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EXAMINER

COLLINS, DOLORES R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATRICK ABBOT KEARNS SR.

Appeal 2014-009926
Application 13/066,509¹
Technology Center 3700

Before ANTON W. FETTING, KENNETH G. SCHOPFER, and
AMEE A. SHAH, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 38–44 and 51–56. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

BACKGROUND

According to Appellant, “[t]he present invention relates to a modified version of Baccarat, and in particular, to a version of Baccarat where each player has the option to place an ante bet when betting on the Banker hand,

¹ According to Appellant, the real party in interest is Station Casinos LLC.
Br. 3.

thereby eliminating the need for payment and collection of a commission.”
Spec. ¶ 1.

CLAIMS

Claims 38–44 and 51–56 are on appeal. Claims 38 and 51 are the independent claims on appeal and recite:

38. A method of playing a game with predetermined rules using at least one standard deck of 52 physical playing cards, wherein at least two but no more than three physical playing cards are dealt to a first hand, at least two but no more than three physical playing cards are dealt to a second hand, and a player has an option to wager on either (i) the first hand having a score closer or equal to a predetermined high value than the second hand, (ii) the second hand having a score closer or equal to the predetermined high value than the first hand, or (iii) the first and second hands having the same score, wherein the predetermined rules make the odds of the first hand having a score closer or equal to the predetermined high value greater than the odds of the second hand having a score closer or equal to the predetermined high value, the method comprising:

requiring a player to place an ante bet when the player wagers on the first hand having a score closer or equal to the predetermined high value than the second hand;

collecting the ante bet from the player if the score of the first hand does not equal the score of the second hand; and

paying the player an ante bet payoff if the score of the first hand equals the score of the second hand.

51. A game comprising:

at least one standard deck of 52 physical playing cards;

a set of predetermined rules, wherein at least two but no more than three physical playing cards must be dealt to a first hand, at least two but no more than three physical playing cards must be dealt to a second hand;

a first requirement that a player has an option to wager on either (i) the first hand having a score closer or equal to a

predetermined high value than the second hand, (ii) the second hand having a score closer or equal to the predetermined high value than the first hand, or (iii) the first and second hands having the same score, wherein the predetermined rules make the odds of the first hand having a score closer or equal to the predetermined high value greater than the odds of the second hand having a score closer or equal to the predetermined high value;

a second requirement that the player place an ante bet when the player wagers on the first hand having a score closer or equal to the predetermined high value than the second hand;

a third requirement that the ante bet be collected from the player if the score of the first hand does not equal the score of the second hand; and

a fourth requirement that the player be paid an ante bet payoff if the score of the first hand equals the score of the second hand.

Br. 14–15.

REJECTION

The Examiner rejects claims 38–44 and 51–56 under 35 U.S.C. § 101 as directed to ineligible subject matter.

DISCUSSION

The Examiner finds that the independent claims are directed to ineligible subject matter “because the claimed limitations include no recitation or insufficient recitation of a machine or transformation, or not directed to a proper application of a law of nature, and is just a mere statement of a general concept.” Non-Final Act. 4. The Examiner further finds that “[a]dditional limitations recited in dependent Claims are no more than a field of use or merely involve insignificant extra-solution activity or

intangibly related to the performance of the steps.” *Id.* Also, in response to Appellant’s arguments, the Examiner finds:

Applicant’s claimed method, while arguably reciting a number of physical steps of dealing cards, is viewed here as an attempt to claim a new set of rules for playing a card game. In this examiner’s opinion, a set of rules qualifies as an abstract idea. Therefore, the examiner maintains that Applicant’s claimed method, although couched in terms of a few actual physical steps, is a clear attempt to claim an abstract idea in the form of a new set of rules for playing a card game. Since the claimed method requires no machine implementation, requires no transformation of a particular article and is seen as an attempt to receive patent protection for an abstract idea in the form of a new set of rules, the examiner maintains that the claimed method is not patent eligible.

Ans. 3.

Appellant argues that the methods recited in the independent claims amount to more than merely abstract ideas, and thus, qualify as patent-eligible subject matter. Br. 9, 12. We are not persuaded by Appellant’s position because, although the Examiner’s rejection was couched in pre-*Alice* guidelines, the Examiner’s findings are sufficient to satisfy the now-applicable two-step *Alice* analysis. *See Alice Corp. v. CLS Bank International*, 134 S.Ct. 2347 (2014). Further, Appellant does not adequately address why the Examiner’s *Alice*-pertinent findings are incorrect, incomplete, unsupported, or otherwise deficient.

Regarding the first step of the *Alice* analysis (i.e., determining whether the claims at issue are directed to a patent-ineligible concept), a wagering game, as claimed here, is akin to fundamental economic practices related to exchanging and resolving financial obligations based on probabilities. *See In re Smith*, 815 F.3d 816, 818–819 (Fed. Cir. 2016). As

such, the claimed method and game are directed to an abstract idea. *See id.* at 819.

Regarding the second step of the *Alice* analysis (i.e., determining whether there are additional elements that transform the nature of the claim with a sufficient inventive concept), we find that the claims do no more than require conventional steps normally associated with wagering games, i.e. dealing a standard deck of cards, placing wagers, and resolving outcomes based on the cards dealt and the wagers placed. “[A]ppending purely conventional steps to an abstract idea does not supply a sufficiently inventive concept.” *Id.* Thus, we agree with the Examiner that the additional elements recited in the claims do not impose meaningful limits on the abstract idea of a set of rules for playing a game. *See id.* at 817 (Affirming rejection of claims under 35 U.S.C. § 101 “[b]ecause the claims cover only the abstract idea of rules for playing a wagering game and use conventional steps of shuffling and dealing a standard deck of cards.”)

For these reasons, we sustain the rejection of claims 38–44 and 51–56.

CONCLUSION

For the reasons set forth above, we AFFIRM the rejection of claims 38–44 and 51–56.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED