

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC.,

Petitioner

v.

DIOGENES LIMITED,

Patent Owner

IPR2023-00266

U.S. Patent No. 10,970,969

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

Table of Contents

I. Introduction.....6

II. Schugar and DeWaal are not “Analogous Prior Art” 7

**III. Petitioner’s Proposed Combination of Schugar and DeWaal is the Result
of Impermissible Hindsight.....11**

IV. Conclusion 12

Patent Owner's Updated Exhibit List

Exhibit No.	Description
EX-2001	Vancura Declaration
EX-2002	U.S. Patent 7,073,793 (“Vancura I”)
EX-2003	U.S. Patent 7,284,756 (“Vancura II”)
EX-2004	U.S. Patent 7,172,505 (“Vancura III”)
EX-2005	U.S. Patent 6,918,834 (“Vancura IV”)
EX-2006	U.S. Patent 6,645,071 (“Vancura V”)
EX-2007	U.S. Patent 6,033,307 (“Vancura VI”)
EX-2008	U.S. Patent 8,795,055 (“Vancura VII”)
EX-2009	U.S. Patent 8,496,524 (“Vancura VIII”)
EX-2010	Letter from J. Lynn to B. Biggs re Sotera Stipulation (Redacted)
EX-2011	U.S. Patent 6,726,562 (“Vancura IX”)
EX-2012	U.S. Patent 6,173,955 (“Vancura X”)
EX-2013	CV of Olaf Vancura, Ph. D.
EX-2014	List of Relevant Patents with Olaf Vancura as Inventor/Co-Inventor
EX-2015	File History for Schugar
EX-2016	Second Declaration of Olaf Vancura
EX-2017	Deposition Transcript of Dwight E. Crevelt
EX-2018	How to Address Customer Loyalty in Online Betting Using Personalization, https://www.coveo.com/blog/address-customer-loyalty-with-personalization-in-online-betting/
EX-2019	Online Sportsbook: A shift in player retention? https://gamingamerica.com/magazine/7296/online-sportsbook-a-shift-inplayer-retention

EX-2020	How to increase customer retention in your online casino or sports betting site? https://medium.com/@thisisstevencruise/how-to-increase-customer-retention-in-your-online-casino-or-sports-betting-sitef1d61fdf2ce8
EX-2021	The Effectiveness of Casino Loyalty Programs – Their Influence on Satisfaction, Emotional Connections, Loyalty and Price Sensitivity https://repository.usfca.edu/cgi/viewcontent.cgi?article=1004&context=m1
EX-2022	Leveraging Loyalty Programs for Success in the Casino Space https://www.laneterralever.com/blog/casino-marketing-loyaltyprograms#gref
EX-2023	An Exploratory Study of Casino Study of Casino Customer Loyalty Programs https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=2097&context=thesesdissertations
EX-2024	Loyalty programs have existed for decades, but they're starting to look different https://www.reviewjournal.com/business/casinosgaming/loyalty-programs-have-existed-for-decades-but-theyre-starting-to-look-different-2595211/
EX-2025	BENEFITS OF AND CONSIDERATIONS IN IMPLEMENTING A CASINO LOYALTY PROGRAM FOR FOODSERVICE AND BEYOND https://tacitcorporation.com/benefits-of-and-considerations-inimplementing-a-casino-loyalty-program-for-foodservice-andbeyond/
EX-2026	Casino Players Club Programs Evolving into True Loyalty Programs https://loyalty360.org/content-gallery/dailynews/casino-players-club-programs-evolving-into-true-loyaltyprograms
EX-2027	Reserved
EX-2028	How to Hedge A Sports Bet https://www.thelines.com/betting/hedge/
EX-2029	Betting Terminology https://sportsbook.draftkings.com/help/glossary/bettingterminology
EX-2030	Guide to Sportsbook Cash Out Bets https://sportshandle.com/cashout/#:~:text=A%20Cash%20Out%2C%20otherwise%20known,w

	in%20%E2%80%94%20before%20the%20competition%20ends.
EX-2031	User retention strategies for better mobile betting app engagement https://crustlab.com/blog/user-retention-staregies-better-mobilebetting-app-engagement/
EX-2032	How does DraftKings treat late stat changes and live scoring delays? (US) https://help.draftkings.com/hc/enus/articles/4405224006931-How-does-DraftKings-treat-late-statchanges-and-live-scoring-delays-US
EX-2033	https://en.wikipedia.org/wiki/Problem_of_points
EX-2034	Prevent Churn in Online Sports, https://www.datarobot.com/usecases/prevent-churn-in-online-sports/
EX-2035	Beginner’s Guide to Hedging: Definition and Example of Hedges in Finance https://www.investopedia.com/trading/hedgingbeginners-guide/
EX-2036	Decision Denying Institution of <i>Inter Partes</i> Review in IPR2023-00265 (Patent No. 9,704,338), June 22, 2023, Paper 9
EX-2037	Petition in IPR2023-00265 (Patent No. 9,704,338), December 1, 2022, Paper 2

I. Introduction

Petitioner's argument in this proceeding requires the Board to accept the existence of sufficient motivation to combine Schugar and DeWaal. Petitioner does not contend that either is anticipatory prior art.

Petitioner's initial argument is that a POSITA would be directed by Schugar to look to "any of the existing technologies that's [*sic*] out there" or "any type of gaming machine." EX-2017, 96:19-97:5; EX-1027, 1:4-55.

Petitioner then contends that a POSITA, being told that they can look to "any" technology, would have looked to DeWaal specifically. Petitioner says this is because Schugar and DeWaal are "analogous prior art." Petitioner's entire argument as to why these references are "analogous" is that they are both directed to cashing out a wager:

The references relied upon in the following ground—Schugar and DeWaal—are analogous art **because both are directed to cashing out a wager** before the completion of a multi-leg wagering event using a networked electronic betting system. See *supra* §VIII.A, §VIII.B. **Schugar teaches a cash-out process** and electronic betting system to wager on a series of game events, such as a four-quarter football game. See EX[1005] ¶[0126]. **DeWaal teaches a cash-out process** and electronic betting system that are used to wager on multi-round bonus events, such as a "multi-round selection game [that] includes four rounds and ten outcomes per round." EX[1004] ¶[0119]. This might be the case, for example, in a four-reel slot machine. *Id.* ¶[0069]. The four-

round bonus event taught by DeWaal naturally aligns with the four-quarter sporting event taught by Schugar, where each round of the bonus event corresponds to each quarter of the sporting event and each of those four legs has at least two outcomes, a correct or incorrect selection at the end of each leg. EX[1007] ¶82.

Petition, pp. 20-21 (emphases added); *See also* Petitioner’s Reply, p. 17.

But *the Board has already rejected this argument*. It found that DeWaal does not teach “cashing out a wager.” *See* EX-2036, Decision Denying Institution, IPR2023-00265, Paper 9.

Petitioner’s residual arguments as to why a POSITA would combine Schugar and DeWaal take the “analogy” (*i.e.*, the foundational motivation to combine them) for granted. Petitioner argues that a POSITA would look to DeWaal’s central server because Schugar directs them to “hardware, software and configurations that were known in the prior art.” Petitioner’s Reply, p. 17. This is impermissible hindsight. Petitioner’s supposed POSITA cherry-picks DeWaal with the destination in mind: Diogenes’s U.S. Patent 10,970,969 (the “’969 patent”).

II. Schugar and DeWaal are not “Analogous Prior Art”

The Board has already determined that DeWaal is not directed to “cashing out a wager.” Petitioner argued in a related proceeding (IPR2023-00265) that DeWaal was directed to “cashing out a wager before the completion of a multi-leg wagering event.” EX-2037 – DK Petition, IPR2023-00265, Paper 2, p. 30 (original page 21).

The Board was not persuaded by this contention, finding that what Petitioner alleged was “cash out” in DeWaal—*i.e.*, the ability to exit a bonus game after a given round, as described in more detail below—was not connected to the claimed “wager”:

Petitioner makes brief reference to “a cash out offer” that a player may accept during play of the bonus game. To the extent that Petitioner intends to map DeWaal’s offer of an additional award to advancing players to quit the bonus event to the recited wager, we are not persuaded by such a mapping.

EX-2036 – Decision Denying Institution, IPR2023-00265, Paper 9, p. 17 (internal citations omitted).

Petitioner’s argument in this proceeding that DeWaal is directed to “cashing out a wager” is similarly without merit. Rather, DeWaal’s bonus game, at best, teaches a series of sequential “rounds” wherein each bettor will have won or lost after each “round.”

All that DeWaal teaches is that a winning bettor in its bonus game can decide whether to leave with their winnings or risk them by playing another round:

YOU HAVE WON \$10 FOR ROUND 1! YOU MAY QUIT
THE BONUS EVENT AND KEEP THE \$10 OR RISK THE \$10 AND
PLAY ANOTHER ROUND!

See Petition, Paper 1, p. 20; EX-1004, ¶[0146].

Thus, in DeWaal there is no ongoing event or wager in progress. Instead, critical to the purported “cash out” allegedly disclosed in DeWaal, the bettor ***has already won*** before being “offered” anything. The “offer” is not really even an offer at all; it is an invitation to start the process again (and win or lose another time with higher stakes). The bettor is just choosing whether to play another round, *e.g.* “doubling down.” This is how gambling has existed since the beginning of time.

This is evident from the passage from DeWaal cited in the Board’s Institution Decision: “[p]layers advancing to a second or subsequent leg of the multi-round event [being] presented with an additional award in exchange for quitting their play in the event.” *See* Institution Decision, p. 15; EX-1004, ¶¶[0141-0142]. The paragraphs of DeWaal to which the Board refers describes that the players “quitting” DeWaal’s bonus game have ***already won***. The player is simply choosing to leave the bonus game with “additional” (*i.e.*, bonus) funds they have won by playing the bonus event. The player’s other option is to proceed to another bonus event and increase the stakes. *Id.*; *see also* EX-1004, Figure 7.

Figure 7 of DeWaal—which relates to paragraphs 141 and 142 of DeWaal, to which the Board refers—makes clear that players “presented with an additional award in exchange for quitting their play in the event” have ***already won*** that additional award. *See* EX-1004, Figure 7 (highlighting added):

FIG. 7

TOTAL AWARD PER ROUND: \$10,000

ROUND	ELIGIBLE PLAYERS	ADVANCING PLAYERS	AWARD WON PER ADVANCING PLAYER	CONTINUING PLAYERS	INELIGIBLE PLAYERS	TOTAL ACCUMULATED AWARD
1	800	400	\$25	300	400	\$25
2	300	200	\$50	100	100	\$75
3	100	50	\$200	20	50	\$275
4	20	5	\$2,000	2	15	\$2,245
5	2	1	\$10,000	0	1	\$12,275

Total Accumulated Award Provided to the Player Who Advanced in Round 5.

The award won is called “additional” because DeWaal is about a bonus game. Awards won in the bonus game are “additional” to any award on the initial wager. EX-1004, ¶[0004] (“The secondary or bonus games usually provide an **additional award** to the player”) (emphasis added). Thus, the player is not “cashing out” (*i.e.*, selling his or her ticket in response to a buy-out offer made prior to the completion of a wagering event); he is simply taking the full amount he has already won and declining the invitation to play again and lose everything.

The sole basis upon which Petitioner asserts a POSITA would be motivated to combine Schugar with DeWaal—*i.e.* that their teachings are “analogous”—is meritless. A POSITA reading Schugar would not be directed to DeWaal.

III. Petitioner's Proposed Combination of Schugar and DeWaal is the Result of Impermissible Hindsight

As noted above, Petitioner's central argument in the Petition was that Schugar and DeWaal are “*analogous art*” because both are directed to cashing out a wager before the completion of a multi-leg wagering event using a networked electronic betting system.” Petition, p. 20 (emphasis added).

However, in its Reply, Petitioner argues that a POSITA reading Schugar would look to DeWaal for “implementation details,” namely “the allocation of control/responsibility for executing the methods among the server and the client,” which Petitioner concedes are absent from Schugar. Petitioner's Reply, p. 13.

Specifically, Petitioner says, “DeWaal teaches a central server that performs the function of providing/initiating the wagering event.” Petition, p. 14. Critically, that is a wagering event that precedes and is entirely separate from the non-cash out bonus game taught by DeWaal.

However, because Schugar and DeWaal are *not* analogous, as set out above, the foundation for Petitioner's original contention as to a POSITA's motivation to combine evaporates. A key question remains: what would have led a POSITA from Schugar to DeWaal? Petitioner has not answered this question and its position regarding motivation to combine should therefore be rejected.

Petitioner's decision to cherry-pick the central server of DeWaal and claim it is the missing link between Schugar and the invention of the '969 Patent is a classic example of impermissible hindsight bias. As the Federal Circuit has explained:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious.[] This court has previously stated that "one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fritch, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citations omitted). But this is precisely what Petitioner has done here.

IV. Conclusion

Petitioner fails to meet its burden to show a POSITA would combine Schugar and DeWaal. Foundational to Petitioner's argument is the supposed "analogy" between Schugar and DeWaal, both purportedly directed to "cashing out a wager". But, even if Schugar were directed to "cashing out a wager" (which it is not), the Board has already rejected Petitioner's argument that DeWaal is. Petitioner's arguments about a POSITA's reasons for combining Schugar and DeWaal therefore fall apart, as do Petitioner's residual arguments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that on February 21, 2024, the foregoing Patent Owner's Sur-Reply to Petitioner's Reply was served via email on the following counsel of record for Petitioner.

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CERTIFICATE OF TYPE-VOLUME

Pursuant to 37 C.F.R. § 42.24(d), the undersigned counsel certifies that the foregoing Patent Owner's Sur-Reply complies with the type-volume limitations set forth in the regulations. The word count, according to the word-processing system used to prepare this paper, is 1450 words, excluding the portions of this paper exempted by 37 C.F.R. § 42.24(c).

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