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TRASKBRITT, P.C. /Bally Gaming, Inc.
PO Box 2550
Salt Lake City, UT 84110

EXAMINER

DENNIS, MICHAEL DAVID

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEOFF HALL

Appeal 2017-002594
Application 13/539,113
Technology Center 3700

Before KEN B. BARRETT, WILLIAM A. CAPP, and
ANTHONY KNIGHT, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–19, 21, and 22 as being directed to patent-ineligible subject matter under the judicial exception to 35 U.S.C. § 101.² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellant identifies Customized Games Limited; Bally Gaming and Systems UK Limited; Bally Gaming, Inc.; and Scientific Games Corporation as the real-parties-in-interest.

² A double patenting rejection over Hall (US 8,398,084 B2, iss. Mar. 19, 2013) has been withdrawn. Ans. 5.

THE INVENTION

Appellant's invention relates to the casino card game of blackjack. Spec. ¶¶ 1–11. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for implementing a blackjack game in a physical casino, the method comprising:
 - providing the physical casino with a physical gaming table with a felt layout on top of the gaming table, the felt layout including a plurality of betting circles imprinted into the felt layout;
 - providing one or more physical decks of cards;
 - receiving a wager from the player in the form of one or more physical chips in a player's betting circle of the plurality of betting circles;
 - dealing, using the one or more physical decks of cards, cards for a player's hand and cards for a dealer's hand;
 - enabling the player to play out the player's hand;
 - resolving the dealer's hand, comprising, upon meeting a burn condition of a number of the cards for the dealer's hand exceeding two and a point total of the cards for the dealer's hand exceeding a predetermined amount and equaling a preset total,
 - burning a card in the cards for the dealer's hand and dealing an additional card for the dealer's hand; and
 - resolving the wager according to predetermined blackjack rules.

OPINION

Appellant's application presents three independent claims, namely, claims 1, 11, and 19. Claims App. Appellant argues all pending claims together, except that Appellant imbeds an argument relating to the use of an electronic apparatus within a section of the Appeal Brief that otherwise applies to all pending claims. *See* Appeal Br. 45. We select claim 1 as

representative, except that we will treat independent claims 11, 19, and claims depending therefrom, which contain subject matter directed to an electronic version of casino Blackjack, as a separate sub-group for which we select claim 11 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).³

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).

The Examiner explains:

³ The first page of the Final Action identifies claims 1–19, and 21 as pending and rejected. Final Action 1. In the Answer, the Examiner corrects this to include claim 22. Ans. 2, 4, 5. In view of how the claims are grouped for argument in both the Appeal Brief and Answer, we view the omission of claim 22 in the Final Action as an inadvertent typographical error.

Claim 1-19, 21 are directed to a method of playing a card game, which is an abstract idea in the same way managing a game of bingo is an abstract idea. The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the use of cards, electronic reader, card table and wager acceptance apparatus, when considered separately and in combination, do not add significantly more to the abstract idea as they are known gaming components. These elements are analogous to the non-unique components used in Planet Bingo.

Final Action 2 (underline in original). The Examiner correctly determines that the claims are directed to an abstract idea. Final Action 2. Our reviewing 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*, 815 F.2d 816 (Fed. Cir. 2016).⁴

With respect to the second step of the *Alice/Mayo* analysis, the Examiner finds that, taken as a whole, the claims contain insufficient additional subject matter to transform the abstract idea into eligible subject matter. Final Action 2. The Examiner elaborated on this finding in the Answer.

Examiner declined to apply a prior art rejection solely for the set of rules pertaining to the burn condition rules, dealing rules, and resolution rules. These additional features fail to

⁴ Appellant urges us not to follow the *Smith* decision, arguing that it is “out of step” with other Federal Circuit case authorities that pre- and post-date *Smith*. Appeal Br. 25, n. 6. We are bound to follow applicable Federal Circuit precedent, including *Smith*. We further note that the underlying facts of *Smith* involve a variation in the casino card game of Blackjack as is the instant application under appeal. Thus, the facts of *Smith* are more closely analogous to those of the instant case than any of the other authorities cited by Appellant in the Appeal Brief in footnote 6.

demonstrate an "inventive concept" sufficient to transform the abstract idea into a patent-eligible application.

Ans. 6.

In regard to step two of *Alice/Mayo* analysis, Appellant argues that the claims amount to "significantly more" than the abstract idea. Appellant presents different arguments for claims 1 and 11, which will be treated separately below.

Claim 1 – "something significantly more" analysis

Appellant argues that the step of burning a dealer card, in combination with the traditional elements of casino Blackjack, constitutes an inventive concept sufficient to create patentable subject matter. Appeal Br. 39–40.⁵

In this case, the claims do not recite merely receiving wagers, distributing cards, and resolving wagers, etc., – or even merely burning a card – in isolation. Rather, the claims recite a particular, ordered combination of method acts (and apparatus features) that is unconventional (i.e., not widely prevalent, well-understood, routine, or conventional activity). For example, the claims recite acts and features by which is provided burning a dealer card upon the dealer drawing to a preset total exceeding a predetermined amount. Burning a card, in blackjack, is not widely prevalent. Therefore, burning a dealer card under the required, particular circumstances is a combination that is ***not widely prevalent***.

Appeal Br. 42–43.

In response, the Examiner takes the position that

Indeed, none of those additional elements are new or original to the gaming art. Rather, they are "widely prevalent" in the card playing art and could easily be found with a cursory search (e.g.

⁵ In its *Alice/Mayo* step 2 analysis, Appellant repeats its earlier argument that such a concept is not an abstract idea. Appeal Br. 41. We have already resolved this issue adverse to Appellant under step 1 of the analysis.

. . . US Pat. No. 6,406,023 to Rowe at Fig 3B, Column 3, lines 10-29 . . . Examiner declined to apply a prior art rejection solely for the set of rules pertaining to the burn condition rules, dealing rules, and resolution rules. These additional features fail to demonstrate an 'inventive concept' sufficient to transform the abstract idea into a patent-eligible application.

Ans. 6. The Rowe patent mentioned by the Examiner is directed to the casino game of Blackjack, as is the instant application. Rowe, Abstract, col. 1, ll. 1–20. Rowe’s invention applies to both physical card games and electronically simulated card games, as with the instant application. *Id.* Rowe further discloses the following “burn” procedure:

The present inventive concept is a blackjack game that incorporates a "dealer burn procedure" in which a dealer will automatically burn the dealer's initial hand (initial two cards dealt) if the two cards are both 10-valued cards. The dealer will burn these two cards by removing the two dealer's cards and placing them into the discard rack, and then dealing the dealer two new cards (an up-card and a hole-card face down), and then the game is continued.

Rowe, col. 3, ll. 49–55. The foregoing disclosure in Rowe effectively refutes Appellant’s contention that a dealer “burn” procedure, such as in claim 1, is “unconventional.” *See* Appeal Br. 42.

We agree with the Examiner that Appellant’s inclusion of a dealer burn procedure in claim 1 does not transform the abstract idea of physically playing a casino Blackjack game into something significantly more than a claim on the abstract idea itself. Final Action 2. We sustain the rejection of claim 1.

Claim 11 – “something significantly more” analysis

Claim 11 differs from claim 1 in that it claims an electronic apparatus for administering a blackjack game substantially as recited in claim 1. Claims App. Appellant argues that claim 11 recites an apparatus with particularly configured financial apparatus and particularly configured processing unit. Appeal Br. 45. Appellant argues that the apparatus, in combination with the Blackjack variation of claim 1, suffices as something significantly more than a claim on the abstract idea itself. Appeal Br. 44–46 (“new or original” articles).

In response, the Examiner explains that claiming a particular gaming apparatus constitutes the type of pre- or post-extra solution activity warned against in *Bilski v. Kappas*, 561 U.S. 593, 610–11 (2010).

Appellant’s reliance on a computer/financial apparatus for implementation of the abstract idea is not no avail. Appellant provides neither evidence nor persuasive technical reasoning to show that the “financial apparatus” of claim 11 entails more than well-known, standard technology used in machines that receive cash or credit cards, etc. Furthermore, 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. We agree with the Examiner that the use of the recited apparatus does not add significantly more to the abstract idea. Final Action 4; *see also* Ans. 7.

We sustain the Examiner’s rejection of claim 11.

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Claims 2–10, 12–19, 21, and 22

These claims are not separately argued and fall with claims 1 and 11.

DECISION

The decision of the Examiner to reject claims 1–19, 21, and 22 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