

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DK CROWN HOLDINGS INC.,
Petitioner

v.

DIOGENES LIMITED,
Patent Owner

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

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

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I. INTRODUCTION

This sur-reply responds to the three arguments presented in Petitioner's Reply.

First, regarding the construction of “continuously retrieve ... in real time,” Petitioner suggests that PO's argument “contravenes the DRP's binding precedent.” This is not the case. The DRP's construction requires retrieval at a “frequency [sufficient] to promptly capture developments.” Importantly, and as ignored by Petitioner, the DRP's construction excludes a system that makes “only discrete determinations” such as at “the end of a period or halftime during a sporting event”—*i.e.*, at discrete time points *of the wagering event*.

PO's expert testifies that a POSITA would recognize that a repeated, regular polling operation satisfies the DRP's requirements. Petitioner has been unable to come up with any alternative. Instead, Petitioner urges the Board to ignore the DRP's exclusions related to “discrete time points of the wagering event” and the DRP's construction of “in real time,” where the “frequency” requirement arises.

Scott's machines “retrieve” only at predetermined time points of its wagering games, precisely as excluded by the DRP in its construction of “continuously retrieve ... in real time.”

Second, regarding the multi-participant system of Claim 16, Petitioner improperly raises two new claim construction arguments: (a) that, absent contrary indicia, the indefinite article “a” in “a wagering event” and “a trading engine module”

should be interpreted to mean “one or more” and (b) that dependent Claim 18 implies the wagering event of Claim 16 could comprise one or more of an entire event or multiple independent events.

Neither argument assists Petitioner. Claim 16 requires a “wagering event” conducted “among” multiple participants—*i.e.*, the same, shared wagering event, whether comprised of a single event (*e.g.*, a baseball game) or multiple events (*e.g.*, the World Series). Scott does not disclose any type of shared or multi-participant wagering event.

Third, regarding Claims 5, 7, and 23, Petitioner once again improperly restricts its analysis to the isolated words “fixed odds” and not the claim term “fixed odds single” — a term of art that the properly informed POSITA would know denotes a sportsbook wager, like the other wager types in these claims. It is undisputed that Scott does not disclose any sportsbook wagers. Petitioner belatedly argues that Scott’s pay table games are “fixed odds singles,” but such games by definition have multiple winning outcomes and do not meet either party’s construction.

Petitioner’s arguments should be rejected, the petition denied, and the validity of the challenged claims affirmed.

II. SCOTT DOES NOT DISCLOSE “CONTINUOUSLY RETRIEVE ... DATA IN REAL TIME” (LIMITATIONS 1[e]/16[i])

A. Petitioner conflates the DRP Decision’s two “discrete time points”

Petitioner argues that the DRP “squarely rejected” a construction of “continuously retrieve ... in real time” precluding “discrete” operation and requiring “repeated, regular polling.” Paper 33 at 1. The DRP did no such thing.

Petitioner says “the DRP already found that a ‘construction ... which excludes performing that task [*i.e.*, retrieval] at discrete time points’ is improper.” Paper 33 at 6. But Petitioner’s argument conflates “discrete time points” in computer operation with “discrete time points *of the wagering event*.” The DRP identifies two distinct types of “discrete” time points when data could be retrieved:

- (a) Discrete time points *in computer operation* — which the DRP says are within the scope of the claims: Paper 14 at 15; and
- (b) Discrete time points *of the wagering event* — which the DRP says are outside the scope of the claims: Paper 14 at 14 and 19.

Petitioner’s Reply refers only to the DRP’s reasoning on discrete time points *in computer operation* (*i.e.*, the first type above), and ignores the second entirely. Paper 33 at 6. There is no dispute that retrieval at discrete time points in this first sense can fall within the claims: as the DRP found, everything a computer does is necessarily done at some discrete point. Paper 14 at 15. However, the DRP also found that “continuously retrieve ... in real time” does *not* encompass retrieval only

at predetermined discrete time points *of the wagering event*, such as halftime or the end of a period. Paper 14 at 19.

Petitioner's Reply does not even attempt to grapple with the latter finding, even though this carve-out is essential to the DRP's construction of "continuously retrieve ... in real time." The reason for Petitioner's omission is obvious: the type of discrete operation the DRP found to be excluded from the '779 Patent's claims is precisely how Scott operates. Any "retrieval" in Scott is *only* performed at predetermined discrete points of its wagering games.

B. Unable to come up with an alternative to polling, Petitioner asks the Board to ignore the DRP's construction of "in real time"

Petitioner argues that the '779 Patent's "continuously retrieve ... in real time" claim element does not call for a polling operation.¹ But neither Petitioner nor its expert can identify any other retrieval method that satisfies the DRP's construction.

Instead, Petitioner again seeks to read out parts of the DRP's construction. Petitioner's Reply argues that the DRP's construction of "*The 'Continuously' Limitations*" is the DRP's construction of the entire claim element ("continuously

¹ Petitioner correctly notes that "polling" is not a word the DRP uses. It is the word PO's expert uses to describe the repeated, regular operation called for by the DRP's express construction: it satisfies the requirement for a "frequency" and the exclusion of only discrete operation at points of the wagering event. Paper 14 at 19 and 21.

retrieve ... in real time”), and that the DRP’s separate construction of “*In Real Time*” is of no consequence. Paper 33 at 10-11. Petitioner is wrong.

The DRP’s discussion of “*The ‘Continuously’ Limitations*” indicates from the outset that “continuously” is the term being construed in this section. Paper 14 at 13 (emphasis in original):

1. The “Continuously” Limitations

The term “continuously” is used in two limitations of claim 1, which recite as follows:

continuously retrieve, by the system controller, data in real time related to a progress of the wagering event;

...

continuously evaluate, by the system controller, the recalculated wager information;

The DRP goes on to construe “continuously,” saying “we construe the phrase ‘continuously retrieve ... data ... related to a progress of the wagering event’ to encompass ... [and not encompass...].” Paper 14 at 14. The DRP here omits the “in real time” language, which it construes separately under the next subheading.

The DRP's "*In Real Time*" section then indicates the construction of "in real time" is at issue. Paper 14 at 18-19 (emphasis in original):

The issue of whether claim 1 is limited to "live" wagering events is intertwined with the construction of the term "in real time." Claim 1 of the '779 patent uses the term "in real time" in several phrases, as recited below:

continuously retrieve, by the system controller, data **in real time** related to a progress of the wagering event;
recalculate, by the system controller, the wager information **in real time** based on the continuously retrieved data;
...
generate, by the system controller, an option **in real time** for the participant to one or more of fully cash out of the wager or partially cash out of the wager prior to a conclusion of the wagering event for at least a portion of the award;

The DRP does reject the notion that "in real time" implies a live wagering event. But it also provides its own construction: operations "'in real time' must be made with *sufficient frequency* to promptly capture developments that may affect the odds of the event, and *cannot cover only discrete determinations*, such as at the end of a period or halftime during a sporting event." Paper 14 at 19 (emphasis added). Thus, Petitioner's Reply argument that the entire "*In Real Time*" section of the DRP Decision "merely addresses '[t]he issue of whether claim 1 is limited to 'live' wagering events'" is simply false. Paper 33 at 11.

Petitioner's desire to read out parts of the DRP's construction lays bare the central flaw in its case. Scott does not satisfy the DRP's "continuously retrieve ... in

real time” construction because Scott does not operate at a “frequency” and consists of *only* discrete operations performed at predetermined times of its wagering games.

Based on the entirety of the DRP’s guidance—including the portions Petitioner ignores—PO’s expert concluded that “continuously retrieve ... in real time,” as construed by the DRP, “contemplates ... retrieving data by a repeated, regular polling operation—*i.e.*, not only at discrete time points of the wagering event—that is sufficiently frequent to promptly capture relevant developments in the wagering event as they occur.” EX-2007 at ¶ 74. When asked about alternative ways during his deposition, he answered “I can’t think of [another way] right now ... but I suppose it’s possible [that other ways to implement the DRP’s construction may exist].” EX-1059, 63:19-23.

Despite its criticism of PO’s expert, Petitioner has not identified any implementation besides polling that would satisfy the DRP’s construction. Its best attempt was by Petitioner’s counsel, during PO’s expert’s deposition:

Q. Would a trigger that occurs at a -- at repeated intervals on a cycle, and where that cycle is sufficient to ensure that it promptly captures developments that may affect the odds of a wagering event, would that type of system meet your interpretation of the DRP construction? [...]

THE WITNESS: What's causing the trigger? What is the trigger?
[...]

Q. Well, I suppose in this hypothetical, the trigger is being automatically triggered at a repeated -- you know, repeated set frequency, regular intervals, on a cycle.

A. Well, that's starting to sound a lot like polling, so . . .

MR. WILSON: Be another okay time to stop, if you would like to take a breather.

EX-1059 at 81:1-18.

The Board should decline Petitioner's request to read out portions of the DRP's construction of "continuously retrieve ... in real time."

As a fallback, Petitioner's Reply asks the Board to infer — based on Scott's reference to a "current cash value" — that Scott "necessarily retrieves data in 'real time.'" Paper 33 at 13. But even if the Board accepts that Scott's cash value is "current" at the time it is presented, it is undisputed that Scott is silent about retrieving data "continuously ... in real time." Petitioner's Reply concedes this — Scott's "current" cash value simply accounts for value at a discrete point of Scott's games, *i.e.*, "***up to that point.***" Paper 33 at 13 (emphasis added). All Petitioner says is that the relevant events in Scott are accounted for just before any "current cash value" is presented.

This argument should also be rejected. Petitioner concedes that Scott's retrieval occurs at only two times: (a) after "each card or other game symbol is dealt

to a player” or (b) “[a]lternatively ... at the end of each dealing stage of the game.” Paper 33 at 12. Both are “predetermined discrete points” of the underlying wagering game, and thus Scott’s determinations are *only* discrete, as excluded by the DRP.

C. A polling operation does not read in a limitation requiring a “live sporting event”

Petitioner also argues that PO’s reference to polling would read in a limitation requiring a “live sporting event.” Paper 33 at 7-10. This is a strawman argument. PO does not contend that Claims 1 or 16 of the ’779 Patent are limited to sporting events, live or otherwise. *See, e.g.*, POR at 11.

Instead, the need for a repeated, regular polling operation to achieve “continuous[] retriev[al] ... in real time” is founded in the DRP’s construction. Requiring retrieval at a “frequency” sufficient to “capture” relevant developments as they occur indicates a repetitive operation at regular intervals – *i.e.*, polling. EX-2007 at ¶ 70; Paper 14 at 19. Polling satisfies the claims as construed by the DRP, regardless of whether the wagering event is a live or pre-recorded event (sporting or otherwise). The DRP noted that for pre-recorded events, the retrieval would be the same, and would occur while the wagering event is being broadcast. Paper 14 at 21.

III. SCOTT DOES NOT DISCLOSE THE “PLURALITY” ELEMENTS OF CLAIM 16

A. Claim 16 requires a common wagering event conducted “among” multiple participants

Petitioner improperly raises two new claim construction arguments regarding

Claim 16 for the first time in Reply, neither of which assists its position. First, Petitioner advances a legal argument that, absent contrary indicia, the indefinite article “a” in “a wagering event” and “a trading engine module” should be interpreted to mean “one or more” as opposed to “one.” Paper 33 at 14. Second, Petitioner argues that dependent Claim 18 implies the wagering event of Claim 16 could comprise one or more of an entire event or multiple independent events. Paper 33 at 15.

In addition to being improper under 37 C.F.R. § 42.23(b), Petitioner’s new arguments are both off target. Claim 16 is directed to “[a] system for conducting a wagering event *among* one or more participants in real time,” wherein “a *plurality of wagers on the wagering event*” are “input by a *plurality of participants*.” EX-1001 at 54:1-15 (emphasis added). The system is configured to, *inter alia*, determine that “one or more participants of the plurality of participants” — that is, a subset of the multiple bettors among whom the wagering event is being conducted — is eligible to win an award based on their wager(s) and a potential outcome of the wagering event, and to generate in real time and cause cash out offers to be displayed to that subset of bettors. Read in full and in context, Claim 16 is directed to a system where multiple bettors place wagers on a *common*, or shared, wagering event that is conducted “*among*” them. Whether the “wagering event” they bet on comprises more than one event (*e.g.*, the World Series) is immaterial. A wagering event cannot be conducted “among” one participant.

If “a wagering event” in the preamble encompasses “one or more wagering events,” as Petitioner urges—for example, in a parlay, where the bettors may be wagering on the outcome of two or more sporting events—the rest of the claim must still be interpreted consistently. The ordinary grammatical rules of claim construction dictate that “*the* wagering event” (singular) recited throughout the rest of the claim must refer to the same antecedent, *i.e.*, the shared or common wagering event (whether one or more than one underlying events) that is conducted among, and wagered upon by, multiple participants.

B. Regardless of Petitioner’s incorrect construction, Scott fails to disclose the “plurality” elements of Claim 16

Petitioner argues that even under PO’s construction, Scott discloses a *singular* trading engine module, which receives wagers from a plurality of input devices on a *single* wagering event. Scott does not.

Petitioner cites to Petition at 24 and 29 for the proposition that Scott discloses a “single value engine.” Paper 33 at 16. Petitioner uses the language “central trading engine module at a server” and “single value engine” in the context of a client/server architecture, which Petitioner then says is disclosed by Scott. Paper 33 at 16-17. However, neither of these phrases or concepts is disclosed or taught by Scott.

Petition at 24 and the portions of Scott cited therein (including Fig. 1B) are explicitly about an *individual* “exemplary gaming machine having the value engine.” EX-1006 at [0025], [0040], [0050], and Fig. 1B. Petitioner now says, “Scott

also discloses a *singular* trading engine module receiving wagers from a plurality of input devices....” Paper 33 at 16-17. However, this conclusion is based on a misunderstanding of Scott’s disclosure. The “input devices” of Scott are not multiple “gaming machines” connected to a server; they are input devices (such as buttons or joysticks) *on the individual gaming machines*, each of which has its own trading engine module. Scott discloses that each “gaming machine **100** may include one or more player input devices **108** (*such as input buttons, a touch-screen display, joystick, touch-pad, or the like*) that may be utilized by *the player* to facilitate game play.” EX-1006 at [0045] (emphases added). Petitioner has failed to demonstrate any disclosure in Scott of a “single value engine” or “central trading engine module” for multiple gaming machines, as they would have the Panel believe. Paper 28 at 4.

Petitioner argues Scott also discloses a client/server configuration for “central determinant games” that allows multiple players to play the same type of game or the same single instance of a wagering game. Paper 33 at 17. This is a new argument (and, therefore, improper under 37 C.F.R. § 42.23(b)), and in any event, says nothing about the disclosure of a *single trading engine module*. Petitioner cites to [0055] of Scott, which says nothing of central determinant games, and instead specifies the functions that a gaming server “may be configured to perform,” including “accounting, player tracking, bonusing, game generation, random number

generation, or other functions.”² EX-1006 at [0055]. This paragraph says nothing of a single value engine or trading engine, and notably, the list of server-side functions does not include *receiving a wager* (the *sole* job of the trading engine module according to Petitioner). Paper 33 at 18. This is presumably because, as Petitioner has previously pointed out, this function is carried out by the *value engine* (Paper 2 at 33) in Scott, which occurs at the level of the machine, not the server.

Petitioner also re-hashes its “marketplace” argument, noting the disclosure of a “betting exchange” in the ’779 Patent and arguing that “PO provides no reason that Scott’s parallel disclosures of a “marketplace” should be excluded from Claim 16.” Paper 33 at 18. However, Petitioner fails to establish that the “betting exchange” referenced in the ’779 Patent specification is a “parallel concept” to the “marketplace” of Scott, as Petitioner suggests. Paper 33 at 17-18. Even if the concepts were the same or analogous (which they are not), Petitioner cannot carry its burden on anticipation or obviousness by comparing Scott to an embodiment in the *specification* of the ’779 Patent.

² Petitioner’s conclusion that Scott discloses “centrally administered games” is consistent with server-side “game generation” or “random number generation.” Paper 33 at 17. But nothing in the Petition or Scott discloses “centrally administered games *which receive wagers on the same singular wagering event* from a plurality of connected input devices” (Paper 33 at 17; emphasis added).

Petitioner's entire argument is premised on its baseless assertion that Claim 16 does not recite or require "multiple participants wager[ing] on the same wagering event." Paper 28 at 4 and 42-43. Petitioner has failed to establish this is the case, and Petitioner's arguments regarding the "plurality" elements of Claim 16 fail.

IV. SCOTT DOES NOT DISCLOSE "FIXED ODDS SINGLE" ELEMENT OF CLAIMS 5, 7, AND 23

A. Petitioner improperly focuses on the phrase "fixed odds" divorced from the full claim element, "fixed odds single"

In addressing Claims 5, 7, and 23, Petitioner's Reply again focuses entirely on the isolated phrase "fixed odds," obscuring the real issue: the construction of "*fixed odds single*" and whether that claim element is disclosed by Scott, which it is not.

Petitioner deliberately ignores both the proper approach to claim construction and PO's expert's testimony regarding the POSITA's knowledge. PO's expert explains why, properly construed, "fixed odds single" and the other bet types enumerated in these claims are unitary terms of art that a POSITA would understand as denoting sportsbook or racebook wagers — none of which are disclosed in Scott. *See* EX-2007 at ¶¶ 45-46, 81-90, 125-128, and 136.

Petitioner cites three new exhibits, purportedly in support of its incorrect “fixed probability” interpretation of “fixed odds.”³ However, Petitioner fails to establish how any of these exhibits would impact the POSITA’s understanding of “fixed odds” in the context of the claim element “fixed odds single” and the ’779 Patent as a whole. If anything, Petitioner’s new exhibits highlight a difference between how the isolated phrase “fixed odds” may be used in relation to the gaming devices of Scott versus the wagering events of the ’779 Patent (to which different regulatory standards apply: *compare, e.g.,* Petitioner’s new EX-1062 for ***gaming devices***, *with* EX-2008 for ***event wagering systems***).

Petitioner also notes the ’779 Patent’s disclosure of “fixed-odds betting terminals,” and accuses PO of “fail[ing] to explain why the term ‘fixed odds’ would exclude bingo when the ’779 Patent’s ***fixed-odds*** terminals provided that game.” Paper 33 at 20 (emphasis in original). Petitioner’s argument seems to be: (1) the ’779 Patent discloses fixed-odds betting terminals; (2) bingo is a fixed odds game (under Petitioner’s incorrect interpretation of “fixed odds”); and (3) therefore, “fixed odds single” should encompass bingo.

³ None of these Exhibits (EX-1061, EX-1062, and EX-1064) were cited in the Petition or by Petitioner’s expert or put to PO’s expert. PO objects to these Exhibits and associated argument and reserves the right to move to strike them.

Petitioner's position is nonsensical, in that it criticizes PO for not responding to an argument Petitioner never made and ignores PO's expert's evidence that "[a] fixed odds single is not a game being *played by* the bettor, and therefore is not a wager type a POSITA would associate with slot type games, poker type games, keno games or bingo games (like those in Scott)." EX-2007 at ¶ 83 (emphasis in original).

Petitioner's position is also wrong because it rests on a false assertion that the terminals in the '779 Patent "provide bingo."⁴ Paper 33 at 20. Petitioner cites to PO's expert for the latter fact, but his evidence was that some fixed-odds terminals supported "fixed odds singles" wagers and (not on) "casino games." EX-1059 at 89:1-90:7. The distinction is critical. Although some casino games may involve "fixed odds" wagers, they are not "fixed odds singles." In any event, PO's expert was **not** asked whether fixed odds betting terminals supported bingo.

The Board should reject Petitioner's deconstructed approach (which lacks support from either the cited evidence or the '779 Patent specification),⁵ and adopt

⁴ The '779 Patent never mentions "bingo," and only mentions fixed odds betting terminals as an example of a "wager station" or "wager terminal." EX-1001 at 12:32-40. Petitioner has provided no evidence linking these terminals with those in EX-1058.

⁵ Petitioner's evidence and argument on Claims 5, 7, and 23 (EX-1007 at ¶¶ 160-163, 166-167, 211; Petition at 67-70, 72, 83) are devoid of even a single reference to the '779 Patent specification.

PO's construction of the full claim term "fixed odds single," which is consistent with the '779 Patent as a whole and supported by evidence from the perspective of a POSITA with the relevant knowledge and experience.

B. Scott does not disclose a "fixed odds single" under PO's construction, nor under Petitioner's inaccurate restatement thereof

Petitioner then argues that even under PO's construction, Scott discloses a "fixed odds single." Paper 33 at 21-24. This argument is premised on multiple misstatements of PO's position and its expert's testimony.

First, and as discussed above, Petitioner mischaracterizes PO's construction by maintaining its blinkered focus on "fixed odds," rather than the actual term (as analyzed by PO), "fixed odds single."⁶

Petitioner further misstates PO's construction by saying that PO contends a fixed odds single "is a game." Paper 33 at 21. However, PO's expert was clear that a "fixed odds single is *not* a wager on a *game being played by* the bettor," but rather on a "*competitive underlying event* that is *independent* of the bettor," such as a sporting event. EX-2007 at ¶ 83 (emphases added).

⁶ Petitioner cites only to PO's interpretation of "fixed odds" (POR at 46), not its construction of "fixed odds single" (POR at 47-48, citing EX-2007 at ¶81), a distinction PO's expert pointed out during his deposition: EX-1059 at 88:7-24.

Petitioner's conclusions that "Dr. Vancura admitted that each game is covered under his construction of "fixed odds single," and that "[n]umerous games in Scott therefore satisfy Dr. Vancura's construction," (Paper 33 at 23) are also demonstrably false. This is evident from a review of Petitioner's citations (or the omission of citations for these crucial "admissions"), each of which, at best, establishes that PO's expert is familiar with games that have fixed payouts. Paper 33 at 24 (citing EX-1006, EX-1059, and EX-1060). None of these citations supports a conclusion that Scott discloses "fixed odds singles" under PO's construction; on the contrary, the games listed in Petitioner's table are exactly the kinds of games *excluded* from Dr. Vancura's construction of "fixed odds single." EX-2007 at ¶ 83. Accordingly, Petitioner does not establish that Scott discloses a "fixed odds single" as construed by PO.

Finally, Petitioner offers a new (and equally inaccurate) interpretation of PO's construction, namely, that a "fixed odds single" is disclosed by any game with a fixed pay table. However, under either party's construction, a "fixed odds single" must be a wager on *a single (or given) outcome* (Paper 33 at 19 and 21), and games with a pay table necessarily involve a wager with *numerous possible outcomes*, each listed with their associated award. EX-1006 at [0061]. Scott's Figure 5 (and accompanying disclosure at [0087] and [0088]) confirms that its games involve multiple "winning outcomes." These games therefore fall outside either party's

construction of “fixed odds single.”

V. CONCLUSION

For the foregoing reasons, the Board should find that Petitioner has not carried its burden of proving that any claim of the '779 Patent is invalid and deny the Petition as to all asserted grounds of challenge.

Date: December 20, 2024

Respectfully Submitted,

By: /Matthew C. Juren/
Matthew C. Juren
Reg. No. 68,233
Stephens Juren, PLLC
2500 Tanglewilde St., Suite 320
Houston, Texas 77063
Main: 832-344-5400
Direct: 832-990-2707
Fax: 832-476-5460
Email: mjuren@patent-lawyers.com

***Counsel for Patent Owner
Diogenes Limited***

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Sur-Reply complies with the type-volume limits of 37 C.F.R. § 42.24(c)(4) because it contains **4,300** words, excluding the parts of this Patent Owner's Sur-Reply to Petitioner's Reply that are exempted by 37 C.F.R. § 42.24(c), according to the word processing system used to prepare this Patent Owner's Preliminary Response.

/s/ Matthew C. Juren
Matthew C. Juren

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on this 20th day of December, 2024, I electronically filed the foregoing document and served a copy of the same on counsel for Petitioner at the following e-mail addresses, as authorized in the Petition:

Elliot Williams – Eliot.Williams@BakerBotts.com
Jamie Lynn – Jamie.Lynn@BakerBotts.com
Tommy Martin – Tommy.Martin@BakerBotts.com
Brad Bowling – Brad.Bowling@BakerBotts.com
Andrew Wilson – Andrew.Wilson@BakerBotts.com
Petitioner Service E-mail – DLDraftKingsvDiogenes@BakerBotts.com

Baker Botts LLP
700 K Street Northwest, Suite 900
Washington, DC 20001-5692
202-639-7700 (telephone)

G. Hopkins Guy III – Hop.Guy@BakerBotts.com

Baker Botts LLP
1001 Page Mill Road
Building One, Suite 200
Palo Alto, California 94304-1007
650-739-7500 (telephone)

Dated: December 20, 2024

/s/ Matthew C. Juren
Matthew C. Juren