

Federal Circuit Reminds IPR Petitioners: Get It Right in the Petition

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Miss a ground in your *inter partes* review (IPR) petition? Don't expect a reply-brief footnote to save you. In *DK Crown Holdings Inc. v. AG 18, LLC*, No. 2024 2078 (Fed. Cir. May 6, 2026), the Federal Circuit affirmed the Patent Trial and Appeal Board's refusal to consider a new invalidity theory raised for the first time in a reply-brief footnote. DK Crown Holdings, f/k/a DraftKings, challenged U.S. Patent No. 9978205, which covers location-based restrictions on networked gaming. DK's petition asserted prior-art Bryson alone against claim 18 and a prior-art Bryson/Schlottmann combination for claims 15 to 17. After institution, DK tried to add Schlottmann to its claim 18 challenge through a single footnote in its reply brief. The Board declined, finding the footnote exceeded the proper scope of a reply because it sought to fill a gap in the petition itself. The Federal

Circuit agreed and emphasized that the Board cannot entertain theories absent from the petition. Practitioners drafting IPR petitions should treat their claim charts as final. A reply footnote will not rescue an omitted ground, and the Federal Circuit will not second guess the Board's refusal to entertain one. This may have the unintended consequence of expanding initial filings.

The Federal Circuit on Wednesday backed the Patent Trial and Appeal Board's decision to uphold one claim of an online gaming patent challenged by DraftKings, rejecting the company's argument about making a "clerical error."

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