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patentattorneys@gmail.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DEVONA COLE

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Appeal 2016-003986  
Application 13/737,635  
Technology Center 3700

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Before STEVEN D.A. McCARTHY, JILL D. HILL, and  
JEFFREY A. STEPHENS, *Administrative Patent Judges*.

HILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

DeVona Cole (“Appellant”) appeals under 35 U.S.C. § 134(a) from the Examiner’s final decision rejecting claims 14–25. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

## BACKGROUND

Independent claims 14, 19, and 25 are pending. Independent claim 14, reproduced below, illustrates the claimed invention.

14. A computer-implemented method for providing and scheduling one or more casino tournaments over a computer network, the method comprising:

- providing one or more casino members with the ability to create an account or log-in to provide information regarding a plurality of casino tournaments over a computer network to allow one or more potential players to search for and sign up to participate as a player in one or more of the plurality of casino tournaments;

- providing the one or more casino members with a log-in screen on one or more visual displays;

- providing the one or more casino members with the ability to create one or more special event tournament schedules, through a first scheduler, based on pre-specified criteria of casino tournaments information over a computer network;

- providing the one or more casino members with the ability to create one or more daily and weekly event tournament schedules, through the a second scheduler, based on pre-specified criteria of casino tournaments information over a computer network;

- receiving information regarding the plurality of casino tournaments including at least the start and end date, tournament type, amount of the buy in, whether or not the tournament offers a rebuy or additional buy in and numbers of players at each tournament table offered by a casino from the one or more casino members, the information being provided by the at least one casino member over a computer network;

- providing the one or more potential players in one or more casino games of the plurality of casino tournaments with the ability to search the plurality of casino tournaments offered by the one or more casino members based on pre-specified criteria of the plurality of casino tournaments over a computer

network, the pre-specified criteria being selected by the one or more potential players;

providing the results of a search of the plurality of casino tournaments from a search requested by the one or more potential players on a visual display or computer readable medium, the results being provided based on the search requested by the one of more potential players selecting one or more pre-specified criteria regarding the plurality of casino tournaments and including at least the start and end date, tournament type, amount of the buy in, whether or not the tournament offers a rebuy or additional buy in and numbers of players at each tournament table;

calculating payout of the one or more potential players after the one or more potential players have participated in one or more casino tournaments;

providing the one or more casino members with the ability to track results of the casino tournaments;

displaying gaming status of each casino tournament;

wherein the one or more casino members need to provide casino tournament information through one of the two schedulers over a computer network at least once before receiving information regarding the plurality of casino tournaments offered by the one or more casino members from the one or more casino members; and

wherein the one or more casino members can view one or more competitor's tournament schedule.

## REJECTIONS

I. Claims 14–25 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 2.

II. Claims 14, 15, and 17–25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Conner (NANCY CONNER, GOOGLE APPS: THE MISSING MANUAL (Pogue Press, 2008) (“Conner”)) and Sabaliauskas (US 5,359,510, issued Oct. 25, 1994). *Id.* at 3.

III. Claim 16 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Conner, Sabaliauskas, and Siddique (US 2010/0030578 A1, pub. Feb. 4, 2010). *Id.* at 7.

## ANALYSIS

### *Rejection I—Ineligible Subject Matter*

Applying the framework in *Alice*, and as the first step of that analysis, the Examiner determines that the claims are directed to the abstract idea of scheduling a tournament (Ans. 2), which is a method of organizing human activity (*id.* at 14). Regarding the second step of the *Alice* framework, the Examiner determines that the additional claim elements amount to no more than instructions to implement the abstract idea on a computer, and/or recitation of generic computer structure performing generic computer functions that are well-understood, routine, and conventional activities previously known, such that the additional claim elements do not transform the abstract idea into a patent eligible application of (significantly more than) the abstract idea. Final Act. 2.

Appellant contends that, in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014), the Supreme Court held that an abstract idea had to be a fundamental practice long prevalent in a field to be non-statutory subject matter under 35 U.S.C. § 101, and intended for abstract ideas to be limited to financial methods. Br. 13–14 (“‘abstract ideas’ applies only to those ideas which are fundamental and long prevalent, and quite possibly to ideas which have been well-known and extensively used for hundreds of years”). Appellant argues that the claimed invention is not an abstract idea under *Alice*, because it is neither a long-prevalent, fundamental practice nor related to commerce or finance. *Id.* at 15.

The Examiner responds that Appellant’s interpretation of *Alice* as limiting an abstract idea to a long-prevalent, fundamental practice or related to commerce or finance is in error and contrary to the Supreme Court’s holding in *Mayo*, which “makes it clear that all laws of nature, mathematical formulas, abstract ideas and natural phenomena are ineligible for a patent unless accompanied by ‘significantly more,’” requiring no degree of antiquity or financial subject matter. Ans. 13; see *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–79 (2012); see also *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335 (Fed. Cir. 2013) (discussing an abstract idea that was not long prevalent or financial – distributing copyrighted media over the Internet); *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. App’x 1005 (Fed. Cir. 2014) (unpublished) (discussing an abstract idea that was not long prevalent or financial – computer-aided management of bingo games).

We agree with the Examiner that an abstract idea need not be a fundamental practice long prevalent in a field, or finance-related, to be non-statutory subject matter under 35 U.S.C. § 101.

Appellant further argues that the claims “go beyond merely reciting the alleged abstract idea and instead recite significantly more by provid[ing] an instruction to ‘apply it.’” Br. 15. As examples of “significantly more,” Appellant recites certain limitations in the pending claims. *Id.* at 16–18. Appellant likens the pending claims to the claims in *Diamond v. Diehr*, 450 US 175 (1981), alleging that claims are transformed into “significantly more” than an abstract idea merely by the input of data and repeated calculation thereof by a computer. *Id.* at 19–20.

The Examiner responds that Appellant fails to explain how the recited claim elements amount to “significantly more.” Ans. 14. The Examiner further contends that the recited elements do not contain significantly more, because they can be performed by a person using pen and paper, or recite only conventional and obvious extra-solution activity when employing a computer. *Id.* Regarding *Diehr*, the Examiner responds that “significantly more” in that case was the transformation of rubber as it cured, rather than the input and calculation of data. *Id.*

We agree with the Examiner. Appellant fails to explain how the claim elements recited on pages 16–18 of the Appeal Brief provide “significantly more” than the abstract idea. Further, it was indeed the transformation of rubber into a different state in *Diehr* that was determined to be the “transformation” that made the claimed patent eligible. *See Diehr*, 450 U.S. at 184 (“physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter. That respondents’ claims involve the transformation of an article, in this case raw, uncured synthetic rubber, into a different state or thing cannot be disputed. The respondents’ claims describe in detail a step-by-step method for accomplishing such, beginning with the loading of a mold with raw, uncured rubber and ending with the eventual opening of the press at the conclusion of the cure. Industrial processes such as this are the types which have historically been eligible to receive the protection of our patent laws.”).

For the reasons explained above, we sustain Rejection I.

*Rejection II – Obviousness of Claims 14, 15, and 17–25*

*Claims 14, 15, 17, and 18*

The Examiner finds, regarding independent claim 14, that Conner renders the claimed invention obvious by disclosing Google Calendar, which includes a method and system for scheduling events on a computer network. Final Act. 3 (citing Conner, 349–391). Although Conner does not disclose casino tournaments, the Examiner reasons that “[c]asino tournaments are events and therefore may be scheduled using Google Calendar,” and explains how such tournament scheduling would be accomplished with Google Calendar to accomplish the claimed system and method. *Id.* at 3–5. The Examiner finds that “Conner fails to explicitly teach receiving information regarding the plurality of casino tournaments including at least tournament type, amount of the buy in, whether or not the tournament offers a re-buy or add-on and numbers of players at each tournament table offered by a casino,” but discloses “providing a description of the event that is scheduled on the calendar.” *Id.* at 4. According to the Examiner, however, “[c]ommon sense suggests that it would have been obvious to one of ordinary skill in the art at the time of the invention to describe the details of the tournament so that potential participants would know these details before signing up for the event.” *Id.* The Examiner also finds that “Conner fails to disclose calculating a payout of the one or more potential players after” tournament participation, and “providing the one or more casino members with the ability to track” and display tournament results. *Id.* at 5. The Examiner finds, however, that Sabaliauskas discloses a tournament scheduler displaying tournament results to players, and concludes that it would have been obvious to one skilled in the art to modify “Conner in view

of Sabaliauskas to display the claimed tournament results in order to provide more information to the player.” *Id.* at 5–6.

Appellant argues, *inter alia*, that the Examiner’s “common sense” reasoning is insufficient and lacks a rational underpinning, because it fails to explain “why common sense would have made it obvious to . . . describe the various specific details of the tournaments required by the claims.” Br. 21.

We agree with Appellant. Regarding independent claim 14, while common sense can be a legitimate reason for combining references or modifying references, the Examiner did not, in this case, provide any evidence that one skilled in the art would have understood that “details of the tournament” includes the claimed “tournament type, amount of the buy in, whether or not the tournament offers a rebuy or additional buy in and numbers of players at each tournament table offered by a casino.” Final Act. 4; Br. 25 (Claims App.). The Examiner makes no findings or conclusions that Sabaliauskas cures the above noted deficiencies of Conner with respect to claim 14. We do not sustain the rejection of claim 14. Claims 15, 17, and 18 depend from claim 14, and we likewise do not sustain the rejection thereof.

*Claims 19–25*

Appellant argues claims 19–25 as a group with claim 14. Br. 20–24. Claims 19–25 do not, however, recite the specific tournament details that the Examiner finds it would have been common sense to include when using Connor’s teachings to schedule an event such as a casino tournament. Therefore, Appellant’s argument that the Examiner’s “common sense” reasoning fails to explain “why common sense would have made it obvious to . . . describe the various specific details of the tournaments required by the

claims” does not inform us of error in the rejection of claims 19–25. Br. 21. For Appellant’s remaining argument, we consider claims 19–25 as a separate group, and select independent claim 19 as representative. 37 C.F.R. § 41.37(c)(1)(iv). Claims 20–25 stand or fall with claim 19.

Claim 19 recites various modules, including “a calculator module, the calculator module calculating payout of at least one player after the player has participated in at least one of the plurality of casino tournaments” and “a tracker module, the tracker module tracking one or more results of the casino tournaments by the at least one player.” Relevant to claim 19, the Examiner finds Conner fails to disclose calculating a payout of the one or more potential players after the one or more potential players have participated in one or more casino tournaments and providing the one or more casino members with the ability to track results of the casino tournaments. Final Act. 5. The Examiner finds this information is considered to be tournament results, and Sabaliauskas teaches a tournament scheduler that displays tournament results. *Id.* The Examiner finds one of ordinary skill in the art would have wanted to modify Conner in view of Sabaliauskas to display the claimed tournament results “in order to provide more information to the player.” *Id.* at 6.

Appellant argues, relevant to claim 19, that calculating a payout and providing the casino members with the ability to track results of the casino tournaments “requires overcoming various technical challenges that are not common sense or taught or suggested by Conner, Sabaliauskas or any other prior art of record.” Br. 23. Appellant contends that performing such actions “requires a sophisticated system that receives and calculates payouts accurately according to the rules of the tournament shortly after a casino

tournament has ended and provides accurate information to the casino members with accurate results as to the outcome of the casino tournament.”  
*Id.*

We agree with the Examiner that one of ordinary skill in the art would have appreciated that every tournament must calculate results at the end of the tournament. Ans. 15. There is also no evidence that posting a table of results on a web page, for example, would have been beyond the level of ordinary skill in the art. We also note that claim 19 does not recite how the calculate payout and results of the tournaments are used by the system.

We therefore sustain the rejection of claim 19. Claims 20–25 fall with claim 19.

*Rejection III – Obviousness of Claim 16*

Claim 16 depends from claim 14. The Examiner makes no finding that Siddique cures the above noted deficiencies of Conner and Sabaliauskas with respect to claim 14. We, therefore, do not sustain Rejection III.

DECISION

We AFFIRM the rejection of claims 14–25 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

We REVERSE the rejection of claims 14, 15, 17, and 18 under 35 U.S.C. § 103(a) as unpatentable over Conner and Sabaliauskas.

We AFFIRM the rejection of claims 19–25 under 35 U.S.C. § 103(a) as unpatentable over Conner and Sabaliauskas.

We REVERSE the rejection of claim 16 under 35 U.S.C. § 103(a) as unpatentable over Conner, Sabaliauskas, and Siddique.

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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