UNITED STATES PATENT AND TRADEMARK OFFICE

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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 LEE AMAITIS and ANDREW GARROOD
_____

Appeal 2019-003661
Application 14/485,646[1]
Technology Center 3700
_____

Before ANTON W. FETTING, PHILIP J. HOFFMANN, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the
Examiner's rejection of claims 31–38 and 41–52. We have jurisdiction
under 35 U.S.C. § 6(b).

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. According to Appellant, the real party in interest is CFPH,
LLC. Appeal Br. 3.

According to Appellant, the invention relates to a wager sell back option. Spec., Title. Claims 31, 41, and 49 are the independent claims on appeal. Below, we reproduce independent claim 31 as illustrative of the appealed claims.

> 31.   A method comprising:
>
> receiving, by at least one processor of a server in networked communication with a plurality of computers configured to receive and transmit data indicating wagers, from a user a request to place a first wager on a first outcome of an event;
>
> receiving, by the at least one processor, from at least one other user at least one other wager, the at least one other wager comprising at least one of (1) a second wager on the first outcome of the event and (2) a different wager on a second outcome of the event that is mutually exclusive to the first outcome such that the first outcome and the second outcome cannot both occur in the event;
>
> after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager, calculating a refund amount for the first wager based on a current probability that the first wager will be a winning wager and risk management information associated with the first wager and the at least one other wager, in which the act of calculating the refund amount comprises calculating the refund amount based at least in part on an amount of total potential liability associated with paying payouts on bets that would win as a result of the first outcome occurring;
>
> causing to be presented to the user at an interface of an electronic display device of a remote device, by the at least one processor, indicia representing an option to receive the refund amount in exchange for cancelling the first wager after the request to place the first wager is received and prior to any determination of the first wager being a winning or losing wager;

receiving, by the at least one processor from the remote device, an indication that the user is exercising the option to receive the refund amount in exchange for cancelling the first wager after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager; and

responsive to the user exercising the option, cancelling the first wager in exchange for the refund amount, wherein the user is required to use at least a portion of the refund amount to place another wager.

REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

I.   Claims 31–38 and 41–52 under 35 U.S.C. § 101 as reciting only patent-ineligible subject matter;

II.   Claims 31, 32, 34–38, 41, 42, 44–50, and 52 under 35 U.S.C. § 103 as unpatentable over Brook et al. (US 8,475,267 B1, iss. July 2, 2013) (hereinafter "Brook") and Silvestro (US 2009/0069075 A1, pub. Mar. 12, 2009); and

III.   Claims 33, 43, and 51 under 35 U.S.C. § 103 as unpatentable over Brook, Silvestro, and Kelly et al. (US 2009/0115133 A1, pub. May 7, 2009) (hereinafter "Kelly").

PRINCIPLES OF LAW CONCERNING 35 U.S.C. § 101

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 has long interpreted 35 U.S.C. § 101 to include implicit exceptions, however: "[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) (citation omitted).

In determining whether a claim falls within an excluded category, the Supreme Court's two-step framework, described in *Mayo* and *Alice*, guides us. *See 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." *Id.* 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 that the courts 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)). Concepts that the courts determined to be patent eligible include physical and chemical processes, such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); "tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (*citing Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, although the claim at issue recited a mathematical formula, the Supreme Court held that "a claim drawn to subject matter otherwise

statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 187; *see also id.* at 191 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). Nonetheless, the Supreme Court also indicated that a claim "seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 ("It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.").

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 (citation omitted). "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.* (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.*

2019 Revised Patent Subject Matter Eligibility Guidance

The U.S. Patent and Trademark Office recently published revised guidance on the application of § 101. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under that 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 i) a fundamental economic
practice, or ii) managing personal behavior or relationships or
interactions between people, 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)
(9th Ed., Rev. 08.2017, Jan. 2018)).

A practical application "appl[ies], rel[ies] on, or use[s] 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." Guidance at 54.

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 either:

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

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

See generally Guidance.

ANALYSIS

Rejection I—§ 101 rejection of claims 31–38 and 41–52

Initially, we note that Appellant argues against the Examiner's § 101
rejection of the claims as a group. *See* Appeal Br. 9–12. We choose
independent claim 31 for our analysis, and the remaining independent and
dependent claims stand or fall with claim 31. *See* 37 C.F.R. § 41.37

(c)(1)(iv). For the following reasons, we sustain the Examiner's rejection of the claims as patent-ineligible.

We determine that in accordance with point (1) of the Guidance referenced above, independent claim 31 recites at least one judicial exception, including an abstract idea. More specifically, as described in further detail, the abstract idea includes certain methods of organizing human activity, such as a fundamental economic practice.

As set forth above, claim 31 recites the following:

> 31. A method comprising:
>
> receiving, by at least one processor of a server in networked communication with a plurality of computers configured to receive and transmit data indicating wagers, from a user a request to place a first wager on a first outcome of an event;
>
> receiving, by the at least one processor, from at least one other user at least one other wager, the at least one other wager comprising at least one of (1) a second wager on the first outcome of the event and (2) a different wager on a second outcome of the event that is mutually exclusive to the first outcome such that the first outcome and the second outcome cannot both occur in the event;
>
> after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager, calculating a refund amount for the first wager based on a current probability that the first wager will be a winning wager and risk management information associated with the first wager and the at least one other wager, in which the act of calculating the refund amount comprises calculating the refund amount based at least in part on an amount of total potential liability associated with paying payouts on bets that would win as a result of the first outcome occurring;
>
> causing to be presented to the user at an interface of an electronic display device of a remote device, by the at least one

processor, indicia representing an option to receive the refund amount in exchange for cancelling the first wager after the request to place the first wager is received and prior to any determination of the first wager being a winning or losing wager;

receiving, by the at least one processor from the remote device, an indication that the user is exercising the option to receive the refund amount in exchange for cancelling the first wager after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager; and

responsive to the user exercising the option, cancelling the first wager in exchange for the refund amount, wherein the user is required to use at least a portion of the refund amount to place another wager.

Appeal Br., Claims App. (Claim 31). Consistent with the Specification's title—"Wager Sell Back Option" (*see* Spec., Title)—each of the steps in independent claim 31's body are directed to a method of wagering, and, more specifically, to a method in which a wager is sold back. In particular, the independent claim describes receiving bets (or "wagers") from two (2) bettors ("users")—i.e., the claim expressly recites "*receiving*, by at least one processor of a server in networked communication with a plurality of computers configured to receive and transmit data indicating wagers, *from a user a request to place a first wager on a first outcome of an event*," and "*receiving*, by the at least one processor, *from at least one other user at least one other wager*, the at least one other wager comprising at least one of (1) a second wager on the first outcome of the event and (2) a different wager on a second outcome of the event that is mutually exclusive to the first outcome such that the first outcome and the second outcome cannot both occur in the

event." *Id.* (emphases added). Claim 31 further recites calculating a refund amount to be offered to the first bettor—i.e.,

> *after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager, calculating a refund amount for the first wager based on a current probability that the first wager will be a winning wager and risk management information associated with the first wager and the at least one other wager,* in which the act of calculating the refund amount comprises calculating the refund amount based at least in part on an amount of total potential liability associated with paying payouts on bets that would win as a result of the first outcome occurring.

Id. (emphasis added). The claim further recites presenting to the first bettor the option to receive, and the first better selecting to receive, the refund amount in exchange for cancelation of the first bet—i.e., "*causing to be presented to the user* at an interface of an electronic display device of a remote device, by the at least one processor, *indicia representing an option to receive the refund amount in exchange for cancelling the first wager* after the request to place the first wager is received and prior to any determination of the first wager being a winning or losing wager," and "*receiving*, by the at least one processor from the remote device, *an indication that the user is exercising the option to receive the refund amount in exchange for cancelling the first wager* after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager." *Id.* (emphases added). Finally, claim 31 recites canceling the first bet placed by the first bettor—i.e., "responsive to the user exercising the option, *cancelling the first wager in exchange for the refund amount,* wherein the user is required to use at least a portion of the refund amount to place another wager." *Id.* (emphasis added).

Taking bets from betters is a fundamental economic practice, and, therefore, an abstract idea. *See* MPEP § 2106.04(a)(2)(I)(A); *Alice*, 573 U.S. at 219–20 ("intermediated settlement" is a fundamental economic practice, and, thus, an abstract idea); *Bilski*, 561 U.S. at 611 ("hedging" is a fundamental economic practice, which is an abstract idea); *In re Smith*, 815 F.3d 816, 818–819 (Fed. Cir. 2016) ("Applicants' claimed 'method of conducting a wagering game' is drawn to an abstract idea much like *Alice*'s method of exchanging financial obligations and *Bilski*'s method of hedging risk."); *In re Marco Guldenaar Holdings B.V.*, 911 F.3d 1157 (Fed. Cir. 2018) (holding ineligible claims directed to a set of rules for playing a dice game).

In accordance with point (2) of the Guidance referenced above, claim 31 does not recite any additional element that integrates the judicial exception into a practical application—i.e., something that "appl[ies], rel[ies] on, or use[s] 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." Guidance at 54. The claim only generically recites the use of certain physical hardware—"at least one processor," "a server," "an interface," "an electronic display device," "a remote device"—and, thus, these components do not meaningfully limit the claim. Further, in the Specification, Appellant does not describe any of the claimed hardware in such a way as to indicate that the hardware is anything other than generic. Thus, claim 31 does not affect an improvement in any technology or technical field.

Therefore, independent claim 31 is directed to the above-discussed abstract idea, and does not integrate the judicial exception into a practical application.

In accordance with points (3) and (4) of the Guidance referenced above, claim 31 fails to recite a specific limitation beyond the judicial exception which is not well understood, routine, and conventional in the field, but instead simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Taking the claim elements separately, the claimed hardware, as well as the functions performed by the claimed hardware, are purely conventional. Specifically, claim 31 uses known, generic components to perform their known, basic functions. Although, arguably, the data processed and displayed differs, the claim recites the hardware only at a high level of generality. In other words, here the claim recites only well-understood, routine, and conventional functions. *See Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *see also In re Katz*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' . . . those functions can be achieved by any general purpose computer without special programming.").

For the following reasons, when considered as an ordered combination, claim 31's hardware does not add anything that is not already present when we consider the steps separately. The hardware and its technological configuration remains the same before, during, and after wagering. Thus, the claim amounts to nothing significantly more than instructions to apply the abstract idea with generic hardware, and does not

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improve the hardware. Accordingly, the claim recitations are insufficient to transform the abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

We have considered all of Appellant's arguments in the Briefs, but Appellant does not persuade us of error. We now address certain arguments below.

Appellant argues that "the Office Action has failed set forth a *prima facie* case under 35 U.S.C. §101 that the claim[s] are directed to an abstract idea," and that "the Office Action has failed to make a *prima facie* showing that the claims do not add significantly more than the allegedly abstract idea." Appeal Br. 10, 11. These arguments are not persuasive of error, however, because claim 31 is directed to an abstract idea, and does not integrate the idea into a practical application, and claim 31 does not add significantly more, for the reasons detailed above.

Appellant argues, with reference to *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), that "[r]ulings by the Federal Circuit . . . make clear that the ability to implement individual limitations or entire claims using conventional computer components generic functions is not determinative of eligibility." Appeal Br. 11. This is not persuasive of error, however. Initially, we note that the Court in *BASCOM* did not find claims eligible, but rather the Court found that the appellee did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant's favor. Regardless, the key fact in *BASCOM* was the presence of a structural change in "installation of a filtering tool at a specific location, remote from the end users, with customizable filtering features specific to each end user. This

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design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server." *BASCOM*, 827 F.3d at 1350. Appellant's claim 31 has no analogous structural benefit.

Appellant argues (*see* Reply Br. 7) that the claims are eligible for reasons similar to the reasons the claims in *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), are eligible. *Core Wireless* states, in relevant part:

> Claim 1 of the '476 patent requires "an application summary that can be reached directly from the menu," specifying a particular manner by which the summary window must be accessed. The claim further requires the application summary window list a limited set of data, "each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application." This claim limitation restrains the type of data that can be displayed in the summary window. Finally, the claim recites that the summary window "is displayed while the one or more applications are in an un-launched state," a requirement that the device applications exist in a particular state. These limitations disclose a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer.

Core Wireless, 880 F.3d at 1362–63. Appellant's claim 31 does not recite an improved user interface in accordance with *Core Wireless*. *Core Wireless* had an interface that assembled a limited number of applications which could then be launched from that interface, while Appellant's claim 31 does not.

Therefore, based on the foregoing, we sustain the Examiner's § 101 rejection of independent claim 31. Inasmuch as the remaining claims stand or fall with claim 31, we also sustain the rejection of claims 32–38 and 41–52.

Rejection II—§ 103(a) rejection of claims 31, 32, 34–38, 41, 42, 44–50, and 52

As set forth above, independent claim 31 recites, in relevant part,

> after receiving the request to place the first wager and prior to any determination of the first wager being a winning or losing wager, *calculating a refund amount for the first wager based on a current probability that the first wager will be a winning wager and risk management information* associated with the first wager and the at least one other wager, in which *the act of calculating the refund amount comprises calculating the refund amount based at least in part on an amount of total potential liability associated with paying payouts on bets* that would win as a result of the first outcome occurring.

Appeal Br., Claims App. (emphases added). In the Appeal Brief, Appellant argues that neither reference discloses calculating a refund amount based on "the '*total potential liability*[,]' . . . [i.e.,] a <u>total</u> liability associated with paying <u>multiple</u> payouts on <u>multiple</u> bets." *Id.* at 8. Instead, according to Appellant, Brook's calculations are "an amount that would be paid on a <u>single</u> bet, and thus [Brook] does not disclose or suggest *an amount of total potential liability 'associated with paying payout<u>s</u> on bet<u>s</u>.*'" *Id.* at 9. Further, according to Appellant, Silvestro also does not disclose such a calculation. *Id.*

Assuming arguendo that we agree with Appellant, in response to Appellant's argument in the Appeal Brief, the Examiner determines "that it would have been obvious . . . to modify the method of Brook" to base the calculation on the total potential liability associated with paying payouts on bets, as claimed. Answer 5; *see also id.* at 3–6. Appellant, however, in the Reply Brief, does not address this determination. Thus, Appellant does not persuade us that the Examiner's determination that, based on portions of

Brook, it would have been obvious to modify Brook to base the calculation on the total potential liability, is in error. Therefore, we must sustain the Examiner's obviousness rejection of claim 31. Inasmuch as Appellant does not argue separately against the Examiner's obviousness rejection of claims 32, 34–38, 41, 42, 44–50, and 52 that the Examiner rejects with claim 31, we also sustain the obviousness rejection of these claims.

Rejection III—§ 103(a) rejection of claims 33, 43, and 51

Appellant does not argue separately against the Examiner's obviousness rejection of dependent claims 33, 43, and 51. Thus, inasmuch as we sustain the Examiner's obviousness rejections of the independent claims from which claims 33, 43, and 51 depend, we also sustain the rejection of these dependent claims.

CONCLUSION

We AFFIRM the Examiner's rejections of claims 31–38 and 41–52 under §§ 101 and 103(a).

In summary:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
31–38, 41–52	101	Eligibility	31–38, 41–52	
31, 32, 34–38, 41, 42, 44–50, 52	103(a)	Brook, Silvestro	31, 32, 34–38, 41, 42, 44–50, 52	
33, 43, 51	103(a)	Brook, Silvestro, Kelly	33, 43, 51	
Overall Outcome			31–38, 41–52	

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. § 41.50(f).

<div align="center">AFFIRMED</div>