

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

Diogenes Limited,
Patent Owner.

Case IPR2023-00268
U.S. Patent No. 11,200,779

**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” or “DraftKings”) objects under the Federal Rules of Evidence to the admissibility of Exhibits 2007-2009, 2011-2013, 2015-2021, 2023, and 2024, which Patent Owner Diogenes Limited (“Patent Owner”) filed with its Patent Owner Response (Paper No. 28) on August 9, 2024. 37 C.F.R. §42.64(b)(1).

Petitioner timely objects within the allowed five business days of service of Exhibits 2007-2009, 2011-2013, 2015-2021, 2023, and 2024. Petitioner files and serves Patent Owner with these objections to provide notice that Petitioner may move to exclude Exhibits 2007-2009, 2011-2013, 2015-2021, 2023, and 2024 under 37 C.F.R. § 42.64(c).

I. Exhibit 2007

FRE 702 and 703: Petitioner objects to Exhibit 2007, including at least ¶¶ 63-76 and 111-124, as improper expert testimony under FRE 702 and 703. This testimony includes Dr. Vancura’s proposed construction of the terms “real time” and “continuous,” and his application of that alleged construction to the cited prior art. But Dr. Vancura previously submitted sworn testimony in this and other related proceedings that these same terms should be given entirely different meanings. In fact, this is Dr. Vancura’s **third** materially **different** proposed construction for these terms. His testimony here is therefore contradicted by his prior testimony and is unreliable. This testimony is also improper because it is based on insufficient facts

or data, is conclusory, 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.

II. Exhibits 2008, 2009, 2012, and 2013

FRE 401, 402, 403: Petitioner objects to Exhibits 2008, 2009, 2012, and 2013 as irrelevant, misleading, or confusing, and their probative value, if any, is outweighed by prejudice. For example, Patent Owner and/or its expert cite these exhibits in alleged support of a POSITA's alleged understanding of the term "fixed-odds single." POR at 49, Ex. 2007, ¶¶ 80, 85. But Exhibit 2008 is dated August 7, 2018, which is six years after the alleged "date of invention" of the '779 Patent. *See* Ex. 2007, ¶22. Similarly, Exhibit 2009 is dated three years after the '779 Patent's alleged "date of invention," and Exhibits 2012 and 2013 post-date the relevant date by almost 10 years. These materials therefore do not reflect a POSITA's understanding at the relevant time.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibits 2008, 2009, 2012, and 2013 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated these exhibits, nor laid the foundation for any hearsay exception.

III. Exhibits 2011, 2019-2021, 2023, and 2024

FRE 401, 402, 403: Petitioner objects to Exhibits 2011, 2019-2021, 2023, and 2024 as irrelevant, cumulative, misleading, or confusing, and their probative value, if any, is outweighed by prejudice.

FRE 801, 802, 901, 1002, 1003: Petitioner objects to Exhibits 2011, 2019-2021, 2023, and 2024 for lacking authentication, lacking foundation, for containing hearsay, and/or causing undue prejudice. For example, Patent Owner has neither authenticated these exhibits, nor laid for the foundation for any hearsay exception.

IV. Exhibits 2015-2018

FRE 401, 402, 403: Petitioner objects to Exhibits 2015-2018 as irrelevant, cumulative, misleading, or confusing, and their probative value, if any, is outweighed by prejudice. For example, these materials include patents invented by Petitioner's expert, Mr. Crevelt, over 25 years ago (Exhibits 2015 and 2017), a book authored by Mr. Crevelt over 35 years ago (Exhibit 2016), and a declaration more recently submitted by Mr. Crevelt in a different proceeding (Exhibit 2018). But each document has no relevance to the claims or issues in this proceeding. Moreover, Exhibit 2016 is not cited by Patent Owner or any declarant in this proceeding.

Dated: August 16, 2024

Respectfully submitted,

/ Eliot D. Williams /

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 16th day of August 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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Date: August 16, 2024

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