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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/698,515	01/26/2007	Nabil N. Ghaly		5730

7590 05/01/2019
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EXAMINER

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ART UNIT	PAPER NUMBER
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3715

MAIL DATE	DELIVERY MODE
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05/01/2019

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NABIL N. GHALY

Appeal 2017-005441¹
Application 11/698,515²
Technology Center 3700

Before MICHAEL C. ASTORINO, CYNTHIA L. MURPHY, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellant appeals from the Examiner's decision rejecting claims 1–21. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ Our decision references the Non-Final Office Action (“Non-Final Act.,” mailed Apr. 25, 2016), the Appeal Brief (“Appeal Br.,” filed Sept. 23, 2016), the Examiner's Answer (“Ans.,” mailed Dec. 15, 2016), and the Reply Brief (“Reply Br.,” filed Feb. 6, 2017).

² According to the Appellant, “Nabil N. Ghaly[] is the real party in interest.” Appeal Br. 6.

STATEMENT OF THE CASE

Subject Matter on Appeal

The Appellant's invention relates to a "gaming device that uses symbols occurring at one, or a plurality of winning lines, also known as pay lines, during a plurality of independent spins, to populate one or a plurality of new winning lines." Spec. 2.

Claims 1, 6, 14, and 19–21 are independent. Claim 21, reproduced below with bracketed notations and paragraphing added, is illustrative of the subject matter on appeal.

21. A method for a gaming device that includes a plurality of reels and a microprocessor with a computer-readable medium encoded with a computer program to control the operation of the gaming device, wherein said gaming device employs at least one primary pay line, and at least one secondary pay line that has a plurality of display positions, and wherein said computer program includes an algorithm comprising the steps of:

[(a)] assigning symbols occurring at said at least one primary pay line, during a game that includes a plurality of spins, to display positions at said at least one secondary pay line, wherein the leftmost display position of the plurality of display positions of the secondary pay line may remain vacant during the second spin of said plurality of spins, and wherein said symbols assigned to the display positions at the secondary pay lines remain at said display positions until the end of the game,

[(b)] evaluating the symbol pattern at said primary pay line for winning combination, and

[(c)] evaluating the symbol pattern at said secondary pay line for winning combination.

Rejections

Claims 1, 3–7, 9–14, and 16–21 are rejected under 35 U.S.C. § 101 as being directed to a judicial exception without significantly more.

Claims 1–15, 17, and 19–21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Singer et al. (US 6,935,947 B1, iss. Aug. 30, 2005) (“Singer”) and Walker et al. (US 2006/0025192 A1, pub. Feb. 2, 2006) (“Walker”).

Claims 16 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Singer, Walker, and Fox (US 2004/0140618 A1, pub. July 22, 2004).

ANALYSIS

35 U.S.C. § 101

The Appellant argues claims 1, 3–7, 9–14, and 16–21 as a group. Appeal Br. 28–45. We select independent claim 21 as representative. The remaining claims stand or fall with claim 21. *See* 37 C.F.R. § 41.37(c)(1)(iv).

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks and citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the

concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”). Under the 2019 Revised Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (MPEP) § 2106.05(a)–(c), (e)–(h) (9th Ed., Rev. 08.2017, Jan. 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See 2019 Revised Guidance.

Step One of the Mayo/Alice Framework

Under the first step of the *Mayo/Alice* framework and Step 2A, Prong 1, of Office Guidelines (*see* 2019 Revised Guidance, 84 Fed. Reg. at 53–54), the Examiner determined that the claims are directed to a casino-type bonus game, best characterized as

assigning symbols occurring at said at least one primary pay line during said plurality of spins to display positions at said at least one secondary pay line, wherein the leftmost display position of

said plurality of display positions of the secondary pay line may remain vacant during the second spin of said plurality of spins.

Non-Final Act. 4. The Examiner determines that this is a concept that is an “idea in and of itself,” which is abstract. *Id.* The Examiner provides “examples of abstract ideas ‘in and of themselves’ as given in the July 2015 Interim Eligibility Guidance,” including: “[c]omparing new and stored information and using rules to identify options[; o]btaining and comparing intangible data[; u]sing categories to organize, store and transmit information[; and o]rganizing information through mathematical correlations.” *Id.* (emphasis omitted).

The Appellant’s characterization of the invention is similar to the Examiner’s characterization of the claims:

The current invention discloses a method and apparatus for a gaming device (slot machine) that includes one, or a plurality of primary pay lines, as well as one or a plurality of secondary pay lines, wherein symbols occurring at the primary pay lines during a plurality of independent spins are mapped into the secondary pay lines. If a player places a bet on a secondary pay line, then win determinations are made for primary and secondary pay lines.

Appeal Br. 28. The Appellant contends that the Examiner’s determination that the claims are directed to an abstract idea — an idea in and of itself — is in error because none of the examples of abstract ideas are applicable to the invention claimed. *Id.* at 28–30.

The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d

1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, the Specification, including the claim language, make clear that the claims focus on an abstract idea, and not on any improvement to computer technology and/or functionality.

An examination of claim 21 shows a “method for a gaming device.” Appeal Br., Claims App; *see* Spec. Title. The “gaming device” includes “a plurality of reels and a microprocessor with a computer-readable medium encoded with a computer program to control the operation of the gaming device.” *Id.* The method being implemented by a “gaming device” does not itself connote a specific structure, as the term is understood simply as a device for gaming (i.e., gambling). *Gaming Definition 1*, DICTIONARY.COM, <https://www.dictionary.com/browse/gaming> (last visited Apr. 19, 2019). The Specification discloses that a gaming device may be a video slot machine with “a micro-processor is used to control the functions performed by the machine and a CRT, or an LCD screen is provided to depict the action of the rotating reels.” Spec. 1. Accordingly, the gaming device’s “plurality of reels” may be simulated. *Id.* at 4 (“video slot machine that employs . . . simulated reels”). The Specification also discloses that the “microprocessor[is] well known in the art.” *Id.* at 10.

The method of claim 21 includes the steps of (a) assigning symbols occurring at said at least one primary pay line to display positions of a secondary pay line during a game having a plurality of spins, (b) evaluating if a primary pay line has a winning symbol pattern, and (c) evaluating if a secondary pay line has a winning symbol pattern. *See id.* These steps are

“well within the skill of the computer programmer.” *Id.* at 15; *see id.* at 7, Figs. 7–9 (showing “a logical flow diagram illustrating the main program functions performed by the game code executed on the microprocessor that controls the gaming device according to the preferred embodiment of the invention”). Moreover, assigning symbols occurring at said at least one primary pay line to display positions of a secondary pay line during a game having a plurality of spins (step (a)) is a manifestation of the application of the wagering principles during game play; and evaluating if primary and secondary pay lines have a winning symbol pattern (steps (b) and (c)) are a manifestation of the application of wagering principals during game play to determine the party that receives the benefit of the wager and the party that receives the loss of the wager.

Thus, steps (a) through (c), under the broadest reasonable interpretation of the claim limitations in light of the Specification, are directed to exchanging and resolving financial obligations between a player and an operator of a gaming machine based on probabilities created during the game, or wagering, which is a fundamental economic practice. And, when viewed through the lens of the 2019 Revised Guidance, the Examiner’s analysis depicts the claimed subject matter as the ineligible “certain methods of organizing human activity” under Prong One of Revised Step 2A. These concepts are similar to the activities found to be abstract in *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016) and *Planet Bingo, LLC v. VKGS, LLC*, 576 F. App’x 1005 (Fed. Cir. 2014). *See* 2019 Revised Guidance at 52, n.13; *Smith*, 815 F.3d at 819 (concluding that “claims[] describing a set of rules for a game[] are drawn to an abstract idea”); *Konami Gaming, Inc. v. High 5 Games, LLC.*, No. 2:14–cv–01483–RFB–NJK, 2018 WL 1020120

(slip op. 19) (“Changing how often a symbol appears and where it appears in a slot game without more is simply altering the manner of display of random symbols – i.e. changing the rules of the game.”). Accordingly, we disagree with the Appellant’s contention that the claims are not directed to an abstract idea, specifically a fundamental economic practice long prevalent in our system of commerce. Appeal Br. 31–36 (citing *Alice*, *Bilski*).

Under Step 2A, Prong 2 of the 2019 Revised Guidance (84 Fed. Reg. at 54), we look to whether the claims “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception,” i.e., “integrates the . . . judicial exception into a practical application.”

In this regard, the Appellant contends that the claims are not directed to an abstract idea because they include a gaming devices that employ microprocessor controls, use a primary and secondary pay lines and reels, and map symbols occurring at primary pay lines into the secondary pay lines. Appeal Br. 33–34, 37. However, these claim elements are not suggestive of a use of a particular machine that is integral to the claim.

As for the “microprocessor with a computer-readable medium encoded with a computer program to control the operation of the gaming device,” this claim element is not suggestive of a particular machine that is integral to the claim. Indeed, the Specification describes the “microprocessor[as] well known in the art.” Spec. 10. Additionally, the Specification describes a “micro-controller with a central processing unit (CPU) 30 and system memory.” *Id.* at 9. The system memory includes read-only memory (ROM) 34 and battery-backed random-access memory

(RAM) 36, and may include a removable flash memory or a hard drive. *Id.* “The system memory is used to store game-related data.” *Id.* The foregoing components are generic hardware components used in their ordinary capacities. The Appellant does not contend that they invented any of those components or their basic functions or that those components, claimed generally, were unknown in the art as of time of the invention. Computers “have become the substrate of our daily lives—the ‘basic tool[],’ *Gottschalk v. Benson*, 409 U.S. 63, 67 . . . (1972), of a great many of our social and economic interactions—generic computer functions, such as storing, analyzing, organizing, and communicating information, carry no weight in the eligibility analysis. *See Alice*, 134 S.Ct. at 2357.” *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1165 (Fed. Cir. 2018) (Mayer concurring).

As for the use of primary and secondary pay lines and a rotation of reels, these elements may be simulations on the display of a video slot machine. Spec. 4 (“video slot machine that employs . . . simulated reels”). And, the mapping symbols from a primary pay line to a secondary pay line is indicative of programming that is “well within the skill of the computer programmer.” *Id.* at 15; *see id.* at 7, Figs. 7–9 (showing “a logical flow diagram illustrating the main program functions performed by the game code executed on the microprocessor that controls the gaming device according to the preferred embodiment of the invention”). Therefore, the foregoing elements are generic software instructions. That the invention is related to gaming on a computer, i.e., in the area of technology, does not make the claim not abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (limiting the use of the abstract idea “to a

particular technological environment” does not make the abstract idea patent-eligible) (citation omitted).

The Appellant contends that the “steps set forth by the claims of the current invention” are different than those of *Planet Bingo*, which include “selecting, storing, and retrieving the bingo numbers, assigning the control number, and checking to see whether the set of numbers is a winner,” as they cannot be performed mentally, nor “carried out by a human using pen and paper” because a “computer is [] integral” to the invention. Appeal Br. 36–37. We disagree with the Appellant. For step (a), the assignment of symbols from a primary pay line to a secondary pay line is similar to the assignment of a control number. For steps (b) and (c), the evaluation of a winning symbol pattern is tantamount to checking to see whether the set of numbers is a winner. Therefore, the steps are merely instructions to implement the concept of claim 21 on a computer and does not impart patent eligibility. *See Planet Bingo*, 576 F. App’x at 1008 (“[I]f a patent’s recitation of a computer amounts to a mere instruction to ‘implemen[t]’ an abstract idea ‘on ... a computer,’ ... that addition cannot impart patent eligibility.’ *Alice*, 134 S.Ct. at 2358 (quoting *Mayo*, 132 S.Ct. at 1301).”

The Appellant argues that the Examiner does not demonstrate “that the rejected inventions fail the machine or transformation test.” Reply Br. 8. However, in determining patent eligibility “the machine-or-transformation test is a useful and important clue, an investigative tool,” but “not the sole test for deciding whether an invention is a patent-eligible ‘process.’” *See Bilski*, 561 U.S. at 604.

Step Two of the Mayo/Alice Framework

Under the second step in the *Mayo/Alice* framework, and Step 2B of the 2019 Revised Guidance, we determine that that the claim limitations, taken individually or as an ordered combination, do not amount to significantly more than the judicial exception. In this regard, the Examiner determines steps concerning “controlling” — e.g., assigning symbols from a primary pay line to a secondary pay line — and “evaluating” “do not amount to significantly 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.” Non-Final Act. 4.

The method of claim 21 includes the following elements: a game device; microprocessor with a computer-readable medium; a plurality of reels; primary and secondary pay lines; program instructions to map symbols from a primary pay line to a secondary pay line, and evaluating winning symbol patterns. These claim elements, alone and in combination, are no more than generic components operating in their ordinary capacity. *Supra*; *see also* Spec. 15 (“[i]t is well within the skill of the computer programmer to provide particular programs for implementing each of the steps of the flow charts [in Figures 7–9].”).

The Appellant argues that claim 21 recites significantly more than an alleged abstract idea. *See* Appeal Br. 38–42. The Appellant contends that the claimed invention includes a “computer [that] provides control functions that are needed to implement a special purpose slot machine.” *Id.* at 42. Initially, we note that the claim is not particular to a slot machine, rather a

“gaming device” that is not limited to a machine that includes a coin/credit detector, an activation lever, and mechanical reels. Hence, the claimed “gaming device” is not understood, under the broadest reasonable interpretation in light of the Specification, as a special purpose slot machine. *But see* Appeal Br. 45 (“It is respectfully submitted that if the claimed invention is drawn to an abstract idea, then it makes no difference if mechanical or simulated reels are used.”).

The Appellant argues that the Examiner has not shown that the claimed inventions are fundamental or that the cited limitations are well-understood, routine, or conventional in the art. Reply Br. 4–5; *see id.* at 6–7; Appeal Br. 36. However, the Appellant does not argue — outside of novelty — that the claimed invention is not well-understood, routine, or conventional. *See also BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1291 (Fed. Cir. 2018) (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.”).

Further, we find supported the Examiner’s determination that the steps of “controlling” — e.g., assigning symbols from a primary pay line to a secondary pay line — and evaluating data is well-understood, routine, and conventional. *See, e.g., Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (storing, recognizing, and classifying data); *Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (selecting, collecting, analyzing and displaying information); *West View Research, LLC v. Audi AG*, 685 F.

App'x 923, 926–27 (Fed. Cir. 2017) (collecting, displaying, and manipulating data).

The Appellant draws the conclusion that “novelty or non-obviousness will in fact lead to eligibility under 101/Alice.” Reply Br. 7. We disagree. An abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 566 U.S. at 78. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). Indeed, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diehr*, 450 U.S. 188–89; *see also Mayo*, 566 U.S. at 91 (rejecting “the Government’s invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101”).

Therefore, we are not persuaded of error in the Examiner’s determination that the limitations of the independent claims do not transform the claims into significantly more than the abstract idea.

Thus, we sustain the Examiner’s rejection of claims 1, 3–7, 9–14, and 16–21 under 35 U.S.C. § 101 as being directed to a judicial exception without significantly more. *See* 37 C.F.R. § 41.37(c)(1)(iv).

35 U.S.C. § 103(a)

The Examiner finds that Singer teaches substantially all of the subject matter of independent claim 21. *See* Non-Final Act. 11–12. The Examiner finds that Singer teaches a gaming device having at least one primary pay

line and at least one secondary pay line having a plurality of display positions 30, 32, 34, 36, and 38. *See id.*

Singer's Figure 2 shows an "example of representative displays that may be encountered during a typical game in accordance with the principles of the present invention." Singer, col. 7, ll. 23–25. More specifically, Figure 2 shows video display screen 10 with "[a] symbol matrix with fifteen symbol positions using a five-column by three-row arrangement, as shown generally at 20." *Id.* at col. 8, ll. 51–53. The five-column by three-row arrangement corresponds to the claimed "at least one primary pay line." Figure 2 also shows a Pair'em Up window with five symbol positions 30, 32, 34, 36, and 38. *Id.* at col. 8, ll. 54–55. The Pair'em Up window corresponds to the claimed "at least one secondary pay line." Singer's Pair'em Up concept "match[es] two or more symbols drawn from the symbol matrix during one or more spins." *Id.* at col. 3, ll. 6–10; *see id.* at col. 6, ll. 21–26. Singer's "game starts with an empty Pair'em Up window" and "[a]t the end of every spin, the symbol appearing in symbol position 3/2 is duplicated into an empty section of the Pair'em Up window." *Id.* at col. 3, ll. 50–53.

The Examiner also finds that Walker teaches — and Singer fails to teach — claim 21's recitation, "wherein the leftmost display position of the plurality of display positions of the secondary pay line may remain vacant during the second spin of said plurality of spins." Non-Final Act. 12 (citing Walker, Figs. 4–7). The Examiner concludes, "[i]t would have been obvious to a person of ordinary skill in the art . . . to combine the disclosures of Singer and Walker in order to facilitate order-dependent bonus games, i.e.,]

games where the order of symbols along the pay[]line is important.” *Id.* (emphasis omitted).

The Appellant argues that the Examiner’s reasoning is flawed because modifying Singer’s matching game so that the symbols in the Pair’em Up window are order-dependent lacks merit. *See* Appeal Br. 53. The Appellant’s argument is based on the assertion that the order of the occurring symbols in the Pair’em Up game is not significant for a matching game, whereas the order of the occurring symbols is significant for Walker’s poker game. *Id.* The Appellant’s argument is persuasive.

The Examiner fails to cogently explain the modification of Singer’s teaching of the Pair’em Up concept from a matching game where order is not dependent to concept where order is dependent. In one instance, the Examiner “reasoned that one might want to create winning outcomes that were order dependent; say, a run of three numbers instead of a pair.” Ans. 7. The Examiner proffers that modifying the game in this way could “show the player where gaps existed in the run, e.g.,[,] the player had a one and a three, but still needed a two.” *Id.* However, in this scenario, the leftmost display position of the plurality of display positions of the secondary pay line would be filled by a one.

In another instance, the Examiner explains that the modification does “not transform[] the invention of Singer into an order-dependent bonus game.” *Id.* at 8. This appears to be a direct contradiction to the rationale provided in the Non-Final Office Action. The Examiner’s position “is not stating that the Singer invention is now order-dependent; that is merely the motivation to combine.” *Id.* at 9. It is evident from this statement that the

Examiner's reasoning does not logically connect the reason to combine the teaching of Walker with the Pair'em Up concept of Singer.

Further, the Examiner suggests that a rationale for the modification of Singer's game could have been understood as an obvious design choice, but does not advance this line of reasoning because it lacks evidence. *See id.* at 6. The Examiner also reasons that "a PHOSITA might fill in the secondary window from right-to-left in order to accommodate players who speak languages which are read that way, such as Hebrew or Arabic." *Id.* at 7. However, this reasoning is not adequately supported by evidence.

Thus, we do not sustain the Examiner's rejection of independent claim 21 as unpatentable over Singer and Walker. Independent claims 1, 6, 14, 19, and 20, includes similar subject matter as independent claim 21. The rejection of these independent claims is based on the same reasoning as presented in the rejection of claim 21. Accordingly, we do not sustain the rejection of independent claims 1, 6, 14, 19, and 20, and dependent claims 2-5, 7-13, and 15-18.

The rejection of claims 16 and 18 based on Singer, Walker, and Fox relies on the same deficiency as discussed above. The deficiency is not cured by the additional findings and reasoning of the remaining rejection. Thus, we do not sustain the rejection of claims 16 and 18 as being unpatentable over Singer, Walker, and Fox.

DECISION

We AFFIRM the Examiner's decision rejecting claims 1, 3-7, 9-14, and 16-21 are rejected under 35 U.S.C. § 101.

Appeal 2017-005441
Application 11/698,515

We REVERSE the Examiner's decision rejecting claims 1–21 under 35 U.S.C. § 103(a).

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-IN-PART