

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DRAFTKINGS INC.,
Petitioners,

v.

WINVIEW IP HOLDINGS, LLC,
Patent Owner.

Case IPR2026-00175
U.S. Patent No. 11,338,189

PATENT OWNER'S PRELIMINARY RESPONSE

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I. INTRODUCTION

The Board should deny institution because the Petition does not establish a reasonable likelihood that DraftKings will prevail on any challenged claim. The Petition's anticipation theory rests on fundamental misreadings of the '189 Patent claims and equally fundamental overextensions of Hughes. Hughes describes roster-based fantasy sports leagues in which a user creates a team once and then competes based on player performance. The '189 Patent, by contrast, is directed to a materially different system: one that allows a user, during a live event, to make multiple event selections that are separately applied, in real time, across multiple distinct contests, with results and standings independently tracked for each contest.

DraftKings attempts to bridge this gap by recharacterizing a fantasy roster—and isolated, unconnected references to predictions in Hughes—as the claimed “event selections.” But Hughes does not disclose receiving multiple event selections and applying those selections across multiple contests as required by the independent claims. Nor does it disclose real-time participation enabled by those selections, contests “selected from single entry contests and multiple entry contests,” or storing results and standings based on multiple event selections. At bottom, the Petition identifies only a single selection applied across leagues and attempts to rewrite the claims to include timing and league-entry concepts disclosed in Hughes.

Because Hughes does not disclose the claim limitations as arranged in the independent claims—and because the Petition never remedies those failures for the dependent claims—the Petition falls well short of the statutory threshold for institution. The Board should therefore deny the Petition.

II. OVERVIEW OF THE '189 PATENT AND ASSERTED ART

A. The '189 Patent Enables a User to Participate Simultaneously Across Multiple Competitions

The '189 Patent describes and claims methods and systems that enable a user to participate simultaneously in multiple contests of skill—each with different competitive groups—based on event selections, thereby increasing engagement and fairness without requiring separate gameplay. '189 Patent at 2:36-37. The user is presented with a list of multiple contests to join, chooses multiple competitions to join, and then makes event selections related to the event, which are applied simultaneously to the multiple events. *Id.* at 2:38-53. As claimed, these event selections must “enable simultaneously and in real time participating in the selected multiple contests of skill or chance.” *Id.*, Claim 24.

For example, a user, “Player A,” can participate in an interactive game associated with a Monday Night Football event. *Id.* at 6:19-67. Player A first selects multiple competitive groups (*e.g.*, an open contest, a head-to-head contest, and a team competition) to participate in. *Id.* Then, during the game, Player A makes

event selections, such as predictions regarding plays occurring in the football game. *Id.* at 9:12-15. These event selections are made once and separately applied to each competitive group contest. *Id.* at 9:15-21. Player A's selections are evaluated against each competitive group and under different rules, resulting in different standings and outcomes from the same performance. *Id.* at 9:22-36.

B. The Asserted Grounds and Art

1. The Asserted Grounds

Ground	Claims	Basis	References Relied Upon
1	14 ¹ , 15, 17, 22, 24-25, 31, 37	§ 102	Hughes
2	19-20, 34-35	§ 103	Hughes in view of Berner
3	23, 25-26, 33, 38	§ 103	Hughes in view of Barber

Pet. at 5. Because Ground 1 is the only ground that challenges the independent claims, the Preliminary Response focuses primarily on this ground.

2. Hughes

Unlike the '189 Patent, where multiple event selections are entered simultaneously across different contests, Hughes disclose a user only entering their team roster—a single entry—into an award league that they are participating in.

¹ Bolded text represents an independent claim.

Hughes' system involves fantasy sports contests, such as football award leagues, in which a user enters their team roster into the league and receives points based on the performance of the players in the team roster. Once the user creates a roster, the roster may be entered into one or more award leagues that group users geographically. Hughes at 6:57-61, 15:57-61, 17:63-18:1, 18:38-41, 20:12-14, Fig. 10 (selecting a team roster), Fig. 11 (depicting the user's team roster 1106). Accordingly, a user can enter a roster into a local, regional, national, or international competition comprised of users from a common geographical area, which allows sponsors, like McDonald's, to individually target advertisements to the different leagues. *See id.* at 2:44-58.

C. Person of Ordinary Skill in the Art

For the purposes of this preliminary response only, WinView adopts DraftKing'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 the equivalent of a Bachelor's degree in computer science, computer engineering, or a related subject and two or more years of experience in the field of distributed systems, networking, and software design. Less work experience may be compensated by a higher level of education, and vice versa." Pet. at 3.

III. CLAIM CONSTRUCTION

For the purposes of this Preliminary Response only, no construction is necessary to resolve the dispute and uphold patentability.

IV. GROUND 1: DRAFTKINGS DOES NOT SHOW A REASONABLE LIKELIHOOD OF PREVAILING ON THE CHALLENGED CLAIMS

A. Hughes Does not Anticipate Independent Claim 24²

There can be no anticipation “unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008). Hughes does not anticipate Independent Claim 24 for at least the following reasons.

1. Hughes Does Not Disclose Receiving Multiple Event Selections and the Applying Selections Across Multiple Events Simultaneously (Element 24[d])

Hughes does not disclose “receiving user input including event selections related to the one or more events and to which multiple contests of skill or chance the selections are to be applied, wherein the event selections are separately applied to each of the selected multiple contests of skill or chance,” as recited in Element 24[d]. DraftKings identifies only a single event selection—a user’s roster—that is

²WinView addresses the Independent Claims in the same order as the Petition and uses the same claim limitation numbering as in the Petition.

allegedly applied to multiple award leagues, and never identifies any other event selection (including a user's prediction) that is separately applied across multiple leagues.

The plain language of the claim requires applying *multiple* event selections to each of the selected contests, which Hughes does not disclose. Although DraftKings identifies more than one selection—a user's roster and event predictions—Hughes only discloses applying one (the user's roster) across multiple leagues. *See* Pet. at 31-32 (“Indeed, Hughes touts that its fantasy sports-contest application ‘allows the user to enter multiple award leagues (in the same sports category), *while maintaining only one team*’ as an express advantage of its fantasy sports contest application.” (quoting Hughes at 16:18-20)). Indeed, DraftKings does not even contend that Hughes' event predictions, which Hughes only mentions in passing, are applied separately to each league. *Id.*

DraftKings also does not contend that the user's selection of a roster constitutes multiple event selections. *See* Pet. at 28-32 (referring to a roster as “an event selection”). Accordingly, when arguing that Hughes teaches receiving multiple event selections, DraftKings points to the user's selection of a roster and a user's prediction about an event. *Id.* at 28-29 (“The user's roster is *an* event selection” and “the user's prediction of real-time outcome is also *an* event selection.”) (emphasis added). However, DraftKings does not contend, and Hughes

does not teach, that a user's prediction of a real-time outcome is received and separately applied to each award league. *Id.* Accordingly, DraftKings has not demonstrated that Hughes discloses applying multiple event selections across multiple selected contests.

Indeed, DraftKings does not argue that Hughes discloses applying a user's predictions across multiple leagues or that Hughes discloses applying a user's predictions in combination with the roster. Instead, for each of these limitations, DraftKings relies only on the user's roster selection:

- “[U]ser input including . . . to which of the multiple contests of skill or chance the selections are to be applied.” DraftKings identifies only the user's roster in asserting that “a user may choose to apply a previously made roster to award leagues.” Pet. at 30 (“Thus, the user provides input to select to which award leagues to apply their roster”).
- “[R]eceiving user input.” For this claim phrase, DraftKings does not argue that a user's predictions are separately applied to multiple award leagues. *Id.* (“As noted above, Hughes describes a user providing input including both their roster (i.e., event selection) and to which award leagues to apply the roster.”).
- “[T]he event selections are separately applied to each of the selected multiple contests.” *Id.* at 31 (“In these contests, the user's roster (i.e.,

event selection) is separately applied to each award league that the user enters.”).

Accordingly, because DraftKings identifies only a single event selection allegedly applied to multiple award leagues, DraftKings does not (and cannot) show that Hughes discloses Element 24[d] in the same way recited in the claims. Therefore, Hughes does not anticipate Independent Claim 24 and its dependents.

2. Hughes Does Not Disclose That the “Selections Enable . . . in Real Time Participating in the Selected Multiple Contests” (Element 24[e])

Hughes does not disclose event selections that “enable . . . in real time participating in the selected multiple contests of skill or chance.” *See* Pet. at 34-36.

DraftKings’ primary argument for this limitation relies on Hughes’ alleged description of “fantasy sports contests that require continued, real-time participation by ‘determining or guessing . . . whether particular outcomes will occur.’” *Id.* at 34-35 (relying on predicting “whether a particular golfer will make the next [putt].”). However, as discussed above, Hughes does not disclose applying such predictions across multiple leagues simultaneously. Accordingly, for at least this reason, Hughes’ limited disclosure of fantasy sports contests that involve predicting plays cannot constitute the claimed event selections that “enable . . . in real time participating in the selected multiple contests of skill or chance.” *See* Hughes at 7:5-12 (generally describing “fantasy sports contests” that involve a “user determining

or guessing (i.e. blindly or with calculation) whether particular outcomes will occur (e.g., whether a particular golfer will make the next [putt])).

DraftKings' alternative argument, that user's "[c]ontinued participation while the competition is active (i.e., during the sports season) by maintaining the composition of the team's roster (e.g., by selecting starting players or making trades with other users) involves 'in real time participating' in the award league." Pet. at 35-36. DraftKings' reliance on "users act[ing] as a general manager by assembling a roster," is meritless because Hughes's do not enable "real time participating in the selected multiple contests" of skill or chance. *Id.* In roster-based fantasy sports leagues, like those disclosed in Hughes, rosters are locked before the beginning of an event, which precludes "real time participation." *See, e.g.,* Ex. 1014 at 152 (players' "'game-time' decision[s]" to sit out a game for injury frustrates fantasy participants because rosters are set before the game begins).

For at least these reasons, DraftKings has not demonstrated that Hughes discloses event selections that "enable . . . in real time participating in the selected multiple contests of skill or chance." '189 Patent, Claim 24 (24[e]).

3. Hughes Does Not Disclose "Wherein the Multiple Contests of Skill or Chance Are Selected from Single Entry Contests and Multiple Entry Contests" (Element 24[e])

DraftKings also has not demonstrated that Hughes discloses "wherein the multiple contests of skill or chance are selected from single entry contests and

multiple entry contests.” ’189 Patent, Claim 24. Whether a user joins a contest before or after it begins, DraftKings’s argument only identifies a single entry (i.e., a single roster) per user per contest.

DraftKings’s argument depends on equating “multiple entry contests” with a contest with multiple entry points. *See* Pet. at 26 (“That is, the fantasy sports contest may involve a single entry for all users to join the competition all at one time or may involve multiple entries, such that users can join during a season that is already in progress.”). DraftKings has not demonstrated that its interpretation is consistent with the plain and ordinary meaning of the term “multiple entry contests” and has not otherwise justified its interpretation under 37 C.F.R § 42.104(b)(3). Denial of institution is warranted for this reason alone because DraftKings has not explained how this limitation is disclosed as properly construed.

DraftKings does not explain how its interpretation of the “multiple entry contest” term (*i.e.* the ability to join the contest at different times) is consistent with its plain language or the intrinsic record. Pet. at 26 (“Hughes explains that ‘the fantasy sports contest application may allow a user to join an award league *at any time* during the season.’”). Whether a user joins a contest before or after it begins, DraftKings’s argument only identifies a single entry (*i.e.*, a single roster) per user per contest. *Id.* DraftKings does not explain allowing a user to join a contest at any

time during the season alone transforms a “single entry contest” into a “multiple entry contest.” *Id.*

For at least this reason, WinView respectfully submits that DraftKings has not demonstrated that Hughes discloses the “wherein the multiple contests of skill or chance are selected from single entry contests and multiple entry contests.”

4. Hughes Does Not Disclose “Storing Results and Standings Based on the Event Selections” (Element 24[f])

DraftKings similarly fails to demonstrate how Hughes discloses “storing results and standings based on the *event selections*,” which DraftKings identifies as “the user’s roster” and “the user’s prediction of real-time outcome.” ’189 Patent, Claim 24 (emphasis added); Pet. at 28-29. As with the various limitations of Element 24[f], DraftKings does not mention a “user’s prediction of real-time outcome” as an alleged “event selection” used to determine results or standings, as recited in Element 24[f]. *See* Pet. at 36-37 (failing to allege that the results or standings are based on multiple event selections). Accordingly, DraftKings has not shown that Hughes discloses element 24[f], which requires the storing of results and standings based on more than one event selection.

B. Independent Claim 14: Hughes Does Not Anticipate the Independent Claim and its Dependents

Based on the foregoing, DraftKings does not demonstrate how Hughes discloses Elements 14[c] and 14[e] in the same way recited in the claims. Therefore, Hughes does not anticipate Independent Claim 14 and its dependents.

1. Hughes Does Not Disclose “Wherein the Multiple Contests of Skill or Chance Are Selected from Single Entry Contests and Multiple Entry Contests” (Element 14[e])

Hughes does not anticipate Independent Claim 14 because it does not disclose “wherein the multiple contests of skill or chance are selected from single entry contests and multiple entry contests.” ’189 Patent, Claim 14. For this element, DraftKings refers back to its analysis for claim element 24[e]. *See* Pet. at 57.

Therefore, WinView’s arguments for Claim 24, particularly element 24[e], apply equally to Claim 14. *See* § IV.A.III, *supra*.

2. Hughes Does Not Disclose “Receiving Additional User Input Including a Single Set of Event Selections” (Element 14[c])

Hughes also does not anticipate Independent Claim 14 because it does not disclose “receiving . . . a single set of event selections.” In the context of the claim, a “single set of event selections” is a set of more than one event selection. As described above, because the claim word “event selections” is plural, there is more than one selected event. *See* § IV.A.1, *supra*. Thus, while there is a single set, that set includes more than one event selection.

For this claim term, DraftKings identifies the user's roster in Hughes as the "single set of event selections." Pet. at 53-54 ("the user may provide a single roster (i.e., a single set of event selections)"). However, according to DraftKings' own theory, the user's roster is a single "event selection." *Id.* at 30 ("roster (*i.e., event selection*)") (emphasis added); *see also id.* at 31 (same), 32 (same). Accordingly, under Hughes' roster is only a single event selection and *not* a "single *set* of event selections."

V. GROUND 2: DRAFTKINGS DOES NOT SHOW A REASONABLE LIKELIHOOD OF PREVAILING ON DEPENDENT CLAIMS 19-20 AND 34-35

Because DraftKings does not demonstrate a reasonable likelihood of prevailing on the independent claims, it also fails to demonstrate a reasonable likelihood that Dependent Claims 19-20 and 34-35, which depend on the independent claims, are unpatentable over Hughes in view of Berner. *See* Pet. at 5. Berner does not resolve the abovementioned deficiencies

VI. GROUND 3: DRAFTKINGS DOES NOT SHOW A REASONABLE LIKELIHOOD OF PREVAILING ON DEPENDENT CLAIMS 23, 25-26, 33, AND 38

Because DraftKings does not demonstrate a reasonable likelihood of prevailing on the independent claims, it also fails to demonstrate a reasonable likelihood that Dependent Claims 23, 25-26, 33, and 38, which depend on the

independent claims, are unpatentable over Hughes in view of Barber. *See* Pet. at 5.

Barber does not resolve the abovementioned deficiencies

VII. CONCLUSION

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

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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 2,872 words in compliance with the 14,000 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: April 21, 2026

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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.

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