Filed on behalf of Game Show Network, LLC and WorldWinner.com, Inc.
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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Game Show Network, LLC and WorldWinner.com, Inc.,

Petitioners,

v.

Patent Owner of

U.S. Patent 6,174,237 to Stephenson

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Case IPR2013-00289

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PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

Walker invalidates every claim of the '237 Patent. The proper focus of the validity analysis is whether Walker discloses or renders obvious the limitations ***actually recited in the claims***. That analysis—when properly focused on the actual claim limitations—is straightforward because Walker plainly discloses or renders obvious all of the broad functional limitations of the claims of the '237 Patent.

Stephenson seeks to distract the validity inquiry from the actual claim language, devoting pages of his Response to purported features or advantages of the invention that are simply found nowhere in the claims. Stephenson's expert candidly admitted that many of these alleged features and advantages Stephenson touts are simply not required by the claims. *See, e.g.,* Ex. 1020 at 75:9-76:3; 77:23-78:3; 78:5-9; 78:15-18; 78:23-79:1; 79:7-16; 79:22-80:2. Thus, many alleged features of the invention are distractors that the PTAB should ignore.

Of particular significance, Stephenson incorrectly asserts that the claims require (1) evaluation of a qualifying round based solely upon a single player's performance, and (2) head-to-head competition of a human player and the host computer. These proposed constructions are unreasonably narrow, and contrary to Stephenson's positions in earlier litigation and representations to the PTO. Walker discloses or renders obvious every limitation as properly construed.

II. WALKER ANTICIPATES CLAIMS 1-3, 5, AND 8-19

With respect to most of the '237 Patent's claim limitations, Stephenson has not even attempted to refute the evidence of anticipation set forth in the Petition. Instead, Stephenson identifies just three alleged distinctions between his claims

and Walker. Paper 22 at 33-38. Those alleged distinctions are illusory. Indeed, they are based upon flawed claim construction, flawed interpretation of Walker, or both. When the claims and Walker are properly interpreted, Walker clearly anticipates them. GSN addresses Stephenson's three alleged distinctions below.

A. Walker discloses the "evaluating the results of said qualifying round" limitations of claim steps (b) and (c)

Stephenson's first argument of no anticipation is that "Walker does not disclose qualification *based on a single player's performance* in a qualifying round." Paper 22 at 33. Stephenson's argument is flawed because the phrase "*based on a single player's performance*" is nowhere to be found in *any* claim of the '237 Patent. Rather than quote actual claim language, however, Stephenson fabricates a non-existent claim limitation—that qualification must be *based on a single player's performance*—and then argues that Walker does not disclose this fabricated claim limitation. Paper 22 at 33. Ironically, although this limitation is not required by the claims, Walker discloses even this fabricated claim limitation.

1. Walker discloses the *evaluating* steps as properly construed

To assess anticipation, the PTAB must look at the *actual* claim language— *not* the "*based on a single player's performance*" language that is not in the claims. The actual claim language includes two closely related limitations—(b) and (c)—that require "evaluating the results of said qualifying round" to classify a player into a performance level and to see if the player is in a qualifying level.

While these *evaluating* limitations recite broadly defined functions, *they say nothing about what criteria is used to perform the evaluation*. Thus, the claims cover *any* evaluation criteria. Contrary to Stephenson's arguments, the *evaluating*

limitations do *not* require qualification *based on a single player's performance*, and they do *not* require qualification based on *predetermined* and *absolute* qualifying performance levels. The terms "*predetermined*" and "*absolute*," like the phrase "*based on a single player's performance*," are simply not in the claims.

When the *evaluating* limitations are properly construed to use *any* evaluation criteria, including either absolute or relative criteria, Walker discloses those limitations. Indeed, because Stephenson concedes that Walker discloses both absolute and relative performance level classifications for the awarding of prizes (Ex. 2007 ¶¶ 84, 88), there is no dispute that Walker discloses limitation (b). Further, Stephenson admits that Walker discloses relative qualification criteria. Paper 22 at 35; Ex. 2007 ¶ 85. Thus, when limitation (c) is construed under the BRI standard—as it should be—to cover *any* evaluation criteria, Walker discloses limitation (c), as well.

Recognizing that he needs a narrow interpretation of the *evaluating* steps to avoid anticipation, Stephenson argues that those steps must use *predetermined* and *absolute* performance criteria *based on a single player's performance*. Paper 22 at 33-36. Stephenson's expert admitted that steps (b) and (c) do not explicitly recite any such limitation. Ex. 1020 at 69:17-20; 75:2-7. Instead, Stephenson's expert *inferred* that qualifying criteria must be predetermined and absolute from the claim requirement that the *game* in a qualifying round includes a *single player*. *Id.* at 69:6-16; 69:21-70:15; 72:10-73:4; 74:16-75:1.

Stephenson's inference is fundamentally flawed, however, because steps (b) and (c) evaluate the *qualifying round,* not just the *game* between a single player

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