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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD VERMAAK, THEO NAICKER, and
TERENCE IGESUND¹

Appeal 2018-000861
Application 14/543,594
Technology Center 3700

Before MICHELLE R. OSINSKI, JEREMY M. PLENZLER, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–21. An oral hearing was held on September 10, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Pridefield Limited (“Appellant”) is the Applicant as provided in 37 C.F.R. § 1.46 and is identified as the real party in interest. Appeal Br. 1.

THE CLAIMED SUBJECT MATTER

Claims 1, 12, 20, and 21 are independent. Claim 1 is reproduced below with additional indentations provided.

1. A machine comprising:

a display;

a processor; and

a non-transitory computer-readable medium storing program instructions, that when executed by the processor, cause a set of functions to be performed, the set of functions comprising:

making a determination that a trigger event occurred;

responsive to making the determination, displaying on the display (i) a selected symbol table comprising a plurality of empty symbol cells and (ii) a scene comprising regions that correspond to respective displayable image components from a displayable image component set, wherein the displayable image components from the displayable image component set are displayable within the corresponding regions to form an image representing an object within a portion of the scene;

for empty symbol cells in the selected symbol table:

(i) randomly selecting a multiplier symbol from a multiplier symbol set comprising different multiplier symbols that correspond to respective displayable image components from the displayable image component set;

(ii) adding the selected multiplier symbol to an empty symbol cell of the selected symbol table such that the selected multiplier symbol is displayed in a given symbol cell, wherein the selected multiplier symbol corresponds to a particular displayable image component;

(iii) adding the particular displayable image component to a selected displayable image component set when the particular displayable

image component is not already in the selected displayable image component set;

(iv) displaying, on the display, the added particular displayable image component of the selected displayable image component set in the corresponding region within the scene such that the added particular displayable image component forms a portion of the image; and

(v) determining whether the selected displayable image component set includes each displayable image component of the displayable image component set; and

when (a) the selected displayable image component set includes each displayable image component of the displayable image component set or (b) each symbol cell in the selected symbol table includes a respective selected multiplier symbol, determining a payout amount.

THE REJECTION²

Claims 1–21 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 3–6.

OPINION

Appellant argues claims 1–21 as a group. Appeal Br. 18–37. We select claim 1 as the representative claim, and claims 2–21 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The patent laws provide that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However,

² A rejection of claims 1–21 under 35 U.S.C. § 112(b) as indefinite (Final Act. 2–3) has been withdrawn (Ans. 2) and is not before us on appeal.

“this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

Mayo Collaborative Services established a framework to distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. *Alice*, 573 U.S. at 217 (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66, 77 (2012)). First, we determine whether the claims are directed to a patent-ineligible concept. *Id.* If so, we next consider the claim elements individually and as an ordered combination to determine whether additional elements transform the claims into a patent-eligible application. *Id.* This search for an inventive concept seeks an element or combination of elements “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 217–18.

Recently, the PTO published guidance for evaluating subject matter eligibility. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (USPTO Jan. 7, 2019) (“Revised Guidance”). Under Step One, a determination is made whether the claims are in a statutory category of patentable subject matter, i.e., do they recite a process, machine, manufacture, or a composition of matter, identified in 35 U.S.C. § 101. Revised Guidance, 84 Fed. Reg. at 50, 53–54; *see Alice*, 573 U.S. at 216; *Mayo*, 566 U.S. at 70.

Next, at Revised Step 2A, Prong One, an evaluation is made whether a claim recites a judicial exception, i.e., an abstract idea as set forth in Section I of the Revised Guidance, a law of nature, or a natural phenomenon. Revised Guidance, 84 Fed. Reg. at 54. To determine if a

claim recites an abstract idea, specific limitations that recite an abstract idea must be identified (individually or in combination), and a determination made whether the limitation(s) fall(s) within one or more of the subject matter groupings in Section I of the Revised Guidance. *Id.* (A. Revised Step 2A). The three groupings are (1) mathematical concepts, relationships, formulas, or calculations, (2) certain methods of organizing human activity, including fundamental economic principles and practices, commercial interactions, managing personal behavior, relationships, or interactions and (3) mental processes and concepts formed in the human mind. *Id.* at 52.

If a claim recites a judicial exception, Prong Two of Revised Step 2A requires a determination to be made whether the claim as a whole integrates the judicial exception into a practical application. *Id.* “A claim that integrates a judicial exception into a practical application will 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.” *Id.* at 53. If a judicial exception is integrated, the claim is patent eligible. *See id.* at 54–55.

If a claim does not “integrate” a recited judicial exception, the claim is directed to the judicial exception and further analysis is required under Step 2B to determine whether the claim contains additional elements, considered individually or in combination, that provide an inventive concept, such that the additional elements amount to significantly more than the exception itself. *Id.* at 56.

Step One: Does Claim 1 Fall within a Statutory Category of § 101?

The Examiner determines claim 1 is directed to one of the statutory classes under 35 U.S.C. § 101. *See* Final Act. 4 (referring to “the claimed

‘machine’”). Claim 1 recites a machine and, thus, falls within the statutory categories of 35 U.S.C. § 101. *See id.*

Step 2A, Prong One: Does Claim 1 Recite a Judicial Exception?

The Examiner determines that claim 1 is “directed to a set of functions to perform a wagering game by random selection of symbols, determining an associated image portion and arranging the determined symbol and image portions into groups.” Final Act. 3–4. The Examiner determines that this “set of functions” “compare[s] to other ‘fundamental economic practice[s]’ found abstract by the Supreme Court.” *Id.* at 4 (citing *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016)). Our reviewing court held in *Smith* that a claim reciting “rules for conducting a wagering game” is directed to a “fundamental economic practice.” *Smith*, 815 F.3d at 818. A “fundamental economic practice” is a type of certain method of organizing human activity that may constitute an ineligible abstract idea. Revised Guidance, 84 Fed. Reg. at 52.

Appellant argues that *Smith* is not applicable with respect to the instant claims. Appeal Br. 23–26. More particularly, Appellant asserts that its claim is “not directed to ‘performing a wagering game.’” *Id.* at 23. That is, Appellant asserts that its claim is “not directed to rules for playing a wagering game or conducting the wagering game itself, but rather a machine that provides features in connection with an underlying game (*i.e.*, a structured GUI and functionality related to that structure).” *Id.* at 25.

We do not find this contention persuasive. Claim 1 recites program instructions, to be executed by a processor, for causing the following steps to be performed: “(i) randomly selecting a multiplier symbol” that may correspond to a particular displayable image component; “(ii) adding the

selected multiplier symbol” to a table; “(iii) adding the particular displayable image component” corresponding to a set; “(iv) displaying, on the display, the added particular displayable image component” so that it forms part of an image; and (v) “determining a payout amount” when (a) the set includes each displayable image component of the set or (b) a predetermined number of multiplier symbols have been randomly selected. Appeal Br. 38 (Claims App’x). These steps recite rules for the wagering game, specifying how the multiplier symbols and displayable image components are added and displayed within the game display, with the last step determining the payout to be awarded in accordance with how the multiplier symbols and displayable image components have been added and displayed within the game display. As such, claim 1, like the claims at issue in *Smith*, regulate the exchange of financial obligations and recite a fundamental economic practice.

Appellant also argues that Appellant’s “claims do not recite ‘resolving . . . wagers’ between players so as to involve exchanging and resolving financial obligations” in that they “do not recite any human parties who exchange and resolve financial obligations.” Appeal Br. 25. Appellant argues that “the Examiner erred by improperly extending the analysis of *In re Smith* to new concepts.” *Id.* We disagree that the instant claims are distinguishable from *Smith*. Although a human player interacts with a gaming machine, rather than a human, in connection with the instant claims, the instant claim limitations 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, which remains a fundamental economic practice. Accordingly, we disagree with Appellant’s

contention that *Smith* is inapposite to the claims. Instead, we determine that claim 1, like the claims at issue in *Smith*, relates to rules for a wagering game and resolving financial obligations. We therefore determine that claim 1 recites a fundamental economic practice which is one of certain methods of organizing human activity identified in the Revised Guidance, and thus, an abstract idea.

Step 2A, Prong Two: Is There Integration into a Practical Application?

Following our Office guidance, having found that claim 1 recites a judicial exception, namely, a fundamental economic practice, we are instructed next to determine whether the claim recites “additional elements that integrate the exception into a practical application” (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)). *See* Revised Guidance, 84 Fed. Reg. at 54.

Appellant argues that “the claim is not directed to performing the game itself but instead [is] directed to a machine that include[s] instructions and other structure to provide specific functionality in connection to the underlying game when the instructions are executed by the processor.” Appeal Br. 19–20. Appellant argues that “the functionality includes providing a specific, structured graphical user interface (GUI) that is updated dynamically based upon appropriate conditions determined by the machine.” *Id.* at 20. Appellant argues that the Examiner “oversimplified claim 1 by looking at the claim generally and failing to account for the specific requirements of the claim.” *Id.*

The additional elements recited in claim 1 include “a display; a processor; and a non-transitory computer-readable medium storing program instructions, that when executed by the processor,” perform the above-referenced steps (i), (ii), (iii), (iv), (v)(a), and (v)(b), as well as earlier steps

of determining that a trigger event has occurred and displaying (i) a symbol table to which the randomly selected multiplier symbols may be added and (ii) a scene comprising regions that correspond to the displayable image components of the set. Appeal Br. 38 (Claims App'x). The display, the processor, and the computer-readable medium are recited at a high level of generality and their recitation does not integrate the abstract idea into a practical application. The generic “display,” “processor,” and “computer-readable medium” limitations are no more than instructions to apply the judicial exception (i.e., a fundamental economic practice) using generic computer elements. These generic limitations do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing the abstract idea. *See* MPEP § 2106.05(f) (“Use of a computer or other machinery in its ordinary capacity for . . . tasks (e.g., to receive, store, or transmit data) or simply adding a general purpose computer or computer components after the fact to an abstract idea . . . does not provide significantly more.”).

Moreover, the earlier steps of determining that a trigger event has occurred and displaying a symbol table and a scene recite only insignificant extra-solution activity in that they are necessary to the abstract idea of steps (a), (b), (c), (d), (e)(i), and (e)(ii). Without a determination of a trigger event and the initial display of a symbol table and a scene, it would be impossible to add the multiplier symbols and displayable image components and, in turn, determine a payout amount at a certain time depending on how the multiplier symbols and displayable image components have been added.

We disagree with Appellant’s contention that “the Examiner’s analysis could be applied generally to exclude any gaming machine from

patentability regardless of that gaming machine's individual features.”

Appeal Br. 22 (emphasis omitted). Rather, the foregoing analysis in Step 2A, Prong Two ensures that the individual features of a gaming machine are considered in assessing patent eligibility, rather than enabling a broad exclusion of any and all gaming machines as patent-eligible subject matter.

Appellant argues that the non-precedential “*Trading Tech.* decision should be considered highly persuasive in this application, since [Appellant's] claims are not directed merely to displaying information as considered in some other decisions, but rather require a specific structured graphical user interface paired with prescribed functionality directly related to the [GUI's] structure as considered in *Trading Tech.*” Appeal Br. 27 (citing *Trading Techs. Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017)). Appellant further argues that its “claims are directed to improvements to gaming machines (or a method operable by a machine) that have no pre-electronic gaming analog.” *Id.* at 28. Appellant additionally argues that “the claims are directed to solve a specific, recurring problem in the gaming arts, that of maintaining and/or increasing a player's interest, anticipation, and excitement in connection with the game.” *Id.* (citing Spec. 16:7–8, 32:9–12).

Appellant's reliance on *Trading Techs.* is misplaced. In *Trading Techs.*, U.S. Patent Nos. 6,772,132 (“'132 patent”) and 6,766,304 (“'304 patent”) describe “[a] method and system for reducing the time it takes for a trader to place a trade when electronically trading on an exchange, thus increasing the likelihood that the trader will have orders filled at desirable prices and quantities.” '132 patent, Abstract; '304 patent, Abstract. In particular, the *Trading Techs.* patents describe a trading system in which a

graphical user interface “display[s] the market depth of a commodity traded in a market, including a dynamic display for a plurality of bids and for a plurality of asks in the market for the commodity and a static display of prices corresponding to the plurality of bids and asks.” ’132 patent, 3:11–16; ’304 patent, 3:15–20. “The claims require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art.”

Trading Techs., 675 F. App’x at 1004. As such, the panel found *Trading Techs.* “claimed subject matter is ‘directed to a specific improvement to the way computers operate,’ . . . for the claimed graphical user interface method imparts a specific functionality to a trading system ‘directed to a specific implementation of a solution to a problem in the software arts.’” *Id.* at 1006.

In contrast to *Trading Techs.*, the problem identified by Appellant in the Specification is a business problem, and the solution proposed by Appellant is a business solution implemented with a generic display and processor, rather than a technological solution to a technological problem. This is similar to what the court determined to be ineligible in subsequent precedential decisions in the *Trading Technologies* line of cases, in which the generic use of a computer as a tool without improvement of the computer was determined not to be an integration of an abstract idea into a practical application. *See, e.g., Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093–94 (Fed. Cir. 2019) (holding that the patent owner “argues the claims improve computer functionality by improving on the intuitiveness and efficiency of prior GUI tools. The specification makes clear that this invention helps the trader process information more quickly. This is not an

improvement to computer functionality, as alleged by [the patent owner].”). In other words, the problem of maintaining and/or increasing a player’s interest, anticipation, and excitement in connection with a game is not brought about by technology and does not require technology for resolution. Appellant’s claimed invention does not “improve the functioning of a known system” similar to the “interface” improvements that occurred in *Trading Techs. Id.* at 1004–05. Any purported improvements are to the underlying game, not the gaming machine itself or its operation and/or function.

Appellant also analogizes its claim to the representative claim of *Core Wireless*, indicating that its claim similarly “disclose[s] a specific manner of displaying a limited set of information to the user.” Supp. Br. 4. (quoting *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362 (Fed. Cir. 2018)). The claim in *Core Wireless* was directed to “an improved user interface for electronic devices, particularly those with small screens” where the improvement was in “the efficiency of using the electronic device by bringing together ‘a limited list of common functions and commonly accessed stored data,’ which can be accessed directly from the main menu.” *Core Wireless*, 880 F.3d at 1363. The Specification in that case confirmed these improvements over “the prior art interfaces [that] had many deficits relating to the efficient functioning of the computer, requiring a user ‘to scroll around and switch views many times to find the right data/functionality.’” *Id.* The Court found that the disclosure in the Specification regarding the improved speed of a user’s navigation through various views and windows “clearly indicates that the claims are directed to an improvement in the functioning of computers, particularly those with small screens.” *Id.* In contrast, Appellant does not demonstrate that

increasing a player's interest, anticipation, and excitement in connection with a game is related to an identified improvement in the functioning of computers. As described above, any purported improvement is to the underlying game in order to achieve business solutions, not to the gaming machine itself or its operation and/or function in order to achieve technological improvements.

We have also considered Appellant's argument that its problem of "maintaining and/or increasing a player's interest, anticipation, and excitement (so as not to lose players) is similar to the problem addressed in *DDR Holdings*, which was that hyperlinks were causing websites to lose visitors to other sites." Appeal Br. 28 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1247 (Fed. Cir. 2014)). Appellant asserts that its "claimed GUI [graphical user interface], being necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of digital gaming machines, is no less technical than the problem and solution analyzed in *DDR Holdings*." *Id.* at 28–29. We are not persuaded that the problem and solution in *DDR* is analogous to the problem and solution in the instant case.

The claims at issue in *DDR* addressed the problem of retaining website visitors who would otherwise be transported away from the host website after clicking on an advertisement on the host website and activating a hyperlink. *DDR*, 773 F.3d at 1257. The *DDR* claims describe automatically generating a hybrid web page that permits users visiting a host website to view and purchase products from a third-party merchant, whose ads are displayed with hyperlinks on the host website, without leaving the host website and entering that merchant's website. *Id.* The Federal Circuit

found the claims to be directed to patentable subject matter because they “specify how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *Id.* at 1258. Thus, the solution set forth in the *DDR* claims “is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* at 1257.

In contrast, here claim 1 does not recite a technical improvement tied to a technical problem in the gaming arts. Instead, the claim is directed to providing “additional opportunities to win the game, thereby increasing the player’s interest, anticipation, and excitement in connection with the game.” *Spec.* 16:7–9. The functionality of the game set forth in claim 1 is not technical in nature and does not provide a technical solution to a technical problem as contemplated by the Federal Circuit in *DDR*. Contrary to Appellant’s argument that its “claimed GUI [is] necessarily rooted in computer technology” (*Appeal Br.* 29), the claimed rules for the wagering game, i.e., specifying how the multiplier symbols and displayable image components are added and displayed within the game, with the last step determining the payout to be awarded based on how the multiplier symbols and displayable image components have been added and displayed, is not a solution “rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR*, 773 F.3d at 1257. Instead, the solution proposed by Appellant is to provide additional game and payout features. Indeed, the recited method steps could be physically (i.e., non-electronically) implemented using a physical display with empty cells to receive physical image components and physical dice, as

determined by physically rolling the dice, while still increasing the player's interest, anticipation, and excitement in connection with the physically implemented game.

In short, the additional elements of the display, processor, and computer-readable medium in this case (1) do not improve the functioning of a computer or other technology, (2) are not applied with any particular machine, (3) do not effect a transformation of a particular article to a different state, and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP §§ 2106.05(a)–(c), (e)–(h). Consequently, the claimed invention does not integrate the abstract idea into a “practical application,” as that phrase is used in the Revised Guidance.

Step 2B: Does Claim 1 Recite an Inventive Concept?

We next consider whether claim 1 recites any elements, individually or as an ordered combination, that transform the abstract idea into a patent-eligible application, e.g., by providing an inventive concept. *Alice*, 573 U.S. at 217–18. The Examiner determines that:

The claims here require the additional elements of a display, a processor and a computer-readable medium to carry out the abstract method of the game. . . . In this case, the claims recite generic computer structure. . . . Therefore[,] the claims do not have an “inventive concept” sufficient to “transform” the claimed subject matter into a patent-eligible application of the abstract idea.

Final Act. 5.

We agree with the Examiner. The display, processor, and computer-readable medium of claim 1 are invoked as conventional tools. The display is recited for its generic function of displaying information. The processor

and computer-readable medium are similarly recited for their generic function of executing program instructions and operations. In our view, claim 1 fails to add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field, but instead claim 1 “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.” *See Revised Guidance*, 84 Fed. Reg. at 56.

Courts have held the receipt and display of data, as recited in particular claims, to be steps that are well-understood, routine, and conventional functions of a general purpose computer. *See MPEP* § 2106(d) (citing *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1334 (Fed. Cir. 2015) and *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015)) (supporting that courts have recognized the computer functions of storing and retrieving information in memory as well-understood, routine, and conventional functions of a computer); *see also e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (“[T]he claims’ invocation of computers, networks, and displays does not transform the claimed subject matter into patent-eligible applications. The claims at issue do not require any nonconventional computer, network, or display components, or even a ‘non-conventional and non-generic arrangement of known, conventional pieces,’ but merely call for performance of the claimed information collection, analysis, and display functions ‘on a set of generic computer components’ and display devices. *Bascom [Global Internet Servs., Inc. v. AT&T Mobility, LLC]*, 827 F.3d [1341,] 1349–52 [Fed. Cir. 2016].”).

We have considered Appellant’s argument that the claim elements “function in concert to recite a machine that includes structure to provide specific, structured GUI paired with prescribed functionality related to the GUI when the machine is operated” (Appeal Br. 34) and that “[t]he game underlying [Appellant’s] claims uses a new and original GUI paired with prescribed functionality related to the GUI” sufficient to “transform[] the claimed subject matter into a patent-eligible application” (*id.* at 35 (citing *Smith*, 815 F.3d at 819 (“We could envisage, for example, claims directed to conducting a game using a new or original deck of cards potentially surviving step two of *Alice*.”))). Although the *Smith* court recognized that adding a limitation beyond what is well-understood, routine, conventional activity in the field (i.e., a new or original deck of cards) may qualify as significantly more than the judicial exception, here we do not view the GUI as adding anything beyond what is well-understood, routine, and conventional activity in the field.

First, the GUI requires no improved computer elements that Appellant has invented—just already available computer elements with their already available basic functions, to use as tools for causing the claimed set of functions to be performed. The Specification describes that “[t]he machine may take” the form of a “personal computer, desktop computer, laptop computer” (Spec. 16:21–17) including a “user interface” (*id.* at 17:3) and “the user interface . . . may take the form of a GUI and may include output components such as a speaker and a display . . . , and input components such as a keypad or a touch-sensitive screen” (*id.* at 17:8–10). Appellant has not persuasively explained how its user interface amounts to significantly more than simply displaying particular information using generic computer

components. *See Trading Techs. Int'l v. IBG LLC*, 921 F.3d at 1093 (“The fact that this is a ‘computer-based method’ does not render the claims non-abstract. The specification indicates the claimed GUI is displayed on any computer device. . . . As a general rule, ‘the collection, organization, and display of two sets of information on a generic display device is abstract.’”) (quoting *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018)).

Second, the idea that “having randomly selected ‘multiplier symbols’ (e.g., faces of a six-sided die) correspond to ‘displayable image components’ that can be joined together to form an image of an object is entirely unconventional” (Supp. Br. 6) points only to the abstract idea itself— i.e., rules for how the multiplier symbols and displayable image components are added and displayed within the game and determining when the payout is to be awarded—rather than an *additional* element that ensures that the claim is more than the judicial exception. *See Revised Guidance*, 84 Fed. Reg. at 56 (instructing that *additional* element(s) should be evaluated to determine whether they (a) add specific limitations that are not well-understood, routine, and conventional in the field, or (2) simply append well-understood, routine, and conventional activities previously known to the industry (citing MPEP § 2106.05(d)). *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (citing *Mayo*, 566 U.S. at 90) (a finding that the claims are novel and nonobvious in light of an absence of evidence does not conflict with the Examiner’s conclusion under 35 U.S.C. § 101 because “a claim for a *new* abstract idea is still an abstract idea”); *see also Trading Techs. Int'l v. IBG LLC*, 921 F.3d at 1093 (“The abstract idea itself cannot supply the inventive concept, ‘no matter how groundbreaking the

advance.”) (quoting *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1171 (Fed. Cir. 2018)).

For the reasons discussed above, we find no element or combination of elements recited in claim 1 that contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. at 221.

Accordingly, we sustain the Examiner’s decision rejecting claim 1, and claims 2–21 falling therewith, under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

DECISION

The Examiner’s decision to reject claims 1–21 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED