arrows. Those are
8 annotations, correct?

9 A. Yes.

10 Q. Did you place those annotations on those
11 documents?

12 A. Yes. In Photoshop.

13 Q. Photoshop. Okay. Where it says "Player
14 attributes" on the bottom right corner, is that text
15 that was displayed on the screenshot or text that is
16 displayed in the screenshot or -- scratch that. Strike
17 that.

18 The words "Player attributes" that's text
19 that's displayed on the screen, correct?

20 MR. BOVICH: Object to the form.

21 THE WITNESS: No. I believe those are
22 annotations as well, but I'm not sure. I have to look
23 more closely.

24 BY MR. HANSEN:

25 Q. Okay. Let's turn to the next page, page 52.



1 At the top it says "Rating Abbreviations," correct?

2 A. Yes.

3 Q. And then it has a list of ratings. Starting
4 with overall, which is abbreviated OVR. STR is
5 strength. AGI is agility. If we go back to that
6 screenshot there's a section on the screenshot where
7 there's rows of numbers, and at the top of the row
8 there are abbreviations that say OVR in the first
9 column, STA in the second column, correct?

10 A. Correct.

11 Q. Are those -- is the OVR abbreviation a
12 rating or -- strike that.

13 Does -- does the text OVR represent the
14 rating abbreviation that's mentioned in this list on
15 page 52? So, for instance, it says OVR means overall.
16 Do you agree that the OVR on the screenshot on page 51
17 is an overall rating for a player?

18 A. Yes. Those are the headers in that
19 scrollable table that's filled with numbers, player
20 performance values.

21 Q. Okay. Very good. So would you agree that
22 the text OVR is not -- by itself is not a parameter.
23 It's the number in association with the code that
24 becomes the parameter?

25 MR. BOVICH: Object to the form.



1 BY MR. HANSEN:

2 Q. Correct?

3 A. Well, the term OVR represents the existence
4 of a parameter and the description of a parameter, but
5 a POSA would presume that beneath that is an actual
6 parameter of numerical value or a percentage or
7 whatever.

8 Q. Okay. Great. So what's displayed on the
9 screen is text but it's indicative of a parameter in
10 the video game?

11 MR. BOVICH: Object to the form.

12 BY MR. HANSEN:

13 Q. Correct?

14 A. It's displayed on the screen as a number and
15 the presumption is that that number will be used to
16 affect the artificial intelligence of the computer
17 player character in the game code.

18 Q. Okay. Very good. You agree that the OVR is
19 not something that changes when you change a player
20 parameter, like the text OVR doesn't change if these --
21 let's just use an example. Berry Sanders -- I think
22 that might say -- it's hard to read. Let's just guess
23 that it says 95, right? If you changed -- if you
24 wanted to change how Berry Sanders performed in the
25 game, you would change that number to a different



1 number, correct, like say 80 and then his overall
2 performance would be lower than 95? Is that your
3 understanding of how changing the parameter would work?

4 A. Not necessarily. It may be that OVR because
5 it's an overall parameter is computed from other
6 parameters. So let's say you change the strength, then
7 obviously -- or his speed it would have a greater
8 affect. I don't know what OVR is necessarily -- how
9 it's interpreted in the game.

10 Q. Very good. Okay so there's some
11 understanding that how you actually calculate that
12 number may have more than one step. So let's use you
13 know -- let's see, what is STR? Maybe that's SPD.
14 Speed. STA.

15 A. The second one is STR.

16 Q. Yeah.

17 A. Strength.

18 Q. STR, strength.

19 A. But SPD is a good one. It's the fourth
20 column.

21 Q. Yeah, SPD. And understanding that you could
22 be wrong on exactly how it might be calculated, but
23 it's your understanding that -- that to change how the
24 character performs in the video game you would need to
25 change the rating number either directly or indirectly?



1 A. I think a better way to state that would be
2 that that number under speed, for example, affects how
3 fast the player runs or whatever, how fast he operates
4 within the game AI. So there is a direct correlation
5 between that number and how the in-game character
6 plays.

7 Q. Okay. So this screen you say shows player
8 attributes, correct? The screen on 51 that we're
9 looking at.

10 A. I used the terms visual appearance and
11 performance parameters.

12 Q. So on the bottom right it says "Player
13 attributes." Would you agree whether that was written
14 by you or someone else that that's used to describe the
15 features displayed on this screenshot?

16 A. The performance parameters in that table
17 could collectively be considered player attributes.

18 Q. Okay. So, for instance, you agree that the
19 height of the player is a player attribute?

20 A. That's correct.

21 Q. And his weight is a player attribute?

22 A. Correct.

23 Q. Looks like it says "Years Pro." Would a
24 number of years that he plays on a team be a player
25 attribute?



1 A. The number of years he plays as a pro can
2 certainly be considered as a player attribute, his
3 experience.

4 Q. Looks like there might be a picture of him,
5 is that correct, on -- this is a bad -- the copy is not
6 that great. But just above where it says "Player" it
7 looks like there's a face, correct?

8 A. Correct.

9 Q. Do you agree that that's a player attribute,
10 what he looks like?

11 A. Certainly.

12 Q. Okay. Is what he looks like a performance
13 parameter?

14 MR. BOVICH: Object to the form.

15 THE WITNESS: Probably not.

16 BY MR. HANSEN:

17 Q. Okay. Returning back to this screenshot
18 from the manual, how would we verify whether those
19 words "Player attribute," "View players by position,"
20 "View team rosters," "Picks remaining," "Round,"
21 "Player Info" and "Other game options," those are the
22 texts that are off to the side, how would we verify
23 whether you annotated them or not?

24 A. Actually, now that I've had a minute to
25 think about it, that I believe is a screenshot taken



1 right out of the manual, so it's snapshot. And those
2 annotations, I believe, were in the manual. So the way
3 to confirm that is to look at the manual.

4 Q. All right. We'll look at the record and see
5 if we have the manual, and if not try and find it.

6 Okay. We might as well go ahead and make this clear on
7 the record. So here's a copy of the manual if you want
8 to look at that. It has additional screenshots that
9 show similar formatting. After reviewing that would
10 you agree that those annotations that we were -- that
11 the player attribute annotation appears to be something
12 that was part of the manual?

13 A. Yes. This image can be found in the manual
14 on page 28, and those annotations exist in the manual.

15 Q. Okay. Great. Thanks. Let's go back to the
16 text file, Exhibit 1016. Do you agree that that text
17 file does not use the word parameter? And if you need
18 to, it's only one page go ahead and read through it.

19 A. Reading this one page text file I see terms
20 such as player abilities and player performance. I do
21 not see the word parameter. But to a person of
22 ordinary skill, a player ability would be treated as a
23 parameter in a video game as would a value that denotes
24 player performance.

25 Q. So in your opinion what player abilities



1 would have changed?

2 MR. BOVICH: Object to the form.

3 BY MR. HANSEN:

4 Q. Or let me ask that question a little bit
5 more fairly I think.

6 Do you know what player abilities changed in
7 the video game via this update?

8 MR. BOVICH: Object to the form, outside the
9 scope.

10 THE WITNESS: Based on this published prior
11 art there are a number of places where Electronic Arts
12 describes that the player abilities relative to these
13 adjusted rosters change. They change on a weekly
14 basis, and they represent the actual NFL team rosters
15 as of a particular date. And as I have already
16 testified, I believe that when Electronic Arts is
17 talking about rosters they mention a roster file, which
18 to a person of ordinary skill in the art is the
19 player's name, the player's height, his weight and any
20 performance parameters that they're tracking from the
21 previous week of play.

22 BY MR. HANSEN:

23 Q. Have you reviewed the DAT file that causes
24 the change in the data?

25 A. I looked at it out of curiosity.



1 Q. And does it say what data changed?

2 MR. BOVICH: Objection, outside the scope.

3 THE WITNESS: The data file is not human
4 readable. It's a bunch of binary data.

5 BY MR. HANSEN:

6 Q. So from the DAT file using the tools that
7 you used to review it, you couldn't tell what the
8 specific data was that changed?

9 MR. BOVICH: Objection, misstates testimony,
10 outside the scope.

11 THE WITNESS: I wasn't asked to analyze the
12 data file from the standpoint of data. I was looking
13 only at published information.

14 BY MR. HANSEN:

15 Q. So from the DAT file using the tools that
16 you used to view it, you could not tell -- is it true
17 that you could not tell what the particular data was
18 that would -- or performance parameter that would
19 change in the video game?

20 MR. BOVICH: Same objection.

21 THE WITNESS: I would disagree with the term
22 could not. I often analyze data, and the tools that I
23 use to look at data are the same tools that I would use
24 to analyze the data. And if I would have been asked to
25 spend the time to determine which specific parameters



1 were being updated I might have been able to determine
2 that from the data file, but it wasn't appropriate in
3 this venue.

4 BY MR. HANSEN:

5 Q. You don't -- it wasn't appropriate to
6 determine what data changed in the video game?

7 MR. BOVICH: Objection, outside the scope.

8 THE WITNESS: There's sufficient information
9 in printed publications of this prior art to describe
10 what types of parameters are changed. There was no
11 need to go into the data file to determine what
12 actually changed. One can simply assume that the
13 publications are telling us the truth.

14 BY MR. HANSEN:

15 Q. So how do you know that player abilities
16 changes a rating in the Madden video game?

17 A. I can give you an example. It would take a
18 while to turn to it in my declaration, so let me just
19 give you a summary. The Madden NFL 2000 video game
20 allowed players to fool around with those parameters.
21 My experience as a video game designer, every video
22 game player fancies himself a video game designer and
23 so Electronic Arts gave them that capability of if you
24 wanted to see what your game would play like if Berry
25 Sanders' speed was zero, one, broken leg, you could



1 play the game that way if you wanted.

2 However, if you take any one of these
3 updates, the printed publication says explicitly that
4 it will rewrite -- it will overwrite any changes you
5 have made in the performance parameters, so a POSA
6 would see clearly that the update updated all of those
7 player parameters that we were looking at on that page
8 of the manual.

9 Q. How do you know that the change would
10 reflect changes in the players performance in the real
11 world?

12 A. I'm told that by Electronic Arts. I'm told
13 that this represents the real world situation as of the
14 previous week. If you download playoff week one,
15 you've got the rosters and the performance parameters
16 or as -- I'm sorry, I won't use the term parameter.
17 Let's use player abilities and player performance,
18 based on that snapshot in time in the real life.

19 Q. So can you point to -- this text file isn't
20 that long. Can you point to where it says the player
21 abilities changed to reflect real life?

22 A. In this text file it refers to it as, quote,
23 "This update brings the Madden NFL 2000 rosters into
24 alignment with the actual NFL team rosters." And as I
25 have said, they mention above that the rosters contain



1 player abilities. So this brings it in line with the
2 actual NFL team rosters as of a given date.

3 Q. So what's a roster?

4 A. The roster is all of the players and their
5 performance parameters, their abilities, player
6 abilities, as it states in this text file. And as I
7 said, that information is bolstered by the fact that
8 Electronic Arts also tells us that if you download this
9 playoff week one update, this very one that we're
10 looking at on Exhibit 1016, it will overwrite any
11 changes that you might have made to player abilities in
12 the game.

13 Q. Where does it say that?

14 A. That I would have to find. This could take
15 a while.

16 Q. It's okay.

17 A. It's just one line in the declaration.

18 Q. I think I found it. Isn't it in -- is it in
19 the text file?

20 A. Is it?

21 Q. "The game will display all changes that have
22 been made." Is that the one you're referring to?

23 A. Oh, there you go. "All prior roster changes
24 that were made by the user will be lost if you update
25 to this roster."



1 Q. Okay. So is the word player abilities a
2 technical term?

3 MR. BOVICH: Object to the form.

4 MR. HANSEN: Strike that.

5 BY MR. HANSEN:

6 Q. Do you agree that the word player ability is
7 a -- is not a programming term?

8 MR. BOVICH: Object to the form.

9 MR. HANSEN: How do I say this?

10 THE WITNESS: The term player ability is
11 plain English.

12 BY MR. HANSEN:

13 Q. Plain English. Understandable to a user of
14 the video game, for instance, correct?

15 A. Yes.

16 Q. Would you -- the term player performance
17 parameter is a technical term, correct?

18 MR. BOVICH: Object to the form.

19 THE WITNESS: I would say that term is more
20 technical, but not such that it needs to be construed.
21 I didn't think so at the time, anyway. I think it's
22 clear what a performance parameter would be.

23 BY MR. HANSEN:

24 Q. Okay. So the Madden reference uses the
25 terms ratings when it describes what you've pointed to



1 as being a performance parameter, correct?

2 A. It uses the term ratings and also player
3 attributes as we just determined from that annotation
4 that exists in the manual.

5 Q. Okay. So do you -- but the manual doesn't
6 use the word player abilities, correct, to describe
7 what you've identified as being the performance
8 parameter?

9 MR. BOVICH: So object to the form. You
10 want to give him the manual.

11 BY MR. HANSEN:

12 Q. The manual as identified on page 51 of your
13 declaration, paragraph 100.

14 MR. BOVICH: Object to the form.

15 THE WITNESS: I don't see the term player
16 parameters used in the screenshot from the manual
17 that's reproduced on page 51. The term "Performance
18 parameter" that is there is my annotation.

19 BY MR. HANSEN:

20 Q. Okay. I believe my question was the word
21 player abilities also is not identified in this
22 screenshot of Madden NFL 2000, correct?

23 A. I see the term "player attributes." Those
24 attributes include abilities, so while I don't see the
25 word abilities a person of ordinary skill in the art --



1 to a person of ordinary skill in the art it would be
2 obvious that player attributes include player
3 abilities.

4 Q. Okay. So player attributes includes player
5 abilities? That's your understanding of how you get
6 from this text file -- what I'm trying to get at here
7 is that the text file describes player abilities, and
8 you're saying that that player ability is a change in
9 the video game and I'm trying to connect up here how
10 you get from player abilities to a change in a player
11 attribute or a player rating or -- it's not clear to me
12 what it is that you're trying to say changed in the
13 video game. So is it fair to say that you're saying
14 that a player ability is a player attribute?

15 A. It should be very clear. As I stated it, to
16 a person of ordinary skill in the art a player
17 attribute in this particular case is going to include
18 player abilities.

19 Q. Okay. All right. I'd like to turn to
20 paragraph 69 of your declaration.

21 A. Paragraph 69?

22 Q. Paragraph 69. That's correct. Page 37 and
23 it goes onto page 38. This is the portion of your
24 declaration that talks about NFL 2K1 Game FAQ. Can you
25 confirm that if you want to look at it just briefly.



1 MR. BOVICH: Object to the form.

2 BY MR. HANSEN:

3 Q. On page 37, 69, it says, "As evidenced by
4 the prior art publications NFL 2K1 Game FAQ on
5 Dreamcast and NBA 2K1 manual for Sega Dreamcast, cited
6 by the examiner during the prosecution of the
7 application leading to the 575 patent." So based on
8 that teaching you're describing here a -- an FAQ
9 related to NFL 2K1 that was cited by the examiner
10 during the prosecution, correct?

11 A. That's correct.

12 Q. So in your declaration it cites EA Exhibit
13 105, pages 377, 378, 379 through 380. I assume that
14 there was some issue with uploading volumes to the
15 patent office or something because the documents that I
16 downloaded only go to 280 pages, 280. So instead of
17 referring to your exhibits I've just gone to the
18 internet and printed out the NFL 2K1 FAQ using the URL
19 that was provided by the examiner. I'd be happy -- if
20 -- if you can produce to me the actual NFL 2K1 FAQ from
21 your exhibits, I would be happy to use that. I've
22 brought with me the NFL 2K1 document based on what --

23 MR. BOVICH: So I've got a copy of 1005.
24 That's what you're asking about. And it goes up to
25 805.



1 MR. HANSEN: 805.

2 MR. BOVICH: So it's the whole thing.

3 MR. HANSEN: Do you have this section?

4 MR. BOVICH: Can you refer to the page
5 number, you know, working from this --

6 MR. HANSEN: Yeah. So page number 378.

7 MR. BOVICH: So I have that.

8 MR. HANSEN: Can we provide it to Mr. Crane?

9 MR. BOVICH: Yeah. So I want to make sure
10 we have a record of exactly what you have him looking
11 at and what you don't have him looking at. So you want
12 to make that record.

13 MR. JONES: Hold on.

14 MR. HANSEN: Here's a copy of what should be
15 the same document. Let's confirm that it's the same.
16 It just has --

17 MR. BOVICH: I'm not confirming that's the
18 same.

19 MR. HANSEN: I know. I'd like to look at
20 what you have, and then we can give it to him. I tried
21 to find it in your exhibit and wasn't able to do so.
22 Let's see. And I would need the page before too.

23 MR. BOVICH: You flip it over.

24 MR. HANSEN: 377. Okay. It actually goes
25 on the page even prior to that, 376.



1 MR. BOVICH: You want 376?

2 MR. HANSEN: Yes. Okay. There we go.

3 There's where it starts.

4 BY MR. HANSEN:

5 Q. Okay. So let's turn to EA 1005, page 378.

6 There's a heading that says "Download." Do you see

7 that? It starts "From this menu you can download the

8 updated roster from your team. This is useful if you

9 do not want to buy NFL 2K2 and you would like to get

10 the new updated roster with new and improved stats.

11 You also need access to set up on your Dreamcast for

12 this to work."

13 A. "Net access set up."

14 Q. Yeah, "net access set up on your Dreamcast

15 for this to work." Do you see that?

16 A. I do.

17 Q. Okay. So the download instruction is part

18 of a section titled "Season specific," correct? For

19 you to answer that you may need to look -- it starts on

20 page 376 and it has dashed lines all the way across.

21 A. Uh-huh.

22 Q. And it says --

23 A. This is a section "Season specific."

24 Q. "Season specific."

25 A. Under which is "Customize."



1 Q. So then it says -- well, first it says
2 "Custom," correct?

3 A. True.

4 Q. Then it says "Customize"?

5 A. Right.

6 Q. Then it says, "Players" there's a bunch of
7 information about things like shoes, arms, wrist,
8 right? Then it says "Teams," correct?

9 A. Correct.

10 Q. Then it says -- "Plays" is the next
11 subheading, correct?

12 A. Correct.

13 Q. Then it says "Download" --

14 A. Right.

15 Q. -- correct?

16 And then it starts another section, "Playoff
17 specific" with the same dashed lines. Perhaps your --

18 A. It does. There's playoff specific with
19 hyphens, a row of hyphens above and below.

20 Q. Okay. So season specific includes those
21 subheadings we just discussed that are between season
22 specific and playoff specific, correct? I'm just
23 verifying that the contents of -- that the download
24 section is part of the contents of season specific.

25 MR. BOVICH: Object to the form.



1 THE WITNESS: That appears to be what they
2 intended.

3 BY MR. HANSEN:

4 Q. Okay. What's your understanding of the
5 title "Season specific"?

6 MR. BOVICH: Objection, outside the scope.

7 THE WITNESS: Season specific would be
8 specific to a particular season.

9 BY MR. HANSEN:

10 Q. Okay. So these are features of the video
11 game that relate to a season?

12 MR. BOVICH: Objection, outside the scope.

13 THE WITNESS: Well, these are features of a
14 video game, not specifically cited in my report but
15 cited by the examiner during prosecution, in a section
16 of my report that is labeled as "Background of the
17 art." So, yes, we are now talking about existing art
18 in the background that while the examiner considered it
19 in prosecution I simply, I don't know, excerpted it a
20 little bit just to set the tone for the background of
21 the art.

22 BY MR. HANSEN:

23 Q. Okay. Great. You're trying -- you're
24 trying to show things that people were downloading and
25 that they included stats? Is that the purpose of this?



1 A. The entire section is talking about the
2 background of the art prior to the date of the
3 application of 575.

4 Q. When this says "Season specific" is it your
5 understanding that season specific in the context of an
6 NFL 2K1 video game is referring to a sport season?

7 MR. BOVICH: Objection, outside the scope.

8 THE WITNESS: Probably.

9 BY MR. HANSEN:

10 Q. Probably. Okay. All right. So in the
11 download section which you cited, and we can just refer
12 to the declaration on page 38, this is paragraph 69
13 again, it mentions the word "improved stats," correct?

14 A. Yes.

15 Q. And specifically "new updated rosters with
16 new and improved stats," correct?

17 A. Correct.

18 Q. What would a POSA understand those stats to
19 be?

20 MR. BOVICH: Objection, outside the scope,
21 calls for speculation.

22 THE WITNESS: A POSA would assume those to
23 be stats as of that date for the players included in
24 the new updated rosters.

25 BY MR. HANSEN:



1 Q. Do you know what the stats were?

2 MR. BOVICH: Same objection.

3 THE WITNESS: Not specifically.

4 BY MR. HANSEN:

5 Q. Do you know if they were player ratings?

6 MR. BOVICH: Same objection.

7 THE WITNESS: As I said, I don't know
8 specifically what the stats would have been included in
9 the Dreamcast update.

10 BY MR. HANSEN:

11 Q. Do you know that the stats were a player
12 rating?

13 MR. BOVICH: Same objection.

14 THE WITNESS: I just said I don't know what
15 stats were included in the Dreamcast update.

16 BY MR. HANSEN:

17 Q. Okay.

18 MR. JONES: Can we take a quick break?

19 MR. BOVICH: Sure.

20 THE WITNESS: Are you going to be wanting
21 this again?

22 MR. HANSEN: No.

23 (Whereupon, a break was taken.)

24 BY MR. HANSEN:

25 Q. Okay. Let's go to your declaration on



1 paragraph 75. Oh, I'm sorry, paragraph 73. At the
2 bottom of page 41, this is in paragraph 73, and it
3 talks about realism. This is in the context of
4 petitioner's website, Cricket World Cup 99; is that
5 correct?

6 A. Yes.

7 Q. And in realism it says, "The most accurate
8 and up to date team and player ratings available from
9 PA sports, the world's leading supplier of sporting
10 statistics. For the PC version, these statistics will
11 be updatable regularly via dedicated EA Sports Live
12 website enabling gamers to quickly download actual up
13 to the minute World Cup tournament statistics,
14 including player injuries, form, team selections and
15 weather conditions." So based on that teaching weather
16 is a tournament statistic, correct?

17 MR. BOVICH: Objection, outside the scope.

18 THE WITNESS: This reference is also, just
19 to be clear, in the "Background of the art" section. I
20 don't form obviousness opinions based on that. That's
21 later in the declaration. So it's just really to point
22 out what the state of the art was, which when we were
23 discussing the POSA you skipped over a couple things.
24 The POSA is presumed to be aware of all pertinent prior
25 art, thinks along all conventional wisdom in the art



1 and is a person of ordinary creativity.

2 So when I'm channeling the POSA, figuring
3 out what these references mean to the POSA, I'm
4 considering the fact that the POSA is aware of all
5 these prior arts. That's why there's a background
6 section. So what this says is -- in the language of
7 the website it allows you to download actual
8 up-to-the-minute World Cup statistics, including player
9 injuries, form, team selections and weather conditions.
10 So as far as this website is concerned they believe
11 that weather conditions would be considered a
12 tournament statistic.

13 Q. Okay. And team selections are also a
14 tournament statistic according to this?

15 A. They consider it to be the case, yes.

16 Q. Player injuries. As a POSA how would you
17 expect a player injury to affect a video game.

18 MR. BOVICH: Objection, outside the scope.

19 THE WITNESS: Well, as a POSA familiar with
20 all of the art that existed prior to the effective date
21 of the patent, it's obvious to me that we have the
22 ability -- the known ability to download all sorts of
23 statistics. We see player parameters, we see player
24 rosters, we see injuries, which would affect a player
25 roster. So the issue is not a specific one as much as



1 a general one that to a POSA it is obvious to be able
2 to download any number of different kinds of statistics
3 into a sports simulation video game.

4 BY MR. HANSEN:

5 Q. Okay. So this reference to player injuries
6 most likely refers to the idea that if a player is
7 injured it changes the roster, you might take a player
8 off a roster if they're not available to play in the
9 game?

10 MR. BOVICH: Objection, outside the scope.

11 THE WITNESS: He might be off the roster or
12 he might be playing injured, which would change his
13 performance parameters.

14 BY MR. HANSEN:

15 Q. Okay. Are you aware of any evidence of
16 injury changing a rating of a player?

17 MR. BOVICH: Object to the form. Objection,
18 outside the scope.

19 THE WITNESS: I don't recall any specific
20 instance describing a player parameter based on an
21 injury, but I would assume it to be included.

22 BY MR. HANSEN:

23 Q. Okay. I have some questions about --
24 general questions about series of video games. Is it
25 your understanding that the sports video games were



1 sold on -- or many of them were sold on ROM disks on an
2 annual basis?

3 MR. BOVICH: Object to the form, outside the
4 scope.

5 THE WITNESS: It was common in the game
6 industry to have annual updates to the game not so much
7 as an update to the game but as a franchise in order to
8 sell a new version. As the technology improved, the
9 realism improved. That was one of the goals, as we've
10 seen, back from 1999 and the 2000 area is to increase
11 realism, and we increased the realism to the extent
12 that the technology was allowed. So it turned out to
13 be a very lucrative business model to take a franchise
14 and sell a new version, but the players expected that
15 new version to be better, better use of technology, you
16 know, higher frame rates, better animations, you name
17 it. So it was really not so much an annual rereleasing
18 of a game. It was a franchise of new games every year
19 with new and improved capabilities.

20 BY MR. HANSEN:

21 Q. Okay. So just like a franchise say to a
22 restaurant, the individual stores are different stores,
23 right, but they have a similar theme that say, for
24 instance, a McDonald's franchise they all belong to
25 McDonald's and they have certain aspects that make them



1 similar? In this video game franchise you have Madden
2 2000 and then a year later you have a new video game.
3 It's not the 2000 video game. It's a new video game,
4 but it's a franchise in the sense that it has a similar
5 name, it's made by the same people, certain aspects of
6 the game have a certain look and feel and players
7 expect the new game to be advanced in certain ways. Is
8 that --

9 MR. BOVICH: Objection --

10 BY MR. HANSEN:

11 Q. Is that --

12 A. I have --

13 MR. BOVICH: Object to the form.

14 THE WITNESS: -- a tough time finding a
15 question in there. Let me say that McDonald's and
16 restaurant franchises would just muddy the water.

17 Q. Okay. Strike the McDonald's analysis.

18 A. A franchise is an industry term, really.
19 I'll give you an example from my own career and that's
20 Pitfall and Pitfall II. Pitfall was one of the most
21 successful video games of all time, and we spent a lot
22 of money marketing it to get it to do that, get it to
23 be there. So I followed it up with a sequel, different
24 game entirely although it happens to have the same main
25 character. But investing in a franchise is a way of



1 getting -- of benefiting from the marketing dollars you
2 spent on the previous one and all of the good will you
3 have in the video game community if the game was good
4 enough to deserve having -- or being a franchise.

5 Q. Okay. So you would consider the video
6 games -- the series of video games in the franchise to
7 be separate and distinct video games?

8 A. They are in fact, yes.

9 Q. Okay. I forgot to ask a question. I'd like
10 to return to the discussion of the manual in your
11 declaration, page 51. This is a screenshot of -- that
12 is actually displayed to users in the video game,
13 correct?

14 A. This specific shot is from the manual, but
15 it represents a screen that is in the video game.

16 Q. So you would expect in the video game to --
17 that this screenshot can or would appear to a user
18 making the right selections to reach that?

19 A. It would look something like this. The
20 aspect ratio would be slightly different. It looks
21 like the bottom part might be cut off, plus it has
22 scroll bars so that you would see different information
23 if you used the scroll bars. But presumably they put
24 it in the manual because it is representative of a
25 similar screen in the game.



1 Q. Is it possible for the update to change some
2 of these numbers, for instance, either a -- a rating or
3 a -- you know, say for instance the height or the
4 picture and not have it affect video game play?

5 MR. BOVICH: Objection, outside the scope.
6 Also object to the form.

7 THE WITNESS: Is it possible? Of course
8 anything's possible, but the whole reason one uses
9 player parameters in a video game is to try to achieve
10 increased realism, make the game more fun to play, and
11 if you changed a parameter in this and it wasn't
12 reflected in the game players would notice. So, yes,
13 it's possible, but it would be a design error that they
14 would quickly find and correct if that were the case.

15 BY MR. HANSEN:

16 Q. Okay. All right. Let's go on to challenge
17 number I think it's three, Swanberg. We're going to be
18 looking at the Swanberg reference. I brought a copy of
19 Swanberg with me in case we need to refer to it.

20 Did you reverse -- review Swanberg in
21 preparation of this deposition?

22 A. I did not.

23 Q. Okay. That's okay. Is it true that
24 Swanberg relates to a trading card?

25 A. Yes. Swanberg is an electronic trading card



1 that can download player stats and use them in a video
2 game.

3 Q. Indeed the title is computerized trading
4 card system?

5 A. Correct.

6 Q. Swanberg discloses a smart card reader,
7 correct?

8 A. Yes.

9 Q. It's connected to the PC?

10 A. That's correct.

11 Q. Swanberg describes some base software that
12 runs on the PC and that base software, for instance,
13 writes data or information to the card reader?

14 MR. BOVICH: Can I hear the question.

15 (Whereupon, the record was read.)

16 MR. BOVICH: Object to the form.

17 THE WITNESS: That's reasonably accurate.

18 BY MR. HANSEN:

19 Q. If you look in paragraph 38 it says, "The
20 base system software for the computing system 25, which
21 may be downloaded from the server 32, includes a card
22 reader interface. Additionally, card related
23 information for verifying the card is downloadable
24 along with graphic elements that are presented on the
25 display 28 identifying a card type read from the card



1 reader." So that paragraph is describing base system
2 software that provides an interface for the card
3 reader, correct?

4 A. Correct.

5 Q. Okay. Let's look at paragraph seven.

6 A. Of Swanberg?

7 Q. Of Swanberg, yes. It describes a system for
8 collecting smart trading cards. "The smart card is
9 read by a local computer." And then the paragraph goes
10 on to the next page -- or the next column and says,
11 "The system may be in connection with the remote server
12 that contains the computer game software." So the
13 software for the video game is stored on a server,
14 correct?

15 MR. BOVICH: Object to the form, misstates
16 document.

17 THE WITNESS: The server may be used in
18 connection with a remote server that contains the
19 computer game software.

20 BY MR. HANSEN:

21 Q. So the video game software's on a server,
22 correct?

23 MR. BOVICH: Same objection.

24 THE WITNESS: "It may be used in connection
25 with a remote server that contains the computer game



1 software."

2 BY MR. HANSEN:

3 Q. Okay. Do you agree that the -- that
4 Swanberg teaches video game software on a remote
5 server?

6 MR. BOVICH: Same objection.

7 THE WITNESS: Swanberg teaches a
8 computerized trading card system that can be used with
9 a video game on a computer.

10 BY MR. HANSEN:

11 Q. And where is the software stored -- where is
12 the video game software stored?

13 MR. BOVICH: Same objection.

14 THE WITNESS: Well, certainly in one
15 implementation in the summary of invention they talk
16 about having the computer game software on a remote
17 server.

18 BY MR. HANSEN:

19 Q. The PC sees a remote computer and
20 communicates with the server, correct?

21 MR. BOVICH: Object to the form.

22 THE WITNESS: Are you still referring to
23 paragraph seven?

24 BY MR. HANSEN:

25 Q. I'm actually looking at paragraph nine.



1 A. Paragraph nine talks about communicating the
2 user's performance during playing of the game, among
3 other things, transferred between the server and the
4 trading card.

5 Q. So the server can transfer a user's
6 performance in the game to the trading card?

7 A. Specifically in paragraph nine they mention
8 a user's performance during playing of the game as one
9 of the things that can be transferred to the card.

10 Q. Excuse me. It was in paragraph eight. It
11 reads, "When the related computer game is implemented
12 by a programming" -- "program running on a remote
13 computer server, a security function is implemented in
14 the smart card allowing the trading card holder to play
15 the game from a remote computer connected to the
16 computer server." So do you -- so that teaches us that
17 the -- that the PC or the -- that the computer that's
18 connected to the trading card is remote -- is a remote
19 computer to the server?

20 MR. BOVICH: Object to the form.

21 BY MR. HANSEN:

22 Q. Correct?

23 A. In that particular implementation they're
24 talking about using a remote server. That's not the
25 only embodiment that they discuss in this patent.



1 Q. Let's talk about the embodiment where they
2 discuss a trading card that is a team card. Oh, before
3 we get there I'd like to actually discuss figure one
4 and what the trading card actually was and what it did.

5 So the trading card has RAM in it, correct?

6 A. Presumably.

7 Q. You can write data to it, correct?

8 A. Correct, although that can be handled
9 without RAM. I think it's safe to assume that we would
10 use a smart card that contains RAM.

11 Q. Okay. In paragraph 40 it says "The sports
12 card 11 stores invariable information about the player,
13 which does not change, which is stored in the ROM 21.
14 Additionally, variable information included in the
15 non-volatile RAM representing a player data file." So
16 from that it appears that the smart card had both ROM
17 and RAM and the RAM is the portion that -- of the smart
18 card that you write data to, correct?

19 A. That's correct.

20 Q. The smart card also displayed information,
21 correct? Specifically look at paragraph seven, the
22 last sentence.

23 A. It says that it's packaged with various
24 information, yeah, displayed on the exterior of the
25 trading card. So yes.



1 Q. It also talks about a controller video -- a
2 controller that's connected to the PC for playing the
3 video game.

4 MR. BOVICH: Object to the form.

5 BY MR. HANSEN:

6 Q. Correct?

7 A. Are you referring to a particular paragraph
8 in Swanberg?

9 Q. Yeah, I'm trying to find it.

10 Do you expect this PC to have a input device
11 attached to it for playing the video game?

12 A. I would expect an input device for playing a
13 video game connected to a PC.

14 Q. So in the embodiment where the video game is
15 executed on a remote server, the input from the
16 controller would be transmitted to the server, correct?

17 A. Not necessarily. Any time you have a game
18 system that has a local client and a server component
19 it's a very gray area about what is done where. Simple
20 design decision as to whether or not you would
21 interpret video game input at the local PC and transmit
22 information having to do with how that affected the
23 game rather than simply transmitting user input to the
24 remote server. It's an issue of efficiency. So it
25 could go either way. Any number of the tasks could be



1 performed up in the client. Any number of the tasks
2 could be performed down in the server.

3 Q. So do you know how it was performed in
4 Swanberg?

5 MR. BOVICH: Object to the form.

6 THE WITNESS: I don't think it matters.
7 Again, it's merely a design decision and usually done
8 for performance efficiencies. Obviously, nobody wants
9 to play a game where they have to wait for every single
10 character to go all the way back to the server and come
11 back, so you do some of the work in the client.

12 BY MR. HANSEN:

13 Q. So you agree that a POSA would only transmit
14 data between the client and the server if it were
15 necessary to do so, otherwise it would just be an
16 inefficiency?

17 MR. BOVICH: Object to the form.

18 THE WITNESS: As I said, it's a design
19 decision as to what processing is done on the client
20 and what processing is done on the server, and that is
21 usually done for efficiency purposes.

22 BY MR. HANSEN:

23 Q. So if the server is processing information
24 about the video game and it needs a statistic, would it
25 be more efficient or less efficient to pull the



1 statistic from the server or the smart card reader?

2 MR. BOVICH: Object to the form, incomplete
3 hypothetical.

4 THE WITNESS: The most efficient method
5 would probably be to keep that data on both the server
6 and in the smart card, which is connected to the client
7 PC.

8 BY MR. HANSEN:

9 Q. So the question was in your opinion as a
10 programmer if the video game requires the statistic to
11 perform and that statistic is stored on the server and
12 also on the smart card reader, would it be more
13 efficient to pull the data from the smart card reader
14 or to pull the data from the server?

15 MR. BOVICH: Same objection.

16 THE WITNESS: The portion of the program
17 that's running on the client PC would find it most
18 efficient to pull that information from the card. The
19 portion of the program running on the server would find
20 it most convenient and efficient to pull it from the
21 server.

22 BY MR. HANSEN:

23 Q. Okay. I'm skipping questions, so we're
24 actually moving faster than you might think.

25 I think we might be -- Dave, maybe we can



1 take another two or three-minute break, and I want to
2 see if he has any additional questions. I think I
3 might be done.

4 MR. JONES: Yeah, let me just check my notes
5 real quick.

6 MR. HANSEN: Let's go through our notes and
7 that would let us -- we can go grab -- if we have one
8 or two more questions, but then we might go to lunch
9 for ten or 15 minutes and then come back and do
10 redirect and be done by like 1:00 or 2:00.

11 MR. BOVICH: Okay.

12 (Whereupon, a break was taken.)

13 MR. HANSEN: So our -- I don't know what do
14 you say?

15 THE WITNESS: You have no further questions.

16 MR. HANSEN: We have no further questions.
17 Yeah, that's right.

18 EXAMINATION BY MR. BOVICH

19 BY MR. BOVICH:

20 Q. Okay. So Mr. Crane, why don't you take a
21 look at Swanberg, paragraph 31.

22 A. Okay.

23 Q. And I'll direct your attention to the last
24 sentence of paragraph 31 and ask you to read it. You
25 don't have to read it out loud but just read it for



1 yourself.

2 A. Okay.

3 Q. And my question is based on that language
4 does Swanberg also teach an embodiment in which the
5 game program may reside on a local computer?

6 A. Yes, it does.

7 Q. And take a look also in Swanberg at
8 paragraph 51 and I have the same question.

9 A. It also discusses that the game could be
10 played on the user's computing system or on a remote
11 computer.

12 Q. And I have the same question with regard to
13 paragraph 52 and figure four, which I believe it
14 corresponds to.

15 A. So could you restate the question relative
16 to this?

17 Q. Based on paragraph 52 and also figure four,
18 which it refers to, is there also a teaching within
19 Swanberg that the game software may reside on a local
20 computer?

21 A. Yes.

22 Q. You were asked earlier about your opinion
23 regarding the POSA in this case. From the perspective
24 of the POSA, can you explain your opinions about the
25 motivation to combine the Madden and the FIFA



1 references?

2 MR. HANSEN: Objection, exceeds the scope of
3 the direct -- or of the cross-examination.

4 BY MR. BOVICH:

5 Q. You can answer.

6 A. Sure. The Madden publications, which are
7 taken in as a group, and the FIFA publications as well,
8 there would be clear motivation to combine to a POSA.
9 These references all refer to not just a video game but
10 a specific genre of video game, that is sports
11 simulations in which realism is an important issue.
12 They both talk about down loading parameters, various
13 parameters, so they're very similar and in effect are
14 working to achieve the same goal, which is realism in
15 the video game which includes real life players and
16 real life parameters.

17 So it would be an easy combine or motivation
18 to combine for -- to combine the Madden NFL 2000 player
19 roster downloads with the FIFA Stadium downloads
20 param -- costumes -- I mean, uniforms, you know, and
21 all the various things that FIFA brings into it as
22 well. So I would consider clear motivation to combine
23 for those elements.

24 Q. And then also using the same perspective of
25 the POSA that you testified to earlier, please explain



1 your opinions about the motivation to combine Swanberg
2 and Hines?

3 MR. HANSEN: Again, objection, exceeds the
4 scope of the cross-examination.

5 MR. JONES: Yeah.

6 THE WITNESS: Yeah. It's similar in that
7 Swanberg talks about player parameters quite a bit and
8 so -- and Hines talks about the back end of collecting
9 player parameters, so it's kind of -- would be a --
10 it's hard to download player parameters unless you've
11 collected player parameters. So the combination of
12 Swanberg and Hines makes -- you know, is easily
13 motivated to combine those teachings to make it all
14 possible.

15 MR. BOVICH: I have no further questions.

16 MR. HANSEN: All right.

17 MR. JONES: It's a wrap.

18 MR. BOVICH: We will read and sign.

19 MR. HANSEN: Yeah.

20 (The deposition proceedings were adjourned at
21 12:00 p.m.)

22
23 _____
24 Signature of Witness

25 *****



REPORTER CERTIFICATE

I, Deanne M. Goyke, hereby certify that the witness in the foregoing deposition was by me placed under oath to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

☒ Reading and Signing was requested.

☐ Reading and Signing was waived.

☐ Reading and Signing was not requested.

In Witness Whereof, I Have Hereunto Set My Hand This 28th day of November 2016.

Deanne M. Goyke
Certified Shorthand Reporter
State of California
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