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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CLIFTON LIND, GORDON T. GRAVES, GARY L. LOEBIG, JEFFERSON C. LIND, JOSEPH R. ENZMINGER, RODNEY L. WILLYARD, and ROBERT LANNERT

Appeal 2017-000129[1]
Application 14/016,172[2]
Technology Center 3700

Before ANTON W. FETTING, KENNETH G. SCHOPFER, and TARA L. HUTCHINGS, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the rejection of claims 1–16. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Our decision references the Appeal Brief ("Br.," filed June 8, 2015), the Examiner's Answer ("Ans.," mailed Oct. 5, 2015), and the Final Office Action ("Final Act.," mailed Dec. 8, 2014).

[2] According to Appellants, the real party in interest is Multimedia Games, Inc. Appeal Br. 3.

BACKGROUND

According to the Specification, "the invention relates to a bingo-type gaming system in which a set of bingo card representations is matched with bingo designations to produce bingo results that are displayed to players using a representation unrelated to the bingo-type game." Spec. 2, ll. 3–6.

REPRESENTATIVE CLAIM

Claim 1 is illustrative of the appealed claims and recites:

> 1. A method for operating a gaming system, the method including:
>
> (a) with a data processing system included in the gaming system, matching a number of game designations from a designation draw for a bingo game to a number of bingo card representations in play for the bingo game;
>
> (b) identifying a game ending result with the data processing system, the game ending result being produced upon matching a first bingo card representation in the number of bingo card representations with a game ending number of game designations from the designation draw for the bingo game to generate a game ending pattern of matched card locations on the first bingo card representation;
>
> (c) with the data processing system, identifying a respective bingo game result for each other bingo card representation in the number of bingo card representations in play for the bingo game, the respective bingo game result for a second bingo card representation in the number of bingo card representations comprising a first winning result which is produced upon matching the second bingo card representation with the game ending number of game designations from the designation draw for the bingo game to generate a first winning pattern of matched card locations on the second bingo card representation, the first winning pattern of matched card locations being dissimilar to the game ending pattern of matched card locations;

> (d) displaying a game ending result representation at an electronic player station in the gaming system for a player associated with the first bingo card representation, the game ending result representation being correlated to the game ending pattern of matched card locations and including a graphical representation of a result in a reel-type game in which a respective result is shown by a number of spinning reels which come to rest to display an array of indicia; and
>
> (e) displaying a first winning result representation at an electronic player station in the gaming system for a player associated with the second bingo card representation, the first winning result representation being correlated to the first winning pattern of matched card locations and including a graphical representation of a first winning result in the reel-type game.

Br. 13.

REJECTION

The Examiner rejects claims 1–16 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

DISCUSSION

As a general matter, we determine whether a claim is directed to patent-eligible subject matter based on the Supreme Court's framework, as articulated in *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), which follows the two-part test set forth in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012). That is, a claim fails to recite patent-eligible subject matter if, in accordance with the first part of the *Alice* test, the claim is directed to an abstract idea, and if, in accordance with the second part of the test, the claim lacks any further claim limitations that, when "consider[ed] . . . both individually and 'as an ordered combination' . . . 'transform the nature of the claim' into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78, 79).

In this case, Appellants argue only that the Examiner erred in determining that the claims are directed to an abstract idea under step one of the *Alice* analysis. *See* Br. 10 ("Because the claims do not seek to cover an abstract idea itself, the claims are directed to patent-eligible subject matter, and it is unnecessary to consider the second part of the [*Alice*] framework.") With respect to independent claims 1 and 6, Appellants assert that the claims are directed "to a specific method for operating a gaming system tied to a particular apparatus" and thus, these claims "do not merely recite an abstract idea so as to preempt that idea for all uses and applications." *Id.* at 9–10 (emphasis omitted). Similarly, with respect to independent claim 12, Appellants assert that the claim "do[es] not merely recited the abstract idea of 'displaying a bingo result' so as to preempt that idea for all uses and applications." *Id.* at 10 (emphasis omitted).

We are not persuaded by Appellants' argument because we agree with the Examiner that the claims are directed to an abstract idea under step one of the *Alice* analysis. Claim 1, for example, is directed to a method of operating a gaming system including steps related to matching numbers on a bingo card with a bingo number draw; identifying bingo game ending results, and displaying bingo game ending results. We agree with the Examiner that the claims are directed to the abstract idea of managing a bingo game and displaying bingo game results. In this regard, we find the claims here similar to claims previously found to be patent ineligible by the Federal Circuit. *See, e.g., Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014). And like the claims addressed in *Planet Bingo*, we agree with the Examiner that the claims here can be carried out mentally using pen and paper or with existing, conventional, and long in use computer

technology. *See id.* 576 Fed. Appx. 1007–08 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

Further, to the extent Appellants argue that the claims are not directed to an abstract idea under the *Alice* analysis because they do not preempt all uses or applications for displaying a bingo result, we are not persuaded. Br. 10. Although the Supreme Court has described "the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption," *Alice*, 134 S. Ct. at 2354, characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. "The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability" and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing Alice, 134 S. Ct. at 2354). Yet although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Id.* Thus, we consider that any concerns related to pre-emption have been addressed as part of the Examiner's *Alice* analysis, with which we agree.

Accordingly, because Appellants do not apprise us of reversible error in the rejection, we sustain the rejection of claims 1–16 as directed to ineligible subject matter.

CONCLUSION

We AFFIRM the rejection of claims 1–16.

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