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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRADLEY JOHNSON, KEITH RIGGS,
JIM MCHUGH, CLINT OWEN,
BRIAN WATKINS, and JP CODY

Appeal 2018-006141
Application 15/049,129
Technology Center 3700

Before PHILLIP J. KAUFFMAN, JEREMY M. PLENZLER, and ALYSSA A. FINAMORE, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner's decision to reject claims 1–15 under 35 U.S.C. § 101 as not directed to patent-eligible subject matter. We have jurisdiction under § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claims 1, 6, and 11 are the independent claims on appeal. Claims 1–5 depend from claim 1. Claims 7–10 depend from claim 6. Claims 12–15 depend from claim 11. Claim 1 is illustrative of the claimed subject matter:

> 1. A method of controlling the award of a progressive prize in a progressive gaming system, the method including:
>
> (a) maintaining a progressive pool value at a progressive prize meter in the progressive gaming system, the progressive pool value including a contribution amount from each progressive contribution qualifying wager placed in the progressive gaming system including a number of gaming machines;
>
> (b) for each gaming machine in the progressive gaming system, maintaining a respective local progressive pool value at a local progressive meter for the respective gaming machine;
>
> (c) maintaining a win meter in the progressive gaming system, the win meter being incremented in response to a respective local progressive pool value reaching a value having defined relationship to a local trigger value;
>
> (d) receiving a player game play input including a progressive contribution qualifying wager and, in response to the player game play input, conducting a round of a wagering game;
>
> (e) with a processing device in the progressive gaming system, identifying an award value for a progressive prize in the progressive gaming system, the identified award value being selected from a set containing a number of different potential award values; and
>
> (f) in response to a progressive prize triggering event for the round of the wagering game, awarding the progressive prize and making a deduction from the progressive pool value, the value of the progressive prize being equal to the identified award value, and the progressive prize triggering event comprising a condition in which the win meter reaches a specified value.

OPINION

Appellant argues claims 1–15 as a group. We select claim 1 as representative. Claims 2–15 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, "[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." Independent claim 1, which is representative, falls within the literal scope of this provision because it claims a process. Final Act. 3.

Nevertheless, the Supreme Court has identified three exceptions to the broad scope of eligibility as literally set forth in § 101, namely, laws of nature, physical phenomena, and abstract ideas. *See Bilski v. Kappos*, 561 U.S. 593, 601 (2010). To determine whether a claim is judicially excepted from patent eligibility, the Court has provided a two-step framework. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). In the first of the two steps identified by the Supreme Court in *Alice*, we must identify a judicial exception to which the claim is purportedly directed. *Alice*, 573 U.S. at 217 (citation omitted). The Office recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("*2019 Guidance*").

Step 2(A)(i)

The Examiner concludes that claim 1 is directed to an abstract idea in the form of an ineligible method of organizing human activity. More specifically, the Examiner concludes that claim 1 is directed to "rules for

managing a progressive prize based on monitoring and analyzing data from disparate sources, and displaying certain results of the collection and analysis." Final Act. 3. These conclusions are correct. Our reviewing court held in *In re Smith*, 815 F.3d 816, 818–19 (Fed. Cir. 2016), that a claim reciting "rules of a wagering game" is directed to a "fundamental economic practice." A "fundamental economic practice" is a type of method of organizing human activity that may constitute an ineligible abstract idea. *2019 Guidance*, 84 Fed. Reg. at 52.[1]

Appellant's attempt to distinguish *Smith* is not persuasive. Appeal Br. 9–10; Reply Br. 4. The claims at issue in *Smith* recited a "method of conducting a wagering game." The Specification identified the wagering game as a blackjack variant. *Smith*, 815 F.3d at 817. Our reviewing court concluded that "Applicant's claims, directed to rules for conducting a wagering game, compare to other 'fundamental economic practice[s] found abstract by the Supreme Court." *Id.* at 818 (alteration in original). In particular, our reviewing court determined that the method claimed in *Smith* was "much like" the method of exchanging and resolving financial obligations at issue in *Alice*. *Id.* at 819.

Appellant contends that the subject matter of representative claim 1 is not analogous to the method at issue in *Smith* because claim 1 is directed to "software structure and data structure for achieving a particular improvement in providing a progressive game," rather than to rules for a wagering game. Reply Br. 4; *see also* Appeal Br. 9–10. The contention is

[1] Because we find that representative claim 1 is directed to a fundamental economic practice analogous to that at issue in *Smith*, we need not address the Examiner's alternative reliance on *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016).

not persuasive. Steps (c), (e), and (f), taken collectively, recite that the win meter be incremented in response to a respective local progressive pool value reaching a value having a defined relationship to a local trigger value (step (c)); that a progressive prize trigger event comprises a condition in which the win meter reaches a certain value (step (f)); that an identified award amount be selected from a set containing a number of different potential award values (step (e)); and that, in response to a progressive prize triggering event, the progressive prize be awarded with a value equal to the identified award value (step(f)). These steps act as rules limiting the timing and amount of progressive prizes awarded in accordance with the claimed method. Furthermore, step (f) indicates that the progressive prizes awarded in accordance with the rules have award values, that is, that the prizes embody financial obligations to the player or players. As such, claim 1, like the claims at issue in *Smith*, regulate the exchange of financial obligations. Ans. 10–11. Claim 1, therefore, recites a fundamental economic practice analogous to that at issue in *Smith*.

Step 2(A)(ii)

That said, "it is not enough to merely identify a patent-ineligible concept underlying the claim; [we] must determine whether that patent-ineligible concept is what the claim is 'directed to.'" *Endo Pharms. Inc. v. Teva Pharms. USA, Inc.*, 919 F.3d 1347, 1353 (Fed. Cir. Mar. 28, 2019) (quoting *Rapid Litig. Mgt. Ltd. v. CellzDirect, Inc.*, 827 F.2d 1042, 1050 (Fed. Cir. 2016)). "A claim is not 'directed to' a judicial exception, and thus is patent eligible, if the claim as a whole integrates the recited judicial exception into a practical application of that exception." *2019 Guidance*, 84 Fed. Reg. at 53.

Appellant contends that claim 1 is directed to "software structure and data structure for achieving a particular improvement in providing a progressive game." Reply Br. 4. More specifically, Appellant contends that claim 1, and especially steps (c), (e), and (f) of claim 1, recite structure, such as the win meter, whereby claim 1, as a whole, does not preempt all practical applications of the abstract idea. Appeal Br. 11; Reply Br. 2.

Appellant's contentions are not persuasive. As discussed earlier, steps (c), (e), and (f) of claim 1 recite an abstract idea. The remaining limitations, considered as a whole, do not integrate the recited abstract idea into a practical application because they either recite insignificant extra-solution activity or do no more than generally link the abstract idea to a particular field of use. *See 2019 Guidance*, 84 Fed. Reg. at 55. For example, steps (a) and (b) recite insignificant extra-solution activity because they merely gather or select data for use in controlling the award of the progressive prize. *See In re Grams*, 888 F.2d 835, 839–40 (Fed. Cir. 1989); MPEP § 2106.05(g) (9th ed., Rev. 08.2017, Jan. 2018).

Step (a) recites "maintaining a progressive pool value at a progressive prize meter in the progressive gaming system." Step (b) recites "maintaining a respective local progressive pool value at a local progressive meter for [a] respective gaming machine." According to steps (a) and (b), the progressive pool value and the local progressive pool values are derived from progressive contribution qualifying wagers laid down during game play. In other words, these steps in combination gather data regarding progressive contribution qualifying wagers. Furthermore, steps (a) and (b) are "insignificant" in the sense that they are necessary to the abstract idea. In particular, without the local progressive pool values gathered in step (b),

one cannot determine whether to increment the value of the win meter recited in step (c). Without maintaining the value of the win meter, one cannot determine if a progressive prize triggering event occurs. Thus, step (b) is necessary to any implementation of the abstract idea in the field of progressive gaming systems, and does not limit the claim to a particular application. As such, steps (a) and (b) recite insignificant extra-solution activity.

Step (d) recites, "in response to the player game play input, conducting a round of a wagering game." The "wagering game" is integrated into the claimed method only in the sense that progressive contribution qualifying wagers laid down during the wagering game determine the local progressive pool values. The preamble of claim 1 identifies the claimed method as a "method of controlling the award of a progressive prize in a progressive gaming system;" and the award of a progressive prize implies the conduct of a wagering game in which progressive contribution qualifying wagers are laid down. Spec. 1:27–31; 19:8–13. Thus, reciting, "in response to the player game play input, conducting a round of a wagering game," merely links the claimed method to its field of use, namely, controlling the award of a progressive prize in a progressive gaming system.

Thus, claim 1 is directed to an abstract idea. Despite this, Appellant cites the Specification as evidence that claim 1, as a whole, is directed to a technical improvement. According to the Specification:

> This method of handling progressive prizes facilitates relatively frequent small local progressive prizes at the various gaming machines in the progressive gaming system, and also facilitates relatively less frequent and potentially larger

> progressive prizes at the various gaming machines in the system. The progressive prizes may not be triggered by any result in a game played at a given player's gaming machine, and thus provide[] an additional layer of anticipation to game play. The relatively more frequent and small progressive prizes and concurrent potential for relatively large progressive awards operate in concert to help maintain the player's interest in continuing to play games at one of the gaming machines in the system.

Spec. 3:7–14. As the Examiner correctly explains, "Appellant's [alleged] improvement of enhancing game play and maintaining the player's interest does not improve the function of the progressive gaming system." Ans. 11. Instead, "provid[ing] an additional layer of anticipation to game play" and "help[ing to] maintain the player's interest in continuing to play games at one of the gaming machines of the system," as discussed in the Specification, organize human activity in the sense of inducing the player to choose to remain at the gaming system. As such, the method recited in representative claim 1, as a whole, is directed to an abstract idea in the form of a method for organizing human activity.

Step 2(B)

There remains the issue whether structure recited in claim 1 adds to the abstract idea something beyond well-understood, routine, conventional activities specified at a high level of generality so as to amount to significantly more than the abstract idea and render the subject matter of claim 1 eligible for patent protection. Reply Br. 4; Appeal Br. 9–10. The Examiner concludes that the "features set forth in the claims are described and claimed generically rather than with the specificity necessary to show how those components provide a concrete solution to the problem addressed

by the patent." Ans. 12. A review of representative claim 1 supports the Examiner's conclusion.

Step (a) recites that the gaming system on which the method is performed "includ[es] a number of gaming machines." The claim does not limit the gaming machines, or the manner in which the machines may be connected. Even assuming that those machines are networked, limiting an otherwise ineligible method to performance on either a generic computer or a generic network does imply that the method is eligible for patent protection. *BuySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (explaining the invocation of generic computer functionality, or the sending and receiving of information over a network, do not render an otherwise ineligible method eligible for patent protection).

Steps (a) and (b) recite "a progressive prize meter" and "local progressive prize meters," respectively. The Specification says that the noun "meter" is sufficiently broad to cover "a register, a memory location, a physical meter or any other device or combination of devices which are capable of maintaining a running value for amounts added to and subtracted from a progressive pool to provide a current pool value at a given point in time." Spec. 19:27–30. Given their broadest reasonable interpretations, the "progressive prize meter" and the "local progressive prize meters" may be any structure capable of storing a progressive prize value and of adding to, or subtracting from, that value. As such, the "progressive prize meter" and the "local progressive prize meters" are recited generically. Likewise, the "win meter" recited in step (c) covers any structure capable of storing a value and incrementing that value in proper circumstances. S*ee* Spec. 21:21–24. The "win meter," also, is recited generically.

Finally, step (e) recites a "set containing a number of different potential award values." Claim 1 does not limit the structure or arrangement of that set in memory. As such, the "set containing a number of different potential award values" is recited generically.

Our reviewing court has held that the recitation of generic computer components does not provide an "inventive concept" sufficient to satisfy the eligibility requirement of § 101. *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 615 (Fed. Cir. 2016). In this particular appeal, the structures of the "number of gaming machines," the "progressive prize meter," the "local progressive prize meters," the "win meter," and the "set containing a number of different potential award values" are not recited with sufficient specificity to limit the subject matter of claim 1 to a technological improvement in the control of the award of a progressive prize in a progressive gaming system. Therefore, the Examiner's conclusion that claim 1 lacks "something more" sufficient to limit the claim to eligible subject matter is correct.

Having applied the two-step process laid out by the Supreme Court, pursuant to the instructions provided us in the *2019 Guidance*, we sustain the rejection of claims 1–15 under § 101 as not directed to patent-eligible subject matter.

DECISION

The Examiner's decision to reject claims 1–15 under 35 U.S.C. § 101 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). 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED