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STANDLEY LAW GROUP LLP
6300 Riverside Drive
Dublin, OH 43017

EXAMINER
CUFF, MICHAEL A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY F. KADLEC and CRAIG R. SEDORIS[1]

Appeal 2016-007670
Application 14/273,535
Technology Center 3700

Before DANIEL S. SONG, WILLIAM A. CAPP, and BRANDON J. WARNER, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–3, 5–23, and 25–27 as unpatentable as being directed to patent ineligible subject matter under the judicial exception to 35 U.S.C. § 101. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] The real party in interest is the applicant and assignee of the present application, Phrazzing Games, LLC.

THE INVENTION

Appellants' invention relates to systems and methods for administering a wagering lottery game. Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A method of administrating a lottery game that comprises a wagering portion and a resolution portion, comprising the steps of:
>
> establishing a lottery game by defining a set of game parameters, including a termination parameter and a set of valid wager parameters, on an administration server, and wherein one of the valid wager parameters is that wager information received is a sequence having a predetermined number of characters selected from a set of possible characters;
>
> opening an instance of the lottery game for play on the administration server;
>
> establishing a wager pool by conducting, with a plurality of users of gaming devices, a wagering portion of the lottery game on the administration server, comprising the steps of:
>
> establishing an interactive communication between the administration server and the gaming device;
>
> providing game rules and information to the gaming device;
>
> requesting wager and payment information;
>
> receiving, provisionally, the wager and payment information from the eligible player;
>
> validating the received wager and payment information;
>
> rejecting the received wager and payment information if either or both of the received wager and payment information are not valid;
>
> rejecting the received and validated wager and payment information if accepting the received and validated wager and payment information would cause the termination parameter to be exceeded; and
>
> accepting the received and validated wager and payment information as an accepted entry by storing the received and

validated wager and payment information in a wager pool; and

conducting a resolution portion of the lottery game, comprising the steps of:

closing the wager pool;

establishing a prize payout; and

drawing a winner from the accepted entries.

OPINION

Claims 1 and 23

Claims 1 and 23 are independent claims and Appellants argue them together. Appeal Br. 7–16. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Supreme Court has set forth "a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66, 72–73 (2012)). According to the Supreme Court's framework, we must first determine whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, and abstract ideas). *Id.* If so, we must secondly "consider the elements of each 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." *Id.* The Supreme Court characterizes the second step of the analysis as "a 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.* (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73).

> With respect to the first step, the Examiner explains:
>
> The claim(s) is/are directed to the abstract idea of wagering or fundamental economic practice and the mathematical relationship or formula guiding wagering . . . .

Final Action 2. The Examiner correctly determines that the claims are directed to an abstract idea. Final Action 2. Our supervising court maintains that claims directed to rules for conducting a wagering game compare to other fundamental economic practices found abstract by the Supreme Court. *See In re Smith*, 816 F.2d 816 (Fed. Cir. 2016).

With respect to the second step of the *Alice/Mayo* analysis, the Examiner finds:

> The additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than mere instructions to implement the idea on a computer, and/or recitation of generic computer structure that serves to perform generic computer functions that are well understood, routine, and conventional activities previously known to the pertinent industry. Viewed as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself.

Final Action 2.

Appellants argue that claim 1 amounts to "significantly more" than the abstract idea. Appeal Br. 13. Appellants argue that the claim language is direct to "how" the invention is implemented. *Id.* at 15. Appellants point out that the claims require devices such as an administration server and gaming devices. *Id.* Appellants also point out that the claims require "specific parameter information." *Id.* Appellants also point out that the

claims require a computer to compare wager and payment information with a wager pool. *Id.*

In response, the Examiner explains that administering a lottery game merely involves data gathering and subsequent processing by internal mathematical relations within a computer. Ans. 4. According to the Examiner, the claims involve insignificant pre-solution activity because such activity is necessary and routine in implementing a fundamental economic practice such as wagering or more specifically a lottery game. *Id.*

It is now well settled that mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S.Ct. at 2358. Thus, merely stating an abstract idea while adding the words "apply it" is not enough to confer patent eligibility. *Id.*

> If that were the end of the § 101 inquiry, an applicant could claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept.

Id. at 2359. Essentially, all Appellants have done here is devise a set of rules and procedures for administering a lottery wagering game using generic computer equipment and functions. *Id.* ("each step does no more than require a generic computer to perform generic computer functions").

We sustain the Examiner's rejection of claims 1 and 23.

Claims 2, 3, 5–22, and 25–27

These claims depend, directly or indirectly, from either claim 1 or claim 23. Claims App. Appellants' separate argument(s) for the patentability these claims is set forth in a single paragraph that bridges pages 15 and 16 of the Appeal Brief. *See* Appeal Br. 15–16. Appellants argue that claims 9–19 and 27 specify "particular variations" of the lottery

game. *Id.* Appellants argue that claim 22 requires a display device. *Id.* at 16. Appellants argue that claims 20 and 21 are directed to alternative methods of selecting a winner. *Id.* Appellants' arguments do not persuade us that these claims amount to "significantly more" than claiming an invention upon the ineligible concept itself. *Alice*, 134 S.Ct. at 2355.

We sustain the rejection of claims 2, 3, 5–22, and 25–27.

DECISION

The decision of the Examiner to reject claims 1–3, 5–23, and 25–27 is affirmed.

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