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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HOWARD W. LUTNICK, DEAN P. ALSERUCCI,  
GEOFFREY M. GELMAN, and KEVIN BURMAN

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Appeal 2018-008423  
Application 11/868,013  
Technology Center 3700

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Before CHARLES N. GREENHUT, MICHAEL L. WOODS, and  
ARTHUR M. PESLAK, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 14–18 and 23–42, which represent all claims pending in the application. Appeal Br. 3. Claims 2–13 and 20–22 have been cancelled and claims 1 and 19 have been withdrawn. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). The Real Party in Interest is CFPH, LLC. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

Appellant's specification discloses an embodiment in which "a first player may make a bet that a second player will fare better than does a third player." Spec. 9 (Relative Bet). Of the rejected claims, claim 14 is the sole independent claim. Appeal Br. 21–28 (Claims App.). We reproduce claim 14, below, with emphases added to particular limitations discussed in this Decision.

14. An apparatus comprising:

A computer device configured to:

determine a first bet made by a first player;

receive from the first player a designation of a second player that is a first part of the first bet;

receive from the first player a designation of a third player that is a second part of the first bet;

receive from the first player an indication that the first bet wins if the second player has a superior performance to the third player in play of games, in which the games include a plurality of different game types that may be played by each of the second and third player;

associate the second player with a first identity token;

associate the third player with a second identity token;

*receive, from a first gaming device, a first indication that the first identity token is associated with a first gaming activity through the first gaming device;*

in response to receiving the first indication, determine a second bet made by the second player in a first type of game of the plurality of different game types and determine a first outcome stemming from the second bet;

*receive, from a second gaming device, a second indication that the second identity token is associated with a second gaming activity through the second gaming device;*

in response to receiving the second indication, determine a third bet made by the third player in a second type of game of the plurality of different game types and determine a second outcome stemming from the third bet;

determine a first performance metric for the second player based on at least one of (a) the second bet and (b) the first outcome and further based on at least one of (a) *a plurality of fourth bets in at least one game types of the plurality of different game types that is different from the first and second game types and that is tracked using the first identity token*; and (b) a plurality of third outcomes in at least one game type of the plurality of different game types that is different from the first and second games types and that is tracked using the first identity token;

determine a second performance metric for the third player based on at least one of (a) the third bet and (b) the second outcome and further based on at least one of (a) *a plurality of fifth bets in at least one game types of the plurality of different game types that is different from the first and second game types and that is tracked using the second identity token*, and (b) a plurality of fourth outcomes in at least one game type of the plurality of different games types that is different from the first and second game types and that is tracked using the second identity token;

determine that the first performance metric is superior to the second performance metric; and

facilitate to the first player a payment based on the first bet, the indication that the first bet wins if the second player has a superior performance to the third player, and the first performance metric being superior to the second performance metric.

*Id.* at 21–23 (emphases added).

### REFERENCES

The prior art relied upon by the Examiner is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Kelly	US 6,015,344	Jan. 18 2000
Ochi	US 2001/0019965 A1	Sept. 6, 2001
Nguyen	US 2004/0053675 A1	Mar. 18, 2004
Cannon	US 2005/0233794 A1	Oct. 20, 2005
Platis	US 2006/0252520 A1	Nov. 9, 2006
White	US 2006/0264252 A1	Nov. 23, 2006

### REJECTIONS

<b>Claim(s) Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
14–18, 23–42	101	Eligibility
14–18, 23–42	112, ¶ 1	Written Description
14–17, 23–26, 30–36, 39–41	103	Ochi, Cannon
18	103	Ochi, Cannon, Platis
27–29	103	Ochi, Cannon, Kelly
37	103	Ochi, Cannon, White
38	103	Ochi, Cannon, Kelly, White
42	103	Ochi, Cannon, Nguyen

### OPINION

With the exception of the Examiner's rejection of claims 15 and 35 as unpatentable over Ochi and Cannon (Final Act. 7, 9; Ans. 5), we agree with the Examiner's findings, reasoning, and analysis as set forth in the Final Office Action and Answer and adopt these as our own.

*I. Rejection under 35 U.S.C. § 101*

Appellant argues claims 14–18 and 23–42 as a group. *See* Appeal Br. 18–20. We select claim 14 as the representative claim, with claims 15–18 and 23–42 standing or falling with claim 14. 37 C.F.R. § 41.37(c)(1)(iv).

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

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”). Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

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

In 2019, the U.S. Patent and Trademark Office (“USPTO”) published revised guidance on the application of § 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”). Under the 2019 Revised Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h) (Rev. 08.2017 2018)).

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

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See* 2019 Revised Guidance.

*a. Step 2A, Prong One: Does the Claim Recite a Judicial Exception?*

Appellant contends that the Examiner fails to identify what the abstract idea is. Appeal Br. 19.

We disagree.

The Examiner determines that claim 14 is “directed to making a bet by a first player whether the second or third player wins at a game (based on various metrics) and resolving the bet made by the first player in accordance with the determination.” Final Act. 2. The Examiner further determines that “[s]uch limitations are similar to limitations that have been decided to be abstract.” *Id.* at 3 (citing *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016)).

Claim 14 contains limitations reciting rules for conducting a wagering game, namely, “determin[ing] a first bet made by a first player”; designating second and third players that are “part of the first bet”; providing that the “first bet wins if the second player has a superior performance to the third player”; “determin[ing] a second bet made by the second player”; “determin[ing] a third bet made by a third player”; determining performance metrics based on bets and outcomes; and “facilitat[ing] to the first player a payment based on the first bet.” Appeal Br. 21–23 (Claims App.); *see also*

*supra* Claimed Subject Matter. Thus, claim 14 recites a method of organizing human activity because it recites rules for conducting a wagering game.

As the Federal Circuit has found, “rules for conducting a wagering game” are abstract. *Smith*, 815 F.3d at 818. And rules for conducting a wagering game fall within the grouping of “[c]ertain methods of organizing human activity,” and, more particularly, under the subgrouping involving “following rules.” 2019 Revised Guidance at 52.

For at least the foregoing reasons, we are persuaded that representative claim 14 recites rules for conducting a wagering game, which is an abstract idea.

*b. Step 2A, Prong Two: Is the Judicial Exception Identified Integrated into a Practical Application?*

Claim 14 recites a certain method of organizing human activity, and in particular, following rules or instructions.

Although the claim recites “[a]n apparatus comprising: a computing device configured to . . .” (Appeal Br. 21 (Claims App.)), The Examiner finds that the additional limitation of a “computing device” is generic and “not deemed to be significantly more than the abstract idea.” Final Act. 3.

Claim 14 further recites first and second “gaming devices,” that respectively send first and second “indications” that first and second “identity tokens” are associated with first and second “gaming activities.” *See* Appeal Br. 22 (Claims App.).

Appellant argues that the “the use of identity tokens . . . would render these claims patent eligible” (Appeal Br. 19) and the claimed “gaming devices similarly transforms these claims into something more” (*id.* at 20).

We disagree. Even if we acknowledge that “gaming devices” and “identity tokens” are not necessarily general-purpose computers, the realm of abstract ideas is not limited by using a computer.

As to the claimed “identity token,” Appellant does not discuss, let alone define, what an “identity token” is. *See generally* Appeal Br.; *see generally* Reply Br. Upon reviewing the record on our own, we find *no reference* to “identity token” in the Specification to aid in our understanding of the term. We agree with the Examiner’s interpretation that the claimed “identity token” may broadly be interpreted to include a player’s identification (“ID”) number. *See* Answer 3 (“Ochi explicitly discloses that there are IDs, or in other words, ‘identity tokens.’”).

As to the claimed “gaming device,” again, Appellant does not discuss or define what a “gaming device” is (*see generally* Appeal Br.; *see generally* Reply Br.) and, upon reviewing the record on our own, we find that the plain language of the claim means that a gaming device is simply a device for gaming.

We find nothing in the record that attributes “gaming devices” or “identity tokens” to an improvement in any technology or functionality, to implementing the abstract idea with a particular machine that is integral to the claim, which effects a transformation or reduction of a particular article to a different state or thing, which applies the abstract idea in some other meaningful way beyond linking the use of the abstract idea to a particular technological environment, or which otherwise indicates that the claimed

invention integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.

We further determine that the additional elements of a “computing device,” a “first gaming device,” a “second gaming device,” a “first identity token,” and a “second identity token” are simply attempts to limit the abstract idea to a particular environment (i.e., a wagering game environment). We agree with the Examiner that the claim merely requires a set of rules (Ans. 10), and when viewed as a combination, simply implements the concept of managing or conducting a wagering game with routine, conventional activity specified at a high level of generality to the wagering game environment.

In accordance with the 2019 Revised Guidance, and looking to MPEP §§ 2106.05(a)–(c) and (e)–(h), the additional elements of claim 14, both individually and as an ordered combination, do not integrate the abstract idea into a practical application. The additional claim limitations do not impose any meaningful limits on practicing the abstract idea, as claim 14 (1) does not improve the functioning of a computer or other technology, (2) is not applied with any particular machine (except for generic gaming components), (3) does not effect a transformation of a particular article to a different state, and (4) is not applied in any meaningful way beyond generally linking the use of the judicial exception to the particular wagering game environment, such that the claim, as a whole, is more than a drafting effort designed to monopolize the exception. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

*c. Step 2B: Are Additional Limitations Well-Understood, Routine, or Conventional?*

We next consider whether claim 1 recites an “inventive concept.” As discussed above (*supra* Part I.b), the Examiner determined that claim 14 does not recite an inventive concept because the additional elements in the claim do not amount to “significantly more” than an abstract idea. *See* Final Act. 3.

We agree with the Examiner’s determination in this regard. The additional elements recited in claim 14 include “computing device,” a “first gaming device,” a “second gaming device,” a “first identity token,” and a “second identity token.” Appeal Br. 21–23 (Claims App.). These additional elements were considered as part of an ordered combination, discussed above. *See supra* Part I.b. Claim 14 recites these elements at a high level of generality, and as discussed above, the record supports a determination that these components are generic components. *Id.* Additional elements that invoke computers or other machinery merely as a tool to perform an existing process will generally not amount to significantly more than a judicial exception. *See, e.g., Versata Dev. Grp. v. SAP Am.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (explaining that in order for a machine to add significantly more, it must “play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly”). Thus, these elements, taken individually or together, do not amount to “significantly more” than the abstract idea itself.

As the Examiner correctly notes, “the claims require merely a set of rules.” Ans. 10. We agree with the Examiner that “[t]hese are the rules of

the game that are directly related to *In Re Smith*.” *Id.* at 11; *see also Smith*, 815 F.3d 816. Adding hardware, such as “gaming devices” and a “computing device,” that performs “well understood, routine, conventional activit[ies] previously known to the industry,” will not make claims patent-eligible. *In re TLI Commc’ns LLC*, 823 F.3d 607, 614–15 (Fed. Cir. 2016).

Accordingly, for these reasons, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of claim 14 as being directed to an abstract idea, and of claims 15–18 and 23–42, which fall with claim 14.

## II. Rejection Under 35 U.S.C. § 112, First Paragraph

The Examiner rejects claims 14–18 and 23–42 under 35 U.S.C. § 112, ¶ 1, for failing to comply with the written description requirement. Final Act. 3.

Sole independent claim 14 recites, *inter alia*:

a plurality of *fourth bets* in at least one game types of the plurality of different game types that is *different from* the first and second game types and that is tracked using the first identity token;

...

a plurality of *fifth bets* in at least one game types of the plurality of different game types that is *different from* the first and second game types and that is tracked using the second identity token.

Appeal Br. 22 (Claims App.) (emphasis added).

The Examiner finds that the “limitations regarding fourth bets and fifth bets [] cannot be found in the originally filed specification, specifically what the bets relate to (i.e. that the fourth and fifth bets must relate to a *different type of game* than a game that [is from] a previous bet(s)[].” Final Act. 3–4 (emphasis added).

In response to the rejection, Appellant argues that a skilled artisan would have understood that applicants had possession of the claimed limitations, citing several excerpts from the specification. Appeal Br. 16–18 (citations omitted).

Having reviewed the cited excerpts from the Specification, we are not persuaded by Appellant’s arguments. As determined correctly by the Examiner, “the claims *specifically* require that a bet on a third different type of game, and such a specific bet is not supported by the specification.” Ans. 9.

Although the cited portions of the Specification provide that the “[d]isclosed embodiments may apply to table games, video games, boxing matches, sporting events, the price movements of equities, the price movement of bonds, the movements of other market securities, the results of elections, the weather, the temperature, the average test scores of a body of students, and so on” (Spec. 353:32–354:9), we find nothing in the cited portion of the Specification that supports the claimed limitation of “a plurality of fourth bets in at least one game types . . . that is *different from* the first and second game types” or “a plurality of fifth bets in at least one game types . . . that is *different from* the first and second game types,” as recited in the claims. *See* Appeal Br. 22 (Claims App., emphases added). For example, if the first game type is blackjack and the second game type is poker, the third game type must be different. The Specification does not support this limitation.

For the foregoing reasons, we affirm the rejection of claims 14–18 and 23–42 under 35 U.S.C. § 112, first paragraph.

*III. Rejected Under 35 U.S.C. § 103(a)*

The Examiner rejects claims 14–17, 23–26, 30–36, and 39–41 as unpatentable over a combination Ochi and Cannon. Final Act. 5.

Appellant contests the rejection of claims 14, 23–26, 31, 32, 39, and 40 collectively. *See* Appeal Br. 8–15. Appellant presents additional arguments for dependent claims 15–17, 30, 34–36, and 41. *See id.* at 9–15.

We select claim 14 as representative, treating claims 23–26, 31, 32, 39, and 40 as standing or falling with representative claim 14. *See* 37 C.F.R. § 41.37(c)(1)(iv). We also address Appellant’s separate arguments contesting the rejection of dependent claims 15–17, 30, 33–36, and 41.

*a. Claims 14, 23–26, 31, 32, 39, and 40*

In rejecting independent claim 14, the Examiner finds that Ochi discloses the majority of the claimed limitations. *See* Final Act. 5 (citations omitted).

As to the claimed “associate the second player with a first identity token,” the Examiner cites to Ochi’s paragraphs 70, 78, and 79 and further adds that “*this would also be inherent* in order to be able to track winners and losers in a spectator bet type game as disclosed.” *Id.* (emphasis added).

As to the claimed “receiving, from a first gaming device, a first indication that the first identity token is associated with a first gaming activity through the first gaming device,” the Examiner cites to Ochi’s paragraphs 74–79, 103–105. *Id.* The Examiner further finds that Ochi discloses the claimed “receiving, from a second gaming device, a second indication that the second identity token is associated with a second gaming

activity through the second gaming device.” *Id.* at 6 (citing Ochi ¶¶ 74–79, 103–105).

The Examiner finds that Ochi *does not disclose* a plurality of different game types, and instead relies on Cannon for teaching this feature. *Id.* at 5. In combining Ochi and Cannon, the Examiner reasons that it would have been obvious to a skilled artisan “to require players in a competition to have to play a variety of games . . . thus making the game more challenging.” *See id.* at 10 (citing Cannon ¶¶ 151–152; Ochi ¶ 120).

In contesting the rejection, Appellant presents two arguments. *See* Appeal Br. 8.

First, Appellant argues that the Examiner’s finding that Ochi *inherently* discloses a second player with a first identity token is in error. *Id.*

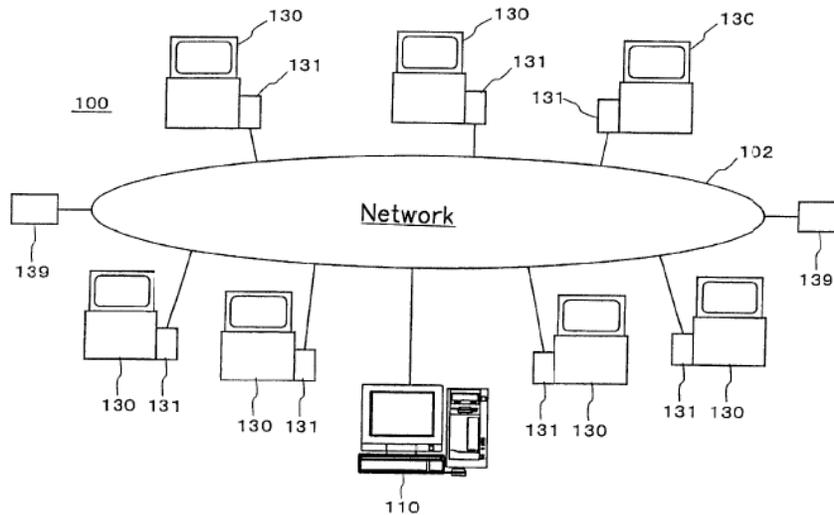
Second, Appellant argues that the Examiner’s cited portions of Ochi “do not teach or suggest anything regarding receiving information from a gaming device or more specifically receiving a first indication that the first identity token is associated with a first gaming activity.” *Id.*

We find Appellant’s two arguments unavailing.

As to Appellant’s first argument that Ochi does not *inherently* disclose this limitation (*id.*), Appellant mischaracterizes the Examiner’s findings. Although the Examiner found that the limitation “would also be inherent,” the Examiner first finds that Ochi expressly discloses the limitation through Ochi’s ID number. *See* Final Act. 5; *see also* Ans. 2. In particular, the Examiner cites to Ochi’s disclosure that each player has an *ID number*. *See* Final Act. 5 (citing in relevant part Ochi ¶ 70). Indeed, paragraph 70 of Ochi discloses that “the function of the personal information storage unit 119 is to *store for each player such data as ID number, identification*

*number . . . .*) (emphasis added). We agree with the Examiner that Ochi’s disclosure that each player has an ID number satisfies the claimed “associate the second player with a first identity token.” *See id.*; *see also* Ans. 3 (“Ochi explicitly discloses that there are IDs, or in other words, ‘identity tokens’ that are coordinated to each player.”). We further point out that Appellant does not offer a construction of “identity token” that conflicts with this finding.

As to Appellant’s second argument, we agree with the Examiner’s finding that Ochi’s system receives, from each player’s gaming device, an indication that the player’s “identity token” (the discussed-above ID number) is associated with a first gaming activity. *See* Ans. 3–5. To illustrate this point, we reproduce Ochi’s Figure 10, below:



*Fig. 10*

Figure 10 depicts a “general configuration of a game system.” Ochi ¶ 51. In particular, Figure 10 illustrates game system 100 to *multiple game machines* 130, *each with terminal management devices* 131 linked to game machines 130. *See id.* ¶ 94. Game machines 130 are connected to network 102 via

terminal management devices 131 (*id.*) and each terminal management device 131 is connected to an ID card reader (*id.* ¶ 95, Fig. 11). Terminal management device 131 sends data that is input including information from the ID card reader. *Id.* ¶ 95, Fig. 11; *see also id.* ¶ 96 (“The ID card reader **136** reads the data stored in an ID card **141**, sending the data to the terminal management device.”). Ochi explains that entry-processing device 139 is connected to network 102 and “sends the personal identification information of the player . . . to the central administrator **110**.” *Id.* ¶ 96. Ochi further discloses that when an ID card is connected to the ID card reader and a game application signal is input with the input device, then the terminal management device 131 performs a game execution entry process. *Id.* ¶ 97.

Because each player has a game machine with a terminal management device (*see, e.g., id.* at Fig. 10, ¶ 94), and the terminal management device reads the player’s ID number from an ID card reader (*id.* ¶ 96, Fig. 11), and sends the data and a game application signal (*id.* ¶ 97) to the central administrator system (*id.* ¶¶ 95, 96), we agree with the Examiner that Ochi discloses the claimed limitations. In other words, Ochi’s central administrator 110 “receive[s], from a first gaming device [130, 131], a first indication that the first identity token [player ID number and information] is associated with a first gaming activity [game application signal] through the first gaming device [130, 131],” as claimed. *See* Appeal Br. 22 (Claims App.).

For the foregoing reasons, we affirm the rejection of claim 14 and of claims 23–26, 31, 32, 39, and 40, which fall with representative claim 14, as unpatentable over Ochi and Cannon.

*b. Claims 15 and 35<sup>2</sup>*

Claim 15 depends from claim 14 and further recites, “in which to facilitate to the first player a payment includes to provide to the first player a *payment of twice the amount of the first bet.*” Appeal. Br. 23 (Claims App.) (emphasis added).

Claim 35 indirectly depends from claim 14 and further recites, “in which the plurality of different game types include different table games but not slot games.” *Id.* at 26.

To address these limitations, the Examiner determines that the limitations of these claims are not critical, and are thus deemed to be *design choice* and thus would have been obvious. Final Act. 7, 10.

Appellant contends that the rejections are incomplete. Appeal Br. 9.

We agree with Appellant. The Examiner bears the burden to identify a *reason* that would have prompted a person of ordinary skill to modify Ochi and Cannon, and merely stating that it would have been an obvious design choice, without more, falls short of that burden.

For the foregoing reason, we reverse the rejection of claims 15 and 35 as unpatentable over Ochi and Cannon.

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<sup>2</sup> Appellant’s brief groups claim 30 with claim 15. *See* Appeal Br. 23. We understand this to be an inadvertent error, however, as the Examiner does not rely on “design choice” in rejecting claim 30 (*see* Final Act. 8) and Appellant contends the rejection of claim 30 in a separate portion of its brief (*see* Appeal Br. 11–12). We also understand that the Examiner relies on the same “design choice” rationale in rejecting claim 35. Final Act. 9. As such, we limit the “design choice” analysis to claims 15 and 35.

*c. Claim 16*

Claim 16 depends from claim 14 and further recites, “in which to determine a first performance metric for the second player includes to: determine a first payout associated with the first outcome; and *determine a difference between the first payout and the second bet.*” Appeal Br. 23 (Claims App.) (emphasis added).

In addressing this limitation, the Examiner cites to Cannon’s paragraphs 151 and 152. Final Act. 7.

Appellant contends that nothing in Cannon’s paragraphs 151 and 152 teaches or suggests the claimed limitation. *See* Appeal Br. 10.

Appellant’s argument is not persuasive. Cannon discloses, “play one or more of a variety of games for a predetermined time period, at the end of which the winner will be the player with the most tournament credits earned.” Cannon ¶ 151. In other words, after the game is completed, the net payout will be the earned credits minus the waged credits, and “a difference between the first payout and the second bet” will be satisfied.

For the foregoing reasons, we affirm the rejection of claim 16 as unpatentable over Ochi and Cannon.

*d. Claim 17*

Claim 17 depends from claim 14 and further recites, “to determine a first performance metric for the second player includes to: determine an amount won by the second player *over a first time period* identified by the first bet.” Appeal Br. 23 (Claims App.) (emphasis added).

The Examiner finds that Cannon teaches this limitation, citing to Cannon’s paragraphs 151 and 152. Final Act. 7.

Appellant disagrees with the Examiner's finding. *See* Appeal Br. 10–11.

We agree with the Examiner. Cannon discloses that “players will simultaneously play one or more of a variety of games for a *predetermined period of time*.” Cannon ¶ 151 (emphasis added). We find that the “predetermined period of time” satisfies the claimed “first time period.”

For the foregoing reasons, we affirm the rejection of claim 17 as unpatentable over Ochi and Cannon.

*e. Claims 30 and 41*

Claim 30 recites, “in which the first performance metric and the second performance metric pertain to a *same first period of time* identified by the first bet.” Appeal Br. 25 (Claims App.) (emphasis added).

Claim 41 recites, “in which the first bet identifies the first period of time and the second period of time.” *Id.* at 28.

In addressing these limitations, the Examiner finds that Ochi's paragraph 114 discloses the limitation of claim 30 and that Ochi's paragraphs 114 and 115 disclose the limitations of claim 41. Final Act. 9, 10.

Appellant contends that Ochi's paragraphs 114 and 115 neither teach nor suggest identification of a time period and that “[n]o time period id [is] mentioned at all.” Appeal Br. 12.

We disagree with Appellant's assertion. Ochi's discloses, “a plurality of players play a match-type game in *real-time* or that the players execute the game at different times.” Ochi ¶ 114 (emphasis added). For example, if the first player wishes to play a game in “real-time” under similar metrics

(e.g., most money won in one hour), the first bet “identifies” the one-hour of real-time as the “first period of time and the second period of time,” as recited in claim 41, and the first performance metric and the second performance metric pertain to a *same first period of time*, that is, the one-hour of “real-time,” as recited in claim 30.

For the foregoing reasons, we affirm the rejection of claims 30 and 41 as unpatentable over Ochi and Cannon.

*f. Claim 33*

Claim 33 depends from claim 14 and further recites, “in which the second bet includes a *bet in a slot machine game*, and in which the third bet includes a *bet in a table game*.” Appeal Br. 25 (Claims App.) (emphasis added).

The Examiner finds that Cannon discloses this limitation citing Cannon’s paragraphs 151 and 152. Final Act. 9.

Appellant contends that although the cited portion of Cannon discloses slot machines and *video poker* type games, the cited “portions do not teach or suggest table games.” Appeal Br. 13 (emphasis added).

We disagree with Appellant.

Appellant offers no claim construction analysis or reference to the Specification to support the argument that “table games” require a physical table. *Id.*

Cannon discloses “that one player may choose one type or class of game by chance, e.g., a *reel slot machine* game of chance, while a second player may choose a different type or class of a game of chance, e.g., *video poker*.” Cannon ¶ 152 (emphasis added). We find that Cannon’s “reel slot

machine game” satisfies the claimed “slot machine game” and Cannon’s “video poker” satisfies the claimed “table game.” We conclude that a broad, but reasonable, interpretation of the claimed “table game” includes poker, including poker games played with a video interface, or video poker.

For the foregoing reasons, we affirm the rejection of claim 33 as unpatentable over Ochi and Cannon.

*g. Claim 34*

Claim 34 depends from claim 14 and further recites, “in which determining the first performance metric includes determining that the *second bet qualifies for inclusion in the first performance metric based on a type of game* in which the second bet is placed being one of the plurality of different game types.” Appeal Br. 26 (Claims App.) (emphasis added).

The Examiner finds that Cannon teaches the claimed limitation. Final Act. 9 (citing Cannon ¶¶ 151, 152). The Examiner explains it is “*inherent* that it must be the types of games allowed if it is allowed to be played.” *Id.* (emphasis added).

Appellant contends that the “Examiner claims that the limitations are inherent from these cited portions . . . but does not comply with the doctrine of inherency’s requirements.” Appeal Br. 14.

Appellant’s argument is not persuasive.

Cannon teaches that a player is allowed to choose the type of games to be played for a mini-tournament. Cannon ¶ 151 (disclosing that the players may choose to play a “winner-take-all” mini-tournament, “wherein the players will simultaneously play one or more of a variety of games for a predetermined time period, at the end of which the winner will be the player

with the most tournament credits earned.”). We agree with the Examiner’s explanation that “[b]ecause a player is allowed to choose what type of game they are wanting to play, the machine will inherently only include that type of game in the minitournament.” Ans. 8. Therefore, the player’s bets qualify for inclusion in their respective “performance metric” based on the type of game played, that is, a mini-tournament.

For the foregoing reasons, we affirm the rejection of claim 34 as unpatentable over Ochi and Cannon.

*h. Claim 36*

Claim 36 depends from claim 14 and further recites, “in which the computing device is configured to provide each of a plurality of players with a *fixed amount of money* to be used to determine respective performance metrics . . . .” Appeal Br. 26 (Claims App.)(emphasis added).

The Examiner finds that Cannon’s paragraphs 151 and 152 teach the limitation. Final Act. 9–10.

Appellant argues that the portions of Cannon cited by the Examiner do not teach or suggest “that any players are provided with a fixed amount of money.” Appeal Br. 15.

Appellant’s argument is unavailing.

Cannon discloses that, after paying an entry fee, a player may play one of many different games, including a “reel slot machine.” Cannon ¶¶ 151, 152. We agree with the Examiner’s findings that a skilled artisan would have understood that “the game must include some sort of currency in that players win and lose credits” and that a skilled artisan would have understood “that in order for the players to actually make a wager that the

players must be given an amount of credits to begin with.” Ans. 8. As such, Cannon teaches providing each of the players with some “fixed amount of money,” as recited in the claim.

For the foregoing reasons, we affirm the rejection of claim 36 as unpatentable over Ochi and Cannon.

*i. Rejection of Claims 18, 27–29, 37, 38, and 42*

Claims 18, 27–29, 37, 38, and 42 depend from independent claim 14. Appeal Br. 23–28 (Claims App.). The Examiner rejects these claims as unpatentable over Ochi, Cannon, as applied above, and at least one of Platis, Kelly, White, and Nguyen. *See* Final Act. 10–15.

Appellant does not present additional arguments contesting the rejection of these claims. *See* Appeal Br. 6–15.

As such, Appellant does not persuade us of Examiner error in the rejection of claims 18, 27–29, 37, 38, and 42 as unpatentable over Ochi, Cannon, and the other cited art. Accordingly, we affirm the rejection of these claims.

## CONCLUSION

The Examiner’s rejection of claims 14–18 and 23–42 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejection of claims 14–18 and 23–42 under 35 U.S.C. § 112, fourth paragraph, is affirmed.

The Examiner’s rejection of claims 14, 16, 17, 23–26, 30–34, 36, and 39–41 under 35 U.S.C. § 103(a) as unpatentable over Ochi and Cannon is affirmed. The Examiner’s rejection of claims 15 and 35 under 35 U.S.C. § 103(a) as unpatentable over Ochi and Cannon is reversed.

The Examiner’s rejection of claim 18 as unpatentable under 35 U.S.C. § 103(a) over Ochi, Cannon, and Platis is affirmed.

The Examiner’s rejection of claims 27–29 as unpatentable under 35 U.S.C. § 103(a) over Ochi, Cannon, and Kelly is affirmed.

The Examiner’s rejection of claim 37 as unpatentable under 35 U.S.C. § 103(a) over Ochi, Cannon, and White is affirmed.

The Examiner’s rejection of claim 38 as unpatentable under 35 U.S.C. § 103(a) over Ochi, Cannon, Kelly, and White is affirmed.

The Examiner’s rejection of claim 42 as unpatentable under 35 U.S.C. § 103(a) over Ochi, Cannon, and Nguyen is affirmed.

#### DECISION SUMMARY

In summary:

<b>Claim(s) Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
14–18, 23–42	101	Eligibility	14–18, 23–42	
14–18, 23–42	112, ¶ 1	Written Description	14–18, 23–42	
14–17, 23–26, 30–36, 39–41	103	Ochi, Cannon	14, 16, 17, 23– 26, 30–34, 36, 39–41	15, 35
18	103	Ochi, Cannon, Platis	18	
27–29	103	Ochi, Cannon, Kelly	27–29	
37	103	Ochi, Cannon, White	37	
38	103	Ochi, Cannon, Kelly, White	38	
42	103	Ochi, Cannon, Nguyen	42	
<b>Overall Outcome</b>			14–18, 23–42	

Appeal 2018-008423  
Application 11/868,013

TIME PERIOD FOR RESPONSE

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