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To: eliot.williams@bakerbotts.com; [Trials](#)
Cc: [Middleton, Matthew](#); [Kellner, Steven](#); [DLA - Diogenes-Colossus v DraftKings Inc USDC DE](#); [DL Draft Kings v Diogenes](#); [Guy, Hop](#); [Lynn, Jamie](#); [Martin, Tommy](#); [Wilson, Andrew](#)
Subject: RE: IPR2023-00268 (Delegated Rehearing Panel) Request To Submit Supplemental Information
Date: Thursday, November 30, 2023 7:48:09 AM
Attachments: [Vancura Deposition Day 1 Index.pdf](#)
[RE Supplemental Information - IPR2023-00268.msg](#)

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Honorable Delegated Rehearing Panel,

Patent Owner's counsel apologizes for another email on this subject, but he believes one is warranted. Petitioner has attempted to circumvent PTAB procedure by, among other things, setting forth legal arguments in its request. In addition, Patent Owner wishes to point out some of the inaccuracies and misstatements in Petitioner's request:

- Patent Owner requested that a meet and confer be held yesterday morning or today. This request was denied, forcing the Patent Owner to oppose the Petitioner's request (see attached email chain)
- Nowhere does the Delegation Order (Paper 11) "anticipate[] 'additional briefing' on issues germane to institution" as Petitioner alleges. Petitioner was informed of this, but proceeded any way.
- The *Ultratec* case is distinguishable from the facts of IPR2023-00268. Petitioner was informed of this, but proceeded any way. Patent Owner can provide the reasons why should the Panel deem it appropriate to do so.
- The Board did not rely solely on Dr. Vancura's testimony for its interpretation of "continuously." See Institution Decision at 14 (Board determining that both "parties' witnesses interpret this language in the same manner" and that "Petitioner's witness, Mr. Crevelt, agrees that the '779 patent distinguishes performing tasks continuously from doing so at discrete times.>").
- Petitioner's Counsel questioned Dr. Vancura on the term "continuously" for hours and over 2 days of his deposition. Attached is a transcript index from the first day (alone) showing the extent of the Q and A, which included numerous tangents and hypotheticals unrelated to the '779 patent. Any cherry-picked or Frankenstein quotation Petitioner submits to the DRP (such as the one Petitioner included in the email below) will require the DRP to also review hours of additional testimony and two deposition transcripts.

For at least the reasons above, Patent Owner opposes Petitioner's request.

Take care,
Gianni

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DLA Piper LLP (US)

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Sent: Wednesday, November 29, 2023 4:38 PM

To: Trials <Trials@USPTO.GOV>

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statements are timely made of record.”)

Counsel for Petitioner and Patent Owner conferred by email prior to Petitioner submitting this request and counsel for Patent Owner indicated that it opposes this request.

Respectfully Submitted,

Eliot D. Williams

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