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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYAN W. CUDDY and ERIC SATTERLIE

Appeal 2014-009485
Application 11/937,326
Technology Center 3700

Before STEFAN STAICOVICI, JAMES P. CALVE, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ryan W. Cuddy and Eric Satterlie (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 1–3 and 9–20.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants submit the real party in interest is IGT. Appeal Br. 2.

THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A gaming system comprising:
a plurality of gaming devices, each gaming device including:
 - at least one input device,
 - at least one display device,
 - at least one processor, and
 - at least one memory device which stores a plurality of instructions which when executed by the at least one processor, cause the at least one processor to operate with the at least one display device and the at least one input device to:
 - (a) enable a player to place a wager on a play of a primary game,
 - b) for the wagered on play of the primary game:
 - (i) generate a primary game outcome,
 - (ii) display to the player the generated primary game outcome,
 - (iii) determine any primary game award associated with the displayed primary game outcome, and
 - (iv) display to the player any determined primary game award, and
- at least one controller configured to operate with each of said gaming devices to:
- (a) distinct from any placement of any wagers associated with any plays of any primary games, accumulate a first quantity of bonus sequence eligibility points for a first player at a first one of said gaming devices if a first bonus sequence eligibility point accumulation event occurs in association with the first one of said gaming devices, said first quantity of bonus sequence eligibility points being greater than zero;
 - (b) distinct from any placement of any wagers associated with any plays of any primary games, accumulate a second, different quantity of bonus sequence eligibility points for a second player at a second one of said gaming devices if a second bonus sequence eligibility point accumulation event occurs in association with the second one of said gaming devices, said

second, different quantity of bonus sequence eligibility points being greater than zero;

(c) maintain and cause a display of a first progressive award amount for the first player at the first one of said gaming devices, wherein said first progressive award amount for the first player is determined in accordance with the first quantity of bonus sequence eligibility points accumulated for the first player, a base amount and an incremental amount;

(d) maintain and cause a display of a second, different progressive award amount for the second player at the second one of said gaming devices, wherein said second, different progressive award amount for the second player is determined in accordance with the second, different quantity of bonus sequence eligibility points accumulated for the second player, the base amount and the incremental amount; and

(e) if a triggering event occurs, provide one of said progressive award amounts to one of the players at one of said gaming devices, wherein the triggering event is associated with the first one of said gaming devices and the second one of said gaming devices.

REJECTIONS

- 1) Claims 1–3, 9–15, and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Acres (US 6,319,125 B1, iss. Nov. 20, 2001) and Olive (US 2006/0003835 A1, pub. Jan. 5, 2006).
- 2) Claims 16 and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Acres, Olive, and Baerlocher (US 2006/0040723 A1, pub. Feb. 23, 2006).
- 3) Claim 19 is rejected under 35 U.S.C. § 102(b) as anticipated by Acres.
- 4) Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Acres and Baerlocher.

DISCUSSION

Rejection 1

The Examiner finds that Acres discloses “all of the limitations of these claims, but lacks specificity as to a primary game as claimed and to the bonus sequence eligibility points being independent of the wagers on the primary game.” Final Act. 2. The Examiner then finds that “Olive allows the tournament (or secondary progressive wager in addition to the wager on the base game) to be optional with Olive’s toggle feature.” *Id.* at 4. The Examiner concludes it would have been obvious “to apply the independence or optionality of the progressive pool of Olive to the game of Acres” resulting in advantageously “allow[ing] positive participation by the player in the progressive bonus games, as opposed to passive participation by the player by meeting minimum wagering requirements.” *Id.* at 5–6.

Appellants contend that “Acres does not include any bonus sequence eligibility points accumulated separate from any placement of any wager.” Appeal Br. 24. Appellants contend that Olive does not cure this deficiency in Acres. *Id.* at 25. Appellants argue that Olive’s progressive jackpot side bet is “a wager (and thus not distinct from the placement of a wager).” *Id.* at 26.

In response, the Examiner explains that Acres’ “acquired minimum coin-in over the coin-in period” and Olive’s “accumulated progressive jackpot pool” are interpreted to be accumulated bonus sequence eligibility points. Ans. 12–13. The Examiner further responds that “[t]he only limitation with any patentable weight is the *independence of the accumulated bonus eligibility points from the wager on the base game.*” Ans. 14. For the following reasons, we do not sustain the rejection.

Acres discloses gaming device 300, such as a slot machine, wherein a user places wager 301 and may win a jackpot 302. Acres, col. 4, ll. 6–20. Primary game wager 301 is also known as coin-in. *Id.* at col. 4 ll. 14–16. Gaming device 300 “is configured as a component in a bonus promotion system” that includes more than one interconnected gaming devices 300. *Id.* at col. 4, ll. 9–10, col. 5, ll. 24–25. A “percentage 303 of each wager 301 is accumulated into a bonus pool 304 for funding each bonus prize.” *Id.* at col. 4, ll. 50–51. Cash bonus prize 307 is “a fixed cash prize funded by bonus pool 304.” *Id.* at col. 4, ll. 65–66. When “bonus pool 304 substantially equals the cash bonus 307,” a winner is randomly selected from all active gaming devices 300.” *Id.*, col. 4, ll. 66 – col. 5, ll. 1, col. 5, ll. 24–36.

Olive discloses gaming machine 10 including a button 20.2. Olive ¶¶ 25–26. Button 20.2 “serves as a toggle between the state in which the player’s bet contributes only to the standard game (i.e., with the button 20.2 in its ‘off’ state) and the state in which a part of the player’s bet contributes to a progressive prize or some other tournament prize(i.e., with the button 20.2 in the ‘on’ state).” *Id.* ¶ 36. When button 20.2 is switched to the “on” state, “a dedicated bet will be automatically taken from the buyer’s credit meter in addition to the original bet.” *Id.* ¶ 37. Participation in “the secondary event is unrelated to participation in, or a result in respect of, the base game of machine 10, *apart from the making of a bet in respect of the base game.*” *Id.* ¶ 42 (emphasis added).

The Examiner has not directed us to any disclosure in Acres to support the finding that the acquired minimum coin-in over the coin-in period for bonus prizes is “distinct from any placement of any wagers associated with any play of any primary games” as recited in claims 1 and 9.

Likewise, the Examiner has not directed us to any disclosure in Olive to support the finding that the “accumulated progressive jackpot pool” is “distinct from any placement of any wagers associated with any play of any primary games” as recited in claims 1 and 9. The Examiner’s finding that Acres and/or Olive disclose the accumulation of a first or second quantity of bonus sequence eligibility points *distinct* from any placement of wagers associated with any plays of any primary games is not supported by a preponderance of the evidence. As the rejection of claims 1 and 9 is based on erroneous factual findings, the conclusion of obviousness cannot stand. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (Holding that “[t]he legal conclusion of obviousness must be supported by facts. Where the legal conclusion is not supported by facts it cannot stand.”). Therefore, we do not sustain the rejection of independent claims 1 and 9 and claims 2–3 which are dependent on claim 1 and claims 10–15 and 18 which are dependent on claim 9 under 35 U.S.C. §103(a).

Rejection 2

The Examiner rejects claims 16 and 17, which are dependent on claim 9, as unpatentable over Acres, Olive, and Baerlocher. Final Act. 6. The Examiner does not rely on Baerlocher to cure the deficiencies in the combination of Acres and Olive explained above. *Id.* at 6–7. For the same reasons as stated with respect to claim 9, we also do not sustain the rejection of claims 16 and 17.

Rejection 3

The Examiner finds that Acres discloses all the limitations of claim 19. Final Act. 7. Appellants contend that Acres does not disclose a controller configured to “display a competitive bonus game to a plurality of

players” and “provide a first bonus sequence award to a first one of the players to which the competitive bonus game is displayed.” Appeal Br. 34. For the following reasons, we do not sustain the rejection.

We first construe the phrase “competitive group bonus game” recited in claim 19. Claim terms are given their broadest reasonable interpretation consistent with the Specification as it would be interpreted by one of ordinary skill in the art. *See In re Suitco Surface, Inc.*, 603 F.3d 1255, 1259–60 (Fed. Cir. 2010); *see also In re Morris*, 127 F.3d 1048, 1054–55 (Fed. Cir. 1997). Although the claims are interpreted in light of the Specification, limitations from the Specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

The Specification discloses “a plurality of players at a plurality of linked gaming devices compete against one another for one or more awards.” Spec. ¶ 113. Therefore, one of ordinary skill in the art would reasonably understand the phrase “competitive group bonus game” to be a game wherein a plurality of players compete against one another for an award or bonus.” As noted above, Acres discloses that the winner of the bonus game is randomly chosen from the bonus game participants. The Examiner does not direct us to any disclosure in Acres of a competitive group bonus game as we have construed that phrase. Final Act. 7–8; *see also* Ans. 12–14. Consequently, the rejection is not supported by a preponderance of the evidence and we do not sustain the rejection of claim 19.

Rejection 4

The Examiner rejects claim 20 as unpatentable over Acres and Baerlocher. Final Act. 9. Claim 20 is dependent on claim 19. The Examiner does not rely on Baerlocher to cure the deficiencies in Acres noted above. *Id.* at 9–10. For the same reasons as stated with respect to claim 19, we likewise do not sustain the rejection of claim 20.

DECISION

The Examiner's decision rejecting claims 1–20 is reversed.

REVERSED