

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DK CROWN HOLDINGS INC. (FORMERLY DRAFTKINGS, INC.),  
A DELAWARE CORPORATION,  
PETITIONER,

v.

DIOGENES LIMITED,  
Patent Owner.

Case IPR2023-00266  
U.S. Patent No. 10,970,969  
Attorney Docket No.: 087764.0109

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

Petitioner DK Crown Holdings Inc. (formerly DraftKings Inc.), a Delaware Corporation (“Petitioner”) objects under the Code of Federal Regulations and Federal Rules of Evidence to the admissibility of Exhibits 2036-2037, which Patent Owner Diogenes Limited (“PO”) filed with its Patent Owner’s Sur-Reply to Petitioner’s Reply (Paper No. 24) on February 21, 2024. 37 C.F.R. §42.64(b)(1).

Petitioner timely objects within the allowed five business days of service of Exhibits 2036-2037. Petitioner files and serves PO with these objections to provide notice that Petitioner may move to exclude one or more of Exhibits 2036-2037 under 37 C.F.R. § 42.64(c).

**I. Exhibits 2036 and 2037**

37 CFR § 42.23(b): Petitioner objects to Exhibits 2036 and 2037 as “new evidence” improperly cited by PO for the first time in its Sur-Reply. 37 C.F.R. § 42.23(b). These new exhibits include an Institution Decision and an IPR Petition from a related proceeding and are therefore properly excluded because they accompany PO’s Sur-Reply but are not “deposition transcripts of the cross-examination of any reply witness.” *See id.*

FRE 401, 402, 403: Petitioner objects to Exhibits 2036 and 2037 as irrelevant, misleading, or confusing, and their probative value, if any, is outweighed by prejudice. Patent Owner cites these exhibits in connection with its improperly raised new Sur-Reply argument that DeWaal and Schugar are not analogous prior art

references because a prior Board panel allegedly “found that DeWaal does not teach ‘cashing out a wager.’” Paper 24, 7. But the Board panel’s decision as to a different application of DeWaal to different claim limitations of a different patent and under a different construction of the term “wager” is not relevant to the limitations at issue here, is potentially misleading and confusing, and any potentially probative value is outweighed by prejudice to Petitioner given Patent Owner’s failure to raise this argument before its Sur-Reply.

Respectfully submitted,  
BAKER BOTTS L.L.P.

/ Eliot D. Williams /  
Eliot D. Williams (Reg. No. 50,822)  
Lead Back-Up Counsel for Petitioner

February 28, 2024

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on this 28th day of February 2024, 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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