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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID COLVIN and ERIC D. COLVIN

Appeal 2019-001230
Application 13/788,018
Technology Center 3700

Before MICHELLE R. OSINSKI, WILLIAM A. CAPP, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–35 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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 Gaming Arts, LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claims 1 and 19 are independent. Claim 1 is reproduced below.

1. An electronic gaming machine comprising:
 - a memory device configured to store processor-executable instructions that provide a plurality of games of chance;
 - an input device configured to receive a physical item associated with a monetary value;
 - a user interface configured to:
 - enable a player to select a wager for at least one of the plurality of games; and
 - enable the player to initiate a cash out operation; and
 - a processor coupled to said memory device for executing the instructions, wherein, when said processor executes the instructions, said processor is programmed to:
 - present to the player the plurality of games and a plurality of game varieties of each game before house indicia are selected to enable the player to select one of the games and one of the game varieties associated with the game, wherein a gameplay for each game of the plurality of games is different than a gameplay of each other game of the plurality of games;
 - enable the player to select one of the plurality of games and game varieties;
 - add the monetary value to a credit balance for the player;
 - deduct the selected wager from the credit balance;
 - in response to a determination that the player selected a first game of the plurality of games:
 - randomly select a first plurality of house indicia from a pool of house indicia;
 - provide a random chance of selecting a bonus indicia, wherein the bonus indicia is not one of the selected house indicia; and
 - present a first outcome based upon a determination that the bonus indicia was selected;
 - and
 - in response to a determination that the player selected a second game of the plurality of games:

randomly select a second plurality of house indicia from the pool of house indicia;
provide a random chance of selecting the bonus indicia; and
present a second outcome based upon the determination that the bonus indicia was selected, wherein the second outcome is different from the first outcome,
wherein said processor is further programmed to decrease the credit balance in response to the cash out operation.

OPINION

Legal Principles

The patent laws provide that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However, “this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

Mayo Collaborative Services established a framework to distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. *Alice*, 573 U.S. at 217 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77 (2012)). First, we determine whether the claims are directed to a patent-ineligible concept. *Id.* If so, we next consider the claim elements individually and as an ordered combination to determine whether additional elements transform the claims into a patent-eligible application. *Id.* This search for an inventive concept seeks an element or combination of elements

“sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 217–18.

Recently, the PTO published guidance for evaluating subject matter eligibility. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (USPTO Jan. 7, 2019) (“Revised Guidance”). Under Step One, a determination is made whether the claims are in a statutory category of patentable subject matter, i.e., do they recite a process, machine, manufacture, or composition of matter, identified in 35 U.S.C. § 101. Revised Guidance, 84 Fed. Reg. at 50, 53–54; *see Alice*, 573 U.S. at 216; *Mayo*, 566 U.S. at 70.

Next, at Revised Step 2A, Prong One, an evaluation is made whether a claim recites a judicial exception, i.e., an abstract idea as set forth in Section I of the Revised Guidance, a law of nature, or a natural phenomenon. Revised Guidance, 84 Fed. Reg. at 54. To determine if a claim recites an abstract idea, specific limitations that recite an abstract idea must be identified (individually or in combination), and a determination made whether the limitation(s) fall(s) within one or more of the subject matter groupings in Section I of the Revised Guidance. *Id.* (*A. Revised Step 2A*). The three groupings are (1) mathematical concepts, relationships, formulas, or calculations, (2) certain methods of organizing human activity, including fundamental economic principles and practices, commercial interactions, managing personal behavior, relationships, or interactions, and (3) mental processes and concepts formed in the human mind. *Id.* at 52.

If a claim recites a judicial exception, Prong Two of Revised Step 2A requires a determination to be made whether the claim as a whole integrates the judicial exception into a practical application. *Id.* “A claim that

integrates a judicial exception into a practical application will apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *Id.* at 53. If a judicial exception is integrated, the claim is patent eligible. *See id.* at 54–55.

If a claim does not “integrate” a recited judicial exception, the claim is directed to the judicial exception and further analysis is required under Step 2B to determine whether the claim contains additional elements, considered individually or in combination, that provide an inventive concept, such that the additional elements amount to significantly more than the exception itself. *Id.* at 56.

Step One: Do Claims 1 and 19 Fall within a Statutory Category of § 101?

Appellant argues claims 1–18 as a first group, and claims 19–35 as a second group. Appeal Br. 13–14. We select independent claims 1 and 19 as the representative claims. Claims 2–18 stand or fall with independent claim 1, and claims 20–35 stand or fall with independent claim 19.

37 C.F.R. § 41.37(c)(1)(iv).

We examine whether claims 1 and 19 recite one of the enumerated statutory classes of subject matter, i.e., process, machine, manufacture, or composition of matter, eligible for patenting under 35 U.S.C. § 101. Claim 1 refers to “[a]n electronic gaming machine,” which recites one of the statutory classes (i.e., a machine) under 35 U.S.C. § 101. Claim 19 refers to “[a] method of providing a plurality of games of chance and game varieties of the games of chance,” which recites one of the statutory classes (i.e., a process) under 35 U.S.C. § 101.

Step 2A, Prong One: Do Claims 1 and 19 Recite a Judicial Exception?

We next look to whether claims 1 and 19 recite 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.

The Examiner finds that claims 1 and 19 “describe[] rules for managing or conducting a wagering game” and that “[m]anaging or conducting the game as recited in [the claims] is similar to the kind of ‘fundamental economic practice’ and ‘organizing human activity’ at issue in *Alice Corp.*” Final Act. 9–10 (underlining omitted). Claim 1 recites a memory device that stores instructions to cause a processor to perform various steps associated with conducting a wagering game, as well as a user interface to enable a player to take part in the wagering game. Appeal Br. (Claims App.). Claim 19 recites the steps taken by the processor and the functionality of the user interface. *Id.*

Claim 1 recites that the user interface is configured to “enable a player to select a wager for at least one of [a] plurality of games.” Appeal Br. (Claims App.). Placing a wager is the first step in a method of conducting a wager game that involves exchanging and resolving financial obligations based on probabilities. Claim 1 further recites that the processor, when executing the instructions, is programmed to present a plurality of games, each game having a plurality of game varieties, for selection by a player, and also, enables the player to select a game and game variety. *Id.* In order to be able to take part in a wagering game, one has to select a particular game in which to participate. Claim 1 additionally recites that the processor, when executing the instructions, is programmed to “add [a] monetary value to a

credit balance for the player.” *Id.* This step recites a simple accounting process to establish an account for game play. We discuss the requirement that the monetary value added to the player’s credit balance be derived from a physical item received by an input device under Step 2A, Prong Two of the analysis. Claim 1 further recites that the instructions cause the processor to “deduct the selected wager from the credit balance.” Appeal Br. (Claims App.). This is akin to the step of a dealer accepting a wager as in *In re Smith*, 815 F.3d 816, 817–18 (Fed. Cir. 2016). The fact that the credit balance is decreased by the wager is an inherent feature of a credit balance established for the purpose of wagering.

Claim 1 additionally recites that the instructions cause the processor to “in response to a determination that the player selected a first game,” “randomly select a first plurality of house indicia . . . ; provide a random chance of selecting a bonus indicia . . . ; and present a first outcome based upon a determination that the bonus indicia was selected” and “in response to a determination that the player selected a second game,” “randomly select a second plurality of house indicia . . . ; provide a random chance of selecting the bonus indicia; and present a second outcome based upon the determination that the bonus indicia was selected, wherein the second outcome is different from the first outcome.” Appeal Br. (Claims App.). This is akin to the step in *Smith*, in which the dealer deals cards from a random set of playing cards. In other words, a method of conducting a wagering game entails randomly determining an outcome. This step is a fundamental part of exchanging and resolving financial obligations based on probabilities.

Claim 1 also recites that the user interface is configured to “enable the player to initiate a cash out operation” and that the “processor is further programmed to decrease the credit balance in response to the cash out operation.” Appeal Br. (Claims App.). This step recites a simple accounting process to enable the player, when done playing, to “cash out” the credits the player has accumulated. This is the final step of any method of conducting a wagering game, i.e., the payout for a winning bet. This simple outputting step is necessary to resolve the wager. This enables the results of the wagering and the game play to be made clear to the player, and is a fundamental part of exchanging and resolving financial obligations based on probabilities.

Each of the above-described steps relates to rules of conducting a wagering game, in which the rules are part of exchanging and resolving financial obligations based on probabilities, and/or relates to managing personal behavior. *See In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160 (Fed. Cir. 2018) (holding that rules for playing games “is one type of [certain] method of organizing human activity”); *In re Smith*, 815 F.3d at 818 (holding that rules for conducting a wager game compare to fundamental economic practices). Fundamental economic practices and managing personal behavior or relationships or interactions between people fall within the abstract idea exception subgrouping of certain methods of organizing human activity. Revised Guidance, 84 Fed. Reg. at 52. Thus, each of the steps discussed above recites a certain method of organizing human activity, which is a judicial exception.

Considered as a whole, these steps discussed above, under their broadest reasonable interpretation, contribute to the rules of playing the

game and recite steps for managing interactions between people, which are certain methods of organizing human activity. These limitations are similar to other processes that courts have determined are certain methods of organizing human activity. *See, e.g., Marco Guldenaar*, 911 F.3d at 1160–61 (holding that a claimed “method of playing a dice game” was drawn to an abstract idea); *Smith*, 815 F.3d at 819 (holding that a “method of conducting a wagering game” using a deck of playing cards was drawn to an abstract idea). Claim 19, although in the form of a method claim, recites substantially similar limitations to independent claim 1.

Appellant argues that independent claims 1 and 19 “are distinguishable from those of” *Smith* because Appellant’s claims “are not performed by a dealer,” but instead “are directed to an electronic gaming machine and method performed by an electronic gaming machine.” Appeal Br. 8 (emphasis omitted). We disagree that the instant claims are distinguishable from *Smith*. Although an electronic gaming machine, rather than a human, performs the recited steps, the instant claim limitations continue to relate to exchanging and resolving financial obligations between a player and an operator of a gaming machine based on probabilities created during the game, which remains at least a fundamental economic practice. Accordingly, we disagree with Appellant’s contention that *Smith* is inapposite to the claims. Instead, we determine that claims 1 and 19, like the claims at issue in *Smith*, relate to rules for a wagering game and resolving financial obligations. We therefore determine that claims 1 and 19 recite at least a fundamental economic practice which is one of certain methods of organizing human activity identified in the Revised Guidance, and, thus, an abstract idea.

Step 2A, Prong Two: Do Claims 1 and 19 Recite Additional Elements that Integrate the Judicial Exceptions into a Practical Application?

Following the Revised Guidance, having found that claims 1 and 19 recite a judicial exception, we next determine whether the claims recite “additional elements that integrate the exception into a practical application” (see MPEP §§ 2106.05(a)–(c), (e)–(h)). See Revised Guidance, 84 Fed. Reg. at 54.

The preamble of claim 1 is directed to “[a]n electronic gaming machine.” Appeal Br. (Claims App.). The body of claim 1 recites certain physical components of the electronic gaming machine in a generic manner. Specifically, claim 1 recites that the electronic gaming machine comprises “a memory device configured to store processor-executable instructions that provide a plurality of games of chance,” “an input device configured to receive a physical item associated with a monetary value,” “a user interface configured to: enable a player to select a wager . . . and enable the player to initiate a cash out operation,” and “a processor.” *Id.*

The Examiner takes the position that “under their broadest reasonable interpretation in light of [Appellant’s] [S]pecification . . . , none of [c]laims 1 to 35 recite coin acceptors, wager inputs and cashout buttons or can be interpreted to provide gameplay on a special purpose machine rather than providing gameplay on a general purpose machine.” Final Act. 4. The Examiner determines that “[w]ithout [an] explicit recitation of gaming device components, the gaming device 114 described in [Appellant’s] [S]pecification is simply a general purpose computer like computing device 300.” *Id.* at 7.

Appellant argues that “Appellant’s claims are not directed to a general-purpose computer,” but rather “are directed to an electronic gaming

machine, which is a special purpose machine that includes components such as an input device configured to receive a physical item associated with a monetary value, such as currency or tickets, for example.” Appeal Br. 4. Appellant argues particularly that “[s]uch an input device is clearly not a general-purpose computer component.” *Id.* Appellant continues that claim 1 is directed to “an electronic gaming machine that includes hardware specific to electronic gaming machines and not found on a general-purpose computer.” *Id.*; *see also id.* at 5 (“While Appellant’s claims include components that may be found on a general-purpose computer, the claims taken as a whole as an ordered combination are clearly not directed to a general-purpose computer or implementation of an abstract idea on a general-purpose computer, but rather a special-purpose electronic gaming machine that includes components that are NOT found on a general-purpose computer to implement a game that is NOT a conventional process.”).

We disagree with Appellant that “an input device configured to receive a physical item associated with a monetary value,” as claimed, is necessarily indicative of something beyond a general-purpose computer component. Appellant’s Specification describes that “gaming devices may include, for example, cellular phones, laptop or desktop computers, gaming kiosks or terminals, and/or any other suitable devices.” Spec. ¶ 62; *see also id.* ¶ 97 (“Gaming devices 114 may also include one or more mobile gaming devices 122, such as, without limitation, cellular phones, tablet computing device, and/or laptops.”). The Specification describes that “gaming device 114 is a computing device 300 that includes a plurality of computing device components 302” and that “[i]n addition, gaming device 114 may include a plurality of gaming device components 402 including a bill

acceptor 404, a card reader 406, a barcode scanner 408, a printer 410, an intrusion detection system 412, a randomization device 414, and an accounting interface 416.” *Id.* ¶ 128. The Specification recognizes that “in some embodiments, a gaming device 114 may not include each gaming device component 402 illustrated in FIG. 4. For example, if gaming device 114 is a *cellular phone*, gaming device 114 may not include bill acceptor 404, card reader 406, barcode scanner 408, and/or printer 410.” *Id.* ¶ 129 (emphasis added).

The Specification, however, does not suggest explicitly that *laptop or desktop computers* might lack a card reader 406. Indeed, the Specification states that “in some embodiments, the functions of each omitted gaming device component 402 may be replaced by equivalent software, hardware, and/or firmware if desired.” *Id.* Accordingly, one of ordinary skill in the art would understand from the Specification that the functionality of a card reader may be encompassed by equivalent computer software and/or hardware for a laptop or desktop computer.

Even to the extent that one of ordinary skill in the art would not consider a card reader 406 to be a general purpose computer component, Appellant’s Specification describes an embodiment in which “the player may enter a number or other identifier associated with the player reward card into gaming device 114, through user interface 312 for example, instead of using card reader 406.” Spec. ¶ 131. Appellant’s Specification also describes another embodiment in which “the player may use a near field communication (NFC) device, such as an NFC device incorporated within communication interface 308, to read the player reward card or data representative of the player card.” *Id.* These alternative embodiments

utilize only user interface 312 or communication interface 308 of computing device 300. *Id.* ¶¶ 120, 131. Yet, these alternative embodiments for the claimed input device remain able “to receive a physical item associated with a monetary value” in that they are able to be presented with the physical card for the obtainment of monetary information associated therewith. *See* Oxford Lexico Dictionary, available at <https://www.lexico.com/en/definition/receive> (defining “receive” as “[b]e given, presented with, or paid (something)”). Thus, we do not agree with Appellant that the claimed input device precludes the Examiner from interpreting the claimed electronic gaming machine as a general purpose computer. Instead, the Specification supports reading an “electronic gaming machine” so as to encompass a general-purpose computer having generic computer components.

Beyond the input device configured to receive a physical item associated with a monetary value, Appellant does not argue with any specificity regarding any other claimed components that Appellant considers to bring the claimed “electronic gaming machine” outside of the purview of a general-purpose computer. In our view, the claimed physical components of the electronic gaming machine are recited generically and encompass any computing device that can be used to input data and store and run software. The physical components of the gaming system are not specific to any particular manifestation of the gaming system (e.g., a dedicated gaming machine, versus a game played on laptop or desktop computers or tablets).

Thus, the elements of claims 1 and 19 are recited as generic computer components that, when considered both individually and in combination, do not implement the judicial exception with, or use the judicial exception in conjunction with, a particular machine or manufacture that is integral to the

claim. The recitations of the generic structures are merely instructions to apply the judicial exception in the context of a game. Thus, the claims do not apply, rely on, or use rules of conducting the wagering game in a manner that imposes a meaningful limit on those aspects of the claims. *See, e.g., Smith*, 815 F.3d at 819 (“Just as the recitation of computer implementation fell short in *Alice*, shuffling and dealing a standard deck of cards are ‘purely conventional’ activities” that are not “sufficient to ‘transform’ the claimed subject matter into a patent-eligible application of the abstract idea.”). Rather, the claims are simply a drafting effort designed to monopolize the rules of conducting a wagering game of claims 1 and 19.

Appellant also argues that “Appellant’s claims are similar to ‘a new deck of cards’ as described by the Court in In re Smith in that . . . Appellant’s claimed electronic gaming machine and method are essentially a new electronic gaming machine and method for a statutory, special-purpose electronic gaming machine.” Appeal Br. 9. Appellant’s analogy to *Smith* is misplaced. The claim at issue in *Smith* was directed to a method of conducting a wagering game. *Smith*, 815 F.3d at 817. The rules for playing the game included the dealer examining hands of dealt cards to determine if any hand has a “Natural 0” count, and either resolving wagers or continuing play in a specific manner based on the result of this examination, and then resolving wagers based on a specific scoring system. *Id.* at 817–18. In the rejection of the claims under 35 U.S.C. § 101, the Examiner acknowledged that the set of rules for playing the game were new, but the Examiner found that the rules were an abstract idea. *Id.* at 818. The court in *Smith* agreed that the claims, “directed to rules for conducting a wagering game, compare to other ‘fundamental economic practice[s]’ found abstract by the Supreme

Court.” *Id.* at 818–19 (alteration in original) (agreeing with the Board that “[a] wagering game is, effectively, a method of exchanging and resolving financial obligations based on probabilities created during the distribution of the cards.”). The court then examined, under step two of the *Alice* inquiry, whether the claim recited an inventive concept sufficient to transform the set of rules for a game into a patent eligible application. *Id.* at 819. The court found that the additional limitations in the claim recited “shuffling and dealing a standard deck of cards.” *Id.* The court held that these additional limitations are “‘purely conventional’ activities” that are not sufficient to transform the abstract game rules into a patent-eligible application of the abstract idea. *Id.* The court further explained, “[t]hat is not to say that all inventions in the gaming arts would be foreclosed from patent protection under § 101” and that “[w]e could envisage, for example, claims directed to conducting a game using a new or original deck of cards potentially surviving step two of *Alice*.” *Id.*

To the extent Appellant is arguing that “the gaming machine features not found on a general-purpose computer are sufficient to transform the abstract idea into a patent-eligible machine and process” (Appeal Br. 9), we have already explained above that the claims are reasonably interpreted by one of ordinary skill in the art in light of the Specification as extending to a general-purpose computer and are not necessarily indicative of a special-purpose gaming machine. To the extent Appellant is arguing that the game implemented on the electronic gaming machine “is NOT a conventional process” (Appeal Br. 5) so as to result in a special-purpose electronic gaming machine, Appellant has not imposed meaningful limits on the rules for playing and/or managing a game simply by programming a general-

purpose computer to perform them, just as the court in *Smith* did not find that the combination of the new rules for playing a game with a conventional deck of cards created a special purpose deck of cards.

Appellant has not established adequately that the additional elements recited in claims 1 and 19 reflect an improvement in the functioning of a computer, or an improvement to other technology or a technical field. Appellant asserts that “[t]he recitations of the instant claims solve a domain-specific problem related to electronic gaming machines” and “the pending claims are patent-eligible according to the Federal Circuit holding DDR Holdings.” Appeal Br. 12. The claims at issue in *DDR* addressed the problem of retaining website visitors who would otherwise be transported away from the host website after clicking on an advertisement on the host website and activating a hyperlink. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). The *DDR* claims describe automatically generating a hybrid web page that permits users visiting a host website to view and purchase products from a third-party merchant, whose ads are displayed with hyperlinks on the host website, without leaving the host website and entering that merchant’s website. *Id.* The Federal Circuit found the claims to be directed to patentable subject matter because they “specify how interactions with the Internet are manipulated to yield a desired result—a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *Id.* at 1258. Thus, the solution set forth in the *DDR* claims “is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* at 1257. Appellant does not explain adequately

how claims 1 and 19 recite a technical improvement tied to a technical problem in the gaming arts.

We have also considered Appellant’s argument that “the fact that Appellant’s claims do not attempt to pre-empt every application of the alleged abstract idea weighs in favor of patent eligibility.” Appeal Br. 11. Merely because claims do not preempt all forms of the abstraction does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). Moreover, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the dispositive test for patent eligibility. Although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

In short, the additional elements discussed above: (1) do not improve the functioning of a computer or other technology; (2) are not applied with any particular machine; (3) do not effect a transformation of a particular article to a different state; and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP §§ 2106.05(a)–(c), (e)–(h). The additional elements recited in claims 1 and 19 merely include instructions to implement the rules for conducting a wagering game on a computer and use the computer as a tool to implement the rules. *See* MPEP § 2106.05(f) (“Use of a computer or other machinery in its ordinary capacity for . . . tasks

(*e.g.*, to receive, store, or transmit data) or simply adding a general purpose computer or computer components after the fact to an abstract idea . . . does not provide significantly more.”). Thus, the additional elements do not add meaningful limits to the judicial exception recited in claims 1 and 19.

Consequently, the claimed invention does not integrate the abstract idea into a “practical application.” Thus, claims 1 and 19 are directed to an abstract idea, which is a judicial exception to patent eligible subject matter under 35 U.S.C. § 101.

Step 2B: Do Claims 1 and 19 Recite an Inventive Concept?

We next consider whether claims 1 and 19 recite any elements, individually or as an ordered combination, that transform the abstract idea into a patent-eligible application, *e.g.*, by providing an inventive concept. *Alice*, 573 U.S. at 217–18. The Revised Guidance similarly states, under Step 2B, “examiners should . . . evaluate the additional elements individually and in combination . . . to determine whether they provide an inventive concept (*i.e.*, whether the additional elements amount to significantly more than the exception itself).” 84 Fed. Reg. at 56.

Appellant argues that claim 1 “recite[s] additional elements that are more than a generic computer performing generic steps.” Appeal Br. 13. In particular, Appellant argues that ‘the electronic gaming machine recited in [c]laim 1 includes an input device configured to receive a physical item associated with a monetary value . . . which is not a ‘generic’ function performed by a general-purpose computer,” and also “includes a processor that adds the monetary value of the physical item to a credit balance, deducts the wager from the credit balance, presents the game to the player, and determines an outcome based on indicia randomly selected by the machine,

and whether a bonus indicia has been selected.” *Id.* Similarly, Appellant argues that claim 19 “require[s] a special-purpose electronic gaming machine that receives a physical item associated with a monetary value using an input device of the electronic gaming machine” and “includes hardware specific to a special-purpose electronic gaming machine.” *Id.* at 14.

The Examiner determines that claims 1 and 19

require the additional limitations of a memory device, an input device configured to receive a physical [i]tem associated with a monetary value, a user interface configured to enable the player to select a wager for at least one of the plurality of games or game varieties and enable the player to initiate a cash out operation, and a processor. These computer components are generically claimed to enable the management of the game by performing the basic functions of: (i) receiving, processing, and storing data, and (ii) receiving or transmitting data over a network. The courts have recognized these functions to be well-understood, routine, and conventional functions when claimed in a merely generic manner. As such, the recitation of the computer limitations in [c]laims 1 [and 19] amounts to mere instructions to implement the abstract idea on a computer.

Final Act. 10.

As discussed above, the additional elements include generic recitations of conventional computer components. These additional elements, when considered individually and as an ordered combination, are well-understood, routine, conventional activity in the field. The claimed computer components are recited at such a high level of generality as to encompass a computer capable of being programmed with rules for conducting the wagering game. And as discussed above, the Specification describes that “[t]he gaming devices may include, for example, cellular phones, laptop or desktop computers, gaming kiosks or terminals, and/or any

other suitable devices.” Spec. ¶ 62; *see also id.* ¶ 97. The Specification also supports that the claimed physical components, as properly interpreted, are simply computer components. *See, e.g., id.* ¶ 131 (supporting that user interface 312 of computing device 300 is able “to receive a physical item associated with a monetary value,” as claimed, in that it is able to be presented with the physical card in order to allow a player to enter an identifier associated with the card into the gaming device for the obtainment of monetary information associated with the card).

Claims 1 and 19 “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.” *See Revised Guidance*, 84 Fed. Reg. at 56. For the reasons discussed above, we find no element or combination of elements recited in claims 1 or 19 that contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. at 221.

For these reasons, we find no error in the Examiner’s rejection of claims 1–35 under 35 U.S.C. § 101.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–35	101	Eligibility	1–35	

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Application 13/788,018

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