UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/324,264	07/07/2014	Darin L. Peters	1002.00006	1492

97510   7590   06/26/2018
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ART UNIT	PAPER NUMBER
3711	

MAIL DATE	DELIVERY MODE
06/26/2018	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte DARREN L. PETERS and LARRY SEGEBARTH
(Applicant: Gaming Properties, LLC)

_____

Appeal 2016-003401
Application 14/324,264
Technology Center 3700

_____

Before STEVEN D.A. McCARTHY, LISA M. GUIJT and
PAUL J. KORNICZKY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

At least one pending claim having been twice rejected, the
Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's decision
rejecting claims 1–6 under 35 U.S.C. § 101 as being ineligible for patent
protection; claims 1–6 on the ground of nonstatutory double patenting, as
being unpatentable over claims 13–19 of Peters (US 7,464,933 B2, issued
Dec. 16, 2008) in view of Lewis (US 6,656,044 B1, issued Dec. 2, 2003);

_____

[1]   The Appellants identify the real party in interest as the Applicant,
Gaming Properties, LLC, of Dallas, Texas. (*See* Appeal Brief, dated June 6,
2015, at 2).

claims 7–17 on the ground of nonstatutory double patenting, as being

unpatentable over Segebarth (US 8,770,583 B2, issued July 8, 2014); claims

7–17 under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Lees

(US 4,775,155, issued Sept. 4, 1998) and Yacenda (US 2001/0003100, publ.

June 7, 2001); and claims 1–6 under § 103(a) as being unpatentable over

Lees, Yacenda and Lewis. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

The claims on appeal relate to games of chance, such as "bingo." (*See*

Spec. 2). The Specification addresses the problem that such games may

have multiple winners, resulting either in the house having to make

unexpectedly high payouts; or in each winner receiving an unexpectedly low

payout. (*See* Spec. 6).

Claims 1, 4, 7 and 12 are independent. Claims 1 and 7 are illustrative:

> 1. A method for administering a game of chance, comprising:
>
> storing a pool of indicators in a memory unit;
>
> creating, by a processor, a plurality of electronic virtual game pieces, each game piece having a unique combination of the indicators, the plurality of electronic virtual game pieces equal to a number of unique combinations of the indicators;
>
> electronically associating the plurality of electronic virtual game pieces to one or more players; and
>
> selecting a winning combination of indicators matching one and only one of the unique combinations.
>
> 7. A game of chance comprising:
>
> a plurality of game pieces distributable to a plurality of players, each game piece having associated therewith one or more unique combinations of indicators, and wherein one and only one game piece wins the game of chance based on the one

or more unique combinations of indicators based on one of the unique combinations of indicators being identified as a winning combination of indicators.

ISSUES

Although the Appellants argue the patentability of independent claims 1 and 4 under separate subheadings in the briefs, the arguments the Appellants present regarding each of the two independent claims are essentially the same. (*Compare* Appeal Brief, dated June 29, 2015 ("App. Br."), at 5–8 & 20–24; Reply Brief, dated Feb. 17, 2016 ("Reply Br."), at 2– 4, 18 & 19 *with* App. Br. 9–12 & 24–28; Reply Br. 5–7, 19 & 20). Therefore, we group claims 1–6 for purposes of the rejections under § 101 and § 103(a). *See* 37 C.F.R. § 41.37(c)(1)(iv). The Appellants argue claims 1–6 as a group for purposes of the rejection for obviousness-type double patenting. (*See* App. Br. 28 & 29; Reply Br. 20 & 21).

Likewise, although the Appellants argue the patentability of independent claims 7 and 12 under separate subheadings in the briefs, the arguments the Appellants present regarding each of the two independent claims are essentially the same. (*Compare* App. Br. 12–15; Reply Br. 7–9 *with* App. Br. 16–19; Reply Br. 13–15). Therefore, we group claims 7–9, 12–14 and 17 for purposes of the rejection under § 103(a). *See* 37 C.F.R. § 41.37(c)(1)(iv). We group claim 10 with claim 15, and claim 11 with claim 16, for purposes of the rejection under § 103(a). (*Compare* App. Br. 15 & 16; Reply Br. 11 & 12 *with* App. Br. 19 & 20; Reply Br. 17 & 18).

The Appellants present no argument contesting the rejection of claims 7–17 on the ground of nonstatutory double patenting, as being unpatentable over Segebarth. We summarily affirm the rejection.

This appeal turns on four issues:

First, does Yacenda teach a solution to the problem of multiple winners in bingo or bingo-type games?

Second, does Lees teach away from the claimed subject matter?

Third, is the subject matter of claim 1 patentably distinguishable from the subject matter of claim 18 of Peters?

Fourth, is appealed claim 1 ineligible for patent protection under the holdings of *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016), and *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014)?

FINDINGS OF FACT

The record supports the following findings of fact ("FF") by a preponderance of the evidence.

Lees

1. Lees describes a "bingo line-type" game auxiliary to a regular bingo game. Referring to Figure 1, Lees describes a bingo display board as follows:

> FIG. 1 shows a conventional bingo display board or flash board **B** which is provided with a plurality of vertical columns **10** and horizontal rows **12**. As is conventional, sixteen vertical columns are provided with the first column containing the letters B-I-N-G-O and the other columns containing a series of five numbers that are headed, respectively, by one of the numbers 1–15. Numbers 1–75 are conventionally used in the bingo game with the numbers being divided in five horizontal rows, such that the first row next to the letter "B" ranges from 1–15, the second row next to the letter "I" ranges from 16–30 and so on. The columns and rows divide the display board **B** into a plurality of squares

> **14** each of which contains an alphanumeric character or indicium
> **16**.

(Lees, col. 3, ll. 22–36).

2.   Lees describes a card *A'* for use in the auxiliary game. As depicted in Figure 3, one side *70* of the card *A'* is obscured by a removable cover means *80*. Beneath the cover means *80* is a first column *78*, featuring the letters B-I-N-G-O. In addition, beneath the cover means *80*, a second column *74* links each of the letters B-I-N-G-O with a number selected from the row of the bingo display board *B* associated with that letter. (*See* Lees, col. 4, ll. 14–16, 19–22, 29 & 30; & Fig. 3).

3.   Lees teaches distributing the cards *A'* to bingo players to permit players to simultaneously play both conventional bingo and the bingo line-type game. Once the players receive the cards, they strip off the cover means *80* to reveal the letters B-I-N-G-O and the numbers linked to each of those letters. During the conventional bingo game, a sequence of numbers within the range 1–75 are called and marked on the bingo display board *B*. When all five numbers in any one of the columns of the bingo display board *B* are marked, the player or players having cards *A'* with numbers corresponding to the numbers in that column on the display board win. (*See* Lees, col. 4, ll. 39–46).

4.   Lees teaches printing the cards *A'* in batches and marking each card in the batch with a serial number *54*. (*See* Lees, col. 3, ll. 53–58 & Fig. 2). For security reasons, only cards bearing one particular serial number would be distributed for use in a particular bingo line-type game. (*See* Lees, col. 4, ll. 53–59).

5.   Lees teaches printing the cards *A′* in batches of six-hundred-and-sixty (*see* Lees, col. 3, ll. 53–58), although no reason is given for this number. As the Appellants correctly point out, there are only fifteen unique columns on a bingo display board *B*. Hence, Lees suggests distributing more cards than there are unique winning combinations of the numbers 1– 75, thereby permitting multiple winners. (*See* App. Br. 13). Lees teaches that the size of the batch may be varied depending on the anticipated number of players in a game. (*See* Lees, col. 4, ll. 59–65). Lees does not teach limiting the number of cards *A′* distributed to players to fifteen so as to ensure that each game will have only a single winner.

Yacenda

6.   Yacenda describes an interactive, electronic gaming system *10* in which a player uses either a computer or a telephone, or both, the purchase a ticket of a "draw 6" lottery game. (*See generally* Yacenda, paras. 42 & 52–62).

7.   In paragraph 61, Yacenda teaches that:

> An exclusive-number type lottery is also contemplated. A subscriber subscribes to a number or a series of numbers to enter into a lottery, for example. A set of numbers is selected by the subscriber. The set may be made exclusive to the subscriber, i.e., only a single subscriber can have the set of numbers selected and reserved by gaming system **10**. These numbers are stored in memory for each subscriber. In this way, a lottery game that selects a reserved number can have only one winner. This is guaranteed by gaming system **10**.

(Yacenda, para. 61).

8.   Yacenda teaches granting the subscriber exclusivity with respect to the number or set of numbers for life (that is, until the subscription

is terminated) or, in the alternative, for a fixed period, such as six or twelve months. (*See id.*)

Lewis

9.   Lewis describes an electronic device *10* for playing bingo and another, auxiliary game. More specifically, Lewis criticizes conventional bingo because a bingo game typically has only one winner: "[a] drawback with Bingo is that in a game, usually only one player is the winner. Thus, unless that player has a winning card, they lose. This can be frustrating." (Lewis, col. 1, ll. 39–41). Lewis addresses this problem by providing the player with an additional, auxiliary game such as video poker, played at substantially the same time: "There is a need to provide a device and method where a Bingo player has at least one other opportunity, unrelated to his Bingo card, to obtain a winning outcome." (Lewis, col. 1, l. 66 – col. 2, l. 1).

10.   Lewis's electronic device *10* includes a processor to control the play of the bingo game and the auxiliary game; and a memory. (*See* Lewis, col. 3, ll. 31–33; *cf. id.* col. 4, ll. 44–47 (referring to the "processor's memory")). The processor creates a plurality of virtual game pieces, namely, virtual bingo cards and poker playing cards. (*See, e.g.,* Lewis, col. 4, ll. 44–52 & col. 4, l. 65 – col. 5, l. 4). In addition, the processor electronically associates the plurality of electronic virtual game pieces to one or more players. (*See id.*) The processor selects a winning combination of indicators (either numbers, in the case of the bingo game; or cards, in the case of the auxiliary poker game). (*See, e.g.,* Lewis, col. 5, ll. 23–39 & col. 6, ll. 7–28).

ANALYSIS

First and Second Issues

Turning first to the rejection of independent claims 7 and 12, the Examiner correctly finds that Lees describes a game of chance including a plurality of game pieces, namely, cards *A*, distributable to a plurality of players, each game piece having associated therewith a combination of indicators, that is, a column *74* of numbers derived from the bingo display board *B*. (*See* Non-Final Office Action, mailed Jan. 27, 2015 ("Non-Final Act."), at 7; FF 2). Lees also discloses that one or more of the game pieces, that is, one or more of the cards *A*, wins the game of chance when the combination of indicators, that is, the column *74* of numbers associated with the one or more cards, is identified as a winning combination of indicators. (*See* Non-Final Act. 7; FF 3).

The Examiner finds that Yacenda teaches providing an exclusive-number type lottery, in which a subscriber is assigned a unique combination of indicators, namely, a unique set of lottery numbers. Any lottery game in which the unique combinations of indicators assigned to the subscriber is identified as a winning combination of indicators can have only one winner. (*See* Non-Final Act. 7 & 8; FF 6). The Examiner concludes that it would have been obvious "to modify [Lees's] bingo [line-type] game such that each game piece A′ ha[d] associated therewith a unique combination of indicators 74, numbers ranging from 1 to 75," in order to make the game more exciting for the players. (Non-Final Act. 8). The Appellants disagree.

The Appellants point out that Yacenda itself does not describe, in clear terms, a lottery card or other game piece having a unique set of lottery

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numbers. (*See* App. Br. 14; Reply Br. 9). In addition, the Appellants point out that multiple players may win one of the bingo line-type games described by Lees. (*See* App. Br. 13; *see also* FF 4 & 5). In addition, the Appellants point out that Lees teaches obscuring the combination of indicators, that is, the column *74* of numbers, associated with a particular card *A'* until after the card is distributed to a player (*see* FF 2 & 3); and that Yacenda teaches providing a player a unique combination of indicators, that is, a unique set of lottery numbers, only when the player purchases a subscription for those numbers for a period of time (*see* FF 8). The Appellants argue that Lees' practice of not permitting a player to know which numbers the layer is assigned in a bingo line-type game would have taught away from Yacenda's teaching regarding subscriptions allowing the players to play unique sets of numbers in multiple games over a period of time. (*See* App. Br. 14; Reply Br. 8 & 9).

The record supports a finding that Yacenda suggests a solution to the problem of multiple winners, namely, that assigning a unique set of lottery numbers to a player will produce a single winner of that unique set of lottery numbers is identified as a winning combination. This is true even though Yacenda describes a subscription lottery game rather than a bingo game; and even assuming, as the Appellants assert, that Yacenda's suggestion to assign subscribers unique sets of lottery numbers is "more directed toward convenience or the ability of the player to continually play with his/her favorite set(s) of numbers." (Reply Br. 9).

Lees's practice of obscuring the column *74* of numbers on a bingo line-type game card *A'* using a cover means *80* prior to receipt of the card by a player would not have discouraged one of ordinary skill in the art from

modifying Lees's game to solve the problem of multiple winners. One of ordinary skill in the art would have had reason to implement Yacenda's suggestion to provide each card with a unique column of numbers in order to provide a single winner without adopting Yacenda's teaching to sell subscriptions for particular sets of numbers. *See In re Sovish*, 769 F.2d 738, 742 (Fed. Cir. 1985)(the issue in an obviousness analysis is not whether one of ordinary skill in the art somehow could have combined the *embodiments* described by the references, but whether the claimed subject matter would have been obvious from the *teachings* of those references.

Therefore, we sustain the rejection of claims 7–9, 12–14 and 17 under § 103(a) as being unpatentable over the combined teachings of Lees and Yacenda.[2] Furthermore, the Appellants contest the rejection of claims 1 and 4 under § 103(a) by means of the same arguments, adding only their assertion that the teachings of Lewis fail to remedy perceived deficiencies in the combined teachings of Lees and Yacenda. Finding no such deficiencies, we sustain the rejection of claims 1–6 under § 103(a) as being unpatentable over the combined teachings of Lees, Yacenda and Lewis.

Claim 10 recites the "game of claim 7, wherein the plurality of game pieces comprise a plurality of scratch-off game pieces." Claim 15 similarly recites the "game of claim 12, wherein the first and second quantities of game pieces comprise first and second quantities of scratch-off game pieces." Claim 11 recites the "game of claim 7, wherein the plurality of

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[2] Our analysis does not rely on characterizing any limitation of claims 7–9, 12–14 and 17 as either printed matter or a games rule incapable of patentably distinguishing the claimed subject matter from the prior art. (*See* Examiner's Answer, dated Dec. 17, 2015, at 11–13).

game pieces comprise a plurality of pull-tab tickets." Claim 16 similarly recites the "game of claim 12, wherein the first and second quantities of game pieces comprise first and second quantities of pull-tab tickets." The Examiner finds that Lees's description of the cover means *80* suggests that the card *A'* might be implemented as either as a scratch-off game piece or as a pull-tab ticket. (*See* Non-Final Act. 7). The Appellants do not appear to contest this finding.

Instead, the Appellants argue that Lees teaches away from the claimed subject matter because the use of either a scratch-off game piece or a pull-tab ticket that obscures a player's assigned column of numbers *74* would have been inconsistent with the subscription lottery game described by Yacenda. (*See* App. Br. 15, 16, 19 & 20; Reply Br. 11, 12, 17 & 18). For reasons similar to those invoked in connection with the rejection of claims 7 and 12, this argument is not persuasive. We sustain the rejection of claims 10, 11, 15 and 16 under § 103(a) as being unpatentable over the combined teachings of Lees and Yacenda.

Third Issue

The Examiner rejects claims 1–6 as unpatentable over claims 13–19 of Peters. The judicial doctrine of obviousness-type double patenting precludes an applicant from extending the term of protection for a patented invention by claiming an obvious variant of the patented invention in a subsequent patent application. *See In re Longi*, 759 F.2d 889, 892 (Fed. Cir. 1985).

> Generally, an obviousness-type double patenting analysis entails
> two steps. First, as a matter of law, a court construes the claim
> in the earlier patent and the claim in the later patent and

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determines the differences. Second, the court determines whether the differences in subject matter between the two claims render the claims patentably distinct. A later claim that is not patentably distinct from an earlier claim in a commonly owned patent is invalid for obvious-type double patenting.

Eli Lilly & Co. v. Barr Labs., Inc., 251 F.3d 955, 968 (Fed. Cir. 2001) (internal citations and footnote omitted).

Claims 13, 15, 16 and 18 of Peters recite the following:

13.   A game of chance played between a plurality of players and a House, wherein a winner is determined by matching a combination of indicators associated with a game piece with a winning combination of indicators determined by the House, wherein the game is adapted so that there can be only a single winner, said game comprising:

means for calculating, for combinations of a given number of indicators, the number of unique combinations of indicators of the given size from a larger pool of indicators of a predetermined size;

a plurality of game pieces equal to the number of unique combinations of indicators, each game piece having one of the unique combinations of indicators associated therewith, and all of the game pieces being distributed to the plurality of players; and

means for the House to determine a winning combination of indicators matching one and only one of the unique combinations associated with one and only one of the game pieces.

15.   The game of chance according to claim 13, wherein the means for calculating the number of unique combinations includes:

means for dividing the numbers from 1 to 75 into fifteen groups of five numbers each; and

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means for calculating for each group of five numbers, the
number of unique 3-number combinations of the
five numbers in the group.

16.   The game of chance according to claim 15, wherein
the means for dividing the numbers from 1 to 75 into fifteen
groups of five numbers each includes means for dividing the
numbers in a manner equivalent to a bingo flashboard.

18.   The game of chance according to claim 16, wherein
the means for the House to determine a winning combination of
indicators includes means for randomly drawing numbers one at
a time in the range from 1 to 75 until three numbers associated
with a single player's game piece have been drawn.

The Examiner details, on pages 15 and 16 of the Examiner's Answer,
mailed December 17, 2015 ("Answer" or "Ans."), how limitations of claims
1 and 4, excluding limitations relating to a processor and a memory, are
recited, expressly or by incorporation, in claim 18 of Peters. The Examiner
concludes that it would have been obvious to modify the subject matter of
claim 18 in the fashion claimed in appealed claims 1 and 4 in view of the
teachings of Lewis. (*See* Non-Final Act. 4 & 5; *see also* FF 9 & 10).

The Appellants argue as follows:

Peters appears to disclose using a dashboard having fifteen
5-number columns, and there are 150 unique 3-number
combinations. (Peters, column 3, lines 41–43). Peters appears
to disclose that 1,000 cards are distributed to the players, 850 of
which are printed with an indication that the card is not a HOLD
card, and 150 cards are printed with a HOLD indication. (Peters,
col. 3, lines 44–48). Peters appears to disclose that the game is
then played with the HOLD cards only. (Peters, col. 3, lines 50–
52).

Thus, Appellant[s] respectfully [submit] that it would not
[have] be[en] obvious to modify Peters as proposed by the
Examiner because the game of Peters appears to use select
printed cards from a greater quantity of distributed printed cards,

which does not appear to lend itself to the electronic device of
Lewis.

(App. Br. 28 & 29; Reply Br. 20 & 21).

As noted earlier, a claim is subject to rejection for obviousness-type
double patenting when the claim subject to rejection is not patentably
distinct from a *claim* of an earlier patent. Claim 18 of Peters does not recite,
either expressly or by incorporation, the distinction between HOLD cards
and non-HOLD cards on which the Appellants rely in seeking to distinguish
appealed claims 1–6 from claim 18 of Peters. The Appellants do not
identify any formal definition or clear disclaimer that might limit the scope
of claim 18 of Peters to a game played using only HOLD cards to the
exclusion of non-HOLD cards. As such, claim 18 is broader than the
embodiment in Peters's written description. The subject matter of appealed
claims 1 and 4 is not patentably distinct from subject matter within the scope
of claim 18 of Peters, viewed in light of the teachings of Lewis, even
assuming that claims 1 and 4 are not obvious variations of an embodiment
played using only HOLD cards to the exclusion of non-HOLD cards. We
sustain the rejection of claims 1–6 on the ground of nonstatutory double
patenting, as being unpatentable over claims 13–19 of Peters in view of
Lewis.

Fourth Issue

Under 35 U.S.C. § 101, "[w]hoever invents or discovers any new and
useful process, machine, manufacture, or composition of matter, or any new
and useful improvement thereof, [to] obtain a patent therefor."
Nevertheless, the courts have recognized three exceptions to this general
rule, excluding from patentability laws of nature, physical phenomena and

abstract ideas. *See Bilski v. Kappos*, 561 U.S. 593, 601 (2010). The Examiner correctly concludes that claims 1–6 fall within the "abstract idea" exception.

Independent claim 1 is representative of claims 1–6 for purposes of this rejection. In particular, independent claim 4 is properly analyzed as a method claim. Claim 4 recites a "system, comprising: a processor; and a memory unit accessible by the processor unit." Nevertheless, in assessing a rejection for ineligible subject matter under § 101, we look not to the name or intended use assigned to the claimed subject matter in the preamble, but to the nature of the claimed subject matter as a whole, to determine whether the claim falls within the "abstract idea" exception. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1374 (Fed. Cir. 2011) ("Regardless of what statutory category ('process, machine, manufacture, or composition of matter,' 35 U.S.C. § 101) a claim's language is crafted to literally invoke, we look to the underlying invention for patent-eligibility purposes"). The Appellants do not appear to contend that either the processor or the memory unit differs from available, general-purpose processors and memory units other than with respect to the pool of indicators stored in the memory unit or with respect to the instructions by which the processor is configured to operate. Because the method of claim 1 recites "storing [the] pool of indicators in [the] memory unit;" as well as the three process steps that the processor of claim 4 is operable to perform, claim 1 is representative for purposes of the rejection for ineligible subject matter.

A two-step analysis is used to determine whether the subject matter of a claim falls within one of the exceptions to patent eligibility. First, one must determine whether the claim is "directed to one of [the] patent-

ineligible concepts." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S.Ct.
2347, 2355 (2014). Second, if so, one must determine if the remainder of
the claim recites an "inventive concept," such that the claim as a whole
recites a specific application of the patent-ineligible concept. *Id.* at 2357–
58.

Turning to the first step of the analysis, neither the Supreme Court,
nor our reviewing court, has defined the term "abstract." *See, e.g., Alice* at
2357; *Research Corp. Techs., Inc. v. Microsoft Corp.*, 627 F.3d 859, 868
(Fed. Cir. 2010). Instead, the contours of what constitutes an "abstract idea"
have developed on a case-by-case basis.

The Examiner correctly concludes that claim 1 is directed to an
abstract idea, namely, the management or conduct of a game. The subject
matter of claim 1 is analogous to that at issue in *In re Smith*, 815 F.3d 816
(Fed. Cir. 2016), and *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx.
1005 (Fed. Cir. 2014). In particular, a panel of our reviewing court held in
the latter case that claim 7 of Wei (US 6,398,646 B1, issued June 4, 2002)
was directed to the abstract idea of managing a game of bingo (*see Planet
Bingo* at 1008):

> 7. A method for playing a game of Bingo which
> comprises the steps of:
>
> (a) providing a system for managing a game of Bingo
> which comprises: a computer with a central
> processing unit (CPU) and with a memory and with
> a printer connected to the CPU; an input and output
> terminal connected to the CPU and memory of the
> computer; and a program in the computer enabling:
>
> (i) input of at least two sets of Bingo numbers
> which are preselected by a player for

repetitive play in games of Bingo over a period of time;

(ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;

(iii) assignment of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;

(iv) retrieval of the group using the player identifier;

(v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;

(vi) addition by the computer of a control number for the set of Bingo numbers which is selected by the player for play in the selected game of Bingo;

(vii) output of a receipt with the control number, the set of Bingo numbers which is selected for play in the selected game of Bingo, a price for the set of Bingo numbers which is selected for play in the selected game of Bingo, a date of the selected game of Bingo and optionally a computer identification number; and

(viii) output for verification of a winning set of Bingo numbers by means of the control

> number which is input into the computer by a
> manager of the game of Bingo;
>
> (b)   playing the game of Bingo using the set of Bingo
> numbers wherein the player signals a Bingo to
> indicate the set of Bingo numbers which is selected
> for play in the selected game of Bingo is the
> winning set of Bingo numbers; and
>
> (c)   verifying the winning set of Bingo numbers with the
> control number with the program.

(Wei, col. 9, l. 33 – col. 10, l. 13).

Appealed claim 1 is sufficiently analogous to claim 7 of the patent at issue in *Planet Bingo* to justify concluding that claim is directed to the abstract idea of managing or playing a bingo game. For example, although the preamble of appealed claim 1 recites a "method for administering a game of chance" rather than a "method for playing a game of Bingo," as recited in the preamble of claim 7 of Wei, the two preambles are similar in that both relate to the management or play of a class of games of chance that includes bingo.

The step of "output[ting] . . . a receipt with [a] control number, the set of Bingo numbers which is selected for play in the selected game of Bingo, a price for the set of Bingo numbers which is selected for play in the selected game of Bingo, a date of the selected game of Bingo and optionally a computer identification number," as recited in claim 7 of Wei, is analogous to the step of "creating, by a processor, a plurality of electronic virtual game pieces, each game piece having a unique combination of the indicators, the plurality of electronic virtual game pieces equal to a number of unique combinations of the indicators," as recited in appealed claim 1. Although the recitation in appealed claim 1 that each game piece has "a unique

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combination of the indicators" has no analog in claim 7 of Wei, this difference in the recitations of the two claims relates directly to the management of a bingo game and, as such, does not diminish the abstract nature of the claimed subject matter as a whole. As the Examiner correctly determines, the step recited in claim 7 of Wei is at least as concrete and tangible as that recited in appealed claim 1, if not more so, because the step recited in claim 7 is sufficiently broad to produce a tangible receipt as opposed to electronic *virtual* game pieces. (*See* Ans. 10).[3]

> The steps of:
>
>> storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer; [and] assignment of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo,

as recited in claim 7 of Wei, are analogous to the step of "electronically associating the plurality of electronic virtual game pieces to one or more players," as recited in appealed claim 1. Likewise, the recitation of a "winning set of Bingo numbers" in step (b) of claim 7 of Wei implies the step of "selecting a winning combination of indicators matching one and only one of the unique combinations," as recited in appealed claim 1. In short, given the analogy between claim 7 of Wei and appealed claim 1, the holding of our reviewing court that claim 7 of Wei was directed to the

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[3]   The Appellants direct our attention to the final decision in *Ex parte Segebarth*, Appeal 2011-012997, S/N 12/316,313 (PTAB Nov. 27, 2013). (*See* App. Br. 6 & 7). Although the application underlying this appeal is a continuation of another application that was a continuation of Application 12/316,313, the present application is separate. *Ex parte Segebarth* is not "law of the case" in this appeal.

abstract idea of managing a game of bingo, *see Planet Bingo* at 1008, implies that appealed claim 1 is directed to the same abstract idea.

Step 2 may be addressed briefly. Adding "conventional computer components to well-known business practices" does not, in general, provide the "something more" necessary to characterize the subject matter of a claim as an application of an abstract idea to which the claim is directed. *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1270 (Fed. Cir. 2016) (quoting *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1338 (Fed. Cir. 2016)). The steps recited in claim 7 of Wei are more detailed, and the computer equipment recited therein, no more generic, than the processor and memory recited in appealed claim 1. Furthermore, each step recited in claim 1 has an analog in claim 7 of Wei, with the possible exception of the step of "storing a pool of indicators in a memory unit." Storing predetermined indicators or numbers in a computer memory is a conventional computer-related task. *See Planet Bingo* at 1009. Without more, the step of "storing a pool of indicators in a memory unit" is insufficient to distinguish appealed claim 1 from the holding of our reviewing court that claim 7 of Wei failed to recite "something more." We sustain the rejection of claims 1–6 under § 101 as being ineligible for patent protection.

DECISION

We sustain all grounds of rejection entered by the Examiner.

We AFFIRM the Examiner's decision rejecting claims 1–17.

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

AFFIRMED