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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/561,274	07/30/2012	Lee M. Amaitis	04-7121-C2	4929

63710 7590 12/02/2016
INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

EXAMINER

HSU, RYAN

ART UNIT	PAPER NUMBER
3716	

3716

NOTIFICATION DATE	DELIVERY MODE
12/02/2016	ELECTRONIC

12/02/2016

ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEE M. AMAITIS, JOSEPH M. ASHER, ALAN B. WILKINS,
HOWARD W. LUTNICK, and DARRIN M. MYLET

Appeal 2015-002292
Application 13/561,274
Technology Center 3700

Before LINDA E. HORNER, THOMAS F. SMEGAL, and LISA M. GUIJT,
Administrative Patent Judges.

GUIJT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seeks our review under 35 U.S.C. § 134 of the Examiner's decision² rejecting claims 1–10, 12, 13, 18, and 21–33.³ We have jurisdiction under 35 U.S.C. § 6(b).

¹ Appellants identify the real party in interest as CFPH, LLC. App. Br. 2.

² Appeal is taken from the Final Office Action dated May 10, 2013 (“Final Act.”).

³ Although claim 11 is listed as an appealed claim subject to a rejection, claim 11 was omitted from the claims as originally filed with the application

We REVERSE.

CLAIMED SUBJECT MATTER

Claims 1 and 26, reproduced below as the independent claims on appeal, are illustrative of the subject matter on appeal.

1. An apparatus comprising:
 - at least one processor; and
 - at least one memory device electronically coupled to the at least one processor, in which the memory device stores instructions which, when executed by the at least one processor, direct the at least one processor to:
 - responsive to a user using a device to access a gaming system to engage in at least one gaming activity, determine whether the user's device is located within a predefined location, wherein to determine whether the user's device is located within the pre-defined location includes to make the determination through an identification of which network, portion of a network, or network component the user's device is using to access the gaming system, and to make the determination of whether the identified network, portion of a network, or network component is within the pre-defined location; and
 - allow the user to engage in the at least one gaming activity from the user's device based upon the determination that the user's device is located in the pre-defined location.

26. A method comprising:
 - responsive to a user using a device to access a gaming system to engage in at least one gaming activity, determining by at least one server whether the user's device is located within a pre-defined location, wherein determining whether the user's device is located within the pre-defined location includes making the determination through an identification of which network, portion of a network, or network component the user's device is using to access the gaming system, and making the determination of whether the identified network, portion of a network, or network component is within the pre-defined location; and

on July 30, 2012, which included only claims 1–10 and 12–32.

allowing by the at least one server the user to engage in the at least one gaming activity from the user's device based upon the determination that the user's device is located in the pre-defined location.

REJECTIONS⁴

I. Claims 1, 2, 4, 5, 8–10, 18, 21–23, 26–28, 30, and 33 stand rejected under 35 U.S.C. § 102(e) as anticipated by Steelberg (US 7,460,863 B2; iss. Dec. 2, 2008). Final Act. 4–7.

II. Claims 3 and 29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Steelberg and Zilliacus (US 6,893,347 B1; iss. May 17, 2005). Final Act. 8.

III. Claims 6, 12, 13, 24, 25, and 31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Steelberg and Wells (US 6,846,238 B2; iss. Jan. 25, 2005). Final Act. 9–10.

IV. Claims 7 and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Steelberg, Wells, and LaDue (US 5,999,808; iss. Dec. 7, 1999). Final Act. 10.

V. Claims 1–10, 12, 13, 18, and 21–33 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Ans. 2–5.⁵

ANALYSIS

Rejection I

Regarding independent claim 26, the Examiner finds, *inter alia*, that

⁴ Upon return of jurisdiction of this application to the Examiner, the Examiner should note that claim 22 depends from claim 22.

⁵ The Examiner states this rejection in the Examiner's Answer as a new ground of rejection.

Steelberg discloses determining whether the user's device is located within the authorized gaming area includes making the determination through the use of geo-fencing (*see col. 10: ln 189-31, col. 49-61*). In at least one embodiment, Steelberg discloses determining whether the user's device is located within the authorized gaming location through the use of a location file provided by the server that provides an authorized gaming area for a user's device (*see col. 3:ln 1-31, col. 10: ln 55-62, col. 11: ln 1-16*). The gaming device then utilizes an identification of which network, portion of a network, or network component the user's device is using to access the gaming system to make a determination of whether the identified network, portion of a network, or network component is within the pre-defined location during the initial activation and approval process (*see col. 9: ln 55-65, col 10: ln 49-62, col. 11: ln 1-16*). In alternative embodiments, this network identification information may be performed by a position location system utilizing a GPS chip (*see col. 11: ln 23-32*).

Final Act. 6.

Referencing Steelberg's disclosure of "a device [that] uses RFTTT or GPS to determine the location of the device," Appellants argue, *inter alia*, that

the cited portions of Steelberg provide no discussion that determining whether the device is located in an authorized location includes making the determination of whether a broadcast station (as used in the context of Steelberg) that a device is using to access a gaming system is within the authorized location or more specifically, "making the determination of whether the identified network, portion of a network, or network component [that a device is using to access the gaming system] is within the pre-defined location," as recited in claim 26.

App. Br. 7.

The Examiner responds, *inter alia*, that Steelberg "implements [at] least three different methods to determine whether the user's device is

located within the predefined location (*see col. 2: ln 48-61*)[:] GPS, radio frequency triangulation telemetry tracking (RFTTT) and utilizing a centrum datum broadcast with an associated radium datum (*see col. 11: ln 1-37, col. 13: ln 25-37*),” noting that “a central datum utilizes a network to deliver data within a predefined radius.” *Ans. 7, see fn 1.*

We agree with Appellants that Steelberg’s disclosure of using GPS or RFTTT technology to determine the location of the remote gaming device and comparing the location to location data to determine whether the remote gaming device is within a pre-defined gaming area does not meet the claim limitation of “making the determination through an identification of which network . . . the user’s device is using to access the gaming system,” because Steelberg discloses that the network the user’s device is using to access the gaming system is the broadcast station, and Steelberg does not disclose, nor does the Examiner find, that the networks associated with the GPS or RFTTT technology are also networks the user’s device is using to access the gaming system.

The Examiner also relies on the embodiment in Steelberg that “implement[s] a relatively low-power regional broadcast station somewhere about the premises [(of a gambling casino)],” (Steelberg 13:25–32) as disclosure of the claimed determining step. We cannot find, however, an explicit disclosure in Steelberg of identifying which network the user’s device is using to access the gaming system and making a determination of whether the identified network is within the pre-defined location, as recited in claim 26. With respect to this embodiment, Steelberg discloses that

[l]ocation information is suitably broadcast as a centrum datum with an associated radium datum, so as to substantially cover the floor plan footprint of the casino at issue. If a user is indeed

within the confines of the casino premises, the card [(or device)] is active and the user is able to access electronic games hosted on the casino's regional broadcast station.

Steelberg 13:32–38; *see* Ans. 5 (“Steelberg discloses . . . determin[ing] whether the user’s device is located within the predefined location using . . . a centrum datum broadcast with an associated radium datum.”); *see also* Ans. 7 (citing Steelberg 13:25–37). Although the smart card is active if the smart card is receiving location information broadcast from the relatively low-power regional broadcast station somewhere on the premises, Steelberg stops short of expressly disclosing identifying the relatively low-power regional broadcast station as the network the user’s device is using to access the gaming system in order to determine whether the user’s device is located within the pre-defined location. In addition, Steelberg fails to expressly disclose that there is a determination of whether the identified network is within the pre-defined location; rather, the relatively low-power regional broadcast station is, by default, within the casino premises.

Accordingly, we do not sustain the Examiner’s rejection of independent claim 26, and claims 18, 21–23, 27, 28, and 30 depending therefrom. Because the Examiner relies on the same findings for the rejection of independent claim 1, for the same reasons as stated *supra*, we also do not sustain the Examiner’s rejection of independent claim 1 and claims 2, 4, 5, 8–10, and 33 depending therefrom.

Rejections II–IV

The Examiner’s rejection of dependent claims 3, 6, 7, 12, 13, 24, 25, 29, 31, and 32 relies on the same findings with respect to independent claims 1 and 26 discussed *supra*. Therefore, we also do not sustain the Examiner’s rejection of claims 3, 6, 7, 12, 13, 24, 25, 29, 31, and 32.

Rejection V

The Examiner rejects claims 1–10, 12, 13, 18, and 21–33 under 35 U.S.C. § 101 “as being directed to ineligible subject matter.” Ans. 2. In particular, the Examiner finds that independent claims 1 and 26 “are directed towards an apparatus and method to allow the user to engage in at least one gaming activity from the user’s device based upon the determination that the user’s device is located in a pre-defined location.” *Id.* at 4. The Examiner determines that these claims “are similar to claims at issue in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010) and *Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 [(2014)], which the Supreme Court held were directed to ‘abstract ideas.’” *Id.* More specifically, the Examiner finds that “the claims are directed to the abstract idea of (i) a method of organizing human activities in a gaming environment, [and] (ii) and idea of itself for determining whether the user’s device is located within the pre-defined location.” *Id.* Appellants argue, *inter alia*, that the Examiner’s finding is a conclusory opinion that lacks sufficient evidence to show that “the alleged abstract idea is abstract.” Reply Br. 2.

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014). In analyzing patent eligibility questions under 35 U.S.C. § 101, the Supreme Court instructs us to “first determine whether the claims at issue are directed to a patent-ineligible concept.” *Id.* at 2355. *Alice* provides several broad examples of what might

constitute an abstract idea, including: (1) fundamental economic practices; (2) certain methods of organizing human activities; (3) an idea of itself and (4) mathematical relationships or formulae. *See id.* at 2350; 2356.

We determine that the subject matter of independent claims 1 and 26 are not merely directed to organizing human activities in a gaming environment, but rather, the claims more specifically address a gaming environment which includes a user device, network, and pre-defined area, wherein computer technology is used to determine, responsive to a user using the device to access the gaming system, whether a gaming device is in a pre-defined area by identifying which network the user's device is using and allowing the gaming activity based on the determination. Unlike risk hedging in *Bilski*, the concept of determining whether a gaming device is in a pre-defined area by identifying which network is being used to access the gaming system is not a fundamental practice of organizing human activity within a certain environment. We also find the recitations of claims 1 and 26 sufficiently concrete as to set them outside the broad definition of an abstract idea itself as set forth in *Alice*. Thus, we conclude that the Examiner did not establish by a preponderance of the evidence that independent claim 1 and 26, and claims 2–10, 12, 13, 18, 21–25, and 27–33 are unpatentable under 35 U.S.C. § 101.

DECISION

The Examiner's decision to reject claims 1, 2, 4, 5, 8–10, 18, 21–23, 26–28, 30, and 33 under 35 U.S.C. § 102(e) is REVERSED.

The Examiner's decisions to reject claims 3, 6, 7, 12, 13, 24, 25, 29, and 31, and 32 under 35 U.S.C. § 103(a) are REVERSED.

Appeal 2015-002292
Application 13/561,274

The Examiner's decision to reject claims 1–10, 12, 13, 18, and 21–33 under 35 U.S.C. § 101 is REVERSED.

REVERSED