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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROGER M. SNOW
and LOUIS J. CASTLE II¹

Appeal 2018-001691
Application 14/846,567
Technology Center 3700

Before LINDA E. HORNER, JOHN C. KERINS, and JAMES P. CALVE,
Administrative Patent Judges.

CALVE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Office Action finally rejecting claims 1–20 as being directed to patent ineligible subject matter under the judicial exception to 35 U.S.C. § 101. *See* Final Act. 2–4; Appeal Br. 6. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Bally Gaming, Inc. and Scientific Games Corporation are identified as the real parties in interest. Appeal Br. 4. Bally Gaming, Inc. also is the applicant pursuant to 37 C.F.R. § 1.46.

CLAIMED SUBJECT MATTER

Claims 1, 11, and 16 are independent. Claim 1 is reproduced below.

1. A method of administering a wagering game on a table with live dealing communicated to a user device associated with a player and remote from the table, comprising:
providing a gaming system comprising:

a table comprising:

a play area depicting at least one player position;

a card handling system;

a camera;

a dealer display; and

a player action indicator; and

a table manager in operable communication with the card handling system, the camera, the dealer display, the player action indicator, and the user device associated with the player;

the table manager transmitting video feed from the camera to the user device;

the table manager receiving, from the user device, an indication of an ante wager associated with the player to qualify the player to participate in the wagering game;

the card handling system providing the dealer a set of player cards defining a partial player hand of a number of randomized physical playing cards from a deck of physical playing cards;

the card handling system determining card information for the set of player cards and transmitting the card information for the set of player cards to the table manager;

the card handling system providing the dealer a set of dealer cards defining a partial dealer hand of a number of randomized physical playing cards from the deck of physical playing cards, the number equaling the number of the randomized physical playing cards forming the partial player hand;

- the card handling system determining card information for the set of dealer cards and transmitting the card information for the set of dealer cards to the table manager;
- the gaming system instructing the user device to present to the player first options comprising a check and a play wager election of a play wager amount not exceeding a first predetermined multiple of the ante wager;
- the table manager receiving from the user device an indication of a first game election selected from the first options and input at the user device;
- the table manager communicating the indication of the first game election to the dealer display and the player action indicator;
- the card handling system providing the dealer a set of community cards comprising another number of randomized physical playing cards from the deck of physical playing cards;
- the card handling system determining card information for the set of community cards and transmitting the card information for the set of community cards to the table manager;
- absent prior receipt of an indication of the play wager election, the gaming system instructing the user device to present to the player second options comprising a fold and the play wager election of a play wager amount not exceeding a second predetermined multiple of the ante wager;
- the table manager determining a poker player hand formed from the set of player cards and the set of community cards;
- the table manager determining a poker dealer hand formed from the set of dealer cards and the set of community cards; and
- the table manager resolving at least the ante wager based at least in part on a comparison of the poker player hand to the poker dealer hand.

ANALYSIS

Appellants argue claims 1–20 as a group with claim 1 as exemplary. Appeal Br. 13–32. We select claim 1 as representative, with claims 2–20 standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 is directed to a “method of administering a wagering game on a table” comprising “a gaming system” with a table and a table manager that transmits video feed from a camera on the table to a user device and a card handling system. Appeal Br. App’x 1. The table includes a play area for at least one player position, a camera, and a dealer display. *Id.* The card handling system provides a partial player hand, a partial dealer hand, and community cards. *Id.* at 1–2. The gaming system instructs a user device to present player first options of a check and a play wager election and player second options of a fold and a play wager election. The table manager determines poker hands for a player and dealer and also resolves wagers. *Id.* at 2–3. Appellants disclose that their wagering game transcends the particular environment in which it is played, e.g., on a table or automated device or with a computer, processor, monitor, cash receptors, etc. *See* Spec. ¶ 26.

Appellants argue that claim 1 recites a “new” wagering game, i.e. one with *unconventional wagering rules*. Appeal Br. 15–17, 21, 29–32. These rules allow a player to remain in the game with an option of checking (to stay in the game without making an additional wager) or making a specific wager amount in a first play wager. *Id.* at 29–32; Spec. ¶ 4. The wagering rules limit the size of bets as game play progresses to multiples of play wagers made earlier in the game. *Id.* at 29; Spec. ¶ 4. Players form hands from a partial player hand and community cards. *Id.* at 30; Spec. ¶¶ 6, 27.

We analyze patent-eligibility under *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) and *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012). First, we consider whether the claims are directed to a patent-ineligible concept such as a law of nature, natural phenomena, or abstract idea. *Alice*, 134 S. Ct. at 2355. If so, we 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 in the second step seeks an element, or a combination of elements “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* We also consider whether the claims fall within a statutory category of section 101. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018).²

Alice Step One: Are the Claims Directed to an Abstract Idea?

We agree with the Examiner’s finding that claim 1 is directed to a set of rules for a card wagering game. Final Act. 2. The Examiner finds that claim 1 recites rules for dealing cards (a dealer hand and a player hand), wagering rules (an ante wager, a play wager, and folding), determining rules (a poker player hand, a poker dealer hand), and resolving rules (comparing player and dealer hands). *Id.*; Ans. 6–7. The Examiner correctly reasons that the rules are comparable to the blackjack wagering rules held to be an abstract idea in *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016). Final Act. 2.

² Reciting a “method of administering a wagering game” does not, by itself, make claim 1 patent eligible. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1374 (Fed. Cir. 2011) (regardless of the statutory category a claim invokes, the underlying invention is considered for patent-eligibility); Appeal Br. 15–16 (“a *new* poker-based wagering method”).

The Examiner determines the claimed wagers, virtual cards, electronic game system, and game table are non-unique, traditional wagering game elements that implement the abstract wagering game rules. Final Act. 2–4.

We agree with the Examiner that the Federal Circuit’s holding in *In re Smith* is controlling and determinative of the issue in this appeal. Final Act. 2; Ans. 2–3. *In re Smith* examined the patent eligibility of a claim 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 re Smith, a precedential decision, held that claims directed to rules for conducting a wagering game are comparable to fundamental economic practices held to be abstract by the Supreme Court. *Smith*, 815 F.3d at 818. In *Smith*, the court held that claims directed to a “method of conducting a wagering game” are drawn to an abstract idea much like the method of exchanging financial obligations in *Alice* and the method of hedging risk in *Bilski v. Kappos*, 561 U.S. 593, 611 (2010). *Id.* at 819.

Like the claim in *Smith*, claim 1 recites a “method of administering a wagering game” according to game rules that include receiving an ante wager from a player, dealing partial player and dealer hands and community cards, receiving player first options, which may be a check (no wager) or a first play wager, revealing a player and community card, and receiving a player second option, which may be a fold or a player wager, determining dealer and player hands, and then resolving all received wagers. Appeal Br. Appx. 1–3; see Final Act. 2, 5; Ans. 6–7. Like the claim in *Smith*, claim 1 therefore allows players to exchange financial obligations with dealers and hedge risk by placing wagers in various amounts or checking.

The Specification’s disclosure “relates to wagering games, casino table wagering games, casino table playing card wagering games, computer-implemented wagering games, and variants of casino table wagering games that use poker ranks in determining outcomes.” Spec. ¶ 2. In particular, the claims are directed to a “variant game of Hold ‘Em poker” that allows for rules of play wherein one player or all players are allowed to remain in the game with an option of checking (which means staying in the game without making an additional wager) or making specific wagering amounts in first play wagers. *Id.* ¶ 4. As games progress, the permitted amounts of wagers decrease with increasing information. *Id.* ¶¶ 4, 28, 29. Games based on the disclosed wagering rules can be carried out in environments ranging from dealers using decks of cards to computer-generated visual representations of dealers and cards over networks such as the Internet to remote players. *Id.* ¶¶ 6–9. Appellants also disclose that “illustrations presented herein are not meant to be actual views of any particular act in a method of administering a wagering game . . . but are merely idealized representations employed to describe illustrative embodiments.” *Id.* ¶ 22.

Thus, the claimed method of administering wagering game on a table with a card handling system and table manager does not remove claim 1 from the realm of an abstract idea. To the contrary, the claimed components merely provide one of many conventional environments to implement the wagering game rules. Appeal Br. 22–24. The game table includes a play area, camera, dealer display, and card handling system. The table manager transmits a video feed from the camera to a user device where a player makes wagers. The card handling system deals cards. Appeal Br. Appx. 1–3; *see* Reply Br. 2–5.

Appellants argue that a patent eligible method can be implemented on conventional equipment. Appeal Br. 21. Although checking, folding, and limits on play wagers are known (Appeal Br. 15–17), Appellant argues that claim 1 recites unconventional rules because the underlying game is unconventional (*id.* at 27–32). Appellants argue that claim 1 recites these features as partial player and dealer hands, first options comprising a check and a play wager, second options of a fold and play wager, community cards, and forming hands from dealt and community cards. *Id.* at 29–30.

Even if these contentions are true, “[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.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). *See also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 88–90 (2012) (the patent eligibility of an abstract idea does not depend on its alleged novelty or non-obviousness); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (“No matter how much of an advance in the finance field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm. An advance of that nature is ineligible for patenting.”); *Two-Way Media, Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017) (“Eligibility and novelty are separate inquiries.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“But, a claim for a *new* abstract idea is still an abstract idea.”); *Versata Develop. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (affirming unpatentability of claims that improved an abstract idea, but not a computer’s performance).

Even if claim 1 recites unconventional wagering rules, as Appellants argue (Appeal Br. 27–32), claim 1 still is directed to rules for a wagering game, which *In re Smith* held to be akin to fundamental economic practices considered abstract by the Supreme Court. *Smith*, 815 F.3d at 818. The alleged nonabstract nature of the claimed rules is based on the alleged new or unconventional way they are grouped together in a wagering game. *See* Appeal Br. 28–30 (the card handling system provides a partial player hand, a partial dealer hand, a set of community cards, player first options of a check and a player wager, player second option of a fold and a play wager not exceeding a multiple of the ante wager, and player and dealer hands formed from the player/dealer cards and community cards). We are not persuaded that the claimed wagering game rules are distinguishable from those in *Smith* just because they recite different abstract wagering rules. Here, as in *Smith*, the claimed wagering game rules allow players and dealers to exchange financial obligations based on probabilities related to cards that are dealt.

That claim 1 may not preempt “an entire field” is not relevant to whether it is directed to an abstract idea, because “the exclusion applies if a claim involves a natural law or phenomenon or abstract idea, even if the particular natural law or phenomenon or abstract idea at issue is narrow.” *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353 (Fed. Cir. 2014) (citing *Mayo*, 566 U.S. at 88–89); *see also Two-Way Media*, 874 F.3d at 1339 (if claims are patent ineligible, preemption concerns are fully addressed and mooted); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (holding that “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility”).

The claimed wagering rules differ from rules held to be patent-eligible under *Alice* Step One in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). In *McRO*, the claimed rules were directed to a patentable, *technological improvement* over existing, manual 3-D animation techniques and achieved an *improved technological result* in conventional industry practice. *Id.* at 1316. The claimed process automatically animated 3-D characters using particular information and techniques to produce accurate, realistic lip synchronization and facial expressions in the animated characters. *Id.* at 1313, 1316. The claims “focused on a specific asserted improvement in computer animation, i.e., the automatic use of rules of a particular type.” *Id.* at 1314. The order of specific, limited rules “renders information into a specific format that is [used to create] a sequence of synchronized, animated characters.” *Id.* at 1315; *see SAP America*, 898 F.3d at 1167 (the claims in *McRO* were directed to the creation of something physical—the display of lip synchronization and facial expressions of animated characters on screens for viewing by human eyes).

Here, claim 1 does not involve an improvement in wagering game *technology*. Cards are dealt, and wagers are made and resolved. The rules essentially involve gathering, processing, analyzing, and communicating information, albeit for a wagering card game, which are abstract concepts. *See Two-Way Media*, 874 F.3d at 1337–38; *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355–56 (Fed. Cir. 2016); *TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2006) (step one of *Alice* asks whether the claims focus on specific improvements in computer capabilities, or a process that merely invokes computers as a tool).

Alice Step Two: Do the Claims Contain an “Inventive Concept”?

We also agree with the Examiner that claim 1 does not recite any additional elements that are sufficient to amount to significantly more than the abstract idea of a set of rules for a wagering card game. Final Act. 2–3; Ans. 7–8. The Examiner finds that the rules, considered individually or as an ordered combination, represent traditional wagering game elements that do not transform the abstract idea of wagering game rules into a patent-eligible application. Final Act. 4; Ans. 7.

Appellants argue that claim 1 recites an unconventional combination of method acts including partial player and dealer hands, first options of a check and a play wager, community cards, second options of a fold and play wager election at a predetermined multiple of the ante wager, community cards, and comparison of player and dealer hands. Appeal Br. 37–38. These arguments are not persuasive because they do not explain why a particular order of abstract wagering game rules provides an inventive concept that transforms the abstract idea into a patent eligible application. *Smith* left open the possibility that claims directed to a game using a new or original deck of cards could survive step two of *Alice*. *Smith*, 815 F.3d at 819. However, Appellants do not assert that the claimed method implements the abstract wagering game play rules on inventive cards or new game systems.

Instead, the Specification discloses that many different wagering games exist for home and casino environments and the games must be exciting, uncomplicated, and easy to learn to avoid frustrating players. Spec. ¶ 3. New games must meet these criteria and be sufficiently different from old games to entice players to the new game. *Id.* Appellants then argue that their game is “new” because of the wagering rules used. Reply Br. 2–8.

Appellants describe their wagering game as a variant of Hold ‘Em poker that includes different wagering rules such as the option of checking or making specific wagering amounts in the first play wagers. *Id.* ¶ 4. All of the alleged innovations relate to an unconventional combination and order of wagering game rules.³ Appeal Br. 36–41. However, a claim directed to individual, or an ordered combination of, rules related to game play and wagering (dealing cards, making and resolving different types of wagers in different amounts) does not provide an inventive concept sufficient to transform the claimed subject matter into a patent-eligible application of the abstract idea. *See Smith*, 815 F.3d at 819; Appeal Br. 31–41.

Even if claim 1 recites an unconventional ordered combination of wagering game rules for poker, claim 1 still is directed to the abstract idea of wagering. *See Smith*, 815 F.3d at 819; *see also Synopsys*, 839 F.3d at 1151 (“But a claim for a *new* abstract idea is still an abstract idea.”); *Versata*, 793 F.3d at 1335 (affirming unpatentability of claims that improved an abstract idea rather than computer performance).

Unlike the rules in *McRO*, the claimed wagering rules in this case do not transform a 3-D image of a dealer or player, nor do they improve a user device or display of the wagering game. The claims wagering rules and their generic computer and game implementation merely allow players to exchange and resolve financial obligations based on probabilities and the distribution of the cards. *See Smith*, 815 F.3d at 818–19; Reply Br. 5–8. They make the game exciting while being easy to learn. *See Spec.* ¶ 2.

³ To emphasize this point, Appellants also argue that the additional elements required to make abstract wagering rules patent-eligible are not limited to physical elements or other implementing items and to not have to be tied to a machine or transform an article to be patentable. *Id.* at 34–40.

Appellants' arguments regarding preemption (Appeal Br. 14–18, 41–43; Reply Br. 8–9) are resolved by our § 101 analysis. *Two-Way Media*, 874 F.3d at 1339 (where patent claims are deemed patent ineligible, “preemption concerns are fully addressed and made moot”); *Ariosa Diagnostics*, 788 F.3d at 1379 (“questions on preemption are inherent in and resolved by the § 101 analysis.”). Thus, we sustain the rejection of claims 1–20.

DECISION

We affirm the rejection of claims 1–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED