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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMIE ABRAHAMSON

Appeal 2018-001233
Application 15/157,518
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

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 10–19 and 21–23.² An oral hearing was held on September 10, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE CLAIMED SUBJECT MATTER

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as the sole inventor, Mr. Jamie Abrahamson. Appeal Br. 3.

² Claims 1–6 and 20 are withdrawn, and claim 7–9 are cancelled. Appeal Br. 46–52 (Claims App.).

Claims 10 and 21 are independent. Claim 10 is reproduced below.

10. A system for enabling a method of executing a game of baccarat with a side bet event, the game of baccarat comprising a player hand of playing cards in competition with a banker hand of playing cards, a player hand position and a banker hand position receiving playing cards from at least one randomized deck of 52 playing cards, the system comprising:

a gaming table with at least two distinct player positions at the gaming table;

the gaming table having positions thereon for placing an initial wager from at least one of at least two player positions at the gaming table on the game of baccarat;

the gaming table having positions thereon for placing a second wager on a side bet event from at least one of at least two player positions at the gaming table on the game of baccarat resolved by using final playing cards dealt to the player hand position and final playing cards dealt to the banker hand position;

each of the at least two player positions has a secondary random outcome indicator display;

the gaming table is associated with a random event generator providing distinct random event outcome indicators to the secondary random outcome indicator displays at each of the at least two player positions; and

each distinct random event outcome indicator displaying a single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Jones	US 4,861,041	Aug. 29, 1989
Walker	US 2010/0025931 A1	Feb. 4, 2010
Merati	US 2016/0101347 A1	Apr. 14, 2016

THE REJECTIONS³

- I. Claims 10–19 and 21–23 stand rejected under 35 U.S.C. § 101 as directed to patent ineligible subject matter. Final Act. 2–4.
- II. Claims 10 and 21⁴ stand rejected under 35 U.S.C. § 103 as unpatentable over Merati and Walker. *Id.* at 6–9; Ans. 4–9.
- III. Claims 15 and 23⁵ stand rejected under 35 U.S.C. § 103 as unpatentable over Merati, Walker, and Jones. Final Act. 11; Ans. 9–10.

³ A rejection of claims 21–23 under 35 U.S.C. § 112(b) as indefinite (Final Act. 5), and rejections, under 35 U.S.C. § 103, of: claims 11–14, 21, and 22 as unpatentable over Merati, Walker, and Bigelow (US 8,257,164 B2; issued Sept. 4, 2012) (*id.* at 9–10) and claims 15–19 and 23 as unpatentable over Merati, Walker, Bigelow, and Jones (*id.* at 11–12) have been withdrawn (Ans. 10) and are not before us on appeal.

⁴ The Examiner did not include claims 11–14 and 22 in the Answer (Ans. 4–9), and Appellant views the Examiner’s rejection in the Final Action of claims 10–14, 21, and 22 (Final Act. 6–9) as having been modified so as to be only a rejection of claims 10 and 21 (Reply Br. 2). Accordingly, Appellant limits its arguments in the Reply Brief to claims 10 and 21. *Id.* at 7–10. Although the Examiner has not clearly withdrawn the rejection of claims 11–14 and 22 (Ans. 10), we do not discuss these claims in our analysis due to Appellant’s reliance on a withdrawal of the rejection of these claims. We leave it to the Examiner to clarify in the record whether this ground of rejection is applicable to claims 11–14 and 22.

⁵ The Examiner did not include claims 16–19 in the Answer (Ans. 9–10), and Appellant views the Examiner’s rejection in the Final Action of claims 15–19 and 23 (Final Act. 11) as having been modified so as to be only a rejection of claims 15 and 23. Reply Br. 2–3. Accordingly, Appellant limits its arguments in the Reply Brief to claims 15 and 23. Reply Br. 10–11. Although the Examiner has not clearly withdrawn the rejection of claims 16–19 (Ans. 10), we do not discuss these claims in our analysis due to Appellant’s reliance on a withdrawal of the rejection of these claims. We leave it to the Examiner to clarify in the record whether this ground of rejection is applicable to claims 16–19.

OPINION

Rejection I

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, “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* USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (USPTO Jan. 7, 2019) (“Revised Guidance”).⁶ Under Step One, a determination is made whether the claims are in a

⁶ On October 18, 2019, the Office issued an “Update” to the Revised Guidance. The Update does not materially impact the present decision.

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 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) falls 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 performed 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: Do Claims 10 and 21 Fall within a Statutory Category of § 101?

Claims 10 and 21 recite “[a] system for enabling a method of executing a game of baccarat with a side bet event.” Appeal Br. 48, 51 (Claims App.). Claims 10 and 21 recite a machine and, thus, fall within the statutory categories of 35 U.S.C. § 101.

Step 2A, Prong One: Do Claims 10 and 21 Recite a Judicial Exception?

The Examiner determines that claims 10 and 21 “recite a set of rules to a baccarat wagering game comprising using a random outcome indicator to generate a random event, competition rules . . . , wagering rules . . . and ‘resolving’ rules . . . , which is an abstract idea in the same way the Federal Circuit held the set of rules used to conduct a blackjack wagering game were an abstract idea in *In re Smith*.” Final Act. 2–3 (citing *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016)).

Appellant argues that the USPTO and PTAB have “interpreted and expanded the scope of *Alice* . . . in such a manner as to have abused basic [a]dministrative [l]aw principles and canons by creating an artificial conflict among different sections of Title 35 of the Patent Act.” Appeal Br. 15 (emphasis omitted). Appellant also argues that that the scope of *Alice* has been “interpreted and expanded . . . to such a degree that it has become an

unwarranted and unconstitutional taking of property, contravening the Fifth Amendment of the U.S. Constitution.” *Id.* at 21 (emphasis omitted).

Appellant argues that it is legal error to effectively assert that all wagering events using playing cards are abstract ideas. *Id.* at 24 (citing *Smith*, 815 F.3d at 816). Appellant provides three Declarations Under 37 C.F.R. § 1.132 to support that playing card games are non-abstract physical events. *Id.* at 27–28.

Smith considered the patent eligibility of claims directed to a “method of conducting a wagering game” with a deck of playing cards that the dealer deals according to game rules while accepting and resolving wagers of players. *Smith*, 815 F.3d at 817–18. In *Smith*, which is a precedential decision and binding on this Board, our reviewing court determined that claims directed to rules for conducting a wagering game are comparable to the fundamental economic practices that the Supreme Court held to be abstract ideas in *Alice* and *Bilski v. Kappos*, 561 U.S. 593 (2010). *Smith*, 815 F.3d at 818–19. Namely, the court determined that the “claimed ‘method of conducting a wagering game’ is drawn to an abstract idea much like *Alice*’s method of exchanging financial obligations and *Bilski*’s method of hedging risk.” *Id.* at 819; *see also id.* (concluding that “claims[] describing a set of rules for a game[] are drawn to an abstract idea”). The *Smith* court also rejected the argument that “shuffling and dealing ‘physical playing cards’ . . . bring[s] the claims within patent-eligible territory.” *Id.*

Appellant’s claims 10 and 21 recite a system for executing a game of baccarat with a side bet event, in which the system includes a gaming table having (i) positions for placing an initial wager on a game of baccarat which is described as a player hand of playing cards in competition with a banker

hand of playing cards from a randomized deck of 52 playing cards; and (ii) positions for placing a second wager on a side bet event on the game of baccarat that has been resolved by using final playing cards dealt to the player and banker hands. Appeal Br. 48, 51 (Claims App.).

Claims 10 and 21, thus, recite a set of rules for executing a game of baccarat, including wagering, at least in that they indicate that the game of baccarat is resolved using final playing cards dealt to the player and banker hands. We agree with the Examiner that the Federal Circuit’s holding in *Smith* is controlling and determinative with respect to the question of whether Appellant’s claim recites an abstract idea. 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. We determine claims 10 and 21, like the claims at issue in *Smith*, relate to rules for conducting a wagering game and resolving financial obligations. We, therefore, determine that claims 10 and 21 recite 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 claims 10 and 21 recite 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.

The additional elements recited in claims 10 and 21 include a “display” at “each of the at least two player positions” and “a random event generator” (claim 10) or “system” (claim 21) providing distinct random event outcome indicators (i.e., a single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9) to the displays at each of the at least two player positions. Appeal Br. 48–49, 51–52 (Claims App.).

The Examiner acknowledges these additional elements as a “random event generator, display.” Final Act. 3. Appellant argues that “rather than merely reciting a ‘random event generator, display,’” the claims require that the random event generator provide distinct random event outcome indicators to the displays at each player position. Appeal Br. 13 (quoting Final Act. 3); *see also id.* at 34–35. That is, Appellant argues that the limitations “require that there must be a distinct . . . random event indicator at each player position” and “a limited number of outcome indicators from which the distinct . . . outcome indicators can be selected.” *Id.* Appellant continues that the claims “distinguish from cards as the outcome indicators are limited to one digit number[s] selected from 0–9” and “[t]he random number generator must also indicate to the individual outcome displays, what random single digit outcome is to be displayed.” *Id.* at 14. Appellant further continues that the “secondary random event is not a playing card and is not integrated into the underlying gaming event” and “the system provides a ‘distinct random event outcome indicator . . . at each of the at least two player positions . . . ’ as opposed to individual cards or a community event.” *Id.* at 35. In sum, Appellant points to “the interconnectivity of the a) random event generator, random event indicators and individual player positions.” *Id.* at 14.

Claim 10 recites the random event generator providing distinct random event outcome indicators (selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8, 9) to corresponding displays at each player position. However, claim 10 fails to recite how the random event outcome indicators (selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8, 9), once displayed, are otherwise related to the system for enabling a method of executing a game of baccarat with a side bet event. Claim 21 recites a system providing distinct and different random event outcome indicators to corresponding displays at each player position. However, claim 21 similarly fails to recite how the random event outcome indicators, once displayed, are otherwise related to the system for enabling a method of executing a game of baccarat with a side bet event. Thus, the additional elements of (i) the random event generator/system for providing random event outcome indicators and (ii) the displays do not actually recite a system that enables a specific manner of executing a game of baccarat with a side bet event that can be described as an improvement over prior systems. Consequently, the additional elements of (i) a random event generator/system for providing random event outcome indicators and (ii) displays at each player position cannot be considered to improve the functioning of a technology. *See* MPEP § 2106.05(a); *see also* Update 12–13 (explaining that “the claim must be evaluated to ensure that the claim itself reflects the disclosed improvement.”).

We next consider whether the additional elements of (i) a random event generator/system for providing random event outcome indicators and (ii) displays at each player position are particular machines that are integral to the claim. *See* Revised Guidance, 84 Fed. Reg. at 55 (citing MPEP

§ 2106.05(b)). When determining whether a machine recited in the claim provides significantly more, the following factors are relevant: (i) the particularity or generality of the elements of the machine, i.e., the degree to which the machine can be specifically identified, (ii) whether the machine “play[s] a significant part in permitting the claimed method to be performed, rather than function[ing] solely as an obvious mechanism for permitting a solution to be achieved more quickly” (*Versata Dev. Grp. v. SAP Am. Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015)); and (iii) the extent to which (or how) the machine imposes meaningful limits on the claim or instead contributes only nominally or insignificantly to the execution of the claimed method. MPEP § 2106.05(b). Here, the random event generator and displays, as claimed, are merely tangentially related to the claimed system in that the claims do not explain at all how they play a part in permitting the game of baccarat with a side bet event to be executed. Consequently, we do not find the additional elements of the random event generator and displays to be particular machines with which the abstract idea is applied. Nor do we find that the additional elements effect a transformation of a particular article to a different state or are applied in any meaningful way. *See* MPEP §§ 2106.05(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: Do Claims 10 and 21 Recite an Inventive Concept?

We next consider whether claims 10 and 21 recite 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 claims 10 and 21

recite the additional elements of “wagers, table, playing cards” and “random event generator, display.” Final Act. 3. The Examiner finds that these additional elements “are non-unique and traditional wagering gaming elements” and “none of [these] additional elements are new or original to the gaming art.” *Id.* at 3–4. The Examiner determines that “when considered separately and in ordered combination, and within the context and character of the claims as a whole, these additional elements are not sufficient to amount to significantly more than the abstract idea of the set of rules that make up the baccarat wagering game.” *Id.*

Appellant argues that:

The claims require that non-conventional gambling equipment be used to functionally enable the recited rules architecture of a unique playing card game using standard baccarat hands only as a determining outcome basis with the provision of a side wager, and the existing scoring mechanic differs from all other playing card games by using the secondary random event only in both the side bet events, which constitutes a greater departure from the conventional processes that occurs when administering conventional playing card wagering events than was required to demonstrate patent-eligibility in *DDR Holdings*.

Appeal Br. 32. Appellant also states that the claims “require[] elements that interact in a unique manner to provide the novel and unobvious events required to functionalize the wagering event.” *Id.* at 34 (emphasis omitted). Appellant continues that “[t]he displayed secondary random event is not a playing card and is not integrated into the underlying gaming event as is typical with some displays and with secondary event displays.” *Id.* at 35.

As an initial matter, claims 10 and 21 do not tie in any way the secondary random event to the side bet event, let alone limit the secondary random event to only the side bet event. Thus, the claims do not actually

require an “existing scoring mechanic [that] differs from all other playing card games by using the secondary random event only in both the side bet events,” as argued. Appeal Br. 32. Moreover, even if claims 10 and 21 limited the secondary random event to the side bet event so as to recite a departure from conventional playing card events with a unique scoring mechanic, the recitation of a secondary random event to be used only for a side bet event would itself recite an abstract idea—i.e., rules for executing a game of baccarat with a side bet event, including wagering and the resolution of the side bet event—rather than an *additional* element that ensures that the claim is more than a 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”).

To the extent Appellant is arguing that the random event generator and displays are “non-conventional gambling equipment” (Appeal Br. 32), we are not persuaded. Appellant describes the random event generator as a random number generator, templates, or a combination of a template and random number generator. Spec. 9:8–17. Appellant does not describe random number generators in detail in the Specification, but Merati’s

Background explains that random number generators can be “any randomizing device such as playing cards, dice, roulette wheels, or number balls drawn from a container” and “could also be implemented by a processor executing machine-readable instructions that cause the processor to generate random numbers, simulating one of the physical random number generators mentioned above.” Merati ¶ 12. Appellant’s Specification explains that “[t]emplates have been used in the art for provision of complete game outcomes.” Spec. 10:3. With respect to displays, the Specification describes the displays as “any component or system that is visually (or even electronically) readable” and “[t]his may include 7-segment displays, nine bulbs, an image panel (with LED, Liquid Crystal, plasma, analog or digital displays), or any other system.” *Id.* at 8:8–11. Thus, there is no indication that random event generators and/or displays are anything beyond routine and conventional equipment previously known to the gaming industry.

To the extent that Appellant is arguing that it is the combination of random event generators and individual displays that renders the additional elements unconventional, we disagree because in its broadest sense the combination of random event generators and individual displays is akin to dealing physical playing cards that are then displayed at individual player positions, which has been identified as a “purely conventional” activity, and thus well-understood, routine, conventional activity. *Smith*, 815 F.3d at 819. To the extent that Appellant is arguing that it is the combination of random event generators and individual displays that particularly “display[] a single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9” (Appeal Br. 49, 52 (Claims App.)), we note Merati’s Background

disclosure of a random number generator comprising “number balls drawn from a container” (Merati ¶ 12).

Moreover, the printed indicia on each display are not functionally related to the substrate of the display in that the particular number on a display does not perform a function with respect to the display (*compare In re Miller*, 418 F.2d 1392 (CCPA 1969) (finding that the volumetric indicia on the side of a measuring cup created a specialized measuring cup)) and the display does not perform a function with respect to the particular number associated with it (*compare In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983) (finding that a band that placed a string of numbers in a certain physical relationship because of the physical structure of the band “exploited the endless nature of the band”)). *In re Marco Guldenaar Holdings B.V.*, 911 F.3d 1157, 1161 (Fed. Cir. 2018) (“[T]he markings on each of Appellant’s dice do not cause the die itself to become a manufacture with new functionality.”); *see also In re Bryan*, 323 Fed. App’x. 898 (Fed. Cir. 2009 (cited in MPEP § 2111) (holding that the identified function of printed matter on a card to “identify and distinguish one deck of cards from another” did not pertain to the structure of the apparatus and were instead drawn to the method or process of playing a game).

Consequently, the gaming table being associated with the additional elements of a random event generator providing distinct random event outcome indicators of numbers 0 through 9 to displays at each of the player positions is no more than well-understood, routine, conventional activities previously known to the gaming industry. To the extent that Appellant is arguing that the use of the random event generator and displays to resolve side bet event wagers in particular (e.g., to prohibit ties in the side bet when

there are less than 10 participating players) is what renders the additional elements unconventional, we note that, as described above, claims 10 and 21 do not recite how the elements of the random event generator and displays relate to side bet wagers in particular.

For the reasons discussed above, we find no element or combination of elements recited in claims 10 or 21 that contain any “inventive concept” or add 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 claims 10–19 and 21–23 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

Rejection II

Claim 10

The Examiner finds that Merati teaches, among other things, “the gaming table having positions thereon for placing a second wager (at step 702) on a side bet event from at least one of at least two player positions at the gaming table on the game of baccarat (Fig. 7).” Final Act. 7. The Examiner also finds that Merati teaches that “the gaming table 106 is associated with a random event generator providing distinct random event outcome indicators . . . [,] generating a distinct . . . single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9 as compared to any other random event outcome generator.” *Id.* (citing Merati ¶¶ 82–83). To the extent that Merati may fail to teach the random event generated outcome being displayed on displays assigned to each of the player positions, the Examiner finds that Walker teaches “it is known in the art for each player position to have their own personal display 80 positioned on a gaming table, wherein the game displays are in communication with the

game system to display game information to the player.” *Id.* at 7–8 (citing Walker ¶¶ 58, 80, Fig. 4). The Examiner concludes that a person of ordinary skill in the art would have found it obvious to combine the teachings of Merati and Walker “to increase the efficiency and enjoyment of the game by providing personal interfaces at each player position.” *Id.* at 8.

Appellant argues that “there is no evidence in Merati of the limitation: ‘ . . . providing distinct random event outcome indicators to the secondary random outcome indicator displays . . . [’] and ‘each distinct random event outcome indicator displaying a single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.’” Appeal Br. 35–36 (emphasis omitted). Merati teaches a second random number generator that generates a side bet game value, and “[t]he side bet game value is provided to server 200, server 300, or processor 702, in accordance with the rules of baccarat, to generate a score between 0 and 9.” Merati ¶ 82. Merati describes that in one embodiment, “multiple side bet game values are generated, one for each player/participant who placed a side bet.” *Id.* The Examiner takes the position that “Appellant is mistakenly reading into the claims the requirement that the value determined by the side bet RNG [random number generator] for a first player cannot be the same value as determined by the side bet RNG for a second player.” Ans. 14.

We agree with the Examiner that the recitation of the generator “providing distinct random event outcome indicators” in claim 10 means only that the generated indicators for the displays at the player positions are “[s]eparate or apart so as to be capable of being distinguished” (Oxford English Dictionary, available at www.oed.com), rather than a more narrow meaning requiring the generated indicators to be different or “not identical”

(*id.*). As explained above, there is a value generated “one for each player/participant who placed a side bet.” Merati ¶ 82. Accordingly, we are not persuaded that Merati fails to teach providing distinct random event outcome indicators to the displays or each indicator displaying a value selected from the group of 0 to 9.

Appellant also argues that “Merati does not have displays at each player position, but merely delivers second point values used in the game count (this is NOT a secondary outcome indicator, but merely a second source of point count[]).” Appeal Br. 41 (emphasis omitted); *see also* Reply Br. 9 (“Merati does not evidence generation of secondary random numbers that are not used in an underlying card play of the invention.”). Appellant also argues that “Walker teaches the use of an individual player position display, and does not evidence using that display for the unique secondary random INDICATOR produced by a random number generator for a side bet event on a progressive jackpot.” Appeal Br. 42 (emphasis omitted).

We disagree with Appellant that Merati fails to teach second point values that are not used in the underlying game. More specifically, Merati describes that the “secondary random game value generator preserves the order in which cards are provided by a primary random game value generator” (Merati ¶ 38) and that “one of the random game value generators is used as a primary source of cards for the traditional game” and “[t]he other random game value generator may be used for side bets, *or, in other embodiments*, used as a source of random game values when either the dealer or a player is allowed to select which random game value source to receive a next game value” (*id.* ¶ 39) (emphasis added). Thus, although in some embodiments, the second random game value generator may be used

as a source of game values, in another embodiment, Merati contemplates the second random game value generator being used for side bets and not the underlying game. Thus, Merati's teachings, in combination with Walker's teaching that it is known in the art for each player position to have its own personal display, result in the claimed invention. *See* Ans. 14.

For the foregoing reasons, we sustain the Examiner's obviousness rejection of claim 10.

Claim 21

Claim 21 recites "the gaming table having a system providing distinct *and different* random event outcome indicators to each of the secondary random outcome indicator displays at each of the at least two player positions; and each distinct random event outcome indicator displaying a distinct *and different* single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9 as compared to any other random event outcome indicator." Appeal Br. 51–52 (Claims App.) (emphasis added). The Examiner finds that Merati teaches these limitations. Final Act. 9 (citing Merati ¶¶ 82–83).

Appellant argues that "[b]y selecting individual cards, values, especially zero, can be repeated." Appeal Br. 37. The Examiner responds that "within typical game iterations of Merati, the value determined by the side bet RNG for a first player will indeed be a different value than the value determined by the side bet RNG for a second player." Ans. 15. The claim only requires two player positions, and with possible values ranging from 0 through 9, the Examiner's finding that the value generated for a first player will be different than a value generated for a second player "within typical game iterations of Merati" is supported by a preponderance of the evidence.

Id. Appellant does not adequately explain why this finding by the Examiner is insufficient to support a disclosure of “the gaming table having a system providing distinct and different random event outcome indicators to each of the secondary random outcome indicator displays at each of the at least two player positions” and “each distinct random event outcome indicator displaying a distinct and different single digit number value selected from the group consisting of 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9 as compared to any other random event outcome indicator,” as claimed. Appeal Br. 51–52 (Claims App.). In other words, Merati’s system is capable of providing distinct and different indicators to two player positions, and will provide distinct and different indicators to two player positions within a typical game, and Appellant does not adequately explain how and/or why the claim, as currently drafted, prohibits any possibility of duplicate values by the system in order to meet the claim.

For the foregoing reasons, we sustain the Examiner’s rejection of claim 21.

Rejection III

Claims 15 and 23 stand rejected under 35 U.S.C. § 103 as unpatentable over Merati, Walker, and Jones. Final Act. 11. Claim 15 depends from independent claim 10. Appeal Br. 50 (Claims App.). Appellant appears to rely on the arguments made in connection with independent claim 10 relating to the perceived deficiencies in Merati as the basis of reversal for claim 15. Reply Br. 10–11. Because we have found no such deficiencies in Merati with respect to independent claim 10, we are not persuaded of error in the Examiner’s rejection of claim 15.

Although Appellant purports to provide additional arguments regarding claim 23 (Appeal Br. 37–38; Reply Br. 10–11), the arguments presented do not relate to claim 23, which recites “the second wager comprises a progressive jackpot wager and there is an automated accounting system in communication with the positions on the gaming table for placing the second wager.” Appeal Br. 52 (Claims App.). Instead, the arguments relate to subject matter of different dependent claims, for example, claim 22 which recites that the generator “provides equally weighed distinct indications on individual displays.” *Id.*; Appeal Br. 37–38; Reply Br. 10–11. Accordingly, we are not persuaded of error in the Examiner’s rejection of claim 23.

We sustain the rejection of claims 15 and 23 under 35 U.S.C. § 103 as unpatentable over Merati, Walker, and Jones.

CONCLUSION

The Examiner’s decision to reject claims 10–19 and 21–23 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter is affirmed.

The Examiner’s decision to reject claims 10 and 21 under 35 U.S.C. § 103 as unpatentable over Merati and Walker is affirmed.

The Examiner’s decision to reject claims 15 and 23 under 35 U.S.C. § 103 as unpatentable over Merati, Walker, and Jones is affirmed.

Appeal 2018-001233
Application 15/157,518

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
10–19, 21–23	101	Eligibility	10–19, 21–23	
10, 21	103	Merati, Walker	10, 21	
15, 23	103	Merati, Walker, Jones	15, 23	
Overall Outcome			10–19, 21–23	

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