

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FANDUEL, INC.,
Petitioner,

v.

WINVIEW IP Holdings, LLC,
Patent Owner.

Case IPR2026-00245
U.S. Patent No. 12,005,349

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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1001	U.S. Patent No. 12,005,349 (“’349 Patent”)
1002	File History of the ’349 Patent
1003	European Patent Application No. 0 873 772 A1 to McKeown, et al. (“McKeown”)
1004	<i>WinView IP Holdings, LLC v. FanDuel, Inc., et al.</i> , 3:25-cv-01146 (D.N.J.), Complaint dated February 10, 2025
1005	Declaration of Dr. Aviel D. Rubin, Ph.D.
1006	Curriculum Vitae of Dr. Aviel D. Rubin, Ph.D. (“Rubin CV”)
1007	U.S. Patent No. 4,592,546 (“’546 Patent”)
1008	U.S. Provisional Application No. 60/723,301 (provisional application of the ’349 Patent)
1009	U.S. Provisional Application No. 60/791,793 (provisional application of the ’349 Patent)
1010	<i>WinView IP Holdings, LLC v. DraftKings Inc. et al.</i> , 3:25-cv-01143 (D.N.J.), Complaint dated February 10, 2025
1011	<i>WinView IP Holdings, LLC v. DraftKings Inc. et al.</i> , 3:25-cv-01143 (D.N.J.), Text Order dated January 21, 2026
1012	<i>WinView IP Holdings, LLC v. DraftKings Inc. et al.</i> , 3:21-cv-13405 (D.N.J.), Opinion dated March 17, 2026
1013	Certificate of Formation of WinView IP Holdings, LLC (June 20, 2023) (“WinView IP Holdings Formation”)

I. INTRODUCTION

Petitioner FanDuel, Inc. (“FanDuel” or “Petitioner”) files this Opposition to Patent Owner’s Discretionary Denial Brief (Paper No. 6, hereinafter “Brief” or “Br.”), setting forth Patent Owner’s arguments why the Director should not exercise discretion to deny the Petition for *inter partes* review (“Petition”) of claims 1-5, 7-13, 15, 17, 21-22, 24, 31, 33, 35, and 39-40 (the “challenged claims”) of U.S. Patent No. 12,005,349 (“’349 Patent”) (Ex. 1001), as assigned to Patent Owner, WinView IP Holdings, LLC (“WinView” or “Patent Owner”).

There is no basis for discretionary denial. The Board previously held unpatentable all challenged claims of each WinView patent subjected to *inter partes* review (IPR), including patents from the same family at issue here, and WinView abandoned its appeals of those decisions. The ’349 Patent is a recently-issued patent (less than two years old) whose claims are distinct from its family members. Nearly every *Fintiv* factor and numerous factors under the Director’s Interim Guidance weigh against discretionary denial. The district courts have already stayed both parallel proceedings asserting the ’349 Patent: *WinView IP Holdings, LLC v. DraftKings Inc. et al.*, 3:25-cv-01143 (D.N.J.) (“*DraftKings IPR*”) and *WinView IP Holdings, LLC v. FanDuel, Inc. et al.*, No. 3:25-cv-01146 (D.N.J.) (“*FanDuel IPR*”). Notably, both proceedings are at the earliest stage, no trial date has been set in either case, and there has been no meaningful investment in parallel litigations. Moreover,

the merits of the Petition are compelling, and WinView cannot demonstrate settled expectations for a patent that did not exist at the time of the parties' earlier interactions. Finally, the district court in *WinView IP Holdings, LLC v. DraftKings Inc.*, No. 3:21-cv-013405 (D.N.J.) ("*DraftKings I*") recently dismissed WinView's indirect and willful infringement allegations with prejudice, finding that the parties' pre-suit interactions (analogous to WinView's pre-suit interactions with FanDuel) were insufficient to put the accused infringer on notice of patents that had not yet issued. *Id.*, Opinion (Ex. 1012). That ruling directly undermines WinView's settled expectations theory.

II. BACKGROUND

WinView IP Holdings, LLC is the assignee of the '349 Patent, which issued on June 11, 2024. Ex. 1001. The '349 Patent alleges priority through a chain of continuation and continuation-in-part applications to provisional applications filed in 2005 and 2006. Exs. 1001, 1008, and 1009. The '349 Patent is part of a large patent family that includes numerous patents and applications. Ex. 2001 (Lockton Decl.), ¶ 3. Each patent in this family has its own distinct claims, and the '349 Patent's claims were not knowable until the publication of its application in January 2022 and were not finalized until the '349 Patent issued in June 2024.

Patent Owner claims that WinView, Inc. and FanDuel had discussions regarding a potential business relationship in 2017. Ex. 2001, ¶ 6. Following those

discussions, FanDuel declined to engage with WinView Inc. Ex. 1004, ¶ 113. WinView Inc. then sued FanDuel in 2021, asserting four patents from the same family. *WinView IP Holdings, LLC*¹ v. *FanDuel, Inc.*, No. 21-cv-13807 (D.N.J.) (“*FanDuel I*”), Dkt. No. 1. The ’349 Patent had not yet issued. Three of those patents were challenged through *inter partes* review, the Board found all challenged claims unpatentable, and WinView Inc. abandoned its appeals. See *DraftKings Inc. v. WinView Inc.*, IPR2022-01351, Paper 30 (P.T.A.B. Jan. 29, 2024), Paper 32 (July 1, 2024); *FanDuel, Inc. v. WinView Inc.*, IPR2022-01306, Paper 22 (P.T.A.B. Jan. 29, 2024), Paper 24 (Aug. 23, 2024); *FanDuel, Inc. v. WinView Inc.*, IPR2022-01307, Paper 21 (P.T.A.B. Jan. 29, 2024), and Paper 25 (Aug. 26, 2024).

The district court in *DraftKings I* recently dismissed WinView’s indirect and willful infringement allegations with prejudice, finding that the parties’ pre-suit interactions failed to plausibly support knowledge of patents that had not yet issued. See Ex. 1012 at 19-32. WinView filed *DraftKings II* and *FanDuel II* on February 10, 2025, asserting the ’349 Patent along with eight other patents from three families. Ex. 1004 (*FanDuel II* Complaint); Ex. 1010 (*DraftKings II* Complaint).

¹ WinView IP Holdings, LLC substituted for WinView Inc. as Plaintiff on October 20, 2025. Dkt. Nos. 109, 111.

FanDuel timely filed the present Petition on February 3, 2026, within the one-year deadline under 35 U.S.C. § 315(b). The district courts have stayed both parallel proceedings asserting the '349 Patent: *DraftKings II* was stayed after DraftKings informed the court of its IPR filings (Ex. 1011) and *FanDuel II* was stayed after FanDuel filed this Petition (Ex. 2005). At the time of both stays, no scheduling order had been entered and neither case had advanced beyond the pleadings stage. Separately, DraftKings filed IPR petitions challenging U.S. Patent Nos. 11,451,883 (IPR2026-00140) and 11,338,189 (IPR2026-00175). WinView's patent portfolio encompasses over 100 patents, and WinView has allowed multiple related patents to lapse for non-payment of maintenance fees. *E.g.*, IPR2026-00175, Paper No. 12, at 6. WinView IP Holdings, LLC, the entity asserting the '349 Patent, was not formed until 2023 and is a different corporate entity from WinView, Inc., whose platform operations ceased in 2020, before the '349 Patent issued. Ex 1013.

WinView's request for discretionary denial should be rejected. Nearly every *Fintiv* factor and many factors set forth in the Director's Interim Guidance weigh against discretionary denial. The Petition is strong on the merits, the parallel district court litigation has been stayed at the earliest possible stage with no meaningful investment, and no trial date has been set. WinView cannot demonstrate settled expectations for a patent that issued less than two years ago with claims distinct from its family members. Each of these factors is addressed below.

III. THE *FINTIV* FACTORS WEIGH DECISIVELY AGAINST DISCRETIONARY DENIAL

In *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020), the Board identified six factors relevant to the exercise of discretion under 35 U.S.C. § 314(a) when a parallel district court proceeding exists: (1) whether the court granted a stay or is likely to grant a stay; (2) proximity of the trial date to the Board's projected statutory deadline; (3) investment in the parallel proceeding by the court and the parties; (4) overlap between issues raised in the petition and in the parallel proceeding; (5) whether the petitioner and the defendant in the court proceeding are the same party; and (6) other circumstances that impact the Board's exercise of discretion, including the merits of the petition. As discussed *infra*, five of the six factors weigh against denial, and the sixth (Factor five) is at most neutral as to *FanDuel II* and weighs against denial as to *DraftKings II*.

A. Factor One (Likelihood of Stay) Weighs Against Discretionary Denial

Factor one **weighs against** discretionary denial. The district court has already stayed both parallel proceedings in which the '349 Patent is asserted. In *FanDuel II*, the court stayed the pending motion to dismiss after FanDuel filed this Petition. Ex. 2005. In *DraftKings II*, the court stayed the case on January 21, 2026, after DraftKings informed the court of its IPR filings. Ex. 1011. Both stays were entered before any scheduling order had been issued and before either case advanced beyond

the pleadings stage. When a stay has been granted, this factor weighs heavily against discretionary denial, as the Board itself has signaled that *inter partes* review will serve the interests of justice and efficiency. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, 2020 WL 2126495, at *3 (P.T.A.B. Mar. 20, 2020).

B. Factor Two (Timing of Trial) Weighs Against Discretionary Denial

Factor two **weighs against** discretionary denial. No trial date has been set in either parallel proceeding involving the '349 Patent. In both *FanDuel II* and *DraftKings II*, no scheduling order had been entered at the time of the stay and before the case advanced beyond the pleadings stage. *See* Ex. 1011, and 2005. Under these circumstances, any trial involving the '349 Patent in either proceeding is years away, well after the Board's projected final written decision. The Board has consistently held that the absence of a trial date weighs heavily against discretionary denial. *See Aptiv Servs. US, LLC v. Microchip Tech.*, IPR2024-00646, Paper 11, 32 (P.T.A.B. Sept. 25, 2024) (finding that other Fintiv factors do not outweigh the lack of a trial date). The absence of any trial date in either of the two parallel proceedings asserting the '349 Patent weighs decisively against denial.

C. Factors Three and Four (Investment in Parallel Proceedings, Overlap of Issues) Weigh Against Discretionary Denial

Factors three and four of the *Fintiv* analysis **weigh against** discretionary denial. There has been no meaningful investment in the parallel litigation. At the time of the stays (Exs. 1011, and 2005), the only substantive activity had been the

filing of complaints, motions to dismiss, and briefing on the motions. *See generally FanDuel II; DraftKings II*. No discovery has taken place, no claim construction proceedings have occurred, no expert reports have been exchanged, and no trial preparation has begun. *Id.* The district court has not invested any resources in adjudicating the validity of the '349 Patent's claims. The lack of activity is the exact opposite of cases where discretionary denial has been warranted. *Formycon AG v. Regeneron Pharms., Inc.*, IPR2025-00233, Paper 15 at 13-14 (P.T.A.B. June 2, 2025) (denying institution where ongoing, un-stayed multi-district litigation involved "substantial investment" including a two-week trial, preliminary-injunction proceedings, and a 203-page decision on the merits). The fact that both parallel district court proceedings asserting the '349 Patent have been stayed at the earliest possible stage, with negligible if not zero investment by either court, demonstrates that institution will not disrupt any ongoing litigation or duplicate any prior district court work.

As to the overlap of issues, FanDuel's Petition challenges 22 of the 41 asserted claims of the '349 Patent on a specific prior art ground that has not been adjudicated in any parallel forum. Between this Petition (challenging the '349 Patent) and DraftKings' petitions (challenging U.S. Patent Nos. 11,451,883 and 11,338,189), the IPR petitions collectively address each of the three patent families at issue in the district court litigations. The Board's review will therefore meaningfully narrow the

issues that remain to be litigated. Where litigation involves a large number of patents involving diverse subject matter, the Board is “better suited” than a district court to address invalidity. *Samsung Elecs. Co. v. Wilus Inst. of Stds. & Tech. Inc.*, IPR2025-00933, Paper 11 at 3 (P.T.A.B. Oct. 10, 2025). WinView’s complaint about “fragmented” challenges ignores that the Board’s review will achieve exactly the opposite: consolidated expert evaluation of validity issues that would otherwise be litigated separately and less efficiently across two parallel district court cases. Factors three and four therefore weigh against discretionary denial.

D. Factor Five (Whether Petitioner Is the Same Party) Is Neutral

FanDuel is a defendant in *FanDuel II* and thus Factor five does not independently weigh against discretionary denial as to that proceeding. However, FanDuel is not a party to the parallel *DraftKings II* litigation, in which WinView asserts the same ’349 Patent. To the extent the Board considers *DraftKings II* as an additional parallel proceeding involving the ’349 Patent, Factor five weighs against discretionary denial because FanDuel has had no opportunity to litigate the validity of the ’349 Patent in that proceeding. *See Samsung Bioepis Co., Ltd v. Regeneron Pharms., Inc.*, IPR2023-00884, Paper 13 at 71 (P.T.A.B. Nov. 17, 2023) (“It is undisputed that Petitioner is not a party to the district court action, which we determine weighs very heavily against exercising our discretion to deny institution.”). Even as to *FanDuel II*, the fact that the petitioner is also the defendant

in its own parallel case is typical for IPR proceedings and does not affirmatively support denial. Factor five is therefore at most neutral as to the *FanDuel II* litigation and weighs against denial as to the *DraftKings II* litigation.

E. Factor Six (Merits) Weighs Heavily Against Discretionary Denial

Factor six of the Fintiv analysis **weighs heavily against** discretionary denial. This factor accounts for “other circumstances that impact the Board’s exercise of discretion, including the merits.” *Fintiv*, IPR2020-00019, Paper 11 at 14-15. Here, the Petition presents a single anticipation ground under 35 U.S.C. § 102(b) (pre-AIA) based on European Patent Application No. 0 873 772 A1 to McKeown et al. (“McKeown”) (Ex. 1003). McKeown discloses each and every limitation of the challenged claims. Specifically, McKeown discloses: (1) an interactive broadcast network that simultaneously transmits live television broadcast signals and interactive game data from a central controller through a combining unit to remote user units (Ex. 1003, at 3:56-4:12); (2) synchronization of the video and game data using a common universal system clock, with the central controller repeatedly issuing synchronization signals that each remote unit’s microprocessor monitors and adjusts to (Ex. 1003, at 6:27-36); and (3) time-stamped lockout signals broadcast to remote units to prevent further predictions after events commence in the live broadcast (*Id.*, at 2:56-3:2, 6:14-18, 7:30-44, 8:53-58). The Petition is supported by

the detailed declaration of Dr. Aviel D. Rubin, Ph.D. (Ex. 1005), who clearly demonstrated that McKeown anticipates each challenged claim.

This anticipation ground is further buttressed by the Board's prior treatment of WinView's related patents. For example, the Board found all challenged claims of three WinView related patents unpatentable, and WinView abandoned its appeals. *DraftKings Inc. v. WinView Inc.*, IPR2022-01351, Paper 30 (P.T.A.B. Jan. 29, 2024), Paper 32 (July 1, 2024); *FanDuel, Inc. v. WinView Inc.*, IPR2022-01306, Paper 22 (P.T.A.B. Jan. 29, 2024), Paper 24 (Aug. 23, 2024); *FanDuel, Inc. v. WinView Inc.*, IPR2022-01307, Paper 21 (P.T.A.B. Jan. 29, 2024), and Paper 25 (Aug. 26, 2024). The '349 Patent is a later-issued continuation from those same families, and the Board's interest in consistency favors institution. WinView's Brief does not engage with the merits, and it does not argue that McKeown fails to teach any claimed element. WinView's silence confirms that Factor six weighs heavily against discretionary denial.

Finally, WinView's Brief's failure to address *any* of the *FinTiv* factors is telling. WinView's abandonment of this argument confirms that the overwhelming balance of the *Fintiv* factors weighs decisively against discretionary denial. Both district courts have stayed their respective proceedings asserting the '349 Patent, no trial date has been set in either case, there has been no meaningful investment in either parallel proceeding, the merits are compelling, and the Board's prior findings

of unpatentability for WinView’s related patents underscores the need for review.

The Director should decline to exercise discretion to deny institution.

IV. THE DIRECTOR’S INTERIM GUIDANCE FACTORS ALSO WEIGH AGAINST DISCRETIONARY DENIAL

In addition to the *Fintiv* factors, the Director’s Interim Guidance memorandum issued on March 26, 2025 introduced additional factors for determining discretionary denial of an IPR petition, including settled expectations of the parties, judicial economy, and the strength of the invalidity challenge. Each of these factors also weighs against discretionary denial here.

A. Settled Expectations of the Parties Weigh Against Discretionary Denial

WinView argues that its disclosures to FanDuel create “strong settled expectations.” Br. at 3-8. This fundamentally misapplies the Director’s guidance. The settled expectations inquiry focuses on notice of the specific patent at issue, not a patent family. The ’349 Patent did not issue until June 11, 2024, which is more than five years after WinView Inc.’s alleged portfolio disclosures, and its claims are distinct from any earlier-issued family member. FanDuel had no basis to seek review of a patent that did not yet exist. Moreover, the ’349 Patent is less than two years old, which weighs strongly against settled expectations. *See Light & Wonder, Inc. v. Evolution Malta Ltd.*, IPR2025-01072, Paper 11 at 2 (P.T.A.B. Oct. 17, 2025); *Orca Sec. Ltd. v. Wiz, Inc.*, IPR2025-01083, Paper 10 at 2 (P.T.A.B. Oct. 17, 2025);

Geotab Inc. v. Fractus, S.A., IPR2025-01026, Paper 14 at 2 (P.T.A.B. Oct. 17, 2025).

The Board’s prior invalidation of all challenged claims of WinView’s related patents and WinView Inc.’s abandonment of its appeals further undermine any settled expectations. *See Mercedes-Benz Group AG v. Phelan Grp.*, IPR2025-00413, Paper 13 at 2 (P.T.A.B. June 25, 2025); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00465, Paper 12 at 2-4 (P.T.A.B. July 16, 2025).

FanDuel filed this Petition within the one-year statutory deadline under 35 U.S.C. § 315(b). WinView characterizes this as “delay” (Br. at 1), but Congress gave petitioners a full year to bring petitions. Exercising discretion to deny institution on the basis that a petitioner filed within the statutory window would effectively rewrite that deadline. The ’349 Patent application was published in January 2022, issued in June 2024, and was not asserted against FanDuel until February 2025. FanDuel filed approximately eleven months later, acting diligently. WinView’s reliance on *Neural AI*, *Murata*, and *iRhythm* is also misplaced. In each case, the petitioner had actual notice of the specific patent at issue and delayed for years. *See NVIDIA Corp. v. Neural AI, LLC*, IPR2025-00608, Paper 16 at 2-3 (P.T.A.B. July 31, 2025); *Murata Mfg. Co. v. Georgia Tech Rsch. Corp.*, IPR2025-00383, Paper 14 at 2-3 (P.T.A.B. July 29, 2025); *iRhythm Techs., Inc. v. Welch Allyn Inc.*, IPR2025-00363, Paper 10 at 3 (P.T.A.B. June 6, 2025). WinView itself acknowledges that the Director in *Neural AI* recognized that new claims “ordinarily . . . would counsel against

discretionary denial.” Br. at 7-8. The district court’s dismissal with prejudice of WinView’s willfulness allegations in *DraftKings I* confirms that alleged portfolio-level awareness does not rise to the level of notice supporting denial.

The distinctions from the present application are significant. In *Neural AI*, the petitioner was sent the specific challenged patents in 2017 and did not challenge either patent for eight years. Paper 16 at 3. The petitioner received a presentation that “included a discussion of Neurala’s patent portfolio, including the patent challenged in IPR2025-00606 and the original patent that the patent challenged in IPR2025-00608 issued from.” *Id.* Accordingly, the petitioner in *Neural AI* had actual notice of the specific challenged patents (not merely a patent family) and failed to act for nearly a decade. Here, by contrast, the ’349 Patent did not exist at the time of any discussions, FanDuel never received a presentation discussing the ’349 Patent, and FanDuel filed this Petition within the statutory window after the ’349 Patent was first asserted.

In *Murata*, the patents had been in force for more than 16 years and the petitioner had been aware of the patent owner’s work “for a significant amount of time before filing.” Paper 14 at 2. The ’349 Patent has been in force less than two years. In *iRhythm*, the petitioner was aware of the challenged patent as early as 2013: “having cited the then-pending application that issued as the challenged patent in an Information Disclosure Statement Petitioner filed in its own patent application.”

Paper 10 at 3. FanDuel never cited the '349 Patent or its application in any IDS. None of these cases involved a situation where, as here, the district court dismissed *with prejudice* the patent owner's willfulness allegations because pre-suit interactions failed to put the petitioner on notice of later-issued patents. *See* Ex. 1012 at 19-32. WinView Inc.'s alleged 2019 portfolio disclosure cannot overcome this deficiency. A portfolio disclosure cannot disclose the specific claims of a continuation patent not yet prosecuted, and FanDuel had no obligation to monitor every continuation in WinView's 100-plus patent portfolio.

WinView's reliance on *Amazon* is also misplaced. *Amazon.com, Inc. v. Audio Pod IP, LLC*, IPR2025-00768, Paper 15 (P.T.A.B. Aug. 14, 2025). In *Amazon*, the Director jointly considered discretionary denial for six challenged patents. Five were at least seven years old, and the Director found settled expectations for those patents. The Director denied the petition as to the sixth, younger patent on the separate ground of judicial efficiency because the district court would already be considering similar validity challenges for the five older patents. *Amazon*, Paper 15 at 3. Here, the '349 Patent is not challenged alongside older patents, both district court cases have been stayed, and there is no parallel validity adjudication that would make institution duplicative.

WinView's reliance on *DraftKings I* and *FanDuel I* is similarly misplaced. Br. at 5-6. The '349 Patent had not issued when *DraftKings I* and *FanDuel I* were

filed, and the result of that litigation was that all challenged claims of every WinView patent addressed by the Board were held unpatentable. *See supra* Section II. WinView cannot argue that prior litigation created settled expectations when the outcome was wholesale invalidation. WinView Inc.’s subsequent conduct reinforces this conclusion: it abandoned its appeals, which counseled against preemptive challenges to WinView’s 100-plus patent portfolio. *Id.* Nor does any alleged commercial relationship alter the analysis: the settled expectations inquiry asks whether the petitioner had notice of the specific patent, not whether the parties once had a business relationship. Br. at 3-4. WinView IP Holdings, LLC was ***not even formed*** until 2023 and is a distinct entity from WinView, Inc., whose platform operations ceased in 2020, before the ’349 Patent issued. *See supra* Section II. Discontinued work by a different corporate entity does not create settled expectations for Patent Owner. Moreover, Mr. Lockton’s declaration offers only generalized statements about development costs, providing nothing connecting those expenses to the ’349 Patent’s claims. *See Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 at 2-3 (P.T.A.B. July 24, 2025) (failing to demonstrate settled expectations).

B. Judicial Economy and System Efficiency Weigh Against Discretionary Denial

WinView argues that institution would undermine judicial economy. Br. at 9-14. The opposite is true. The district court *sua sponte* stayed both *DraftKings II* and

FanDuel II asserting the '349 Patent. Both parallel proceedings are at the earliest stage, with no discovery, no claim construction, no expert reports, and no trial date set in either case. This is the exact opposite of cases supporting discretionary denial. *Formycon AG v. Regeneron Pharms., Inc.*, IPR2025-00233, Paper 15 at 13-14 (P.T.A.B. June 2, 2025). Between this Petition and DraftKings' petitions (IPR2026-00140 and IPR2026-00175), the challenged patents address each of the three patent families at issue, and the Board's review will meaningfully narrow the issues across both the FanDuel and DraftKings district court proceedings. *Samsung Elecs. Co.*, IPR2025-00933, Paper 11 at 3 (Board is "better suited" for invalidity in multi-patent litigation). The prior IPRs that invalidated all challenged claims of WinView's patents, leading to dismissal of two asserted patents in *FanDuel I* and *DraftKings I* demonstrate the efficiency benefits of Board review.

1. FanDuel Did Not Engage in Strategic Delay

WinView characterizes FanDuel's conduct as "strategic delay" and "litigation gamesmanship." Br. at 9-11. This mischaracterizes the record. FanDuel filed this Petition before any schedule was entered in *FanDuel II* and while its motion to dismiss was still pending. *See* Ex. 2005. The timing of this Petition relative to *FanDuel I* is a consequence of the '349 Patent's later issuance and WinView's decision to file a second lawsuit. *See* Ex. 1004. FanDuel's motion to dismiss was a routine procedural step and the same type of motion vindicated by the district court

in *DraftKings I*, which dismissed WinView’s indirect and willful infringement claims with prejudice. *See* Ex. 1012 at 19-32. The court’s decision to stay proceedings reflects its assessment that the IPR could efficiently resolve validity issues, favoring institution, not denial.

WinView’s argument that there will be a *de bene esse* deposition is also misplaced. FanDuel’s objection to conducting a *de bene esse* deposition was based on the prejudice of obtaining trial testimony before discovery had begun in litigation that was already stayed, not on any effort to delay. The court granted WinView’s request and the deposition is scheduled to proceed regardless of this IPR. Ex. 2006.

Next, WinView cites *Amazon.com, Inc. v. SoundClear Techs. LLC*, IPR2025-01080, Paper 15 (P.T.A.B. Oct. 17, 2025) and *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12 (P.T.A.B. July 31, 2025) for the proposition that stays do not preclude denial (Br. at 11), but those cases turned on strong settled expectations and petitioner delay that are neither applicable nor present here.

2. The Petition Does Not Fragment the Dispute

WinView’s contention that FanDuel and DraftKings coordinated petitions to avoid estoppel (Br. at 12-13) is baseless. FanDuel and DraftKings are independent entities with different accused products involved in separate litigations. DraftKings filed its petitions first (IPR2026-00140; IPR2026-00175, filed Jan. 16, 2026), and FanDuel’s subsequent challenge of a different patent is not evidence of “collusion,”

particularly given that serial challenges to the same patent are disfavored. *See Samsung Elecs. Co. v. VB Assets, LLC*, IPR2025-00868, Paper 13 at 2-3 (P.T.A.B. Sept. 12, 2025); *Webgroup Czech Republic A.S. v. DISH Techs. LLC*, IPR2025-00467, Paper 14 at 2-3 (P.T.A.B. July 16, 2025). FanDuel did not control DraftKings' choice of patents or grounds, and WinView has not cited evidence to the contrary, nor could it, relying instead on complete speculation.

Furthermore, a petitioner need not challenge every asserted patent to advance judicial economy; indeed, the prior IPRs narrowed *DraftKings I* and *FanDuel I*, including dismissal of two asserted patents. *Samsung Elecs. Co.*, IPR2025-00933, Paper 11 at 3. Moreover, the Petition challenges claims on a single anticipation ground based on McKeown, a ground not adjudicated in any forum. There is no overlap with any district court proceeding, as neither court has addressed the '349 Patent's validity. Both cases were stayed at the pleadings stage, before invalidity contentions, claim construction, or expert discovery. Discretionary denial here would increase the number of proceedings by forcing FanDuel to litigate in a less specialized forum. Invalidation of the 22 challenged claims will substantially narrow both district court disputes, and IPR estoppel under § 315(e) will further streamline proceedings.

3. WinView's Stipulation Arguments Are Premature

WinView faults FanDuel for not filing a *Sotera* stipulation. Br. at 14. But the proposed rule WinView cites, 90 Fed. Reg. 48,335, has not been finalized. Under the current Director's guidance, stipulations are encouraged but not required.

C. The Strong Merits of the Petition Weigh Against Discretionary Denial

As discussed in Section III.E above, the Petition is strong on the merits based on a single-reference anticipation ground under § 102(b) (pre-AIA), with McKeown (Ex. 1003) disclosing every element of the challenged claims. The strength of the anticipation ground is reinforced by the Board's prior treatment of WinView's related patents. In *FanDuel, Inc. v. WinView Inc.*, IPR2022-01306, Paper 22 (P.T.A.B. Jan. 29, 2024), the Board found all challenged claims of the '730 patent, from the same family as the '349 Patent, unpatentable as obvious over Malaure *and* McKeown. The Board's decision directly credited McKeown's teachings on lockout signals and synchronization (Paper 22 at 31-36) and Dr. Rubin's testimony (*id.* at 42). WinView, Inc. abandoned its appeal. *See* IPR2022-01306, Paper 24 (Aug. 23, 2024). This Petition goes further: whereas the '730 patent challenge required McKeown in combination with Malaure, this Petition relies on McKeown alone for anticipation. The '349 Patent itself acknowledges that lockout signals and synchronization were well-known in the art. Ex. 1001, at 4:35-41. If McKeown sufficed in combination to render all '730 patent claims unpatentable, its standalone

disclosures are more than sufficient here. Denying institution would require the Board to ignore its own prior findings.

V. CONCLUSION

For all the foregoing reasons, WinView's request for discretionary denial should be denied. Every *Fintiv* factor weighs against denial or is neutral: both district courts have stayed their proceedings (*FanDuel II* and *DraftKings II*), no trial date has been set, there has been no meaningful investment, and the merits are strong. Under the Interim Guidance, WinView has no settled expectations for a patent issued less than two years ago and institution would promote judicial economy across both parallel proceedings. The district court's dismissal with prejudice of WinView's willfulness allegations confirms that pre-suit interactions cannot create settled expectations for unissued patents.

Petitioner respectfully requests that the Board deny WinView's request for discretionary denial and institute *inter partes* review of claims 1-5, 7-13, 15, 17, 21-22, 24, 31, 33, 35, and 39-40 of the '349 Patent.

Dated: May 12, 2026

Respectfully submitted,

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CERTIFICATE OF PAGE LIMIT

The undersigned certifies that Petitioner's Opposition to Patent Owner's Request for Discretionary Denial complies with the 20-page limit provided in Section III.C.iii of the Interim Director Discretionary Process guidance available at <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>.

Dated: May 12, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on May 12, 2026, a complete and entire copy of this Petitioner's Opposition to Patent Owner's Request for Discretionary Denial, were provided to the Patent Owner as follows:

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