

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

PATENT OWNER'S PRELIMINARY RESPONSE

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PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	Declaration of David Lockton in Support of Patent Owner's Request for Discretionary Denial
2002	Intentionally omitted
2003	First Amended Complaint for Patent Infringement, <i>WinView IP Holdings, LLC v. FanDuel, Inc.</i> , No. 21-cv-13807, Dkt. No. 8 (D.N.J.), filed on July 28, 2021
2004	Letter from counsel for Petitioner to Honorable Judge Castner, <i>WinView IP Holdings, LLC v. FanDuel Inc., et al.</i> , No. 25-cv-01146, Dkt. No. 66 (D.N.J.), filed on February 3, 2026
2005	Text Order Staying Motion to Dismiss, <i>WinView IP Holdings, LLC v. FanDuel Inc., et al.</i> , No. 25-cv-01146, Dkt. No. 68 (D.N.J.), filed on March 2, 2026
2006	Text Order Regarding Mr. Lockton's Deposition, <i>WinView IP Holdings, LLC v. FanDuel Inc., et al.</i> , No. 25-cv-01146, Dkt. No. 73 (D.N.J.), filed on March 13, 2026
2007	Complaint for Patent Infringement, <i>WinView IP Holdings, LLC v. DraftKings Inc., et al.</i> , No. 3:25-cv-01143, Dkt. No. 1 (D.N.J.), filed on February 10, 2025
2008	Proposed Rule § 42.108(e), 90 Fed. Reg. 48,335, 48338 (Oct. 17, 2025)
2009	Verizon webpage, "What is Streaming – Definition, Meaning & Explanation," dated May 7, 2026, available at https://www.verizon.com/articles/internet-essentials/streaming-definition/

Patent Owner's Preliminary Response
IPR2026-00245 (U.S. Patent No. 12,005,349)

Exhibit	Description
2010	Microsoft Learn webpage, “Stream, Streaming – Microsoft Style Guide,” dated June 24, 2022, available at https://learn.microsoft.com/en-us/style-guide/a-z-word-list-term-collections/s/stream-streaming
2011	Microsoft Computer Dictionary, Page 499 (5th ed. 2002), definition for “streaming”

I. INTRODUCTION

The Director should deny institution because McKeown does not anticipate any claim of the '349 Patent, which is directed to a very different solution to a very different problem. The '349 Patent is about solving problems created by latency delays that affect multiplayer games that are streamed over the Internet, giving some players unfair advantages based on when they receive the data. The challenged claims of the '349 Patent solve that problem by synchronizing video data and game data, thereby accounting for delays in transmission to the user.

In contrast, McKeown, which is based on late 1990s technology, is directed to implementing a game over a conventional TV broadcast, where players try to predict events that are happening in the live broadcast. McKeown adds game data to the analog TV broadcast. Unlike the Internet-based two-way communications underlying the '349 Patent, McKeown primarily operates with a one-way flow of information over the TV broadcast, and relies on different backchannels, such as a landline, for the game players to provide information back to the system. To solve the problem of players' remote units falling out of synch, McKeown relies on a "common universal system clock," which includes "synchronization signals" in the TV broadcast. McKeown relies on this synchronization process to determine when to stop accepting player predictions. The synchronization clock in McKeown *has no impact at all on modifying the display to the user*. Thus, McKeown does not

disclose streaming over the Internet or providing game and video data that are synchronized when displayed, and it cannot anticipate any of the challenged claims.

Petitioner FanDuel's arguments trying to map McKeown to the challenged claims are an attempt to force a square peg into a round hole. **First**, FanDuel relies on McKeown's TV broadcast signal for the claimed "streaming," but a TV broadcast does not meet streaming under any reasonable interpretation of that term. The '349 Patent's specification uses "streaming" in accordance with its plain and ordinary meaning in the art, which refers to the transmission of data over the Internet. Indeed, the specification explains that streaming and TV broadcasting are distinct and alternative data transmission mechanisms. '349 Patent at 20:55-58. The Director should deny institution because McKeown's TV broadcast does not "stream[] video data" (Claim 1) or synchronize "streaming content" with game data at the device where the game is being played (Claim 24).

Second, FanDuel relies on McKeown's common universal system clock for synchronizing game data and video data displayed to the user, but McKeown's clock does not provide synchronization of game data and video data when displayed. McKeown's common universal system clock synchronizes a centralized system clock with local device clocks for rule enforcement purposes: when a user places a bet, the device compares the bet's timestamp from its local clock to the timestamp of a lockout signal. As long as the centralized system clock and the local clock are

synchronized, the system can prevent the user from placing the bet in the first place or nullify a bet that should not have been allowed. McKeown's common universal system clock does not, and is unrelated, to any process for synchronizing game data and video data when displayed to the user, as both independent claims require.

Third, McKeown does not disclose an application that is processed by a processing component and configured for transmitting both game data and a lockout signal to devices, as required in Independent Claim 24. Rather, McKeown's system includes two hardware components—a central controller and a combiner—each performing its own distinct transmission function. The central controller issues an alleged lockout signal to the remote units. The combiner combines game data with a TV broadcast for transmission to the remote units. McKeown therefore does not include a distinct application that, executed by a processing component, is configured for the transmission of both game data and a lockout signal as Independent Claim 24 requires.

Fourth, FanDuel fails to identify with particularity where McKeown allegedly discloses “preventing users from submitting a response to the game data based on the video data and a lockout signal,” as recited in Independent Claim 1. 35 U.S.C. § 312(a)(3). The Petition identifies McKeown's time-stamped lockout commands as allegedly disclosing the prevention of responses based on “a lockout signal,” but FanDuel does not identify any teaching in the art that allegedly discloses

preventing a user response “based on the video data.” FanDuel’s failure to account for this limitation precludes a finding that it satisfied its burden to “specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4).

Accordingly, for each of these independent reasons, FanDuel fails to demonstrate a reasonable likelihood that it would prevail on any challenged claim, and institution should be denied.

II. OVERVIEW OF THE '349 PATENT AND THE ASSERTED GROUND

A. The '349 Patent Claims Multiplayer Games That are Based on Synchronization of Streamed Video Content and Game Data When Displayed

The '349 Patent claims delivering a game of skill alongside streaming video content to a user’s device. The game data and video data are then synchronized at the user’s device (point of display). A lockout signal prevents users from submitting responses once a triggering event has occurred in the video. '349 Patent, Claims 1, 24. The core problem the claims address is that propagation delays inherent in streaming content over the Internet mean that participants watching the same live event do not all see it at the same time, creating an unfair competitive advantage if a lockout signal is applied without accounting for each user’s individual delivery delay. *Id.* at 3:47-57, 3:66-4:2. The '349 Patent’s inventions solve this latency

problem by synchronizing video data and game data when displayed, thereby leveling the playing field while keeping the window of time open as long as possible for participants to enter their selections or wagers.

The claims solve this problem through two requirements working together. First, the system streams video data and game data over the Internet to the user's device—enabling the system to measure and account for delivery delays caused by latency in Internet transmission. *Id.* at Claim 1, 18:51-60. Second, the video data and game data must be synchronized when displayed to the user: “software resident on the phone ensures that the game play data and audio are synchronized with the video archive.” *Id.* at 13:2-5; *see also id.*, Claim 1 (“video data and the game data are synchronized when displayed” to the user), Claim 24 (“the game data is to be synchronized with the streaming content at the one or more devices”).

The specification discloses that display-level synchronization is achieved, for example, by the application on the device determining when the stream is received, estimating the delivery delay for that user's location, and adjusting the presentation of game data accordingly so that the lockout signal reaches the user at the appropriate time. *Id.* at 12:17-21, 19:44-50. The application continuously monitors this alignment using synchronization points to ensure the game data remains synchronized with the content throughout the display to the user. *Id.* at 18:51-60.

B. The Asserted Ground and Reference

1. The Asserted Ground

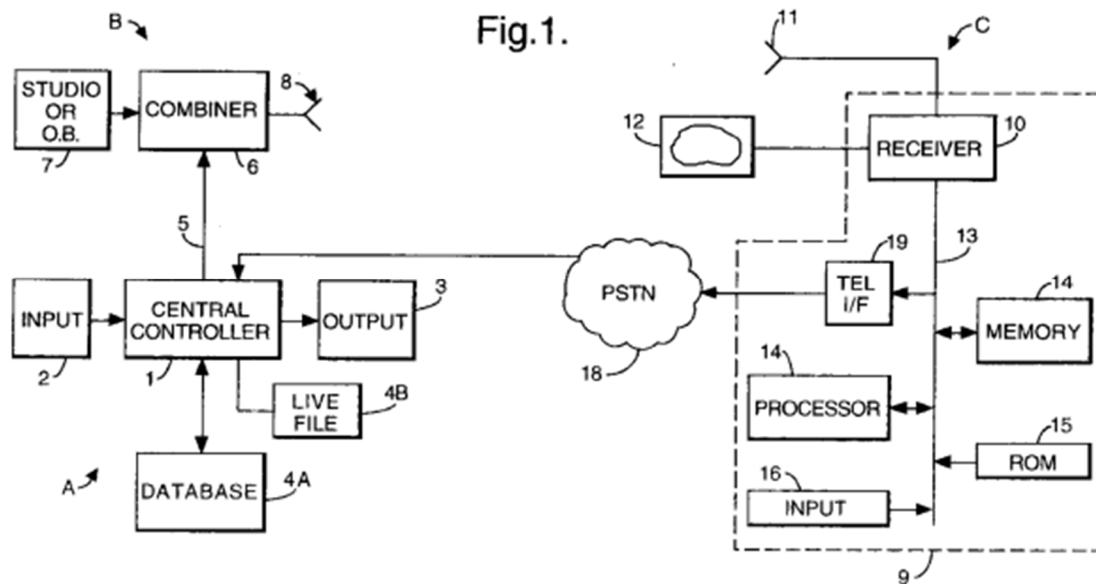
Ground	Claims	Basis	References Relied Upon
1	1 , ¹ 2-5, 7-13, 15, 17, 21-22, 24 , 31, 33, 35, and 39-40	§ 102	McKeown

Pet. at 5.

2. The McKeown Reference (Ex. 1003) Provides Analog TV Broadcasts to Remote Users

McKeown describes an interactive, predictive game system in which a central controller generates game playing data that is sent to a combiner and transmitted with a TV broadcast to remote users. McKeown at 1:35-41, 2:4-9, 4:2-12.

¹ Bolded text represents an independent claim.



Id. at Fig. 1. Because McKeown's game data is combined with an analog TV broadcast signal and delivered over the air to a television receiver, it does not disclose streaming video or game data.

McKeown's "common universal system clock" also does not provide display-level synchronization. McKeown's clock serves a single purpose: to align the local clocks of remote units across the system to a shared time base so that prediction rules can be consistently enforced. McKeown at 6:27-45. The central controller periodically sends synchronization signals to remote units, and each unit compares the signal against its local clock and adjusts accordingly. *Id.* at 6:8-7:2. That clock alignment mechanism tells every device what time it is—it does not measure, compensate for, or control display-level synchronization of game data and video data. *Id.*

III. PERSON OF ORDINARY SKILL IN THE ART

For the purposes of this preliminary response only, WinView adopts FanDuel's proposed definition of a person of ordinary skill in the art ("POSITA"), which is a person who at the earliest claimed priority had "at least a bachelor's degree, or equivalent, in Computer Science and several years of experience in software development." Pet. at 14.

IV. CLAIM CONSTRUCTION

The only construction necessary to resolve this controversy is "*streaming*," which is recited in Independent Claims 1 and 24 of the '349 Patent:

Claim 1	Claim 24
1. A method of playing a game, comprising: a. <i>streaming video data and game data</i> ; b. operating a program to display the video data and the game data, wherein the video data and the game data are synchronized when displayed; and c. preventing users from submitting a response to the game data based on the video data and a lockout signal.	24. A server for synchronizing a game or contest with <i>streaming content</i> comprising: a. a memory for storing an application, the application configured for: i. transmitting game data for the game or contest to one or more devices on which the game or contest is to be played wherein the game data is to be synchronized with the <i>streaming content</i> at the one or more devices; and ii. transmitting a lockout signal to the one or more devices to prevent users from submitting a response to the game or contest based on the <i>streaming content</i> ; and b. a processing component coupled to the memory, the processing component

Claim 1	Claim 24
	configured for processing the application.

Streaming is a ubiquitous and well-understood term in the art, which requires, at a minimum, *transmitting data over the Internet*. FanDuel's Petition depends on departing from this plain and ordinary meaning to encompass over-the-air TV broadcasts. *See, e.g.*, Pet. at 2, 16, 27, 37-38. The Director should deny the Petition because FanDuel has not attempted to establish that the inventor of the '349 Patent intended to re-define "streaming," as is its burden under 37 C.F.R. §§ 42.104(b)(3)-(4), and because the plain and ordinary meaning of "streaming" does not extend to TV broadcasts like those disclosed in McKeown, which are not transmitted over the Internet.

The specification consistently and repeatedly uses "stream" to refer to Internet-based transmission. *See Golden Bridge Tech., Inc. v. Apple Inc.*, 758 F.3d 1362, 1365 (Fed. Cir. 2014) ("Claim terms are generally given their plain and ordinary meanings to one of skill in the art when read in the context of the specification and prosecution history."). For instance, the specification discloses that:

- A "stream" occurs "*via the Internet*."
- A "live stream" is "*Internet* delivered."

- “Live streams via the *Internet*.”
- A “streamed video” is “*Internet* programming.”

’349 Patent at 2:50-56, 5:13-17, 3:4-6 (emphases added). Thus, the specification’s Internet-based transmission description supports the plain and ordinary meaning of streaming.

Definitions from technical dictionaries and articles confirm that streaming content is transmitted over the Internet. *Trs. of Columbia Univ. in City of New York v. Symantec Corp.*, 811 F.3d 1359, 1362-63 (Fed. Cir. 2016) (dictionary definitions may be relied on “so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents”). The definitions listed as follows all include Internet-based transmission of data:

- “streaming” is “transmitting audio and video files in a *continuous flow over a wired or wireless internet connection*.” Ex. 2009 at 1 (emphasis modified).
- “streaming” is “audio, video, or graphics coming to a browser or media player *over the internet*.” Ex. 2010 (emphasis added).
- “streaming” is “[o]n the *Internet*, the process of delivering information, especially multimedia sound or video, in a

steady flow that the recipient can access as the file is being transmitted.” Ex. 2011 at 499 (emphasis added).

The intrinsic and extrinsic record confirm that streaming refers to the flow of data over the Internet, which is distinct from a TV broadcast that is over the air. *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001) (declining to construe a term to include an alternative approach that the patentee was aware of and distinguished as an alternative). The '349 Patent distinguishes between a stream and a broadcast as alternative transmission mechanisms: media content can be transmitted either “over the air broadcast” or “through an Internet delivered live stream.” '349 Patent at 5:12-17. “In other words, data is able to be *either* A) downloaded in advance or *B) streamed or C) broadcast.*” *Id.* at 12:56-64 (emphasis added). The terms “either”/“or,” in particular, signify that streaming and broadcasting are different transmission modalities, and that streaming content requires, at a minimum, that the content be transmitted over the Internet.

Based on the foregoing, streaming means *the transmission of data over the Internet*, which is a distinct from an over-the-air TV broadcast

**V. FANDUEL DOES NOT ESTABLISH A REASONABLE
LIKELIHOOD THAT MCKEOWN ANTICIPATES ANY CLAIM**

**A. McKeown's TV Broadcast is Not "Streaming Content" or
"Streaming Video" (Claims 1 and 24)**

McKeown does not anticipate Independent Claims 1 and 24 because over-the-air TV broadcast signals are not "streaming content," "streaming video data," or "streaming . . . game data" under the plain and ordinary meaning of the term streaming. *See* § IV, *supra*; Pet. at 27, 52-53 (mapping McKeown's "live television broadcast signals" to "streaming").

Streaming refers to the transmission of data over the Internet, which is distinct from, and an alternative to, a TV broadcast that is over the air. *See* § IV, *supra*. In McKeown, a central controller "generat[es] game playing data for transmission with a TV broadcast to the remote player(s)." McKeown at 1:38-41; *see also id.* at 2:4-9, 4:2-12. The TV broadcast signal—including the game data and TV broadcast—is transmitted over the air "within a vertical blanking interval (VBI) of the normal TV signal or on a separate radio FM-SCA channel" and received by a television receiver. *Id.* at 4:15-22. McKeown's TV broadcast signal is not, therefore, streaming content.

FanDuel's only support for its contention that a TV broadcast is "streaming content" comes from its expert who parrots the Petition without any additional analysis or supporting technical evidence. *See* Pet. at 27 (citing Ex. 1005 at ¶ 57).

Where there is no additional evidentiary support, the expert's declaration should be entitled little to no weight. *Xerox Corp. v. Bytemark, Inc.*, No. IPR2022-00624, Paper 9 at 15 (P.T.A.B. Aug. 24, 2022) (precedential).

For at least these reasons, FanDuel has not established that McKeown anticipates Independent Claims 1 and 24.

B. Independent Claims 1 and 24: McKeown Does Not Disclose Synchronized Limitations

McKeown also does not anticipate Independent Claims 1 and 24 because it does not disclose a program that synchronizes video data and game data “when displayed” or “game data is to be synchronized with the streaming content at the one or more devices.” ’349 Patent, Claims 1, 24. McKeown’s “common universal system clock” aligns local device clocks to a centralized clock to ensure that bets placed after a lockout signal (according to the synchronized clocks) are not honored; it has no impact on synchronizing video data and game data when displayed to the user. *See* Pet. at 29-30 (relying on McKeown’s “common universal system clock”); McKeown at 6:27-45.

The ’349 Patent discloses that “software resident on the phone ensures that the game play data and audio are synchronized with the video.” ’349 Patent at 12:50-53, 13:2-5. For instance, “[a] plurality of synchronization points within audio or video are used by software on a client in connection with a server to continuously

monitor the telecast/streaming content to ensure the game of skill or chance played on the client is precisely synchronized with the telecast/streaming content.” *Id.* at 18:55-60. Thus, the '349 Patent discloses and claims display-level synchronization of the game data to the video data for display.

McKeown's common universal system clock—which FanDuel relies on for synchronization—is used for system clock alignment, not synchronization of video data and game data for display. *See* Pet. at 29-30, 57-58. The system aligns each remote unit's local clock to the common universal system clock so that all users are subject to the same time frame for submitting predictions. McKeown at 6:27-45. To maintain alignment, the central controller repeatedly sends “synchronization signals” to each remote unit, which compares the signal against its own clock. If there is a discrepancy, the remote unit adjusts its clock to agree with the synchronization signal. *Id.* Once the system and local clocks are synchronized, the system applies timestamp lockouts relative to the same shared time base to prevent users from making predictions after a lockout signal has been sent. *Id.* at 6:8-7:1.

McKeown's common universal system clock, therefore, synchronizes users' clocks with a centralized clock, but it plays no role in synchronizing video data and game data for display. McKeown's clock alignment has no impact at all on modifying the display to the user. For example, it does not measure, compensate for, or control when the game and video data are rendered on a user's display (e.g.,

including delays from broadcast distribution, receiver processing, buffering, or decoding). Nor does it disclose any other method for synchronizing video data and game data that would allegedly satisfy the Challenged Claims. Accordingly, McKeown may synchronize device clocks to ensure that wagers placed after a lockout signal is sent can be prevented or cancelled, but it does not synchronize video data and game data when displayed to the user.

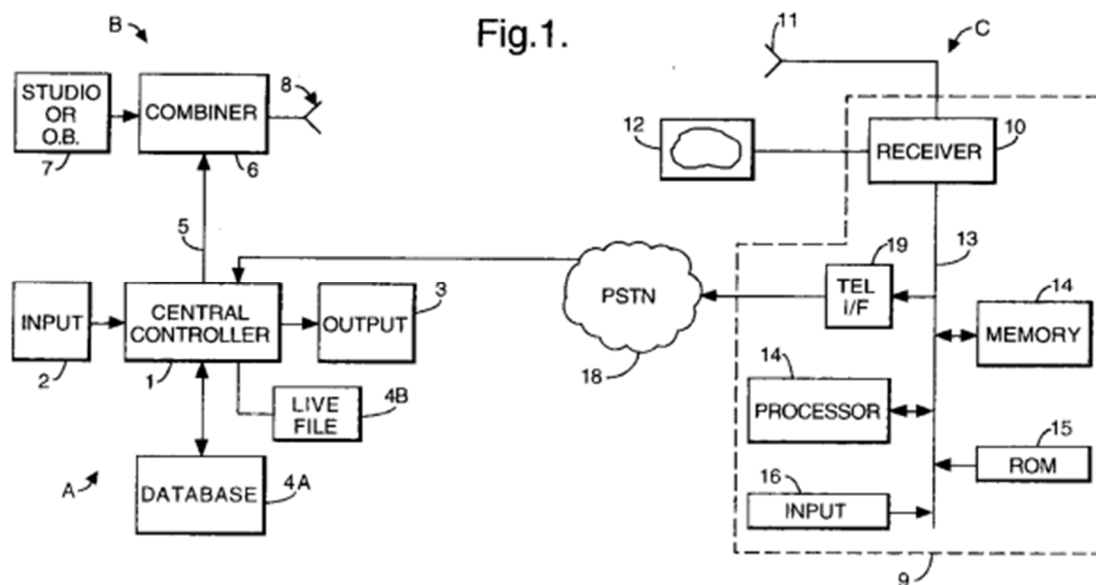
Thus, contrary to FanDuel's assertion, McKeown's synchronization signals are for clock alignment across devices, not synchronization of video data and game data when displayed to the user. Pet. at 30. McKeown therefore does not disclose the display-level synchronization as recited in the independent claims.

C. Independent Claim 24: McKeown Does Not Disclose “an Application” That is Processed by a Processing Component and Configured for Transmitting Game Data and a Lockout Signal

McKeown also fails to anticipate Independent Claim 24 because it does not disclose an “application” that transmits game data and a lockout signal to one or more devices, as claimed. *See* '349 Patent, Claim 24 (reciting “the application configured for: i. transmitting game data . . . to one or more devices” and “ii. transmitting a lockout signal to the one or more devices” and “a processing component” that is “configured for processing the application”).

FanDuel does not identify a memory storing an “application configured for” “transmitting game data” and “a lockout signal” to one or more devices playing the

game. To map these limitations, FanDuel points to certain functionalities of central controller 1 and combining unit 6 (otherwise known as the combiner) without establishing that these functionalities are performed by any application, let alone the same application. Pet. at 55-56, 59-60. In fact, McKeown's combiner and central controller are distinct components, and to the extent either executes an application, it is not the same application that is stored in "a memory," as recited in Claim 24:



McKeown at Fig.1.

FanDuel relies on (1) the central controller for transmitting an alleged lockout signal and (2) the combiner for transmitting game data with a TV broadcast. This is reflected in FanDuel's mapping. Pet. at 59-60 (arguing that the *central controller* "issue[s] a lock-out signal which is broadcast to the remote units C") (emphasis modified); *id.* at 55-56 (arguing that the *combining unit 6* "receives television

broadcast signals” and combines them with the game data “so that they are transmitted simultaneously by a transmitter 8 to the remote users of player C”) (emphasis modified). FanDuel does not—and cannot—identify in McKeown an application that is configured to transmit game data and a lockout signal to the remote units.

Based on the foregoing, McKeown does not disclose “the application” that is executed by a processing component and is configured for transmitting game data and a lockout signal.

D. Independent Claim 1: FanDuel Fails to Show How McKeown's Alleged Prevention of Users Submitting a Response is Based on Video Data

FanDuel has not established a reasonable likelihood that McKeown anticipates Independent Claim 1 because it has not identified where McKeown allegedly teaches “preventing users from submitting a response to the game data *based on the video data* and a lockout signal.” ’349 Patent, Claim 1 (emphasis added). FanDuel’s analysis only mentions lockout signals. *See* Pet. at 30-33.

It is FanDuel’s burden to establish that McKeown discloses preventing users from submitting a response based on both video data and a lockout signal. 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”); *see also* 37 C.F.R. § 42.104(b)(4) (“The petition must specify where each element of the

claim is found in the prior art patents or printed publication relied upon.”). However, FanDuel’s analysis is directed only to the claimed “lockout signal”—alleging that “time-stamped signals supplied to the remote players can be used as a lock-out signal” to prevent predictions. Pet. at 30; *see also id.* at 31 (“the central controller 1 will issue a *lock-out signal . . . to prevent any further predictions from being entered*”) (emphasis added); *id.* at 32 (“the use of a lockout signal to prevent predictions from being entered”). FanDuel does not explain how preventing users from submitting a response is “based on the video data,” as recited in Independent Claim 1.

Absent identification and explanation of how McKeown allegedly prevents predictions based on both “video data and a lockout signal,” FanDuel fails to show that McKeown discloses the claim limitation.

VI. CONCLUSION

For at least the foregoing reasons, the Director should deny institution because FanDuel fails to show a reasonable likelihood of success that any Challenged Claim is unpatentable.

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Respectfully submitted,

Date: May 12, 2026

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CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

The undersigned hereby certifies that the portions of the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** has 3,693 words in compliance with the word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using the Microsoft Word word-processing system used to prepare this paper.

Dated: May 12, 2026

/James Hannah/
James Hannah (Reg. No. 56,369)

Attorneys for Patent Owner
WinView IP Holdings, LLC

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), that
service was made on Petitioner as detailed below.

<i>Date of service</i>	May 12, 2026
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