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INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

EXAMINER
WONG, JEFFREY KEITH

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phowe@cantor.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEE M. AMAITIS, JOSEPH M. ASHER, ROBERT F. BAHRAMPOUR, DARRIN M. MYLET, ALAN B. WILKINS, and HOWARD W. LUTNICK

Appeal 2019-001416
Application 14/246,320
Technology Center 3700

Before STEFAN STAICOVICI, EDWARD A. BROWN, and ARTHUR M. PESLAK, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's decision in the Final Office Action (dated Oct. 19, 2017) rejecting claims 1–29. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. CFPH, LLC is identified as the real party in interest in Appellant's Appeal Brief (filed June 12, 2018). Appeal Br. 3.

INVENTION

Appellant's invention relates to a gaming method employing a wireless network. Spec. 1, l. 13.

Claim 1, the sole independent claim, is representative of the claimed invention and reads as follows:

> 1. A method comprising:
>
> determining, by a computing device of a cellular telephonic communication network, that each of a plurality of cellular telephones is approved to use the cellular telephonic communication network;
>
> determining, by the computing device, that a first subset of the plurality of cellular telephones is approved for a first level of gaming services using the cellular telephonic communication network based on a first bundle of services to which the first subset of the plurality of cellular telephones is subscribed;
>
> determining, by the computing device, that a second subset of the plurality of cellular telephones is approved for a second level of gaming services using the cellular telephonic communication network based on a second bundle of services to which the second subset of the plurality of cellular telephones are subscribed, in which the second level of gaming services includes an ability to place a wager;
>
> allowing a respective level of gaming services using the cellular telephonic communication network for each of the plurality of cellular telephones based on the determined level of gaming services for which the respective cellular telephone is approved; and
>
> billing each respective subscriber of the first and second subset of the plurality of cellular telephones for usage of the cellular telephonic communication network and usage of the gaming services based on respective billing rates associated with the respective bundles of services.

REJECTIONS[2]

I. The Examiner rejects claims 1–29 on the ground of nonstatutory double patenting as being unpatentable over claims 1–29 of U.S. Patent No. 8,690,679.[3]

II. The Examiner rejects claims 1–29 on the ground of nonstatutory double patenting as being unpatentable over claims 1–29 of U.S. Patent No. 8,070,604.[4]

III. The Examiner rejects claims 1–16 and 21–29 under 35 U.S.C. § 103(a) as being unpatentable over Akram.[5]

IV. The Examiner rejects claims 17–19 under 35 U.S.C. § 103(a) as being unpatentable over Akram and Minear.[6]

V. The Examiner rejects claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Akram and Jung.[7]

ANALYSIS

Rejections I and II

As Appellant does not argue Rejections I and II, we summarily sustain the rejections of claims 1–29 on the grounds of nonstatutory double patenting as unpatentable over claims 1–29 of US 8,690,679 B2 and over claims 1–29 of US 8,070,604 B2. *See* Appeal Br. 4–12; Ans. 3.

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[2] The Examiner has withdrawn the rejection of claims 1–29 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. *See* Examiner's Answer 3 (dated Oct. 5, 2018, hereinafter "Ans."); Final Act. 5–7.
[3] Amaitis et al., US 8,690,679 B2, issued Apr. 8, 2014.
[4] Amaitis et al., US 8,070,604 B2, issued Dec. 6, 2011.
[5] Akram et al., US 2004/0259626 A1, published Dec. 23, 2004.
[6] Minear et al., US 2004/0043763 A1, published Mar. 4, 2004.
[7] Jung, US 2006/0106736 A1, published May 18, 2006.

Rejection III

Appellant has not presented arguments for the patentability of claims 2–16 and 21–29 apart from claim 1. Therefore, in accordance with 37 C.F.R. § 41.37(c)(1)(iv), we select claim 1 as the representative claim to decide the appeal of the rejection of these claims, with claims 2–16 and 21–29 standing or falling with claim 1.

The Examiner finds that Akram discloses most of the limitations of the method of independent claim 1, but "fails to explicitly disclose the plurality of cellular telephones being approved for a gaming service[]." Final Act. 8–10 (citing Akram, paras. 18–20, 32, 62, 63, 65, 70, 81, 85, 95). Nonetheless, the Examiner finds that because a player in Akram's method "enter[s] an access code" to allow the player to "to be approved to play wagering-type games, this means [that] the entering of the access code on a cellular device makes it possible for the cellular device [to be] capable of playing such wagering-type games." *Id.* at 10. As such, the Examiner determines that the aspect of a player entering an access code is the same as approving the use of the cellular device because "if a device is not approved to play a wagering-type game upon entering an access code then . . . the device would not be able to [be used by a player] to play a wagering-type game." *Id.*

Appellant argues that because Akram's access code is known to a user and allows the user to use the cellular device, "[s]uch an access code . . . is not a teaching or suggestion of a device approval as claimed." Appeal Br. 8. According to Appellant, Akram's disclosure of "player age and locale" is not a disclosure "regarding the device being approved," but rather, "is a way of approving a user," which is "separate from [approving] a device," and,

thus, "player approval and device approval are completely different things." *Id.*

We appreciate Appellant's position that Akram's disclosure of "player age" represents an authorization (authentication) of the user, and, therefore, constitutes "player approval." However, for the reasons noted below, Akram's disclosure of "player location" constitutes a disclosure of the location of a wireless device, i.e., "device approval," and, hence, we agree with the Examiner that "using an access code is . . . [similar to] a device approval." Ans. 7.

In particular, in Akram's method, after a player enters an access code, a wireless network communicates with a wireless device (i.e., cellular device) to determine the location of the wireless device, and, thus, determine whether the player is located in an approved geographical area. Akram, paras. 18, 20, 94, 95. Akram specifically discloses that if the wireless device is found to be located in a jurisdiction with legal restrictions on gambling, the user's ability to play wagering games is blocked, which means that the wireless device is not "approved" to use the wireless network to play wagering games. *Id.*, para. 5 ("[T]he mobile gaming unit may provide location information so that availability of games can be blacked out in jurisdictions with legal restrictions on gambling.").

In other words, using Akram's access code to determine that a wireless device is located in a jurisdiction without legal restrictions on gambling results in allowing the wireless device to communicate with a wireless network to play wagering games. Therefore, in such a situation, the Examiner is correct that Akram's wireless device is "approved for . . . [playing] wagering games" (*see* Ans. 6), and, thus, "is approved to use the . . . communication network," as called for by claim 1.

In conclusion, for the foregoing reasons, we sustain the rejection under 35 U.S.C. § 103(a) of independent claim 1 as unpatentable over Akram. Claims 2–16 and 21–29 fall with claim 1.

Rejections IV and V

As Appellant does not argue Rejections IV and V, we summarily sustain the rejections under 35 U.S.C. § 103(a) of claims 17–19 as unpatentable over Akram and Minear and of claim 20 as unpatentable over Akram and Jung. *See* Appeal Br. 4–12.

CONCLUSION

Claim(s) rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1–29		Obviousness-type Double Patenting	1–29	
1–29		Obviousness-type Double Patenting	1–29	
1–16, 21–29	103(a)	Akram	1–16, 21–29	
17–19	103(a)	Akram, Minear	17–19	
20	103(a)	Akram, Jung	20	
Overall outcome			**1–29**	

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

AFFIRMED