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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JENNIFER SCHULZE HUYNH, CLINT OWEN, and JP CODY

Appeal 2016-004021
Application 13/959,545
Technology Center 3700

Before MICHAEL L. HOELTER, JILL D. HILL, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

HILL, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Independent claims 1, 11, and 16 are pending. The patent relates to a bingo-type gaming system (claim 1), a method of operating a bingo-type gaming machine (claim 11), and a computer readable medium comprising bingo-type gaming instructions (claim 16). Claim 1, reproduced below, illustrates the claimed subject matter:

> 1. A method of operating a gaming machine, the method including:

(a) displaying a graphic representation of a bingo card at a display device of the gaming machine, the bingo card being displayed with randomly populated indicia from a finite set of indicia to form one or more paylines through the bingo card;

(b) with a game processor associated with the gaming machine, randomly selecting a number of indicia from the finite set and for each selected indicia determining whether the respective selected indicia matches one of the populated indicia;

(c) for each selected indicia matching one of the populated indicia, (i) daubing the respective matched populated indicia in the displayed bingo card by changing an appearance of the matched populated indicia on the display device to a daubed appearance, and (ii) in the event there are one or more undaubed populated indicia in the payline in which that daubed indicia is located between that daubed indicia and a collection end of that payline, moving that daubed indicia toward the collection end of that payline to a respective different position in that payline such that no undaubed populated indicia remain in that payline between the different position and the collection end of the payline, and (iii) shifting at least each undaubed populated indicia located between the original position of that daubed indicia and the collection end of that payline one position toward the original position of that daubed indicia; and

(d) awarding a prize for any payline through the bingo card which includes a number of daubed indicia defined in a paytable for the gaming machine as a winning payline, the paytable correlating each winning payline to a respective prize.

REJECTION

Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to ineligible subject matter. Final Act. 2.

PRINCIPLES OF LAW

A patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme Court has held that this provision

contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) ("Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work."). Notwithstanding that a law of nature or an abstract idea, by itself, is not patentable, the application of these concepts may be deserving of patent protection. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293–94 (2012). In *Mayo*, the Court stated that "to transform an unpatentable law of nature into a patent eligible application of such a law, one must do more than simply state the law of nature while adding the words 'apply it.'" *Id.* at 1294.

In *Alice*, the Supreme Court reaffirmed the framework set forth previously in *Mayo* "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts." *Alice*, 134 S. Ct. at 2355. The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* If the claims are directed to a patent-ineligible concept, then the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination"' to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). In other words, the second step is to "search for an 'inventive concept' — i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more

than a patent upon the [ineligible concept] itself.'" *Id.* (alterations in original) (quoting *Mayo*, 132 S. Ct. at 1294). The prohibition against patenting an abstract idea "cannot be circumvented by attempting to limit the use of the formula to a particular technological environment or adding insignificant post-solution activity." *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citation and internal quotation marks omitted). The Court in *Alice* noted that "'[s]imply appending conventional steps, specified at a high level of generality,' was not 'enough' [in Mayo] to supply an 'inventive concept.'" *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1300, 1297, 1294).

Moreover, our reviewing court has "determin[ed] that methods of managing a game of bingo were abstract ideas" and denied patentability of such concepts. *In re Smith*, 815 F.3d 816, 819 (Fed. Cir. 2016) (citing *Planet Bingo, LLC v. VKGS LLC*, 576 F. App'x. 1005, 1007-08 (Fed. Cir. 2014)).

DISCUSSION

Appellants argue all claims as a single group. *See* Appeal Br. 17. We select claim 1 as representative and claims 2–20 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

In rejecting the claims, the Examiner finds that claims 1–20 are directed to "the abstract idea of managing/playing the game of bingo" without "significantly more." Final Act. 2. According to the Examiner, the claim limitations reciting a computer (e.g., gaming machine, processor) only involve the computer to play the game, and "[t]he steps of displaying a bingo card on a computer, selecting indicia on a computer, and rearrang[ing] numbers in the bingo card [are] well known steps" that can also be

performed mentally. *Id.* The Examiner thus determines that claims 1–20 are directed to the abstract ideas of organizing human activity (playing a game) and fundamental economic practices (awarding a prize). Final Act. 2–3.

We agree with the Examiner's characterization of the claims and are not persuaded by Appellants' arguments, as discussed below.

Appellants argue that the claims do not fall under a judicial exception, because they do not include or describe any of a fundamental economic practice, a methods of organizing human activity, an idea "of itself," or a mathematical relationship or formula. Appeal Br. 9. Appellants particularly point out that "element (c) of claim 1 includes a very specific process performed by the game processor wherein both matched indicia and unmatched indicia are moved to different locations on the bingo card to dynamically change the appearance of the bingo card," which "includes an innovative and patentable improvement to conventional implementations of bingo on gaming machines." *Id.* at 9–10.

Appellants then argue that, even if the claims are determined to be directed to an abstract idea, they include "many and significant limitations in addition to the abstract idea of providing a bingo game," and the limitations "prevent the claim[s] from effectively preempting the stated abstract idea [of] managing/playing the game of bingo." Appeal Br. 14–15, 11, 17. Appellants further argue that the claims include a non-general purpose computing device component — "a physical item acceptor configured to receive a unit of currency having a monetary value to facilitate placement of a wager based at least in part on that monetary value," such that the claims do not seek to tie up any abstract ideas. *Id.* at 16. Appellants further argue that the claimed process steps "cannot be performed mentally [because] they

require moving indicia from one bingo card location to another on a display device." *Id.* at 11.

We are not persuaded of error.

Considering the first step in the *Alice* analysis, determining whether the claims at issue are directed to one of those patent-ineligible concepts, we note that claim 1 is directed, generally, to a method for operating a gaming machine, including displaying a bingo card containing indicia, performing a bingo draw, changing the card display based on the bingo draw to highlight matched indicia and rearrange matched/unmatched indicia, and awarding a prize. We find the claims here similar to the claims previously found to be patent ineligible by the Federal Circuit. *See In re Smith*, 815 F.3d 816, 819 (Fed. Cir. 2016) ("the rejected claims, describing a set of rules for a game, are drawn to an abstract idea"); *see also Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014). We agree with the Examiner that the claims here, like the claims in *Planet Bingo* can be carried out mentally using pen and paper or with existing, conventional, and long in use computer technology. Final Act. 3; *see also Planet Bingo*, 576 Fed. Appx. at 1007–08 (*quoting Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

Our inquiry, however, does not end there. Abstract ideas, including a set of rules for a game, may be patent-eligible if they contain an "'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1294, 1298). But appending purely conventional steps to an abstract idea does not supply a sufficiently inventive concept. *Id.* at 2357–58. Appellants argue that the claims here recite significantly more than an abstract idea, because the claims require more than a generic computer implementation of

bingo rules. Appeal Br. 17. As restated by the Examiner, Appellants argue that the claims include "a very specific process performed by the game processor wherein both matched indicia and unmatched indicia are moved to different locations on the bingo card to dynamically change the appearance of the [displayed] bingo card," and as such, "claim 1 is not an abstract idea." Ans. 4–5. However, as per the Examiner, merely revising the display fails to add significantly more to the abstract idea. *See* Final Act. 3, Ans. 5–6. We agree with the Examiner. We decline to determine that Appellants' recitation of display modifications that highlight and move certain indicia is an inventive concept that transforms the claimed abstract idea into a patent-eligible application. *See* Ans. 6 ("A person can rearrange the matched and unmatched indicia by moving the cards around.").

Regarding Appellants' argument that the claims are not directed to an abstract idea under *Alice* because they do not preempt all uses or applications for displaying a bingo result, we are not persuaded. We are not persuaded by this argument because, although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (*citing Alice*, 134 S. Ct. at 2354).

Accordingly, because Appellants do not apprise us of reversible error in the rejection, we sustain the rejection of claims 1–20 as directed to ineligible subject matter.

CONCLUSION

We AFFIRM the rejection of claims 1–20 for the reasons set forth above.

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