

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DRAFTKINGS INC., A DELAWARE CORPORATION,
Petitioner,

v.

Diogenes Limited,
Patent Owner.

Case IPR2023-00266
U.S. Patent No. 10,970,969

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Petitioner DraftKings Inc., a Delaware Corporation (“Petitioner”) objects under the Federal Rules of Evidence to the admissibility of Exhibits 2016-2026¹ and 2028-2035, which Patent Owner Diogenes Limited (“PO”) filed with its Patent Owner Response (Paper No. 13) on September 29, 2023. 37 C.F.R. §42.64(b)(1).

Petitioner timely objects within the allowed five business days of service of Exhibits 2016-2026 and 2028-2035. Petitioner files and serves PO with these objections to provide notice that Petitioner may move to exclude one or more of Exhibits 2016-2026 and 2028-2035 under 37 C.F.R. § 42.64(c).

I. Exhibit 2016

FRE 702 and 703: Petitioner objects to Exhibit 2016, including at least ¶¶ 63 and 65-68 as improper expert testimony under FRE 702 and 703. The testimony is based on insufficient facts or data, is not the product of reliable principles and methods, and does not reliably apply the appropriate principles and methods to the facts of the case. For example, the testimony is based on cross-examination testimony from DraftKings’ expert, Mr. Crevelt, (Exhibit 2017) that is taken out of context, does not support the proposition it is relied upon to establish, and is inadmissible on its own independent bases as, for example, stemming from vague and confusing questioning.

¹ Patent Owner appears to skip-over exhibit number 2027 in labeling its exhibits.

II. Exhibit 2017

FRE 403: Petitioner objects to Exhibit 2017, including at least 13:20-14:5 as misleading or confusing, and its probative value, if any, is outweighed by prejudice. PO and its expert, Dr. Vancura, cite this portion of Mr. Crevelt's cross-examination deposition transcript as the sole basis for supporting their claim construction of the term "cash out" (see EX2016 ¶¶63-68; POR at 21-22) but the question Mr. Crevelt was responding to was impermissibly vague and ambiguous, lacked foundation, and was not properly drawn to elicit claim construction testimony.

III. Exhibit 2018

FRE 401, 402, 403: Petitioner objects to Exhibit 2018 as irrelevant, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. PO cites this exhibit in connection with the importance of online customer loyalty (see POR at p. 1) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2018 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

IV. Exhibit 2019

FRE 401, 402, 403: Petitioner objects to Exhibit 2019 as irrelevant, misleading, or confusing, and its probative value, if any, is outweighed by prejudice.

PO cites this exhibit in connection with the importance of online player retention (see POR at p. 2) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2019 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

V. Exhibit 2020

FRE 401, 402, 403: Petitioner objects to Exhibit 2020 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with the importance of online customer retention (see POR at p. 2) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2020 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

VI. Exhibit 2021

FRE 401, 402, 403: Petitioner objects to Exhibit 2021 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed

by prejudice. Patent Owner cites this exhibit in connection with casino loyalty programs (*see* POR at p. 3) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2021 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

VII. Exhibit 2022

FRE 401, 402, 403: Petitioner objects to Exhibit 2022 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with casino loyalty programs (*see* POR at p. 3-4) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2022 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

VIII. Exhibit 2023

FRE 401, 402, 403: Petitioner objects to Exhibit 2023 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed

by prejudice. Patent Owner cites this exhibit in connection with complimentary rewards offered by brick-and-mortar casinos (*see* POR at p. 4) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2023 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

IX. Exhibit 2024

FRE 401, 402, 403: Petitioner objects to Exhibit 2024 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with casino loyalty programs (*see* POR at p. 4) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2024 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

X. Exhibit 2025

FRE 401, 402, 403: Petitioner objects to Exhibit 2025 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with casino loyalty programs (*see* POR at p. 4) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2025 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XI. Exhibit 2026

FRE 401, 402, 403: Petitioner objects to Exhibit 2026 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with casino loyalty programs (*see* POR at p. 4) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2026 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XII. Exhibit 2028

FRE 401, 402, 403: Petitioner objects to Exhibit 2028 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with hedging sports bets (see POR at p. 6) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2028 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XIII. Exhibit 2029

FRE 401, 402, 403: Petitioner objects to Exhibit 2029 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in connection with hedging sports best (see POR at p. 6) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2029 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XIV. Exhibit 2030

FRE 401, 402, 403: Petitioner objects to Exhibit 2030 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Both Patent Owner and its expert do not cite this exhibit and PO has therefore failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2030 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XV. Exhibit 2031

FRE 401, 402, 403: Petitioner objects to Exhibit 2031 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in purportedly showing that interactivity between players is a key driver of engagement (*see* POR at p.7) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2031 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue

prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XVI. Exhibit 2032

FRE 401, 402, 403: Petitioner objects to Exhibit 2032 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Patent Owner cites this exhibit in purportedly showing that live scoring and statistics information is typically provided by third-party providers (*see* POR at p. 35) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2032 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XVII. Exhibit 2033

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2033 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XVIII. Exhibit 2034

FRE 401, 402, 403: Petitioner objects to Exhibit 2034 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed

by prejudice. Patent Owner cites this exhibit in connection with preventing churn rate online (see POR at p. 2) but has failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2034 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

XIX. Exhibit 2035

FRE 401, 402, 403: Petitioner objects to Exhibit 2035 as irrelevant, cumulative, misleading, or confusing, and its probative value, if any, is outweighed by prejudice. Both Patent Owner and its expert do not cite this exhibit and PO has therefore failed to establish relevance of the material to the alleged patentability of the Challenged Claims.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibit 2035 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated this exhibit, nor laid for the foundation for any hearsay exception.

Dated: October 6, 2023

Respectfully submitted,

/ Eliot D. Williams /
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CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 6th day of October 2023, that a true and correct copy of the foregoing **PETITIONER’S OBJECTIONS TO PATENT OWNER’S EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)** was served in its entirety on the following parties via electronic mail:

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