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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEE M. AMAITIS and JOSEPH M. ASHER

Appeal 2018-008835
Application 10/836,077
Technology Center 3700

Before BARRY L. GROSSMAN, ERIC C. JESCHKE, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals, under 35 U.S.C. § 134(a), from the Examiner's rejection of claims 1–39, 42, 43, and 61, as set forth in the Final Office Action dated December 4, 2017. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejections.

¹ We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as CFPH, LLC. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a method or system of wagering or gaming. (Spec. ¶¶ 3, 4).² Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An electronic wagering system to communicate over a communication network with input and output portions of graphical user interfaces of client electronic devices, the system comprising:

a slot machine coupled to at least one controller;
the at least one controller configured to:

detect a presence of a first data source that includes data representing a computer-based bet that includes a timestamp representing when the computer-based bet is placed;

detect a presence of a second data source that includes data representing a computer-based period of time having a duration to determine one or more financial market information;

after detecting the second data source representing the computer-based period of time, receive from an input portion of a graphical user interface of a client electronic device a computer-based bet, in which the computer-based bet is associated with the computer-based bet timestamp;
determine whether a first financial market indicator is available;

if the first financial market indicator is available, obtain a value of at least one digit of the first financial market indicator, in which the value includes a value that occurs at the moment during or at the end of the identified computer-based period of time and after the computer-based bet timestamp;

if the first financial market indicator is available: (1)
automatically determine a first value for a first reel of the slot

² Our Decision refers to the Specification (“Spec.”) filed April 29, 2004, as published on Nov. 3, 2005 (Pub. No. 2005/0245308 A1) because Appellant cites to this version (*e.g.*, Appeal Br. 11); the Final Office Action (“Final Act.”) mailed December 4, 2017; the Appeal Brief (“Appeal Br.”) filed June 5, 2018; the Examiner’s Answer (“Ans.”) mailed June 20, 2018; and the Reply Brief (“Reply Br.”) filed August 20, 2018.

machine based at least in part upon the value of the at least one digit of the first financial market indicator; and (2) automatically determine a second value for a second reel of the slot machine;
determine an outcome of the computer-based bet based at least in part upon the first value and the second value;
store in at least one memory of the slot machine a data structure that includes data representing a determination of the outcome of the computer-based bet;
generate an electronic signal to communicate a command representing the determined outcome of the computer-based bet; and
generate an electronic signal to cause a display on a graphical payline on an output portion of the graphical user interface of the client electronic device an indication of the outcome.

REJECTIONS

The Final Office Action rejected all pending claims, which are claims 1–39, 42, 43, and 61, as amended on November 2, 2017, under each of three grounds:

1. 35 U.S.C. § 101 as directed to patent-ineligible subject matter;
2. 35 U.S.C. § 112, first paragraph, for failing to provide a written description of the invention, as required; and
3. 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventors regards as the invention.

Final Act. ¶¶ 1–11. There are no rejections based on prior art references.

Final Act. ¶ 16.

Appellant presents arguments addressing only the rejections based upon 35 U.S.C. §§ 101 and 112, first paragraph. Appeal Br. 4. Appellant does not present arguments addressing the rejection based on 35 U.S.C. § 112, second paragraph.

OPINION

Section 101 Analysis

Patent eligibility is a question of law that is reviewable *de novo*. *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). Accordingly, we review the Examiner’s § 101 determinations concerning patent eligibility under this standard.

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]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) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

“[F]or distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts,” we are guided by the Supreme Court’s two-step framework, described in *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)).

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Alice*, 573 U.S. at 218. If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then, under the second step of the framework, we 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. *Id.* at 221 (citing *Mayo*, 566 U.S. at 72–73, 79).

In January 2019, the U.S. Patent and Trademark Office adopted revised guidance on the application of § 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).³ The Revised Guidance applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. *Id.* In this case, the Revised Guidance was published after all briefing was completed. Thus, neither Appellant nor the Examiner specifically addressed the analysis required in the Revised Guidance.

Under the Revised Guidance and the October 2019 Update, 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) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁴

Revised Guidance, 84 Fed. Reg. at 52–55.

³ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the Revised Guidance. *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁴ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 54–55 (§ III(A)(2)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, 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.

Revised Guidance, 84 Fed. Reg. at 52–56.

In our § 101 analysis, we group all claims together and select claim 1 as representative of the group, as Appellant has done. *See* Appeal Br. 7 (“The claimed subject matter was amended to recite as in representative claim 1”); 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, eligibility under § 101 of all pending claims turns on our analysis of claim 1. Any reference to particular claim language is to language in claim 1.

Step 1

In accordance with the Revised Guidance, we determine whether a claim satisfies the criteria for subject matter eligibility by evaluating the claim in accordance with the criteria discussed in MPEP § 2106, i.e., “whether the claim is to a statutory category (Step 1) and the *Alice/Mayo* test for judicial exceptions (Steps 2A and 2B).” Revised Guidance, 84 Fed. Reg. at 53.

Step 1 of the Revised Guidance (which is unchanged from the prior guidance) is to review the claims to determine whether they fall within one

of the enumerated categories of invention under § 101, i.e., a process, machine, manufacture, or composition of matter. *Id.* at 53–54.

The preamble of independent claim 1 refers to a “wagering system,” which qualifies as a “machine” under § 101. The preamble of independent claim 17 refers to a “method of gaming,” which qualifies as a process under § 101. The preamble of independent claim 23 refers to a “method of wagering,” which also qualifies as a process under § 101. Evaluation of this step is made by construing the claims in accordance with their broadest reasonable interpretation. *See* MPEP § 2106.03 (II). Here, we will assume the claims fall within a statutory category and, thus, must be further analyzed at Step 2A to determine if the claim is directed to a judicial exception. *Id.*; *see also* MPEP § 2106.04 (“Determining that a claim falls within one of the four enumerated categories of patentable subject matter recited in 35 U.S.C. 101 (i.e., process, machine, manufacture, or composition of matter) in Step 1 does not end the eligibility analysis, because claims directed to nothing more than abstract ideas (such as a mathematical formula or equation), natural phenomena, and laws of nature are not eligible for patent protection.”).⁵ This is consistent with the Examiner’s analysis, which found that the claims fit within a statutory class. *See* Final Act. ¶ 4 (“While the claims themselves are system and method

⁵ *Cf. In re Smith*, 815 F.3d 816, 818, 819 (Fed. Cir. 2016) (concluding that “Applicants’ claims, directed to rules for conducting a wagering game, compare to other ‘fundamental economic practice[s]’ found abstract by the Supreme Court” and are “drawn to an abstract idea”); *see also* October 2019 Update at 5 n.24 (citing *In re Smith* in a discussion of the sub-grouping “fundamental economic practices or principles”). The claims at issue in the case before us do not address “rules” of a wagering game; they address a computer-based system or method of wagering.

claims that fit within a statutory class, the core of the invention is toward the abstract idea of picking numbers.”).

Thus, we proceed to Step 2A of the Revised Guidance, which is the first step in the *Alice/Mayo* test.

Step 2A

In Step 2A of the Revised Guidance, we determine if the claims are “directed to” a “judicial exception.” Step 2A of the Revised Guidance corresponds to the first step of the *Alice/Mayo* test but is in part changed from the 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74,618–33 (Dec. 16, 2014), by separating the first step into two prongs. We address these prongs in order below.

Under this step, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for

which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* Revised Guidance, 84 Fed. Reg. at 54–55.

In the Final Office Action, the Examiner rejected claims 1–39, 42, 43, and 61 under 35 U.S.C. § 101 because they are “directed to the abstract idea of using a financial market as a random number generator for a wagering game.” Final Act. ¶ 4. The Examiner acknowledged that “[w]hile the claims themselves are system and method claims that fit within a statutory class,” the Examiner held that “the core of the invention is toward the abstract idea of picking numbers.” *Id.* The Examiner also held that the claims “do not include additional elements that are sufficient to amount to significantly more than the judicial exception because beyond the abstract idea the only physical item claimed is ‘a client electronic device’ and ‘a processor’ each of which are parts of a general purpose computer.” *Id.* Additionally, the Examiner determined that “a graphical user interface,” also recited in the claims, “is notoriously part of a general purpose computer and thus does not rise to the level of significantly more than the abstract idea.” *Id.*

Appellant argues that the Examiner fails to make a *prima facie* showing of unpatentability under § 101 (Appeal Br. 5) and makes numerous errors in rejecting the claims under § 101 (*id.* at 6).

Step 2A, Prong 1

In Step 2A, Prong 1, of the Revised Guidance we determine whether the claims recite a judicial exception including (a) mathematical concepts; (b) certain methods of organizing human activity; or (c) mental processes. Revised Guidance, 84 Fed. Reg. at 54.

As described in the Specification, the disclosed and claimed invention recites a slot machine. *E.g.*, Spec. ¶ 3 (“The client communicates a bet regarding a spin of the reels of a slot machine.”). A controller determines a first value for a first reel of the slot machine based at least in part upon the value of a digit of a first financial market indicator. *Id.* The controller continues to determine a second value for a second reel of the slot machine, and a third value for a third reel of the slot machine. *Id.* The controller then determines the outcome of the bet based at least in part upon the first value, the second value, and the third value. *Id.*

In prior slot machines, the combination of symbols that line up on the reels of a slot machine are determined by a “Random Number Generator.” Spec. ¶ 2. A “Random Number Generator” is a computer program inside the machine that is used to generate a sequence of numbers in milliseconds. *Id.* Each random number it generates corresponds to a reel combination of the slot machine. *Id.* In the disclosed and claimed invention, the inputs for the game are determined based on the value of financial market indicators, or some other type of non-random but unpredictable event, rather than the numbers generated by a Random Number Generator. *Id.* ¶ 5. As stated in the Specification, “the inputs for the game are determined based on the value of financial market indicators rather than the numbers generated by a Random Number Generator.” Spec. ¶ 5. When financial market indicators are unavailable, such as on the weekends and holidays when financial markets are typically closed, the system determines inputs for the game based on some other type of non-random but unpredictable event. *Id.*

Representative claim 1 states that the claimed system uses “at least one controller” to “determine whether a first financial market indicator is

available” and if so, the controller “automatically determine[s] a first value for a first reel of the slot machine based at least in part upon the value of the at least one digit of the first financial market indicator,” and “automatically determine[s] a second value for a second reel of the slot machine.” As in a typical slot machine using a traditional Random Number Generator, these values are used to determine the outcome of the bet.

Other claim limitations recite a controller configured to: detect “a first data source that includes data representing a computer-based bet;” “determine an outcome of the computer-based bet based at least in part” on the value of the random number; “generate an electronic signal to communicate” the “determined outcome of the computer-based bet;” and “generate an electronic signal to cause a display on a graphical payline on an output portion of the graphical user interface of the client electronic device.” Thus, the claim as a whole, under its broadest reasonable interpretation, recites steps for practicing a wagering game. In this way, claim 1 recites a method for managing personal behavior or relationships or interactions between people, which is one of the certain methods of organizing human activity identified in the Revised Guidance, and thus an abstract idea. *See In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160 (Fed. Cir. 2018) (“[W]here the Patent Office further articulates a more refined characterization of the abstract idea (*e.g.*, ‘rules for playing games’), there is no error in also observing that the claimed abstract idea is one type of method of organizing human activity.”); Revised Guidance, 84 Fed. Reg. at 52; *see also* October 2019 Update at 6 (listing “a set of rules for playing a dice game, *In re Marco Guldenaar Holding B.V.*” as an example of the sub-

grouping “managing personal behavior or relationships or interactions between people”).

In the alternative, claim 1 can also be viewed as reciting a fundamental economic principle or practice, which is *another* of the certain methods of organizing human activity identified in the Revised Guidance, and thus an abstract idea. *See In re Smith*, 815 F.3d 816, 818, 819 (Fed. Cir. 2016) (concluding that “Applicants’ claims, directed to rules for conducting a wagering game, compare to other ‘fundamental economic practice[s]’ found abstract by the Supreme Court” and are “drawn to an abstract idea”); Revised Guidance, 84 Fed. Reg. at 52; *see also* October 2019 Update at 5 n.24 (citing *In re Smith* in a discussion of the sub-grouping “fundamental economic practices or principles”).

Under this analysis, claim 1 is properly viewed as reciting either a method for managing personal behavior or relationships or interactions between people, or a fundamental economic principle or practice. Thus, for the reasons discussed above, claim 1 recites at least one of the subgroupings of the certain methods of organizing human activity identified in the 2019 Revised Guidance, and thus is an abstract idea.

The limitations in representative claim 1 are similar to the kind of gaming system limitations found unpatentable in *Planet Bingo, LLC v. VKGS LLC*, 576 F. App’x 1005, 1007–08 (Fed. Cir. 2014), which determined that the steps of selecting, storing, and retrieving two sets of numbers, assigning a player identifier and a control number, and then comparing a winning set of bingo numbers with a selected set of bingo numbers was an unpatentable abstract idea.

Accordingly, the claims recite an abstract idea.

We thus proceed to Step 2A, Prong 2, of the *Alice/Mayo* test to determine whether the abstract idea embodied in the claims is integrated into a practical application.

Step 2A-Prong 2

Under Step 2A, Prong 2, of the Revised Guidance, we (a) identify whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluate those additional elements individually and in combination to determine whether the claim as a whole integrates the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 54–55. This step requires an additional element(s) or a combination of additional elements in the claim to 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 exception. *Id.* at 54. The analysis in this step excludes consideration of whether the additional elements represent well-understood, routine, conventional activity. *Id.* at 55.

Appellant asserts that the claimed subject matter is “drawn to an **improved interface which provides advantages over the prior art systems** which improves the efficiency of the electronic devices, thereby overcoming **disadvantages of prior systems.**” Appeal Br. 9 (citing *Core Wireless Licensing S.A.R.L. v. LG Elecs. Inc.*, 880 F.3d 1356 (Fed. Cir. 2018)). The Examiner responded that “Appellant here has not invented a new user interface, but rather, in the claims, is merely using an interface This is not an improvement to the interface itself, but rather just using known interfaces as a tool.” Ans. 4.

The Revised Guidance recognizes that “an improvement in the functioning of a computer or other technology or technological field may render a claim patent eligible at step one of the *Alice/Mayo* test even if it recites an abstract idea, law of nature, or natural phenomenon.” 84 Fed. Reg. 53 (citations omitted).

The Federal Circuit’s determination in *Core Wireless* turned on how the claims were “directed to an *improvement in the functioning of computers*, particularly those with small screens.” *Core Wireless*, 880 F.3d at 1363 (emphasis added); *see also id.* (“Like the improved systems claimed in *Enfish, Thales [Visionix Inc. v. United States]*, 850 F.3d 1343 (Fed. Cir. 2017), *Visual Memory [LLC v. NVIDIA Corp.]*, 867 F.3d 1253 (Fed. Cir. 2017), and *Finjan [Inc. v. Blue Coat Systems, Inc.]*, 879 F.3d 1299 (Fed. Cir. 2018)], these claims recite a specific improvement over prior systems, resulting in an improved user interface for electronic devices.”).

Similarly, the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), and *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), were determined to be patent eligible not merely because they were implemented in software or displayed information, but because they reflected an improvement in an underlying technology. *See DDR Holdings*, 773 F.3d at 1257 (stating that “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks”); *BASCOM*, 827 F.3d at 1350–51 (stating that the “claims may be read to ‘improve[] an existing technological process’” (quoting *Alice*, 573 U.S. at 223)).

Appellant has not pointed us to any persuasive evidence that supports its argued “advantages” over prior art systems. Appeal Br. 9. Argument in the brief “does not take the place of evidence in the record.” *Garrido v. Holt*, 547 F. App’x 974, 979 n.3 (Fed. Cir. 2013) (citing *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965)); *see also* October 2019 Update at 13 (“If the examiner concludes the disclosed invention does not improve technology, the burden shifts to applicant to provide persuasive arguments supported by any necessary evidence to demonstrate that one of ordinary skill in the art would understand that the disclosed invention improves technology.”).

The only reference in the Specification to an “advantage” of the disclosed or claimed invention is that the “systems and methods provide bettors with gaming based upon the value of financial market indicators” or “some other type of non-random but unpredictable event.” Spec. ¶ 5. There is no persuasive evidence that the claimed invention provides “an improvement in the functioning of a computer or other technology or technological field.” *See* Revised Guidance, 84 Fed. Reg. at 53. Moreover, even assuming that the claimed subject matter *does* enhance the gaming experience, that would indicate an improvement in *the abstract idea itself*, rather than an improvement *in the relevant technology*. *See McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (“We therefore look to whether the claims in these patents focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” (citing *Enfish*, 822 F.3d at 1336)).

Thus, we find that the evidence before us supports that the claimed subject matter, as a whole, does *not* reflect an improvement in the

functioning of a computer, or an improvement to another technology or technical field, or that the claims integrate the judicial exception into a practical application. Appellant provides no persuasive argument or evidence to the contrary.

The Guidance also discusses other considerations indicative of whether the additional elements may have integrated the judicial exception into a practical application—e.g., effecting a transformation, linking the use of the judicial exception to a particular technological environment, etc. *See* Revised Guidance, 84 Fed. Reg. at 55. Appellant does not raise any such considerations. Thus, the claims do not recite additional elements individually or in combination that integrates the judicial exception into a practical application.

Appellant argues that the “claimed techniques *may* help improve computer performance by providing a virtual slot machine with an interface to a user including displaying a payline which *may* help control computer workload including computer resources.” Appeal Br. 7 (emphasis added). Appellant also argues that the “claimed subject matter allows the computer to perform a function not previously performable by a computer.” *Id.* According to Appellant, “Paragraphs [0005, 0010 and 0011] of Applicants published application, US 2005-0245308 describes [sic] problems with current systems as well as advantages to solutions to problems and contains ‘a teaching in the specification about how the claimed invention improves a computer or other technology’” *Id.* (bracketed paragraph numbers included in original).

Paragraph 5 of the Specification, as discussed above, states that “the inputs for the game are determined based on the value of financial market

indicators rather than the numbers generated by a Random Number Generator.” Spec. ¶ 5. Paragraph 10 of the Specification identifies a generic controller, communication network, and data sources to provide for “wagering based at least in part upon event information . . . , such as financial market indicators.” *Id.* ¶ 10. Paragraph 11 of the Specification states that the disclosed invention may be implemented in a standard, generic “physical slot machine” or a “virtual slot machine.” Spec. ¶ 11.

The Examiner responds to Appellant’s asserted “improved computer performance” arguments by stating that “Appellant has provided no evidence from the specification of how the elements of claim one ‘may help control computer workload.’” Ans. 2. The Examiner also notes “it appears that Appellant is unsure if such is *actually* the case as Appellant states, ‘it *may help.*’ Appellant does not even seem to be sure whether this would provide any benefit to the computer or not, and is merely suggesting it might.” *Id.* at 2–3.

The Examiner also notes, correctly, that “the specification is completely silent on this matter as far as the purpose of the invention being to aid in computer resources management and this appears to be merely an afterthought presented by the attorney after receiving a rejection rather than the actual intent of the invention.” *Id.* at 3. The Examiner emphasizes that “there is no evidence showing that using a number from a financial market would expend any less resources than creating a random number in the machine.” *Id.*

We agree with the Examiner’s analysis.

Representative claim 1 recites generic “graphical user interfaces” and a “controller,” each performing purely conventional functions, i.e., receiving

requests/information, analyzing information, and displaying results. As discussed above, the claim limitations do *not* recite technological implementation details for any of the recited system elements or method steps or a particular way of programming. The functions performed in claim 1 by the generic graphical user interface and controller are purely generic. Receiving requests/information, analyzing information, and displaying results are generic functions previously known to the industry. *See* Final Act. 3 (noting that that “‘a client electronic device’ and ‘a processor’” are each “parts of a general purpose computer” and that “a graphical user interface” “is notoriously part of a general purpose computer”); *see also* Spec. ¶ 1 (stating that “[t]he rules to playing slot machines are quite simple,” and then summarizing those well-known, simple rules). The claims, therefore, do not state an arguably inventive concept. For example, claim 1 does not, as discussed above, purport to improve the functioning of the graphical user interface and controller themselves. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to apply the abstract idea using generic computer components performing routine computer functions. That is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

When considered as a whole, claim 1 recites an abstract idea performed on systems used in their ordinary capacity, performing well-understood, routine, and conventional activities. Thus, the limitations of claim 1 do not integrate the judicial exception into a practical application.

Step 2B

In Step 2B, we consider whether the claimed invention amounts to an “inventive concept.” *See, e.g.*, Revised Guidance, 84 Fed. Reg. 56.

Appellant neither argues this step nor cites any evidence in support of Step 2B. We determine, based on our analysis of the claims above, that the claims do not amount to an inventive concept.

Conclusion Regarding Section 101

Accordingly, based on our analysis above, we affirm the Examiner’s § 101 rejection of claims 1–39, 42, 43, and 61.

We note that our analysis does not consider whether the claims are novel or would have been obvious based on prior art. *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘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.”); *Myriad*, 569 U.S. at 591 (“Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.”). Instead, novelty and obviousness are addressed through §§ 102 and 103, which are not involved in this case.

Section 112 Analysis

In the Final Rejection, the Examiner rejected the claims under § 112, first and second paragraphs. Final Act. 3–5.

Section 112, First Paragraph – Written Description

Regarding the rejection under § 112, first paragraph, the Examiner stated: “Applicant has claimed a ‘graphical user interface’ performing distinction functions. However, there is no mention of a graphical user

interface in the specification and further no mention of it performing the functions as claimed.” Final Act. 3–4.

Appellant argues that reference in paragraph 11 of Appellant’s published patent application that “clients 20 comprise devices, such as those described above, that can display a virtual slot machine to a user” provide sufficient written description support for the limitations in the claims to input and output portions of “a graphical user interface.” Appeal Br. 11. We disagree. The devices described in paragraph 11 “include a computer, a personal digital assistant, a mobile phone, a kiosk or point of sale terminal.” Spec. ¶ 11.

Generic reference in the Specification does not support specific and distinct recitations of the graphical user interface in representative claim 1: (1) to receive a computer bet from “an input portion of a graphical user interface of a client electronic device,” and (2) to generate an electronic signal to cause a display on a graphical payline on “an output portion of the graphical user interface of the client electronic device.” See Appeal Br. 12 (Claims Appendix). Moreover, Appellant has not demonstrated that the devices disclosed in paragraph 11 necessarily have graphical user interfaces.

The Examiner:

notes that GUIs [graphical user interfaces] were notoriously well known at the time of filing, Applicant never actually mentioned [in the Specification] using a GUI, but rather only added the GUI to the claims on February 6, 2017, in what appears to be an attempt to overcome the 35 USC 101 rejection by implying that because it had a GUI it must therefore be patent eligible (at the time citing *Trading Technologies International, Inc. v. CQG* [675 F. App’x 1001 (Fed. Cir. 2017)]).

Ans. 8. *Trading Technologies* affirmed a District Court decision holding that the claims in that case, which included a GUI, were patentable subject matter under Section 101.

Paragraph 11 of the published application, on which Appellant relies for written description support (Appeal Br. 11) states only that the various devices referred to in the Specification “can display a virtual slot machine to a user.” Neither the word “interface” nor the phrase “graphical user interface” appear in the written description, as noted by the Examiner. Ans. 7. The Specification then states that “Fig. 2 illustrates one example of such a slot machine.” Spec. ¶ 11. We have not been directed to any persuasive evidence that Figure 2, or any other disclosure in the Specification, illustrates or discloses “an input portion of a graphical user interface of a client electronic device,” or “an output portion of the graphical user interface of the client electronic device,” as recited in representative claim 1.

Accordingly, we affirm the Examiner’s decision rejecting the claims under Section 112, first paragraph.

Section 112, Second Paragraph – Indefinite Claims

Section 112, second paragraph requires “claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” The Examiner determined that the claims were “indefinite” for failing to meet this requirement. Final Act. ¶ 8.⁶ The Examiner stated,

⁶ The Final Action was responsive to Appellant’s “communication filed on 11/02/2017.” Final Act. 1 (cover Summary sheet). This communication amended the claims. It is these amended claims that are subject to the final rejection. The Examiner stated in the Final Action that “Previous rejections based upon 35 USC 112(b) *that are not repeated above* are withdrawn based upon Applicant amending the claim.” The Examiner maintained the

“[t]he independent claims of the present invention contain many errors under 35 USC 112(b), while claim 1 will be used as an example, the errors appear to apply to all independent claims.” *Id.* The Examiner then specifically identified these “many errors.” *Id.* at 4–5.

Appellant does not address this rejection. *See* Appeal Br. 4 (stating the grounds for rejection to be reviewed on appeal are whether the claims are “unpatentable as being directed to a judicial exception to 35 USC 101 statutory subject matter,” and “unpatentable as lacking written description under 35 USC 112, first paragraph”). The Examiner noted the failure to address this ground of rejection in his Answer. Ans. 9. Appellant also does not address this ground of rejection in its Reply Brief. The entirety of the Reply Brief is the following paragraph:

Applicants maintain all relevant arguments presented in the Appeal Brief. The Examiner has done nothing to correct the defects identified in the Appeal Brief. Applicants do not agree with any statements made in the Examiner’s Answer or surrender any arguments made in the Appeal Brief.

Reply Br. 2.

As stated in our rules, “any arguments or authorities not included in the appeal brief will be refused consideration by the Board for purposes of the present appeal.” 37 C.F.R. § 41.37(c)(1)(iv). Under the circumstances, we deem Appellant to have waived any arguments as to this Rejection. *See Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (“When the appellant fails to contest a ground of rejection to the Board, . . . the Board may treat

rejections under Section 112(b), or second paragraph, of the amended claims that were “repeated above” in the Final Action. Paragraph 8 of the Final Action clearly rejected all pending claims under Section 112(b), or second paragraph.

any argument with respect to that ground of rejection as waived.”); *see also In re Berger*, 279 F.3d 975, 984 (Fed. Cir. 2002) (holding that the Board did not err in sustaining a rejection under 35 U.S.C. § 112, second paragraph, when the applicant failed to contest the rejection on appeal). Accordingly, we summarily sustain this Rejection.

CONCLUSION

The Examiner’s rejection under Section 101 is affirmed. The Examiner’s rejection under Section 112, 1st paragraph, is affirmed. The Examiner’s rejection under Section 112, 2nd paragraph, is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–39, 42, 43, 61	101	Eligibility	1–39, 42, 43, 61	
1–39, 42, 43, 61	112 ¶ 1	Written Description	1–39, 42, 43, 61	
1–39, 42, 43, 61	112 ¶ 2	Indefiniteness	1–39, 42, 43, 61	
Overall Outcome			1–39, 42, 43, 61	

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).

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AFFIRMED