

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VSR INDUSTRIES, INC.,
Petitioner,

v.

COLE KEPRO INTERNATIONAL, LLC,
Patent Owner.

Case IPR2015-00182
Patent 6,860,814 B2

Before BENJAMIN D. M. WOOD, CARL M. DEFRANCO, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

VSR Industries, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–14 of U.S. Patent No. 6,860,814 B2 (“the ’814 patent,” Ex. 1001). Cole Kepro International, LLC (“Patent Owner”) waived its right to file a preliminary response to the Petition. *See* Paper 7. We instituted trial as to claims 1–14 of the ’814 patent on the following grounds of unpatentability:

- A. Obviousness of claims 1–14 over Fraley;¹
- B. Obviousness of claims 1–14 over Fraley and Okada;²
- C. Obviousness of claims 1–14 over Runte;³
- D. Obviousness of claims 1–14 over Runte and Okada; and
- E. Obviousness of claims 1–14 over Smith.⁴

Paper 8, 11 (“Dec. to Inst.”).

After institution, Patent Owner filed a Patent Owner Response⁵ (Paper 11, “PO Resp.”), and Petitioner filed a Reply⁶ (Paper 22, “Reply”). Patent Owner also filed two motions to seal, which are addressed below. Papers 13, 25.

An oral hearing was conducted on January 27, 2016. A transcript of the oral hearing is included in the record. Paper 29 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This decision is a Final Written Decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 as to the patentability of claims 1–14. For the reasons discussed below, Petitioner has

¹ U.S. Patent No. 3,796,433, issued Mar. 12, 1974 (Ex. 1003, “Fraley”).

² U.S. Patent No. 4,718,672, issued Jan. 12, 1988 (Ex. 1006, “Okada”).

³ U.S. Patent No. 3,940,136, issued Feb. 24, 1976 (Ex. 1008, “Runte”).

⁴ U.S. Patent No. 5,351,176, issued Sept. 27, 1994 (Ex. 1009, “Smith”).

⁵ A redacted version of the Patent Owner Response was filed as Paper 12.

⁶ A redacted version of the Reply was filed as Paper 23.

demonstrated by a preponderance of the evidence that these claims are unpatentable.

A. Related Proceedings

Petitioner indicates that Patent Owner asserted the '814 patent against Petitioner in a lawsuit in the U.S. District Court for the District of Nevada styled *Cole Kepro International, LLC v. VSR Industries Inc.*, No. 2:14-cv-01416-JCM-CWH. Pet. 1. However, Petitioner states that Patent Owner has not served the complaint on Petitioner. *Id.*

B. The '814 Patent

The '814 patent relates to a gaming apparatus housed in a cabinet. Ex. 1001, Abstract. The Background of the Invention describes that a “wide variety of devices are known for implementing games of skill and/or chance.” *Id.* at 1:14–15. “[T]wo very common types of gaming devices” are the mechanical type slot machine and the video gaming device. *Id.* at 1:15–17, 27–28. According to the Background, video gaming devices include a cathode ray tube (CRT) for displaying information housed inside of a cabinet. *Id.* at 1:28–29. “The CRT is supported on a shelf in a main portion of the cabinet and [is] viewable through a[n] opening in the door.” *Id.* at 1:35–37. A drawback that the '814 patent identifies with prior art gaming devices is that they are manufactured as distinct devices: “a manufacturer custom designs one particular device to be configured as a video gaming device, and custom designs another particular device to be a mechanical reel type device.” *Id.* at 1:41–45. Another problem is the size and weight of the devices: “CRT based video gaming devices are very large because they must accommodate the CRT.” *Id.* at 1:56–57.

The '814 patent seeks to address these problems with a device that “is readily configured to present one of several different games.” *Id.* at 2:20–21. Figures 4 and 5 are reproduced below.

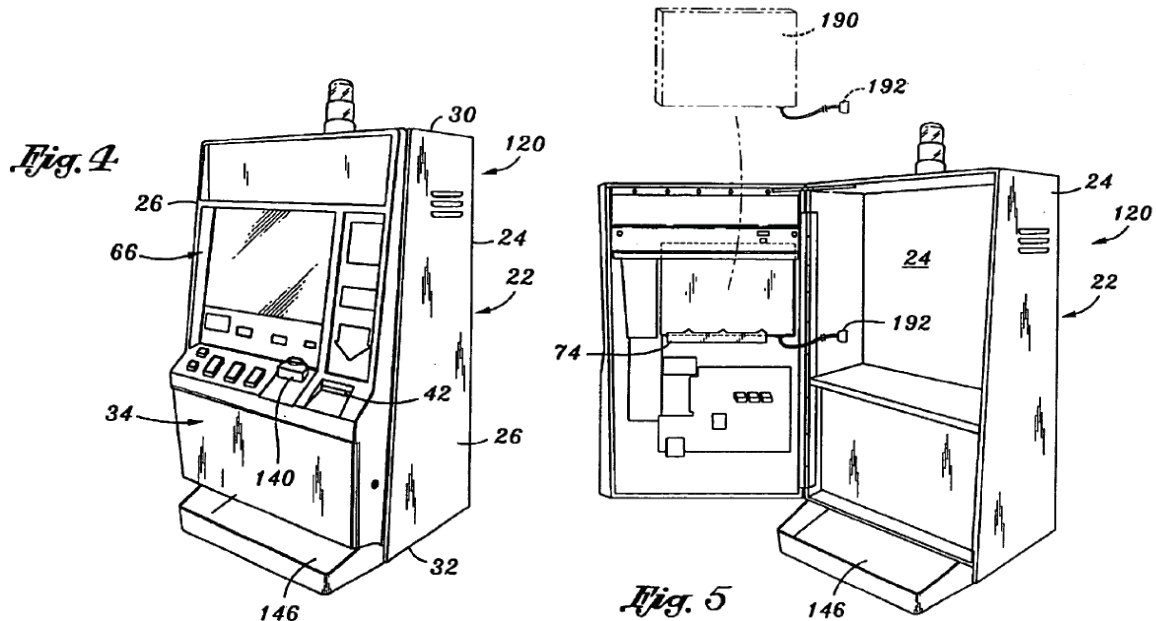


Figure 4 is a perspective view of gaming device 120 arranged in a configuration as a video type gaming device. *Id.* at 3:27–28, 47–49. Figure 5 is a perspective view of gaming device 120 with door 34 in an open position and certain components removed from the device. *Id.* at 3:29–32.

As depicted in Figures 4 and 5, door 34 includes window 66, through which display 190 is visible. *Id.* at 8:55–56. The '814 patent describes that “[i]n a preferred embodiment, the display 190 comprises a liquid crystal display (LCD) screen or other substantially planar or thin display.” *Id.* at 8:30–32. According to the '814 patent, the configuration of gaming device 120 “is such that the total size of the device can be reduced substantially as compared to similar devices utilized today.” *Id.* at 9:59–62. The '814 further explains:

Advantageous [sic] are also realized by connecting the video display to the door of the gaming device. In particular, because

the display is connected to the door, no supports are needed in the cabinet for the display, freeing up substantial space within the cabinet 22 for other components, such as circuitry and the like. Also, when the door is moved to its open position, the display is moved out of the interior of the cabinet, making the interior portion of the cabinet more accessible. The attachment of the display to the door also renders the display more readily accessible for servicing or removal.

Id. at 10:46–56.

C. Illustrative Claim

The '814 patent includes claims 1–14. Claims 1 and 8 are independent. Claims 2–7 depend from claim 1, and claims 9–14 depend from claim 8. Claim 1 is illustrative of the challenged claims, and is reproduced below, with line breaks and indentation added for clarity:

1. A gaming apparatus configured to present one or more wager-based games comprising:
 - a cabinet,
 - a door connected to said cabinet,
 - said door moveable between a first position and a second position,
 - said door in said first position cooperating with said cabinet to define a generally closed interior space,
 - said door in said second position permitting access to said interior space,
 - said door having an inner surface and an outer surface and an opening therein,
 - a generally planar video display
 - mounted to said inner surface of said door and
 - movable with said door when said door is moved between said first and second positions,

said video display aligned with said opening in
said door to be viewable therethrough, and
at least one gaming controller,
said gaming controller located in said interior
space and
connected to said video display to provide game
information for display by said video
display.

Ex. 1001, 11:2–17.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Under that standard, and absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art, in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

1. “*gaming apparatus [. . .] configured to present one or more wager-based games*”

The preambles of claims 1 and 8 recite “[a] gaming apparatus [. . .] configured to present one or more wager-based games.” In our Decision to Institute, we were not persuaded by Petitioner’s argument that this phrase should be given no weight. Dec. to Inst. 5. We determined that the phrase “is properly construed to require that the gaming apparatus be arranged such that it presents one or more wager-based games.” *Id.* Patent Owner appears to be in agreement with this construction. *See* PO Resp. 12, 41 n.9.

Petitioner’s Reply states that “Petitioner accepts the Board’s construction of

this term.” Reply 2; *see also* Tr. 16:4–10. Therefore, for the reasons set forth in the Decision to Institute, and in view of the parties’ agreement, we maintain our construction of “gaming apparatus [. . .] configured to present one or more wager-based games” in claims 1 and 8 as requiring that the gaming apparatus is arranged such that it presents one or more wager-based games.

2. “*a reduced dimension from said front to said back*”

Claim 4 recites a cabinet having “a reduced dimension from said front to said back.” Our Decision to Institute determined that this limitation “encompasses at least a cabinet having a width greater than its depth.” Dec. to Inst. 6. Neither party disputes this construction. *See* Tr. 16:4–10; PO Resp. 11–18. Accordingly, for the reasons set forth in the Decision to Institute, and in the absence of any challenge from the parties, we maintain our construction of this term.

3. “*cabinet*”

Patent Owner contends that the term “cabinet,” which appears in independent claims 1 and 8, should be construed to mean “an upright cabinet or housing.” PO Resp. 14. Patent Owner’s argument for this construction points out that the figures of the ’814 patent show the front, sides, and back of the cabinet arranged vertically. *Id.* at 13. Patent Owner also argues that the usage of “cabinet” in the prior art supports its proposed construction, insofar as Fraley describes its housing as a cabinet and depicts it as an upright structure. *Id.* at 13–14 (citing Ex. 1003, 3:4–5, Fig. 2).

Petitioner disputes Patent Owner’s construction. Reply 2–3. Petitioner argues that Patent Owner has been collecting royalties under the ’814 patent for devices that do not have upright cabinets, and therefore

Patent Owner's licensing conduct is inconsistent with Patent Owner's proposed construction. *Id.*

We are not persuaded that the term "cabinet" requires a housing that is "upright," as Patent Owner proposes. As an initial point, Patent Owner's proposal obfuscates the scope of this claim term rather than clarifying it, as what it means for a cabinet to be "upright" is vague. At the hearing, Patent Owner's counsel indicated that "an upright cabinet is one that is going to display the display . . . in a more vertical orientation as opposed to a horizontal which is a table top." Tr. 28:6–9. Patent Owner's counsel also argued that a cabinet must be taller than it is wide. *Id.* at 30:12–13; *see also id.* at 29:5. It is unclear whether either of these features is sufficient, or if both are necessary, for a cabinet to be "upright." For example, it is unclear if a cabinet that is taller than it is wide, that includes a display on a horizontal top surface, would qualify as "upright" under Patent Owner's construction.

More significantly, the '814 patent does not support Patent Owner's proposed construction. That the figures show cabinets that are taller than they are wide is not sufficient, by itself, to limit the claim scope to only cabinets having that feature. The Federal Circuit has repeatedly warned against reading into the claims limitations from a preferred embodiment in the specification. *See, e.g., In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004) ("We have cautioned against reading limitations into a claim from the preferred embodiment described in the specification, even if it is the only embodiment described, absent clear disclaimer in the specification."); *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("[A] particular embodiment appearing in the written

description may not be read into a claim when the claim language is broader than the embodiment.”).

Patent Owner does not identify any disclosure in the Specification disclaiming non-upright cabinets or indicating that only upright housings qualify as cabinets. *See* Tr. 31:1–32:17. The portion of the Specification on which Patent Owner relies simply describes that the cabinet has a front and back, which does not support Patent Owner’s proposal that a cabinet must be upright. *See id.* (citing Ex. 1001, 3:58–65); PO Resp. 13 (citing Ex. 1001, 3:66–4:3). In any event, the Specification makes clear that this description is of one embodiment (Ex. 1001, 3:55), and that “cabinet 22 need not have the specific configuration illustrated.” *Id.* at 4:14–15. Indeed, the Specification repeatedly emphasizes that the described embodiments are merely illustrative and non-limiting. *See id.* at 3:37–42, 10:62–67. Patent Owner’s arguments based on Fraley are also unpersuasive because the cited portion of Fraley merely refers to “a box-like cabinet or housing 10” that is shown in the figures as being taller than it is wide, but does not suggest that a housing *must be* taller than it is wide in order to qualify as a cabinet. *See* Ex. 1003, 3:4–5, Fig. 2.

Accordingly, we do not accept Patent Owner’s proposed construction of “cabinet.” Having decided that a “cabinet” as recited in claims 1 and 8 need not be “upright,” we do not perceive that further explication of the meaning of “cabinet” is necessary. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

4. “*gaming controller*”

Petitioner proposes that the term “gaming controller,” which appears in claims 1 and 8, means “hardware and/or software that can be programmed to control game play.” Pet. 12 (citing Ex. 1001, 5:31–34, 5:63–65). Patent Owner proposes that the term should be construed as a “controller including a random number generator and configured to provide data to the video display for presenting wager-based game information and operate a plurality of peripheral gaming devices.” PO Resp. 18.

Looking first at Patent Owner’s proposal, the intrinsic record does not support that the features included therein are necessary to the meaning of a gaming controller. Patent Owner’s construction is based primarily on the Specification’s disclosure of capabilities that the controller “may” have. For example, in support of the random number generator feature, Patent Owner cites the ’814 patent’s disclosure that “the controller *may* be arranged to generate a signal . . . based on a determined random outcome for the game.” *Id.* at 17 (quoting Ex. 1001, 5:43–45) (emphasis added). Similarly, Patent Owner’s proposal that the controller must operate a plurality of peripheral devices is based on the disclosure that the controller “may” be arranged to receive an input signal from a coin acceptor and bill acceptor and “may” also control other mechanisms associated with the device. *See id.* at 17–18; Ex. 1001, 5:31–56. We are not persuaded that a skilled artisan would understand these features, which are described as optional in the Specification, to inhere in the meaning of a gaming controller. With respect to providing data to the video display, we note that claims 1 and 8 expressly recite as a separate limitation that the gaming controller is “connected to said video display to provide game information for display by said video

display.” It is, therefore, unnecessary to repeat this feature as part of the construction of “gaming controller.”

Turning to Petitioner’s proposal, the Specification supports that the controller can include software, hardware, or both. *See* Ex. 1001, 5:63–65. Patent Owner argues that “a general purpose controller which ‘can be programmed to control game play’ is not encompassed by a BRI of this term” because the language of claims 1 and 8 indicates that the controller is configured to provide game information to the video display. *See* PO Resp. 16. We agree with Patent Owner that hardware or software that has not been programmed to control gaming but is capable of being so programmed is not yet a gaming controller. Therefore, we construe “gaming controller” to mean “hardware and/or software that is programmed to control game play.”

B. Principles of Law

To prevail in its challenges to the patentability of the claims, a petitioner must establish facts supporting its challenges by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). A claim is unpatentable under § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved based on underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere*, 383 U.S. 1, 17–18 (1966). We also recognize that prior art references must

be “considered together with the knowledge of one of ordinary skill in the pertinent art.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (citing *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)).

We analyze the instituted grounds of unpatentability in accordance with the above-stated principles.

C. Level of Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, and the sophistication of the technology. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986). Also, we are guided by the level of skill in the art as reflected by the prior art of record. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

Petitioner contends that a person of ordinary skill in the field of this invention would have had a diploma from a high school or vocational school and at least five years of relevant experience, or seven years of experience without a diploma. *See* Pet. 10. Patent Owner argues that five years of relevant experience is sufficient. *See* PO Resp. 11.

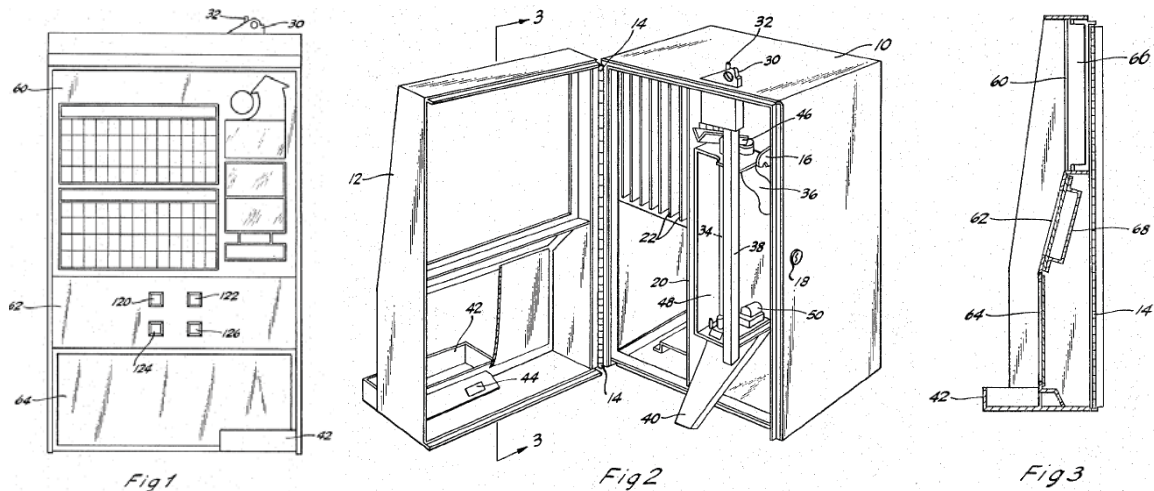
We note that the difference in the parties’ proposals is fairly minor. Our analysis below, including the conclusions we reach, would be substantially the same under either party’s proposal. Nevertheless, after considering the evidence of record, we agree with Patent Owner that five years of experience designing or developing gaming machines is sufficient to qualify as a person of ordinary skill in the art, regardless of whether the person also has a diploma. Thus, we adopt Patent Owner’s proposal of the level of ordinary skill in the art.

D. Obviousness over Fraley and Okada

Petitioner argues that claims 1–14 are unpatentable under 35 U.S.C. § 103(a) over Fraley alone, or over the combination of Fraley and Okada. *See* Pet. 13–20; Reply 7–10. Patent Owner contests these arguments. *See* PO Resp. 24–30. We have considered the arguments and evidence presented by both parties, and we determine that Petitioner has shown by a preponderance of the evidence that claims 1–8 and 10–14 are unpatentable over Fraley and Okada, but has not done so with respect to claim 9.⁷

1. Summary of Fraley

Fraley describes an electronic device for playing the game of blackjack. Ex. 1003, 1:1–5. Figures 1–3 of Fraley are reproduced below:



Figures 1 and 2 are front elevation and perspective views, respectively, of Fraley’s device. *Id.* at 2:46–49. Figure 3 is a vertical cross-section of door 12 taken along the line 3–3 of Figure 2. *Id.* at 2:50–51.

Fraley’s device includes “a box-like cabinet or housing 10,” which

⁷ Given our determination that these claims would have been obvious based on Fraley and Okada, we see no need to separately address whether the claims would also have been obvious based on Fraley alone.

“has a door or front panel 12 pivotly [sic] secured thereto by hinge 14.” *Id.* at 3:6–11. Fraley teaches that “[d]oor 12 is constructed with an upper recessed vertical display panel 60 upon which the progress and results of the game are displayed.” *Id.* at 3:60–62. “The display and control panels can be conveniently enclosed by the top and side members of the door which provide some privacy for the player and tend to isolate the display and control panels from adjacent machines.” *Id.* at 3:65–4:2.

Display panel 60 includes a dealer card display and a player card display, both of which are comprised of fifty-two indicators representing specific cards. *See id.* at 4:4–7, 21–24. Fraley describes:

Each of the card indicators in dealer card display 70 and player card display 72, and the special condition indicators are each separately illuminated by lamps placed behind the indicators to vividly indicate the play of a particular card or the existence of a particular condition. These lamps and the attendant electrical circuitry are located in an enclosed box 66 in the upper section of door 12.

Id. at 4:39–46. Fraley further teaches that the arrangement shown in the figures “may be modified and that other display panel layouts can be employed without materially altering the game described herein.” *Id.* at 4:46–50.

2. *Summary of Okada*

Okada discloses a slot machine having main body 1 and front door 2. Ex. 1006, 2:47–51, Fig. 1. Door 2 includes display windows 6, 7, 8. *Id.* at 2:51–56, Fig. 2. Okada describes that liquid crystal panel 90 can be mounted at the back of display windows 6, 7, 8. *Id.* at 5:58–61, Fig. 8.

3. *Analysis of Claims 1, 3–8, and 10–14*

Petitioner contends that Fraley discloses a cabinet, door, and gaming controller as claimed. Specifically, Petitioner asserts that Fraley’s “box-like cabinet or housing 10” corresponds to the claimed “cabinet” (Pet. 14 (citing Ex. 1003, 3:6–7, Fig. 2)), Fraley’s “door or front panel 12” corresponds to the claimed “door” (*id.* at 14–15(citing Ex. 1003, 3:10–16, Figs. 2–3)), and that the computer and electronic control circuitry described in Fraley corresponds to the claimed “gaming controller” (*id.* at 17 (citing Ex. 1003, 3:16–23, 5:17–7:47)).

With respect to the “video display,” Petitioner contends that Fraley’s display includes all of the features recited in claim 1, except that it is a “generally planar analogue display” rather than a video display. *Id.* at 15–17; Reply 7. Petitioner argues that it would have been obvious to modify Fraley’s display to use an LCD or plasma video display instead, because by the time of the invention, it was well-known that a gaming device could be implemented with a CRT, LCD, or plasma display. Pet. 16 (citing Ex. 1004, 6:2–7, 8:41–44; Ex. 1005, 2:25–28). Petitioner notes that Fraley discloses that its display “may be modified and that other display panel layouts can be employed without materially altering the game described herein.” *Id.* (quoting Ex. 1003, 4:49–51).

Except for two limitations discussed below, Patent Owner’s Response does not dispute Petitioner’s contentions that the subject matter of claim 1 is disclosed or rendered obvious by Fraley. *See* PO Resp. 24–30; *see also* 37 C.F.R. § 42.23(a) (providing, with respect to oppositions, that “[a]ny material fact not specifically denied may be considered admitted”);

37 C.F.R. § 42.120(a) (“A patent owner response is filed as an opposition.”). Further, the evidence supports Petitioner’s contentions on the undisputed limitations.

Turning to the limitations in claim 1 that Patent Owner argues are not disclosed or obvious in view of Fraley’s disclosure, Patent Owner argues that Fraley does not teach or suggest a “video display” as recited in claim 1. PO Resp. 19–20. Patent Owner asserts that Fraley teaches a static image of cards, which is not a video display. *Id.* (citing Ex. 2001 ¶ 22). Moreover, according to Patent Owner, Fraley’s disclosure that other display panel layouts could be employed is only referring to replacing the static panel with another static panel having a different layout. *Id.* at 25 (citing Ex. 2001 ¶ 28). Patent Owner also contends that Fraley does not provide a motivation to replace the static display with a video display. *Id.* at 28–29. And Patent Owner argues that the proposed modification would require a complete redesign of Fraley. *Id.* at 29–30.

Although Patent Owner is correct that Fraley’s display is static, we agree with Petitioner that it would have been obvious to replace Fraley’s static display with an LCD display. The evidence of record supports Petitioner’s assertion that LCDs and plasma displays were known alternatives for displays in gaming devices. *See* Ex. 1004, 6:2–7, 8:41–44; Ex. 1005, 2:25–28.⁸ Patent Owner agreed with this point at oral argument.

⁸ Although the ground being discussed does not identify Exhibits 1004 or 1005 as references that would have rendered the claims obvious, “[a]rt can legitimately serve to document the knowledge that skilled artisans would bring to bear in reading the prior art identified as producing obviousness.” *Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1365 (Fed. Cir. 2015) (citing *Randall Mfg. v. Rea*, 733 F.3d 1355, 1362–63 (Fed. Cir. 2013)).

See Tr. 23:1–6. And, as Petitioner argues, substitution of one known component for another is likely to be obvious when doing so yields only predictable results. Reply 7; *see also KSR*, 550 U.S. at 416 (“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.”).

Patent Owner’s argument that Fraley’s disclosure does not motivate replacement of static panel with video display (*see* PO Resp. 28–29; Tr. 36:20–37:12) is not persuasive because it assumes that the motivation for a proposed modification must be provided by the cited prior art reference itself. The Supreme Court has rejected that approach to obviousness as overly rigid. *KSR*, 550 U.S. at 415. Petitioner has articulated a reason why a skilled artisan would have substituted an LCD display for Fraley’s static display that is supported by rational underpinnings—namely, that the substitution would have enhanced Fraley’s device with the capability to display a video. *See* Reply 7–8.

We also are not persuaded that the proposed modification to Fraley is beyond the level of skill in the art. Patent Owner quotes the following testimony of Mr. Lewin:

[I]t would not be obvious for one skilled in the art to improve a lights and glass based game to a game that uses a digital video display. . . . It is like comparing a railroad to an airplane—both are modes of transportation, but you can’t easily put wings on a train and expect it to fly.

PO Resp. 29 (quoting Ex. 2001 ¶ 23). We do not find this analogy apt. Mr. Lewin does not explain any technical challenges to placing an LCD panel on the door of a gaming cabinet that are remotely akin to making a train fly.

The challenges that Mr. Lewin identifies are making changes to the door and cabinet to support the LCD and replacing Fraley's electronics with components that are designed for an LCD video display. Ex. 2001 ¶ 23. In our view, these tasks would have been within the abilities of a person of ordinary skill in the art at the time of the invention. We note that the '814 patent does not describe the alleged technical difficulties or the solutions thereto. For example, the '814 patent does not describe a particular hinge design or panel mounting configuration that is capable of supporting the additional weight of an LCD display. Rather, the '814 patent indicates that the same support 74 used to support window glass 68 in the mechanical reel embodiment can also be used to support video display 190 in the video game embodiment. Ex. 1001, 7:21–22, 8:42–44. With respect to the configuration of the electronics in the video game embodiment, the '814 patent merely describes that a controller is used that is adapted to present a video game and that display 190 includes interface cable 192 for connection to the controller. *See id.* at 8:26–29, 56–58. The terseness of this description supports Petitioner's position that the tasks necessary to modify a cabinet to include an LCD display were within the level of ordinary skill in the art. *See Reply 8–9; In re O'Farrell*, 853 F.2d 894, 904 (Fed. Cir. 1988) (“For obviousness under § 103, all that is required is a reasonable expectation of success.”).

Patent Owner also argues that Fraley's display is not “mounted to an inner surface of a door” as recited in claim 1. PO Resp. 24. Instead, according to Patent Owner, Fraley's glass panel is mounted to the outer surface of the door. *Id.* at 25–26. Patent Owner further argues that in the

prior art, gaming displays were typically disposed within a cabinet, not mounted to an inner surface of a cabinet door. *Id.* at 26–28.

Fraley does not expressly state whether display panel 60 is mounted to an inside or outside surface of door 12, but it is clearly mounted to the door. *See* Ex. 1003, Figs. 1–3. In replacing Fraley’s panel 60 with an LCD display, a skilled artisan would have only a few options of which surface of the door to attach the LCD to. One option would be an inner surface. As Petitioner correctly notes, Okada discloses mounting a liquid crystal panel 90 at the back of display windows 6, 7, 8, which are attached to the inside of door 2. Reply 8–9 (citing Ex. 1006, 5:58–61, Fig. 2). Moreover, Fraley describes that display panel 60 is recessed and enclosed by top and side members of the door, “which provide some privacy for the player and tend to isolate the display and control panels from adjacent machines.” *See* Ex. 1003, 3:65–4:2; Tr. 38:21–39:14. Attaching the LCD display to the inside surface of the door, as opposed to the outside surface, would tend to promote Fraley’s preference for privacy and isolation because doing so would keep the display as recessed as possible. In view of the limited options for surfaces on which to attach an LCD to Fraley’s door, Okada’s teaching of attaching an LCD panel to the inside of a door, and Fraley’s preference for recessing the display toward the interior of the machine to promote privacy, we agree with Petitioner that in the proposed modification of Fraley, attaching the LCD to the inner surface of the door would have been obvious.

Independent claim 8 shares many of the same features as claim 1, and adds that the gaming apparatus has a “reduced depth dimension.” *See* Ex. 1001, 11:37; Tr. 24:13–16. We agree with Petitioner that Fraley’s machine has a “reduced depth dimension” because it is shown as having a depth that

is less than its width. *See* Pet. 19 (citing Ex. 1003, Fig. 2). Patent Owner's arguments regarding claim 8 are the same as its arguments regarding claim 1, which we have discussed above. *See* PO Resp. 24–29.

With respect to dependent claims 3–7 and 10–14, Petitioner explains how the subject matter of these claims would have been obvious in view of Fraley and Okada. *See* Pet. 18–20. Patent Owner does not rebut Petitioner's arguments and evidence regarding these claims, separate from its arguments for claims 1 and 8 from which they depend. *See* 37 C.F.R. §§ 42.23(a), 42.120(a). Upon reviewing the unchallenged contentions and supporting evidence in the Petition, we are persuaded that Petitioner has shown by a preponderance of the evidence that these dependent claims would have been obvious in view of Fraley and Okada.

Thus, even subject to the secondary considerations discussed below, we conclude that Petitioner has shown by a preponderance of the evidence that each of claims 1, 3–8, and 10–14 would have been obvious in view of the disclosure of Fraley and Okada.

4. *Claim 2*

Claim 2 depends from claim 1 and further recites that “a mount is connected to said door and said video display is supported by said mount.” Petitioner argues that in Fraley, the display is mounted in some fashion to the door, and a mount is a well-known way to attach a door. Pet. 17–18. Thus, according to Petitioner, this limitation is either inherent in Fraley or obvious. Pet. 17–18. Petitioner also argues that Okada discloses this feature. Reply 10 (citing Ex. 1006, 2:63–68, 5:58–61).

Patent Owner argues that Fraley does not teach this feature because “Fraley only teaches a static glass panel (60) that is recessed within or

supported by the door, as opposed to by a separate mount that is connected to the door.” PO Resp. 54. Further, Patent Owner argues that a mount would not have been obvious “because ‘the requirements for mounting glass to the outside of a cabinet (as Fraley) . . . are very different than mounting a planar video display to the inner surface of the door.’” *Id.* at 55 (quoting Ex. 2001 ¶ 35).

In the broad fashion in which Patent Owner has claimed this feature, we agree with Petitioner that the combination of Fraley and Okada teaches this limitation. Neither party has proposed a construction for “mount.” *See* Tr. 25:8–17. It is difficult to imagine any manner of attaching a video display to a door that would not include some structure that would qualify as a “mount” in the ordinary meaning of that term. Patent Owner’s argument that the requirements for a mount that would support a glass panel are markedly different from a mount that supports a video display is unpersuasive because, as noted above, the ’814 patent indicates that the same support 74 used to support window glass 68 in the mechanical reel embodiment can also be used to support video display 190 in the video game embodiment. Ex. 1001, 7:21–22, 8:42–44. In addition, Okada discloses that “liquid crystal panel 90 is *mounted* at the back of the display windows.” Ex. 1006, 5:59–60 (emphasis added).

Even subject to the secondary considerations discussed below, we conclude that Petitioner has shown by a preponderance of the evidence that claim 2 would have been obvious in view of the disclosure of Fraley and Okada.

5. *Claim 9*

Claim 9 depends from claim 8 and adds the feature that “a bracket [is] connected to said door support connected to said bracket, said support defining a generally horizontal supporting surface upon which a lower edge of said video display is supported when connected to said door.” Petitioner argues that “adding a bracket to solidify a horizontal support is a well-known practice in cabinet making that would be obvious” to a skilled artisan. Pet. 20. However, as Patent Owner points out, Petitioner does not cite any evidence in the record to support this attorney argument. PO Resp. 57.⁹ Thus, we agree with Patent Owner that Petitioner has not shown by a preponderance of the evidence that claim 9 would have been obvious in view of the disclosure of Fraley and Okada.

E. Obviousness over Runte

Petitioner argues claims 1–14 are unpatentable under 35 U.S.C. § 103(a) over Runte alone, or over the combination of Runte and Okada. Pet. 20–28. Patent Owner challenges those arguments. PO Resp. 30–36. As explained below, after considering the arguments and evidence presented by the parties, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–14 are unpatentable over Runte.¹⁰

⁹ Petitioner attempted to shore up this deficiency at the hearing by citing other references that it had not discussed in its briefing. *See* Tr. 16:14–17:9. In evaluating Petitioner’s challenge to claim 9, we do not consider the references that were not discussed in Petitioner’s briefing. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015) (“A patent owner . . . is undoubtedly entitled to notice of and a fair opportunity to meet the grounds of rejection.”).

¹⁰ Given our determination that these claims would have been obvious based on Runte alone, we see no need to separately address whether the claims

1. Summary of Runte

Runte describes that “amusement devices” are well known in which a CRT is used to produce an image and players manipulate knobs to give the illusion of controlling some device. Ex. 1008, 1:5–10. Runte explains that most of these devices are mounted on a wall or set up in a console, but that console-type devices are disadvantageous in a bar setting because patrons leave their table to go to the console. *Id.* at 1:10–11, 21–23. This inhibits patrons from consuming food and beverages and makes service more difficult. *Id.* at 1:17–27. Accordingly, Runte describes a device that forms a table. *Id.* at 1:40. Figures 1 and 3 are reproduced below:

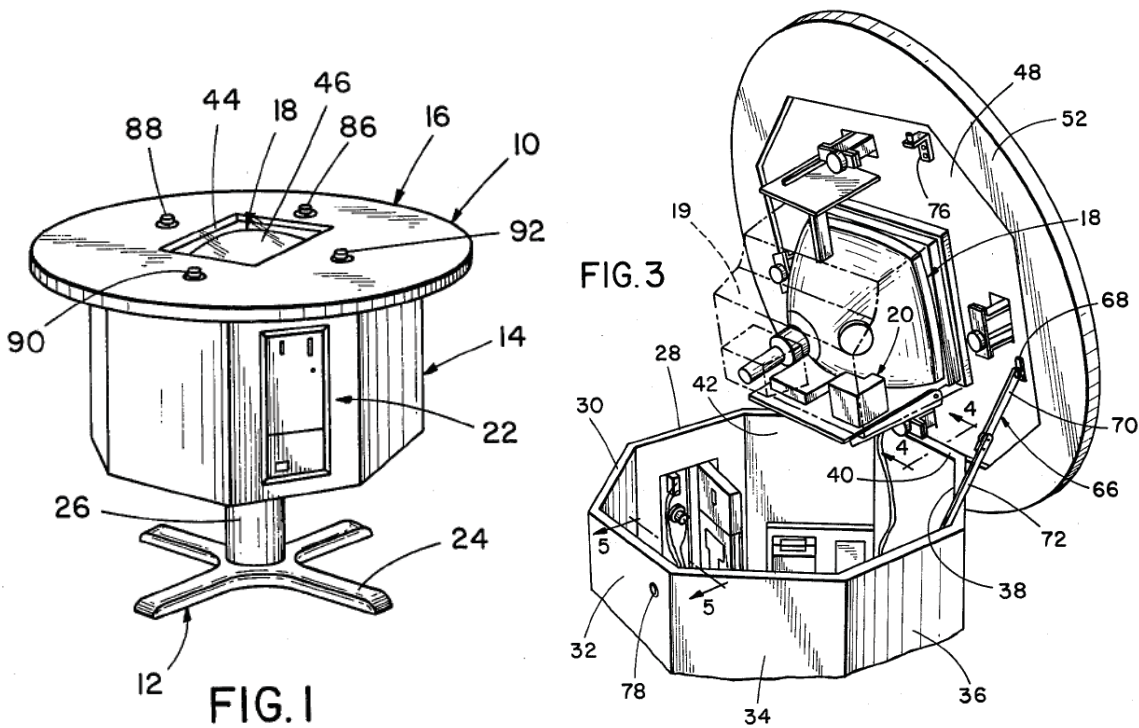


Figure 1 is a perspective view of video amusement device 10. *Id.* at 2:10–11. Figure 3 is “an enlarged fragmentary perspective view” of device

would also have been obvious based on the combination of Runte and Okada.

10 with its table top 16 raised. *Id.* at 2:16–18. Runte describes that amusement device 10 includes table top 16 hingedly mounted on housing 14 and cathode ray tube 18 mounted on the interior of table top 16. *Id.* at 2:42–45. The screen of cathode ray tube 18 is visible through aperture 44 in the center of table top 16. *Id.* at 2:63–64, 3:33–35. Runte teaches that an advantage of this construction is that it facilitates maintenance of the device:

[T]he tube 18 and the associated electronic circuitry 20 is mounted on the underside of table top 16. When it is necessary to perform any maintenance, the lock 74 is released so that top 16 may pivot about hinge 56. Pivoting of the top is limited by bracket 66. When the table top is pivoted to the attitude shown in FIG. 3, all of the parts are presented for ready servicing. It is not necessary for the service personnel to engage in a disassembly of a large number of parts in order to get at a given part.

Id. at 5:6–17.

2. *Analysis of Claims 1, 3–8, and 10–14*

Petitioner contends that Runte discloses a cabinet, door, and gaming controller as recited in claim 1. Specifically, Petitioner asserts that Runte’s housing 14 corresponds to the claimed “cabinet” (Pet. 22 (citing Ex. 1008, 2:41–43, 58–62, Figs. 1, 3)), Runte’s table top 16, which is hingedly mounted on housing 14, corresponds to the claimed “door” (*id.* at 23 (citing Ex. 1008, 2:41–44, 3:10–11, Figs. 1, 3)), and that Runte’s electronic circuitry 20 and solid-state printed circuit logic board 21 corresponds to the claimed “gaming controller” (*id.* at 17 (citing Ex. 1008, 2:47–50)). With respect to the “video display,” Petitioner contends that it would have been obvious to substitute for Runte’s cathode ray tube 18 an LCD or plasma display because those were known alternatives for gaming displays. *Id.* at 24 (citing Ex. 1004, 6:2–7, 8:41–44; Ex. 1005, 2:25–28).

Patent Owner argues that several limitations in claim 1 would not have been obvious based on Runte's disclosure. Patent Owner's arguments are addressed below. With respect to the limitations in claim 1 that Patent Owner does not address, the evidence supports Petitioner's contention that these limitations would have been obvious in view of Runte. *See also* 37 C.F.R. §§ 42.23(a), 42.120(a).

First, Patent Owner argues that Runte describes an amusement device and, therefore, does not disclose the requirement of being "configured to present one or more *wager-based* games." PO Resp. 30–31 (emphasis added). Patent Owner emphasizes that "amusement devices are not subject to the strict manufacturing or regulatory requirements gambling (wagering) machines are required to meet." *Id.* at 31 (quoting Ex. 2001 ¶ 44). Petitioner's initial position was that this claim phrase, which appears in the preamble, is not a limitation on the claim. Pet. 22. However, as discussed in Section II.A.1., we construe the phrase to require that the gaming apparatus is arranged such that it presents one or more wager-based games. Petitioner also argues that "games of skill or chance can be played for credits, tokens, prizes, or currency, and so fall within the scope of wager-based games" (Pet. 22) and "[e]ven if Runte is not a wager-based game, wager-based games are well-known to those skilled in the art." Reply 10 (citing Ex. 1001, 1:14–17).

Based on the record before us, we agree with Petitioner that it would have been obvious to configure Runte's device to present a wager-based video game. Runte describes a device in which users insert coins in order to activate play and then interact with the video game through control knobs. Ex. 1008, Abstract, 4:36–44. The specific video game that Runte discloses is "similar to ping pong," (*id.* at 4:40), but we see no reason why configuring

Runte to display a wager-based video game would have been anything other than a predictable use of prior art elements according to their established functions. *See KSR*, 550 U.S. at 417. As Petitioner points out, the '814 patent describes that video gaming devices “for implementing games of skill and/or chance” were known in the prior art. *See Ex. 1001*, 1:14–16, 27–28.

Regarding Mr. Lewin’s testimony regarding the unique manufacturing and regulatory requirements for gambling devices (*Ex. 2001* ¶¶ 44–46), Patent Owner does not explain why these special requirements make it nonobvious to apply the teachings of housings for non-gambling video gaming devices in making a housing for a wager-based video game. And we agree with Petitioner that the lack of detail in the '814 patent regarding how to program a controller for wager-based gaming undermines Patent Owner’s reliance on the regulatory requirements of wager-based gaming to distinguish over Runte’s amusement gaming device. *See Reply 10* (“Either a suitable gaming controller was well-known, in such case it would have been obvious to use one in Runte, or the '814 patent fails to meet its obligations under § 112.”). Based on our review of the '814 patent, the overwhelming focus of the Specification is on the mechanical arrangement of its cabinet to allow the cabinet to be adaptable for different types of games, conserve space, and facilitate servicing. Regarding the controller, the Specification lists various functions that the controller may carry out, discusses where the controller can be located, and discloses that the controller for the video gaming embodiment is different than that of the mechanical reel slot machine embodiment. *See Ex. 1001*, 5:32–6:10, 8:25–29. The Specification does not describe any specific algorithms or programming details that permit the controller to successfully operate a

wager-based gaming device. The '814 patent's cursory discussion of the controller supports the view that configuring a controller for wager-based gaming, or obtaining a controller that was already so configured, was within the knowledge of a person of ordinary skill in the art. *See id.* at 3:42–44 (describing that “well-known features have not been described in detail so as not to obscure the invention”).

Relatedly, Patent Owner argues that Runte does not disclose a “gaming controller” as claimed. PO Resp. 33–34. To the extent this argument differs from the argument just discussed, it is based on Patent Owner's position that “gaming controller” should be construed to require a random number generator. *See id.* As discussed in section II.A.4., we disagree with Patent Owner's claim construction proposal and instead construe the term to mean “hardware and/or software that is programmed to control game play.” We agree with Petitioner that Runte discloses a gaming controller under the construction we have adopted. Ex. 1008, 2:47–50.

Patent Owner also argues that Runte does not disclose an upright cabinet. PO Resp. 31–32. As discussed in section II.A.3., we do not interpret the term “cabinet” to require a housing that is “upright.” We agree with Petitioner that Runte's housing 14 is a “cabinet.” *See Pet.* 22.

Next, Patent Owner argues that there is no motivation in Runte to replace a CRT with a substantially planar video display. PO Resp. 34–35. Petitioner argues that replacing Runte's CRT with a flat panel would reduce the space needed for the display, thereby increasing leg-room for patrons. Pet. 26. Patent Owner counters that “Runte expressly states that the table top amusement device is already comfortable for its patrons.” PO Resp. 35 (citing Ex. 1008, 4:67–5:5). Petitioner's stated reasoning for the proposed

modification is supported by rational underpinnings. Runte's disclosure that its device is comfortable does not indicate that user comfort could not be further enhanced by additional legroom. Regarding Patent Owner's argument that LCD or plasma displays were more expensive than CRT displays (PO Resp. 34 (citing Ex. 2001 ¶ 49)), we are not persuaded that this indicates that replacing a CRT with an LCD would not have been obvious. *See In re Farrenkopf*, 713 F.2d 714, 718 (Fed. Cir. 1983) ("That a given combination would not be made by businessmen for economic reasons does not mean that persons skilled in the art would not make the combination because of some technological incompatibility. Only the latter fact would be relevant.").

Patent Owner additionally argues that Petitioner's proposed modification would require a complete redesign of Runte to an upright configuration and to have various other features of a wager-based gaming device. PO Resp. 35–36 (citing Ex. 2001 ¶ 51). This argument is based on Patent Owner's claim construction proposals that we have not adopted. Because we do not agree that claim 1 requires a cabinet that is upright, Runte would not need to be modified to a different orientation for the purpose of rendering the claimed subject matter obvious. Thus, we do not agree with Patent Owner that Petitioner's proposed modification would change Runte's principle of operation. *See id.* at 36.

As noted above, independent claim 8 shares many of the same features as claim 1, and adds that the gaming apparatus has a "reduced depth dimension." *See* Ex. 1001, 11:37; Tr. 24:13–16. We agree with Petitioner that the proposed modification of Runte would result in a "reduced depth dimension" because the flat panel would allow the depth of the housing to be

reduced such that its depth is less than its width. *See* Pet. 27. Patent Owner's arguments regarding claim 8 are the same as its arguments regarding claim 1, which we have discussed above. *See* PO Resp. 30–36.

With respect to dependent claims 3–7 and 10–14, Petitioner explains how the subject matter of these claims would have been obvious in view of Runte. *See* Pet. 26–27. Patent Owner does not rebut Petitioner's arguments and evidence regarding these claims, separate from its arguments for claims 1 and 8 from which they depend. *See* 37 C.F.R. §§ 42.23(a), 42.120(a). Upon reviewing the unchallenged contentions and supporting evidence in the Petition, we are persuaded that Petitioner has shown by a preponderance of the evidence that these dependent claims are obvious in view of Runte.

Thus, even subject to the secondary considerations discussed below, we conclude that Petitioner has shown by a preponderance of the evidence that each of claims 1, 3–8, and 10–14 would have been obvious in view of the disclosure of Runte.

3. *Claim 2*

We agree with Petitioner that Runte discloses the subject matter of dependent claim 2 insofar as it teaches “a conventional cathode ray tube 18 mounted on the interior of table top 16.” Pet. 25 (quoting Ex. 1008, 2:44–45). Patent Owner's argument that Runte's CRT is mounted on a table top rather than the door of an upright cabinet (PO Resp. 56) is unpersuasive because it is based on Patent Owner's proposed construction, which we have declined to adopt, that claim 1 requires a cabinet that is upright. Patent Owner also argues that Runte does not teach a substantially planar display and, therefore, does not teach a mount supporting the substantially planar display. *Id.* This argument is unpersuasive because, for the reasons

discussed above with respect to claim 1, we agree with Petitioner that it would have been obvious to modify Runte to include a substantially planar LCD or plasma video display. Patent Owner does not present any evidence or argument that Runte's CRT mount would have been inappropriate for mounting a LCD or plasma display.

Accordingly, even subject to the secondary considerations discussed below, we conclude that Petitioner has shown by a preponderance of the evidence that claim 2 would have been obvious in view of the disclosure of Runte.

4. Claim 9

With respect to dependent claim 9, Patent Owner argues that using a bracket to solidify a horizontal support is appropriate for mounting a display to the front door of an upright cabinet but not to a table top as in Runte. PO Resp. 58 (citing Ex. 2001 ¶ 54).

We agree with Petitioner that a bracket as recited in claim 9 would have been obvious based on Runte's disclosure. The testimony of Patent Owner's own declarant confirms this view. Mr. Lewin testifies that a skilled artisan

would understand that a CRT is too heavy to be mounted solely by supporting the lower edge of the display. Rather[,] mounting the CRT display of Runte requires equally supporting all four edges of the CRT in order to securely hold the CRT in place and to insure that it remains parallel to the tabletop.

PO Resp. 58–59 (quoting Ex. 2001 ¶ 54). Thus, when table top 16 is in the open position as shown in Figure 3, a skilled artisan would understand that the lower edge of the display rests on a horizontal supporting surface, in accordance with claim 9. We note that claim 9 does not indicate that the horizontal supporting surface must be the sole source of support for the

display. As such, the presence of supports on the other three edges of the display do not preclude the subject matter of claim 9 from being disclosed.

Even subject to the secondary considerations discussed below, we conclude that a preponderance of the evidence supports Petitioner's contention that claim 9 would have been obvious in view of Runte.

F. Obviousness over Smith

Petitioner contends that claims 1–14 are unpatentable under 35 U.S.C. § 103(a) over Smith. Pet. 34–38. Patent Owner opposes Petitioner's arguments. PO Resp. 36–46. As discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–8 and 10–14 are unpatentable over Smith, but has not done so with respect to claim 9.

1. Summary of Smith

Smith relates to a display mounted in a hinged front panel of a computer. Ex. 1009, 1:9–10. Smith explains that computers can be mounted in racks when space is at a premium and when there is a need to quickly repair or replace a unit upon failure. *Id.* at 1:22–24, 33–37. Certain components in a standard computer, including the display, require large amounts of space, making standard computers undesirable for rack mounted applications. *Id.* at 1:37–42. Smith teaches a front panel display that minimizes the need for rack space “while still providing an internal display and maximum access to computer controls.” *Id.* at 1:44–47. Figure 4 of Smith is shown below:

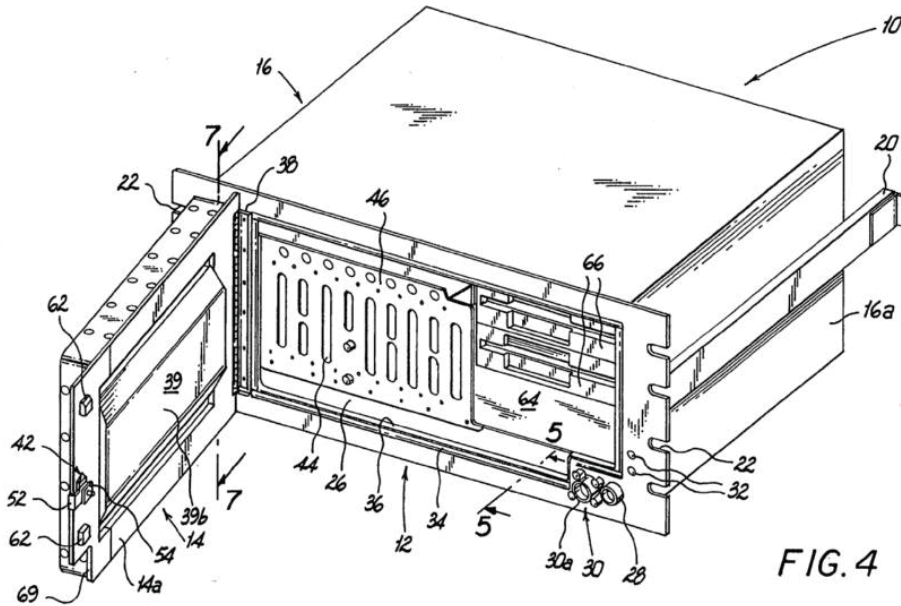


Figure 4 depicts computer front panel 10 with display portion 14 in the open position. *Id.* at 2:35–38, 53–55. Smith describes that “display portion 14 is pivotably secured to panel portion 12 via hinge 38 and includes display 39 and display window 40.” *Id.* at 4:39–41. Display 39 is a flat panel display, such as “a color thin film transistor active matrix LCD display.” *Id.* at 4:44–48.

2. Analysis of Claims 1, 3–8, and 10–14

Petitioner contends that Smith discloses a cabinet, door, and generally planar video display as recited in claim 1. Specifically, Petitioner asserts that Smith’s computer housing 16a corresponds to the claimed “cabinet” (Pet. 29–30 (citing Ex. 1009, Fig. 4, 3:48–50)), Smith’s front panel 10, which includes panel portion 12 and pivotable display portion 14, corresponds to the claimed “door” (*id.* at 30 (citing Ex. 1009, Fig. 1, 2:53–56)), and Smith’s display 39 corresponds to the claimed “generally planar video display” (*id.* at 31 (citing Ex. 1009, 4:44–48)). With respect to the claimed “gaming controller,” Petitioner asserts that Smith discloses a CPU with internal memory, circuitry to communicate with peripheral equipment

and user interface circuitry. *Id.* at 32 (citing Ex. 1009, 3:6–14, 3:27–31). Petitioner contends that it would have been obvious to use Smith’s computer as a gaming apparatus configured to present wager-based games. *Id.* at 35.

Patent Owner’s arguments that claim 1 would not have been obvious based on Smith’s disclosure are addressed below. With respect to the limitations in claim 1 that Patent Owner does not address, the evidence supports Petitioner’s contention that these limitations would have been obvious in view of Smith. *See also* 37 C.F.R. §§ 42.23(a), 42.120(a).

First, Patent Owner argues that Smith should not be considered in the obviousness analysis because it is non-analogous art. PO Resp. 37 (citing *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011)). In this regard, Petitioner contends that Smith is reasonably pertinent to the problem faced by the inventor of the ’814 patent because it is concerned with providing a display within a space-constrained enclosure while still permitting access for maintenance and repair. Pet. 36; Reply 11. Patent Owner counters that Smith is not in the same field of endeavor because it relates to front panel display construction for computers, not a gaming apparatus for a wager-based game. PO Resp. 37. Patent Owner further argues that Smith is not pertinent to the problem of the ’814 patent because Smith is concerned with minimizing vertical rack space, whereas the ’814 patent’s main objective is to reduce the depth of the cabinet. *Id.* at 38–39, 45–46.

We agree with Petitioner that Smith is reasonably pertinent to the problem with which the inventor was concerned. The Federal Circuit has explained that:

A reference is reasonably pertinent if . . . it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his

problem. If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection.

Scientific Plastic Prods., Inc. v. Biotage AB, 766 F.3d 1355, 1359 (Fed. Cir. 2014) (quoting *Innovention Toys, LLC v. MGA Entm't, Inc.*, 637F.3d 1314, 1321 (Fed. Cir. 2011)). When the problem an invention is designed to solve is not unique to the specific field of the invention, it is not improper to consider whether a person of ordinary skill would consult a different art in order to solve the problem. *See, e.g., In re Paulsen*, 30 F.3d 1475, 1481–82 (Fed. Cir. 1994) (affirming rejection of a laptop computer hinge as obvious over hinged cabinets, piano lids, etc., because the problems “were not unique to portable computers”).

Here, one of the problems facing the inventor of the '814 patent was reducing the size of electronic gaming machines. Ex. 1001, 1:56–2:6; 9:59–10:8. Another problem was facilitating maintenance and repair by providing access to components within the machine. Ex. 1001, 2:7–14, 10:51–56. Smith is concerned with these same problems, albeit in the context of rack mounted computer equipment rather than gaming machines. Ex. 1009, 1:33–50. In our view, Smith's problem is sufficiently similar to the problem facing the inventor of the '814 patent that Smith would have commended itself to the inventor's attention in considering his problem.

Next, Patent Owner argues that it would not have been obvious to use Smith's design for a gaming apparatus “configured to present one or more wager-based games,” as recited in claim 1. Petitioner's explanation for why it would have been obvious to do so is that such games are software applications stored and run by a CPU. Pet. 35 (citing Ex. 1004, Figs. 5–6,

8:15–25; Ex. 1005, Fig. 1, 1:66–2:4). According to Petitioner, Smith’s “front panel display computer possesses all of the necessary components for presenting a wager-based game and it would be well within the prior knowledge of one skilled in the art to modify Smith in this way.” *Id.*; Reply 12. In response, Patent Owner argues that Smith’s device is of the wrong size and shape for a gaming machine, is not capable of supporting necessary gaming peripherals, and is not in compliance with appropriate casino gaming regulatory requirements. PO Resp. 41 (citing Ex. 2001 ¶ 60). Relatedly, Patent Owner argues that Smith’s general computing device does not contain or suggest a “gaming controller.” *Id.* at 43. According to Patent Owner, gaming machines use custom CPUs, so a general CPU as in Smith does not teach this limitation. *Id.* at 43–44 (citing Ex. 2001 ¶ 66).

We agree with Petitioner that it would have been within the level of ordinary skill in the art to apply Smith’s design in a gaming machine that presents wager-based games, and to utilize a gaming controller in that device. Although wager-based games for a casino environment may typically have a different size and shape than Smith, and may include other peripherals such as a coin hopper, those features are not required by claim 1. Thus, in these respects, Patent Owner’s arguments are not commensurate with the scope of claim 1.

Regarding a gaming controller, Patent Owner’s arguments are unpersuasive for reasons similar to those discussed above with respect to Runte. The ’814 patent describes that video gaming devices were known in the prior art (Ex. 1001, 1:14–16, 27–28), and Petitioner has presented evidence that gaming controllers for video gaming devices were also known. *See* Ex. 1004, 8:16–25; Ex. 1005, 1:66–2:4. Patent Owner’s declarant

testifies that the “custom gaming CPU” disclosed in these references shows why it would not have been obvious to use a general purpose computing device for a wager-based game. Ex. 2001 ¶ 67. Yet the availability and use of such custom gaming controllers, which Mr. Lewin indicates were “the norm for IGT and other slot machine manufacturers in the early 2000’s” (*id.*), supports Petitioner’s contention that substituting such a known gaming controller into Smith’s general purpose computing device would have been a predictable use of prior art elements according to their established functions. *See KSR*, 550 U.S. at 417. Further, as discussed in greater detail in Section II.E.2., the cursory discussion of the controller in the ’814 patent supports the view that configuring a controller for wager-based gaming, or obtaining a controller that was already so configured, was within the knowledge of a person of ordinary skill in the art.

Patent Owner also argues that Smith does not disclose an upright cabinet. PO Resp. 42. As discussed in section II.A.3., we do not interpret the term “cabinet” to require a housing that is “upright.” We agree with Petitioner that Smith’s housing 16a is a “cabinet.” *See* Pet. 29–30.

Patent Owner further argues that Smith does not teach a “display mounted to an inner surface of a door,” as recited in claim 1. Specifically, Patent Owner asserts that Smith’s Figure 7 shows display 39 mounted within the door, not to the inner surface of the door. PO Resp. 44–45; Tr. 23:21–24, 46:10–19. Petitioner contends that Smith’s display 39 is mounted by screws 71 to an inside surface of door 68. Pet. 31; Reply 13; Tr. 6:23–7:13.

Although neither party proposed an express construction for the phrase “an inner surface of the door,” the crux of the disagreement is whether there can be only one inner surface of the door, as Patent Owner

contends, or if more than one inner surface is permissible, as Petitioner contends. *See* Tr. 46:14–16. The claim recites “said door having an inner surface and an outer surface and an opening therein.” As recently reiterated by our reviewing court, the Federal Circuit

has “repeatedly emphasized that an indefinite article ‘a’ or ‘an’ in patent parlance carries the meaning of ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising.’” The exceptions to this rule are “extremely limited: a patentee must ‘evince [] a clear intent’ to limit ‘a’ or ‘an’ to ‘one.’”

Convolve, Inc. v. Compaq Computer Corp., 812 F.3d 1313, 1321 (Fed. Cir. 2016) (internal citations omitted). Although “‘having’ does not convey the open-ended meaning as strongly as ‘comprising,’” the use of “having” as a transitional term can also make a claim open. *Crystal Semiconductor Corp. v. TriTech Microelectronics Int’l Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001) (citing *Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1573 (Fed. Cir. 1997)). Patent Owner does not direct us to, and we do not find, any indication in the Specification or the file history that the door must include only one inner surface. Thus, we agree with Petitioner that the claim does not preclude the presence of more than one inner surface of the door. We also agree with Petitioner that the surface to which Smith’s display 39 is mounted by screws 71 is an inner surface of the door, insofar as it is interior of the exterior surface of the door, which is the rightmost edge shown in Figure 7. *See* Ex. 1009, Fig. 7.

As noted above, independent claim 8 shares many of the same features as claim 1, and adds that the gaming apparatus has a “reduced depth dimension.” *See* Ex. 1001, 11:37; Tr. 24:13–16. Petitioner argues that it would have been obvious to apply Smith’s teachings of saving space by configuring the cabinet with a reduced depth dimension rather than a

reduced vertical dimension when implementing Smith's device as a gaming machine. *See* Pet. 36, 38. Patent Owner's arguments regarding claim 8 are the same as its arguments regarding claim 1, which we have discussed above. *See* PO Resp. 37–46. Petitioner's evidence and arguments are sufficient to support a finding that claim 8 would have been obvious in view of Smith.

With respect to dependent claims 3–7 and 10–14, Petitioner explains how the subject matter of these claims would have been obvious in view of Smith. *See* Pet. 34–38. Patent Owner does not rebut Petitioner's arguments and evidence regarding these claims, separate from its arguments for claims 1 and 8 from which they depend. *See* 37 C.F.R. §§ 42.23(a), 42.120(a). Upon reviewing the unchallenged contentions and supporting evidence in the Petition, we are persuaded that Petitioner presents sufficient evidence to support a finding that these dependent claims would have been obvious in view of Smith.

Thus, even subject to the secondary considerations discussed below, we conclude that Petitioner has shown by a preponderance of the evidence that each of claims 1, 3–8, and 10–14 would have been obvious in view of the disclosure of Smith.

3. *Claim 2*

Petitioner argues that Smith discloses a mount as recited in dependent claim 2. Pet. 33–34 (citing Ex. 1009, Figs. 4, 7, 6:16–22). Patent Owner disputes this assertion, arguing that Smith uses screws 71 to secure display 39 to window receiver 70, not a mount. PO Resp. 56. In the broad fashion in which Patent Owner has claimed this feature, we agree with Petitioner that the limitation is disclosed by the arrangement shown in Smith's Figure 7

for connecting display 39 to the door. Thus, even subject to the secondary considerations discussed below, we conclude that Petitioner has shown by a preponderance of the evidence that claim 2 would have been obvious in view of Smith.

4. Claim 9

Similar to its challenge to claim 9 based on Fraley and Okada, Petitioner's argument that claim 9 would have been obvious based on Smith relies on unsupported attorney argument that "adding a bracket to solidify a horizontal support is a well-known practice in cabinet making that would be obvious to one skilled in the art." Pet. 38. Lacking any citation to record evidence supporting this assertion, Petitioner has not shown by a preponderance of the evidence that claim 9 would have been obvious in view of Smith.

G. Secondary Considerations

Patent Owner argues that secondary considerations in the form of commercial success and licensing establish the nonobviousness of independent claims 1 and 8. PO Resp. 46–54.

Factual inquiries for an obviousness determination include secondary considerations based on evaluation and crediting of objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Notwithstanding what the teachings of the prior art would have suggested to a skilled artisan, the totality of the evidence submitted, including objective evidence of nonobviousness, may lead to a conclusion that the challenged claims would not have been obvious to one with ordinary skill in the art. *In re Piasecki*, 745 F.2d 1468, 1471–72 (Fed. Cir. 1984). Secondary considerations, when present, must always be considered as part of an

obviousness inquiry. *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1349 (Fed. Cir. 2012).

Secondary considerations may include any of the following: long-felt but unsolved need, failure of others, unexpected results, commercial success, copying, licensing, and praise. *See Graham*, 383 U.S. at 17–18; *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

To be accorded substantial weight, there must be a nexus between the merits of the claimed invention and the evidence of secondary considerations. *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995).

“Nexus” is a legally and factually sufficient connection between the objective evidence and the claimed invention, such that the objective evidence should be considered in determining nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988). The burden of showing that there is a nexus lies with the Patent Owner. *Id.*; *see In re Paulsen*, 30 F.3d 1475, 1482 (Fed. Cir. 1994).

1. Commercial Success

Patent Owner argues that the commercial success of its product embodying the '814 patent supports the nonobviousness of the claimed invention. PO Resp. 47–49. Patent Owner’s arguments regarding commercial success rely on the testimony of Frederick Cook, Jr., Patent Owner’s Chief Executive Officer. *See id.*; Ex. 2002 ¶ 1. Mr. Cook testifies that “from the time of their introduction, sales of the Patented Product have increased over 750% from a volume of 2000 machines per year to over

15,000 machines per year in 2015.”¹¹ Ex. 2002 ¶ 7. Mr. Cook further testifies that before the invention of the ’814 patent, gaming machines predominantly used CRT displays, but after the invention, the “Patented Product” quickly became Patent Owner’s largest selling product. *Id.* ¶¶ 5–6. Mr. Cook testifies that “[c]ustomers quickly began issuing purchase orders to Cole Kepro specifying gaming machines having cabinets with the configuration of the ’814 patent.” *Id.* ¶ 7. According to Mr. Cook, the commercial success of the Patented Product was due to the invention allowing for a smaller cabinet and easier servicing. *Id.* ¶ 4. Mr. Cook testifies that “[t]hese and other benefits have resulted in a current market share . . . of about 85% for gaming machines employing the invention of the ’814 patent.” *Id.*

We agree with Petitioner that Mr. Cook’s secondary considerations testimony is unsupported and fails to show the required nexus. *See* Reply 13. Patent Owner’s arguments concerning commercial success lack many important details that would enable evaluation of whether the product is an embodiment of the claimed invention, and whether any commercial success is due to the unique characteristics of the claimed invention. Patent Owner does not present evidence, such as photographs, engineering drawings, or product literature, showing the design or operation of the Patented Product. Indeed, Patent Owner does not even provide the name of the Patented Product. Also absent is any explanation of how the Patented Product includes every limitation of any claim in the ’814 patent. Without this

¹¹ By way of comparison to the overall market for electronic gaming machines, in his deposition, Mr. Cook estimated that between [REDACTED] machines are sold per year. Ex. 1013, 40:7–18.

underlying information, Patent Owner's assertion that the Patented Product embodies the claimed invention lacks evidentiary support.¹²

Relatedly, Patent Owner does not provide any corroborating evidence to support Mr. Cook's testimony that the commercial success of the Patented Product was due to the innovative feature of '814 patent. Mr. Cook testifies that after Patent Owner introduced the Patented Product in the fall of 1999, customers quickly began issuing purchase orders specifying gaming machines having the patented configuration and that customer demand was due to the benefits of a door mounted display. Ex. 2002 ¶¶ 6–8. Yet Mr. Cook testified that he did not become involved with Patent Owner or the gaming industry until 2011, more than ten years after the Patented Product was introduced. *See* Ex. 1013, 5:5–6, 6:12–15. Patent Owner did not submit any purchase orders, customer communications, or other documentation supporting Mr. Cook's testimony that the innovative feature was the reason for customer demand. The underlying basis for Mr. Cook's testimony regarding the nexus between commercial success and the patented invention is, therefore, unclear. We find that the lack of corroborating evidence diminishes the weight that should be accorded to Mr. Cook's testimony regarding nexus. *See In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“[T]he Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations.”).

¹² We note that Mr. Cook's declaration states that the display was mounted to the inner surface of the door, but does not address other limitations of claims 1 or 8, such as the requirement for a gaming controller connected to the display. *See* Ex. 2002 ¶ 6.

We also take into account that Mr. Cook is an interested witness, insofar as he is the CEO of Patent Owner. Ex. 2002 ¶ 1. Thus, Mr. Cook’s testimony regarding the importance and value of the invention is due less weight than a more objective source. *Cf. In re Cree*, No. 2015-1365, 2016 WL 1085247, at *6 (Fed. Cir. Mar. 21, 2016) (“While ‘praise in the industry for a patented invention, and specifically praise from a competitor tends to ‘indicate that the invention was not obvious,’” self-serving statements from researchers about their own work do not have the same reliability.”) (quoting *Power-One v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1352 (Fed. Cir. 2010)).

Moreover, Mr. Cook’s testimony that the Patented Product became more popular and displaced sales of cabinets for gaming machines with CRT displays (Ex. 2002 ¶ 6) is not probative that consumer demand was driven by the unique feature of the claimed invention—which, according to Mr. Cook’s testimony, is attaching a thin panel display to the inside of the door of a gaming cabinet. *See id.* ¶ 4; Ex. 1013, 7:20–22. Neither Mr. Cook’s testimony nor any other evidence adequately accounts for the possibility that the popularity of the Patented Product was due to its smaller size, which advantage is attributable to adoption of flat panel displays in lieu of CRT displays, not to the ’814 patent’s innovation of attaching the panel to the inside of the door. Mr. Cook testified that LCD flat panel displays are “the next generation” of CRT displays and thin flat-panel LCDs have become increasingly prevalent in the place of CRT displays. Ex. 1013, 8:13–20. An LCD panel occupies less space than a CRT panel of comparable display size. *Id.* at 13:8–10. Therefore, the use of an LCD panel in place of a CRT panel allows a gaming cabinet to have a smaller depth. *Id.* at 18:11–24; 19:19–23. This advantage of a smaller footprint is not attributable to the unique feature

of the invention, because a cabinet could be configured to house a flat panel without attaching the panel to the inside of the door. *Id.* at 18:3–6.

Patent Owner has worked on cabinets made by others in which the LCD is not attached to the door, and Mr. Cook was aware of one instance in which a customer requested Patent Owner to reconfigure a cabinet so that the panel was mounted inside the housing rather than attached to the inside of the door. *Id.* at 24:19–25:12. But as for cabinets with upright displays that Patent Owner itself designs, Mr. Cook testified that [REDACTED] *Id.* at 27:4–6; *see also id.* at 27:21–28:1. Because the evidence of record indicates that Patent Owner generally does not sell gaming cabinets for flat panel displays that do not include the display attached to the door, its customers are not selecting between a cabinet for a flat panel that has the unique feature of the '814 patent and one that does not have the unique feature. Accordingly, the significance of mounting the display on the door as a factor in driving sales of the Patented Product cannot be isolated from other factors, such as the size reduction made possible by a flat panel. *Cf. Apple Inc. v. Samsung Elecs. Co.*, No. 2015-1171, 2016 WL 761884, at *12 (Fed. Cir. Feb. 26, 2016) (holding that nonobviousness of slide-to-unlock feature was not demonstrated by studies in which customers preferred to purchase a device with a slide-to-unlock feature because “the evidence does not show what alternative device consumers were comparing that device to. For example, it is not clear whether the alternative device had any unlocking feature”).

Mr. Cook’s testimony regarding the 85% market share of gaming devices that employ the patented invention is based on the products of Patent

Owner's products in addition to the products of Patent Owner's licensees. Ex. 2002 ¶ 4; Ex. 1013, 38:24–40:1. Patent Owner's licensing of the '814 patent as secondary evidence of nonobviousness is discussed in the next section.

2. *Licensing*

Patent Owner argues that licensing of the '814 patent by others constitutes objective indicia of non-obviousness. PO Resp. 51–53. Specifically, Patent Owner asserts that the vast majority of the gaming machine market has taken a license to the '814 patent. *Id.* at 51 (citing Ex. 2002 ¶ 14). Patent Owner submitted nine exemplary licenses. Ex. 2002 ¶ 11, Exs. A–I.¹³ According to Patent Owner, the licenses arose out of recognition by competitors that they could not effectively compete without offering the feature of a door mounted flat panel display. PO Resp. 52 (citing Ex. 2002 ¶ 10). Patent Owner emphasizes that market leaders, such as IGT and Bally's, have taken a license. *Id.* at 52–53. And Patent Owner argues that “[e]ach of the licensing agreements involving the '814 Patent has a total value exceeding a reasonable estimate of potential litigation costs at the time of the agreement” and that the licenses were not entered into for the purpose of settling patent infringement litigation. *Id.* at 53 (citing Ex. 2002 ¶ 10).

¹³ Instead of filing each of the licenses as an individually numbered exhibit, Patent Owner filed the licenses as Exhibits A–I to the Cook Declaration, resulting in a 90-page Exhibit 2002 with nine sub-exhibits, each having its own separate pagination. In future cases, we suggest that the parties avoid agglomerating several different sub-exhibits together into a single exhibit because it hinders the panel's review and makes citation to specific portions of the documents unnecessarily awkward.

Petitioner counters that only one of the licenses that Patent Owner has submitted sets out a specific royalty for the '814 patent, and every other license covers at least one other patent without apportioning a royalty for the '814 patent. Reply 14 (citing Ex. 2002, Ex. C). In addition, Petitioner argues that there is no evidence of how much revenue was actually paid under any per-unit royalty license. *Id.* at 14. With reference to the license to Bally's, Petitioner cites the testimony of Mr. Cook that the licensee sells the gaming unit for ██████████ in comparison to which the royalty of ██████████ ██████████ *Id.* at 14 (citing Ex. 1013, 37:5–38:8). Further, Petitioner argues that, contrary to Patent Owner's assertion, at least some of the licenses Patent Owner submitted appear to have been entered into as part of a litigation settlement. *Id.* at 14–15 (citing Ex. 2002, Ex. D; Ex. 1013, 35:3–7).

Based on our review of the evidence and arguments, the large proportion of the relevant industry that has taken a license to the '814 patent weighs in Patent Owner's favor. However, the significance of the licensing evidence as a secondary consideration of nonobviousness is weakened by several factors. First, all of the licenses that Patent Owner submitted convey rights beyond the '814 patent. *See* Ex. 2002, Ex. A, § I.C.; *id.* at Ex. B, § 2.1; *id.* at Ex. C, § 1; *id.* at Ex. D, § 2; *id.* at Ex. E, § 2.1; *id.* at Ex. F, §§ 1.1, 2.1; *id.* at Ex. G, §§ 1.1–1.3, 2; *id.* at Ex. H, § 2.1; *id.* at Ex. I, § 1.2, Ex. A. Thus, the value of the licenses is not entirely attributable to the '814 patent. *See Cree*, 2016 WL 1085247, at *7. Further, as Petitioner points out, most of the licenses do not separately apportion the royalty rate for the '814 patent, making a determination of how much of the value of the license is attributable to the '814 patent somewhat speculative.

Moreover, the per-unit royalty amounts appear to be quite small compared to the value of the machine. Particularly compelling in this regard is Mr. Cook's deposition testimony concerning the royalty paid by Bally's, a market leader whose decision to take a license Patent Owner touted as a demonstration of the '814 patent's value (PO Resp. 52–53): [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 1013, 37:22–25. Similarly, the license to WMS Gaming, Inc. required a one-time payment of [REDACTED]. See Ex. 2002 ¶ 11. This lump-sum amount is difficult to square with Patent Owner's assertion that the total value of each of the licenses exceeded potential litigation costs. See PO Resp. 53.

The Federal Circuit has long recognized that licensing programs “are not infallible guides to patentability. They sometimes succeed because they are mutually beneficial to the licensed group or because of business judgments that it is cheaper to take licenses than to defend infringement suits, or for other reasons unrelated to the unobviousness of the licensed subject matter.” *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907–08 (Fed. Cir. 1985). More recent Federal Circuit decisions continue to “specifically require affirmative evidence of nexus where the evidence of commercial success presented is a license, because it is often ‘cheaper to take licenses than to defend infringement suits.’” *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317, 1324 (Fed. Cir. 2004); see also *ABT Systems, LLC v. Emerson Elec. Co.*, 797 F.3d 1350, 1361–62 (Fed. Cir. 2015) (“While licenses can sometimes tilt in favor of validity in close cases, they cannot by themselves overcome a convincing case of invalidity without

showing a clear nexus to the claimed invention.”). In this case, Patent Owner relies on the testimony of Mr. Cook to show a nexus. For the reasons discussed in the preceding section, we do not find the evidence of nexus to be persuasive.

3. *Summary*

We acknowledge that Patent Owner’s evidence of secondary considerations carries some weight in tending to show the nonobviousness of the ’814 patent. However, on balance, for the reasons discussed above, we determine that Petitioner’s evidence of obviousness outweighs the evidence of secondary considerations of nonobviousness submitted by Patent Owner. We find applicable here the Federal Circuit’s recent reminder that “‘weak secondary considerations generally do not overcome a strong prima facie case of obviousness.’ This is particularly true when an invention involves nothing more than ‘the predictable use of prior art elements according to their established functions.’” *Apple*, 2016 WL 761884, at *10 (internal citations omitted).

H. Patent Owner’s Motions to Seal

Patent Owner filed two motions to seal under 37 C.F.R. § 42.54. Paper 13; Paper 25. The first motion moves to seal a confidential version of Patent Owner Response and a confidential version of the Declaration of Frederick Cook, Jr., including exhibits thereto. Paper 13, 2. The first motion includes, as Exhibit A, a Joint Proposed Protective Order, which is identical to the default protective order in the Office Patent Trial Practice Guide except that it identifies this particular proceeding in the first sentence. *See id.* at 5, Ex. A. The information sought to be sealed constitutes financial terms of Patent Owner’s licensing agreements. *Id.* at 3–4. Patent Owner has

also filed redacted versions of the documents sought to be sealed. *See* Paper 12; Ex. 2002. Paper 25 moves to seal seventeen pages of Exhibit 1013, which is the transcript of Mr. Cook’s deposition. The portions sought to be sealed discuss the terms of the licensing agreements that are the subject of the first motion to seal. *Id.* A public, redacted version of the transcript has been filed. *See* Ex. 1013. Both motions to seal are unopposed.

We have reviewed the exhibits at issue and find that Patent Owner has made a sufficient showing that they contain confidential information. Accordingly, we enter the Stipulated Protective Order submitted as Exhibit A of Paper 13 and grant Patent Owner’s motions to seal (Paper 13; Paper 25).

This Decision discusses information that is the subject of the motions to seal. *See supra* Section II.G.2. Accordingly, we have entered this Decision in the Board’s PRPS system as “Board and Parties Only.” If either Party believes that any portion of the Decision should be maintained under seal, the Party must file, within five business days of the entry of this Decision, a motion to seal portions of this Decision. The motion must include a proposed redacted version of the Decision, accompanied by an explanation as to why good cause exists to maintain under seal each redacted word or phrase. In the absence of a motion to seal by the specified deadline, the full version of this Decision will become public.

III. CONCLUSION

We conclude that Petitioner has shown by a preponderance of the evidence that claims 1–8 and 10–14 would have been obvious in view of Fraley and Okada. However, Petitioner has not shown that claim 9 would have been obvious in view of Fraley and Okada.

We further conclude that Petitioner has shown by a preponderance of the evidence that claims 1–14 would have been obvious in view of Runte.

Finally, we conclude that Petitioner has shown by a preponderance of the evidence that claims 1–8 and 10–14 would have been obvious in view of Smith. However, Petitioner has not shown that claim 9 would have been obvious in view of Smith.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–14 of the '814 patent are held *unpatentable*;
FURTHER ORDERED that Patent Owner's Motion to Seal is
granted;

FURTHER ORDERED that the Board's default Protective Order appearing in the Office Trial Practice Guide, 77 Fed. Reg. 48,756, 48,769–71 (Aug. 14, 2012), is hereby *entered* in this proceeding; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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