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INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022			COBURN, CORBETT B	
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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* LEE AMAITIS, CHRISTOPHER JOHN DAVIE, and  
GUY IAN OLIVER RICHES

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Appeal 2016-006299  
Application 14/027,955  
Technology Center 3700

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Before ANTON W. FETTING, BIBHU R. MOHANTY, and  
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-17, 20, and 21 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

### THE INVENTION

The Appellants' claimed invention is directed to a system and method for wagering in a financial market environment (Spec., para. 2). Claim 11, reproduced below, is representative of the subject matter on appeal.

11. A method comprising:
  - causing, by at least one processor, an electronic display to display:
    - a first value of a financial indicator, the first value comprising a value determined based on a current value of the financial indicator;
    - a first icon for selecting a first bet that the financial indicator will be greater than the first value at a designated future time;
    - a second icon for selecting a second bet that the financial indicator will be less than the first value at the designated future time;
  - receiving, by the at least one processor from a first user, a selection of (1) the first bet and (2) a wager amount for the first bet;
  - tracking, by the at least one processor, a current value of the financial indicator until the designated future time;
  - determining, by the at least one processor, whether a value of the financial indicator at the designated future time is greater than the first value; and
  - settling, by the at least one processor, the first bet based on the act of determining whether a value of the financial indicator at the designated future time is greater than the first value.

### THE REJECTIONS

The following rejections are before us for review:

1. Claims 1-17, 20, and 21 are rejected on the grounds of nonstatutory double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 8,535,138
2. Claims 1-17, 20, and 21 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

## FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence<sup>1</sup>.

## ANALYSIS

### *Rejection under Nonstatutory Double Patenting*

The Appellants argue that the rejection of claims 1-17, 20, and 21 is improper because it “does not show how any specific claim of the present application corresponds to any specific reference claim” (Appeal Br. 6).

In contrast, the Examiner has determined that the rejection of record is proper (Final Act. 2-4, Ans. 5-8).

We agree with the Examiner. The rejection of record has stated that “[a]lthough the claims at issue are not identical, they are not patentably distinct from each other because the claims are virtually identical- except for two minor limitations (which appear in claims 3 & 13 of the instant application rather than claims 1 & 11 of the patent), the claims are identical” (Final Act. 4). Here, the rejection is not so uninformative that it prevents the Appellants from recognizing and seeking to counter the grounds of rejection. See *In re Jung*, 637 F.3d 1356 at 1362. The Appellants have provided no specific arguments related to the actual claim language at hand. Regardless, a review of the rejection of claim 1, for instance, finds the Examiner’s determination for rejection under double patenting to be proper. As the

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

Appellants have provided no specific arguments related to the actual claim language at hand, this rejection of record is sustained.

*Rejection under 35 U.S.C. § 101*

The Appellants argue that the rejection of claim 11 has not been properly identified as an abstract idea (Appeal Br. 9, 10). The Appellants also argue that the claim is directed to “significantly more” than the alleged abstract idea (Appeal Br. 10, 11, Reply Br. 2-4).

In contrast, the Examiner has determined that the rejection of record is proper (Final Rej. 2, Ans. 2-5, 8-10).

We agree with the Examiner. 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 judging whether claim 11 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the claim both individually and as “an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application of the abstract idea. *Id.* This is a search for an “inventive concept” an element or combination of

elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention”. *Id at 2358.*

Here, we determine that the claim is directed to the concept of the placement and settling of a bet on a financial indicator. This is a fundamental economic practice long prevalent in our system of commerce and is an abstract idea beyond the scope of § 101. The Specification indicates at para. 2 that the invention is directed to a method for wagering in a financial environment.

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. The Specification at paras. 36, 40, and 43 for instance discloses using conventional computer components including computer displays, cellular telephones, networks, and processors for their known functions in a conventional manner.

We note the point about pre-emption (Appeal. Br. 12). While pre-emption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*,

134 S. Ct. at 2354 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012)), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). *See also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), cert. denied, 136 S. Ct. 701, 193 (2015)(“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

For these above reasons, the rejection of claim 11, and its dependent claims which are drawn to similar subject matter, is sustained. Claim 20 and its dependent claim 21 are directed to similar subject matter and the rejection of these claims is sustained as well.

We reach the same conclusion as to independent system claim 1 and its dependent claims. Here, as in *Alice*, “the system claims are no different in substance from the method claims. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea.” *Alice* 134 S. Ct. at 2351. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea ‘while adding the words ‘apply it’ is not enough for patent eligibility.” *Id.* at 2358 (quoting *Mayo*, 132 S. Ct. at 1294).

### CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-17, 20, and 21 on the ground of nonstatutory double patenting.

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-17, 20, and 21 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

### DECISION

The Examiner's rejection of claims 1-17, 20, and 21 is sustained.

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