

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC.,
Petitioner,

v.

DIOGENES LIMITED,
Patent Owner.

IPR2023-00267
Patent 10,997,822 B2

Before WILLIAM V. SAINDON, ROBERT L. KINDER, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

On December 2, 2022, DK Crown Holdings Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1, 7, 15, and 21 (the “Challenged Claims”) of U.S. Patent No. 10,997,822 B2 (Ex. 1001, “the ’822 patent”). Paper 1 (“Petition” or “Pet.”). Diogenes Limited (“Patent Owner”) did not file a Preliminary Response.

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314(b) and 37 C.F.R. § 42.4(a) (2020). An *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

For the reasons provided below, we determine Petitioner has satisfied the threshold requirement set forth in 35 U.S.C. § 314(a). Because Petitioner has demonstrated a reasonable likelihood that at least one claim of the ’822 patent is unpatentable, we institute an *inter partes* review of all challenged claims based on all grounds raised in the Petition. 37 C.F.R. § 42.108(a).

I. BACKGROUND

A. *Related Cases and Proceedings*

Petitioner indicates that the ’822 patent has been asserted in *Diogenes Limited v. DraftKings Inc.*, Case No. 1-21-cv-01695 (D. Del.). Pet. 3–4. Patent Owner identifies the following as related proceedings before the Patent Trial and Appeal Board: IPR2023-00261 (U.S. Pat. No. 8,721,439); IPR2023-00262 (U.S. Pat. No. 9,117,341); IPR2023-00263 (U.S. Pat.

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No. 9,275,516); IPR2023-00264 (U.S. Pat. No. 9,424,716); IPR2023-00265 (U.S. Pat. No. 9,704,338); IPR2023-00266 (U.S. Pat. No. 10,970,969); IPR2023-00268 (U.S. Pat. No. 11,200,779). Paper 3, 2 (Patent Owner's Mandatory Notices).

B. Real Parties in Interest

Petitioner identifies itself (DK Crown Holdings Inc.) as a real party in interest. Pet. 3. Petitioner also identifies that it “is a wholly-owned subsidiary of DraftKings Inc.” *Id.* Petitioner identifies Crown Gaming Inc. as a wholly-owned subsidiary of DraftKings Inc., and further identifies SBTech (Global) Limited as a wholly-owned subsidiary of DK Crown Holdings Inc. *Id.*

Patent Owner identifies itself (Diogenes Limited) and Colossus (IOM) Limited as real parties in interest. Paper 3, 2.

C. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability (Pet. 6):

Claims Challenged	35 U.S.C. §	Reference(s)/Basis
1, 7, 15, 21	102	Scott ¹
7, 15, 21	103	Scott and Schugar ²
1, 7, 15, 21	102	DeWaal ³
1, 7, 15, 21	103	DeWaal and general knowledge of a POSITA
7, 15, 21	103	DeWaal and Schugar

Petitioner supports its challenges with a Declaration of Dwight Crevelt (Ex. 1007).

D. The '822 patent

The '822 patent is titled, “Wagering Apparatus, Methods and Systems.” Ex. 1001, code (54). The U.S. application resulting in the '822 patent was filed on December 2, 2020. *Id.* at code (22). The '822 patent identifies multiple related U.S. applications, the earliest of which was filed on September 6, 2012. *Id.* at code (63).

The '822 patent “provides a unique betting product where multiple players or groups of players may construct and contribute to (‘crowdfund’) one or more tickets and behave as a single ‘player.’” *Id.* at code (57). The

¹ U.S. Patent Application Publication No. 2012/0309503 A1, published Dec. 6, 2012 (Ex. 1006).

² U.S. Patent Application Publication No. 2008/0311981 A1, published Dec. 18, 2008 (Ex. 1005).

³ U.S. Patent Application Publication No. 2008/0113765 A1, published May 15, 2008 (Ex. 1004).

Specification provides multiple embodiments outlining various components and operations of a wagering system. *See id. at 2:6–4:31*. The wager system may include “one or more wagering input devices that allow for the placement of wagers on a wagering event.” *Id. at 2:15–17*. The one or more wagering input devices correspond to the one or more players participating in the wagering event. *Id. at 2:55–64*. The wagering input devices are “configured to communicate with” a system controller. *Id. at 2:17–19*.

The system controller can “initiate [a] wagering event for one or more players . . . receive a wager via the one or more wagering input devices . . . and determine if any of the one or more players have won.” *Id. at 2:20–27*. The system controller includes “a processor and a memory having instructions stored thereon, which, when executed by the processor performs an operation of conducting a wagering event.” *Id. at 3:1–4*. The instructions included in the memory and executed by the processor include “initiating a conditional wager” and “broadcasting the conditional wager” in a wagering event where either a single player or a set of players may contribute to the conditional wager. *Id. at 3:4–17*.

Figure 5, reproduced below, illustrates exemplary process steps carried out by the wagering system. *Id.* at 24:17–46.

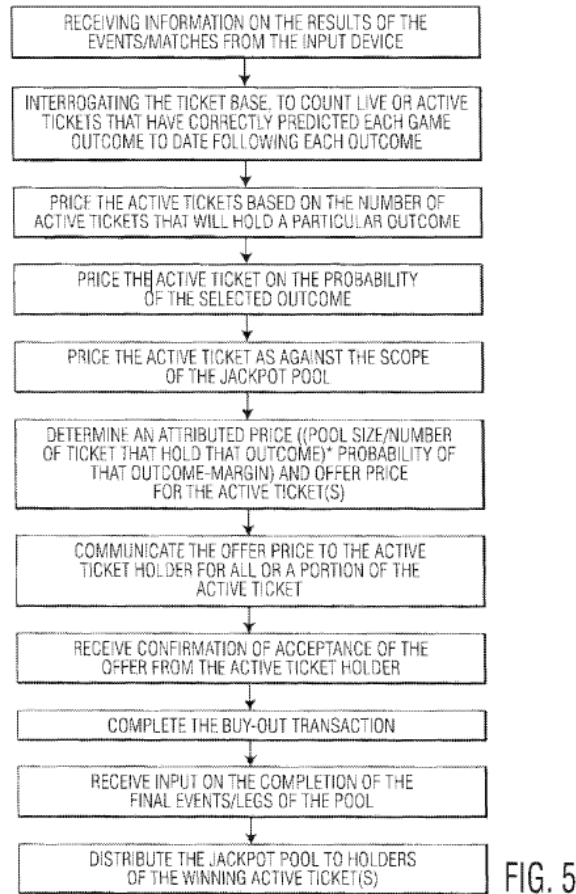


Figure 5 (above) is an exemplary flow chart of the logic of the software subroutine program of the central server system. *Id.* at 4:46–47.

As described, the first step includes “receiving information on the results of the events/matches” from the input device, which is followed by “interrogating the ticket base, to count live or active tickets that have correctly predicted each game outcome to date following each outcome.” Ex. 1006, 24:17–46. The system then “price[s] the active tickets based on the number of active tickets that will hold a particular outcome; . . . the

active ticket on the probability of the selected outcome; . . . [and] the active ticket as against the scope of the Jackpot Pool.” *Id.* Thereafter, the system “determine[s] an attributed price . . . and offer price for the active ticket(s).” *Id.* The system then “communicate[s] the offer price to the active ticket holder for all or a portion of the active ticket” and “receives confirmation of acceptance of the offer from the active ticket holder.” *Id.* Once the acceptance of the offer is received, the system “complete[s] the buy-out transaction; . . . receive[s] input on the completion of the final events/legs of the pool; . . . [and] distribute[s] the Jackpot Pool to holders of the winning active ticket(s).” *Id.* The Specification notes that “the concept and system disclosed herein can be adapted for other multi-outcome wagering scenarios and may include any desired manner of wagering, including but not limited to those that accommodate accumulator or parlay wagering.” *Id.* at 24:47–51.

E. Challenged Claims

Petitioner challenges claims 1, 7, 15, and 21 of the ’822 patent. Pet. 6. Claim 1 is illustrative of the claimed subject matter and is reproduced below with Petitioner’s bracketing added for reference (*see* Pet. 4–5):

- 1[a] A system for processing a payment for a wager in connection with a wagering event, the system comprising:
 - [b] a communications interface;
 - [c] a processor operatively coupled to the communications interface; and
 - [d] a memory having programming instructions stored thereon, which, when executed by the processor, performs one or more operations, comprising:

[e] receiving, over the communications interface, a designated amount for a value of the wager on the wagering event from a first input device,
[f] receiving, over the communications interface, a cash out offer from a second input device,
[g] identifying an acceptance of the cash out offer from the first input device prior to the end of the wagering event,
[h] processing the cash out offer, and
[i] transmitting, over the communications interface, a value of the cash out offer to the first input device.

Ex. 1001, 50:52–51:3 (bracketed identifiers a–i added by Petitioner for reference, *see* Pet. 4–5).

II. ANALYSIS

A. Legal Standards

“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)); *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

“Under 35 U.S.C. § 102 a claim is anticipated ‘if each and every limitation is found either expressly or inherently in a single prior art reference.’” *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1274 (Fed.

Cir. 2010) (quoting *Celeritas Techs. Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)). “Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)).

B. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art “would have a bachelor’s degree in electrical engineering, computer science, or a similar field; and at least two years of experience in the wager based gaming industry. A person with less education but more relevant practical experience may also meet this standard.” Pet. 10 (internal citations removed).

Based on the record before us, we adopt Petitioner’s definition for purposes of this Decision.

C. Claim Construction

Petitioner states that “[n]o terms of the ’822 Patent require construction beyond their plain and ordinary meaning.” Pet. 10.

For purposes of our Decision, which examines claim 1 below, we determine that it is not necessary to construe any particular term.

Claim 15 is also challenged but not analyzed below. The parties have made arguments either in this proceeding or related proceedings suggesting that it may be necessary to determine the scope of certain terms in claim 15. Claim 15 requires “causing the central server system to receive one or more

of a buy-out offer comprising the value of the wager or a partial buy-out offer comprising a portion the value of the wager.” Ex. 1001, 52:26–29. Petitioner contends that if this language is “construed in the disjunctive such that the claim is satisfied by either ‘a buy-out offer’ *or* ‘a partial buy-out offer,’ Scott discloses both.” Pet. 32. If, however, the language is “written in the conjunctive (*i.e.*, that this limitation requires both a “buy-out offer” *and* a “partial buy-out offer”),” claim 15 would have been obvious based on Scott and Schugar, according to Petitioner. *Id.* at 33.

We encourage further briefing on the construction of these terms during trial. The parties should also bring to the Board’s attention any arguments or decisions in related proceedings or the related district court litigation that impact the claim interpretation of any claim term in the ’822 patent. *See* 37 C.F.R. § 42.100(b) (“Any prior claim construction determination concerning a term of the claim in a civil action, or a proceeding before the International Trade Commission, that is timely made of record in the *inter partes* review proceeding will be considered.”).

D. Asserted Anticipation by Scott

Petitioner presents undisputed contentions that claims 1, 7, 15, and 21 are anticipated by Scott. Pet. 19–33. We focus our analysis on independent claim 1.

1. Scott

Scott is titled, “Multiplayer System Providing Current Cash Value for Wagering Game Indicia.” Ex. 1006, code (54). Scott was published on

December 6, 2012, from an application filed on March 14, 2012. *Id.* at codes (43), (22).

Scott is directed to a “multiplayer gaming system for wagering games where nonfinal sets of indicia may be associated with an offer price for sale to other players.” *Id.* at code (57). The gaming system generates a “marketplace for sale of non-final sets of indicia” by allowing “non-final sets of wagering game indicia to be associated with an offer price for sale by one player to another player.” *Id.* ¶ 9. Scott’s system “may comprise a plurality of gaming machines configured to present one or more wagering games and at least one server.” *Id.* ¶ 10. The “server may have one or more processors, memory devices, and communication devices.” *Id.* ¶ 11. The server may “receive an offer price acceptance from one or more second players via any gaming machine in the subset of the plurality of gaming machines.” *Id.* ¶ 12. Moreover, the server can “transfer payment from the second player’s gaming machine to the first player after receipt of the offer acceptance.” *Id.* ¶ 14.

2. *Independent Claim 1*

Petitioner contends that claim 1 is anticipated by Scott. Pet. 19–30. We are persuaded by Petitioner’s undisputed contentions on the current record that Petitioner demonstrates a reasonable likelihood that claim 1 is unpatentable.

a) Element 1[a]

On this record, the cited evidence supports Petitioner’s undisputed contention that Scott satisfies the subject matter of the preamble.⁴ Element 1[a] recites “a system for processing a payment for a wager in connection with a wagering event.” Ex. 1001, 52:52–53. In addressing this limitation, Petitioner contends that Scott’s multiplayer system “facilitates payments between players exchanging ‘non-final sets of indicia’ in a wagering event.” Pet. 19 (quoting Ex. 1006 ¶ 116). According to Petitioner, “Scott explains, a first player may ‘wager monetary credits’ and play such games, thereby making them ‘*wagering event[s]*.’” Pet. 20 (alteration in original) (quoting Ex. 1006 ¶¶ 49–50). Petitioner asserts that, based on Scott’s disclosure, one of ordinary skill in the art “would understand Scott’s ‘multiplayer system’ is for ‘*processing a payment*’ made by a second player for a first player’s wager (including their nonfinal set of game indicia) in the wagering game, i.e., wagering event,” and “that ‘transfer[ring] payment,’ such as ‘tokens, credits, funds or other consideration used to purchase the non-final set of [indicia],’ corresponds to ‘*processing payment for a wager in connection with a wagering event*.’” Pet. 20 (first alteration in original) (quoting Ex 1007 ¶¶ 92–93).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

⁴ Whether the preamble is limiting need not be resolved at this stage of the proceeding, because Petitioner shows sufficiently for purposes of institution that the recitation in the preamble is satisfied by the prior art.

b) Element 1[b]

Element 1[b] recites “a communications interface.” Ex. 1001, 52:54. Petitioner contends that Scott meets this limitation because “Scott discloses that ‘[t]he server may have one or more . . . *communication devices*’ and ‘may utilize various communication mediums in operation’ in order to ‘communicat[e] with one or more gaming machines.’” Pet. 20–21 (alteration in original) (quoting Ex. 1006 ¶¶ 11, 116, 118). Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

c) Element 1[c]

Element 1[c] recites “a processor operatively coupled to the communications interface.” Ex. 1001, 52:55–56. Petitioner contends that “Scott discloses this limitation by expressly claiming a ‘multiplayer wagering game system comprising . . . a server having *one or more processors*, memory devices, and *communication devices*,’ and that the server is ‘configured to transmit’ and to ‘receive’ offers and acceptances to and from players’ gaming machines.” Pet. 21 (alteration in original) (quoting Ex. 1006, claim 1). Based on Scott’s disclosure, Petitioner asserts that one of ordinary skill in the art would understand that Scott discloses limitation 1[c] because “the ‘processor’ of Scott’s server must be ‘operatively coupled’ to Scott’s communication devices to perform these actions.” *Id.* (citing Ex. 1007 ¶¶ 96–97).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

d) Element 1[d]

Element 1[d] recites “a memory having programming instructions stored thereon, which, when executed by the processor, performs one or more operations.” Ex. 1001, 52:57–59. Petitioner contends that Scott discloses the “memory” limitation by “expressly teaching that the ‘server may have one or more . . . *memory devices*.’” Pet. 21–22 (alteration in original) (quoting Ex. 1006 ¶ 11). Petitioner also contends that Scott claims a server having one or more processors, memory devices, and communication devices, and that the “server is ‘configured to transmit’ and to ‘receive’ offers and acceptances to and from players’ gaming machines.” Pet. 22 (alteration in original) (quoting Ex. 1006, claim 1). Moreover, according to Petitioner, the memory devices “may ‘store . . . machine readable code to implement and/or operate’ these functionalities.” *Id.* (alteration in original) (quoting Ex. 1006 ¶ 55). Petitioner asserts that one of ordinary skill in the art would understand that Scott discloses limitation 1[d] because these functions “are implemented via programming or computer readable instructions stored in the memory and executed by the processor.” *Id.* (citing Ex. 1007 ¶ 99).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

e) Element 1[e]

Element 1[e] recites “receiving, over the communications interface, a designated amount for a value of the wager on the wagering event from a first input device.” Ex. 1001, 52:60–62. Petitioner contends that Scott meets this limitation because it discloses

that, “[i]f the player decides to sell” their non-final set of indicia generated after initiating a wagering event on a first gaming machine, “then an offer price (i.e., purchase price) may be requested from the first player” and subsequently “transmitted by the first gaming machine 100A to the server 120. This *receipt by the server 120* is shown by step 924 in FIG. 9.”

Pet. 22 (alteration in original) (quoting Ex. 1006 ¶ 127). Petitioner concludes that because “the ‘offer price’ is the amount at which the first player is offering to sell their wager (including non-final set of indicia), a POSITA would understand that the ‘offer price’ is both a ‘*designated amount*’ and ‘*for a value of the wager on the wagering event.*’” Pet. 23 (quoting Ex. 1007 ¶ 102).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

f) Element 1[f]

Element 1[f] recites “receiving, over the communications interface, a cash out offer from a second input device.” Ex. 1001, 52:63–64. Petitioner contends that Scott meets this limitation because “after the first player sets a desired offer price for their wager, the server distributes the offer price to ‘be received at the one or more second gaming machines 100B of the one or more second players (i.e., buying players.)’” Pet. 24 (quoting Ex. 1006 ¶ 134). Petitioner further contends that, after the first player sets the offer price, a “second player at the second gaming device can then accept the offer price, reject the offer price, or ‘counter the offer price’ by ‘proposing his or her own different price or counter offer.’” *Id.* (quoting Ex. 1006 ¶¶ 135–139). “If the second player proposes a counter-offer, the server may

‘receive [the] counter offer price from’ the second gaming device so it may ‘transmit the counter offer price to the first player’s gaming machine’ for the first player to accept.” Pet. 24–25 (alteration in original) (quoting Ex. 1006 ¶¶ 14, 135–139; claim 8).

Petitioner asserts that one of ordinary skill in the art would understand Scott’s

received counter-offer corresponds to a “*cash out offer*” because it is an offer to take a designated amount in exchange for the first player “no longer be[ing] able to play the non-final set of indicia,” at which point the server will “transfer the non-final set of indicia from the first player to the second player.”

Pet. 25 (alteration in original) (quoting Ex. 1006 ¶ 140).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

g) Element 1[g]

Element 1[g] recites “identifying an acceptance of the cash out offer from the first input device prior to the end of the wagering event.” Ex. 1001, 52:65–67. Petitioner contends that one of ordinary skill in the art would understand that Scott meets this limitation because “Scott discloses that its ‘server 120 may be configured to facilitate transmission of . . . the acceptance . . . of the counter offers,’ regardless of whether the counter-offer accepted was initially proposed by the first or second player.” Pet. 26 (alteration in original) (quoting Ex. 1006 ¶¶ 6, 139). As further support, Petitioner asserts that Figure 9 of Scott shows that “‘counter offers may *continue* to be made between the players until a counter offer is accepted or declined.’” *Id.* (quoting Ex. 1006 ¶ 139). According to the Petitioner,

“‘*acceptance* may then be transmitted to the server 120’ and received as an ‘*acceptance* indicator’” at the moment an offer or a counter offer is accepted. *Id.* (quoting Ex. 1006 ¶ 140, Fig. 9).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

h) Element 1[h]

Element 1[h] recites “processing the cash out offer.” Ex. 1001, 53:1. Petitioner contends that one of ordinary skill in the art would understand that Scott meets this limitation because Scott discloses “transmitting a ‘message or notification . . . to the first gaming machine 100A to notify the first player that his or her non-final set of indicia has been purchased.’” Pet. 27–28 (alteration in original) (quoting Ex. 1006 ¶ 140). Petitioner contends that the processing of the cash-out offer is met when Scott transfers the non-final set of indicia from the first player to the second player, collects transaction fees, and transfers “the tokens, credits, funds or other consideration used to purchase the non-final set of indicia . . . from the second player to the first player.” Pet. 26–27 (alteration in original) (quoting Ex. 1006 ¶ 140).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

i) Element 1[i]

Element 1[i] recites “transmitting, over the communications interface, a value of the cash out offer to the first input device.” Ex. 1001, 53:2–3. Petitioner relies on Figure 9 of Scott and asserts that one of ordinary skill in the art would understand that Scott discloses limitation 1[i] because it

“discloses how its ‘server may be further configured to *transfer payment* from the second player’s gaming machine to the first player *after receipt of the offer acceptance.*” Pet. 28 (quoting Ex. 1006 ¶ 14). According to Petitioner, these payments represent “‘*a value of the cash out offer*’ because it is the value of the counter-offer that the selling player has accepted for their wager.” Pet. 29. Moreover, “the payment is transmitted ‘*to the first input device*’ because it is transmitted ‘to the first player’ using the first ‘gaming machine.’” *Id.* (quoting Ex. 1006 ¶ 14).

Based on the current record, Petitioner has shown sufficiently that Scott discloses this limitation.

III. Conclusion

As explained above, we find that Petitioner has established a reasonable likelihood of success in showing that claim 1 is anticipated by Scott. Accordingly, we institute *inter partes* review on all challenged claims on all asserted grounds. *See SAS Inst. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018).

IV. Order

In consideration of the foregoing, it is hereby:

ORDERED that an *inter partes* review of claims 1, 7, 15, and 21 of the ’822 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the ’822 patent is hereby instituted commencing on the

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entry date of this Decision, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

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