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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRUCE MERATI

Appeal 2020-000696
Application 14/513,302
Technology Center 3700

Before BENJAMIN D. M. WOOD, ANNETTE R. REIMERS, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

DEFRANCO, *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 1–9 and 11–19, which constitute all the claims pending in this application. 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).

CLAIMED SUBJECT MATTER

Of the claims on appeal, claims 1, 13, and 18 are independent. All three claims are directed to a “gaming system.” Claim 1 recites—

1. A gaming system, comprising:

a surface on which to play a game;

first means for providing a first random gaming value to a game player on the surface during execution of the game; and

second means for providing a second random gaming value to the game player on the surface when a predetermined event occurs, *the second random gaming value provided in response to an instruction from the game player to receive the second random gaming value.*

Appeal Br. 11 (Claims App.) (emphasis added).

EVIDENCE OF RECORD

Name	Reference	Date
Lancaster	US 2006/0135238 A1	June 22, 2006
Lutnick	US 2011/0065490 A1	Mar. 17, 2011

EXAMINER’S REJECTIONS

Claims 1–9 and 11–18 are rejected under 35 U.S.C. § 102(a)(2) as anticipated by Lutnick. Final Act. 4–8.

Claim 19 is rejected under 35 U.S.C. § 103 as unpatentable over Lutnick and Lancaster. *Id.* at 9.

ANALYSIS

A. Claims 1–9 and 11–18

Appellant argues independent claims 1 and 13 together. *See* Appeal Br. 6–8. Appellant does not argue dependent claims 2, 3, 5–9, 14, 15, and 17 separately from claims 1 and 13, thus, we presume they are argued solely on the basis of their dependency from their respective base claims 1 and 13.

Appellant does argue dependent claims 4, 11, 12, and 16 separately, thus, we likewise address them separately. *See id.* at 7–8. And while Appellant also argues independent claim 18 separately, its arguments are essentially the same as those for independent claims 1 and 13, thus, we treat independent claims 1, 13, and 18 together. *See id.* at 8–9.

The Examiner rejected independent claims 1, 13, and 18 as anticipated by the teachings of Lutnick. Final Act. 4–8. Of the limitations recited by the independent claims, Appellant disputes that Lutnick discloses “two sources of random game values, where a *player* decides *when* and *from which* source to receive a game value *during* game play.” Appeal Br. 6, 7 (bolding omitted). According to Appellant, Lutnick teaches that selection of cards during the game “is dictated not by players, but as a pre-arranged sequence.” *Id.* (citing Lutnick ¶¶ 1777, 1778, 1787). While acknowledging that Lutnick allows players to choose a shoe from which cards are dealt “*before* the game begins,” Appellant asserts nonetheless that Lutnick “fails to teach a player *selecting* a random number generator *during* game play, and [also] fails to teach *when, during* a game, a player may select a random number generator.” *Id.* at 7 (bolding omitted).

We disagree, as Appellant ignores what Lutnick teaches as a whole. First, it is beyond dispute that Lutnick discloses the claim limitations of a “first means” and a “second means” for providing, respectively, a “first random gaming value” and a “second random gaming value” to a player on a game surface. In that regard, as explained by the Examiner, Lutnick discloses a table card game (i.e., blackjack or poker) where a player receives playing cards from at least two card shoes (i.e., random number generators). Final Act. 4–8 (citing Lutnick ¶¶ 1776–81, 1784, 1787, Fig. 2); Ans. 2–3.

We agree with the Examiner that Lutnick’s card shoes amount to a means for providing random gaming values (i.e., cards) to be used by a player in the course of playing a game of blackjack or poker.

Moreover, contrary to Appellant’s arguments, the Examiner explains specifically where Lutnick discloses not only that a player chooses when to be dealt a random gaming value (i.e., card) from a card shoe, but also that the player does so during the game and not simply at the beginning of the game. For instance, the Examiner points to Lutnick’s disclosure that a player “may use cards from two or more card shoes” and “*may select* a shoe to use” because she/he “*may decide* that the second shoe is the luckier shoe.” Ans. 3 (citing Lutnick ¶¶ 1777, 1778) (emphases added). The Examiner also points to Lutnick’s disclosure that “a player *may choose* a particular random number generator [or card shoe] from a set of possible random number generators [or card shoes] *to be used* in a particular game.” *Id.* (citing Lutnick ¶ 1787) (first emphasis added). And, in choosing a card shoe from which the cards are dealt, Lutnick discloses that the player “may use cards *in alternating fashion* from two shoes.” Lutnick ¶ 1778 (emphasis added).

In our view, a skilled artisan would understand Lutnick’s disclosure that a player “may select” or “may choose” a particular card shoe from which cards may be dealt in the course of playing blackjack or poker, and may do so “in alternating fashion,” to mean that the cards in the shoes are dealt in response to an instruction from the player to receive a card. Indeed, in the very section of Lutnick relied on by the Examiner (i.e., the section titled “Random Generators”), Lutnick states as much—

In various embodiments, a card shoe may be under manual control. For example, a human or computer may indicate to the card shoe when to deal a new card. In this way, a new card may

be dealt only when necessary in a game. For example, if a player is using the cards dealt from a card shoe for a game of video poker then *the remote terminal of the player may instruct the card shoe to deal new cards only when the player has indicated which cards to discard from an initial hand*. The cards dealt from the shoe may then be used as replacement cards for the cards discarded.

Lutnick ¶ 1772 (emphasis added). That disclosure by Lutnick clearly supports that new cards are dealt from the card shoe only upon an instruction from the player to replace any discarded cards.

Elsewhere, Lutnick repeats the same point. For instance, in introductory paragraphs speaking of “VR Gaming—Generally,” Lutnick discloses that the player decides when to be dealt a card. *See, e.g.*, Lutnick ¶ 70 (“The player may make decisions in the additional game, such as decisions of whether to hit or stand in a game of blackjack, or such as decisions of how many cards to draw in a game of video poker.”). Similarly, in describing a game terminal used by players, Lutnick discloses

the terminal may have various input devices, such as input buttons. In various embodiments, input buttons may allow the player to make standard decisions in games. A terminal may have buttons (e.g., dedicated buttons) for making a decision to ‘hit’ or for making a decision to ‘stand’ in a game of blackjack. A terminal may have a button to ‘draw’ a button to ‘hold’ and/or a button to ‘discard,’ where such buttons may be utilized in a game of video poker.

Id. ¶ 79.

In sum, when Lutnick is read as a whole, we are persuaded that Lutnick satisfies the claim limitations requiring that the game value be provided “in response to an instruction from the game player” (claim 1), “in response to the game player requesting a game value” (claim 13), or as a

result of “an indication from a player of the game, from the user interface, of a selection by the player to receive a random game value” (claim 18). The record does not support Appellant’s arguments to the contrary. Thus, we sustain the Examiner’s rejections of independent claims 1, 13, and 18, as well as the dependent claims not argued separately from those base claims, i.e., claims 2, 3, 5–9, 14, 15, and 17.

B. Claims 4, 11, 12, 16

Although Appellant argues claims 4, 11, 12, and 16 separately, it repeats the same argument it made in refuting the Examiner’s rejection of the independent claims, namely, that Lutnick only allows a player to select a shoe from which a card is to be dealt “*before* commencement of game play” but not “during game play.” Appeal Br. 7–8 (bolding omitted). For the same reasons provided above in our analysis of the rejection of the independent claims, we do not find this argument persuasive. Thus, we sustain the Examiner’s rejection of claims 4, 11, 12, and 16. *See* Final Act. 5–8; Ans. 3–5.

C. Claim 19

The Examiner rejected dependent claim 19 under 35 U.S.C. § 103 as unpatentable over Lutnick and Lancaster. Final Act. 9. To refute the rejection of this claim, Appellant relies solely on the arguments it presented with respect to base claim 18. Appeal Br. 8–9. For the same reasons provided above in our analysis of the rejection of claim 18, we do not find this argument persuasive. Accordingly, we sustain the Examiner’s rejection of dependent claim 19.

CONCLUSION

We sustain the Examiner's rejection of claims 1–9 and 11–18 as anticipated by Lutnick, as well as the rejection of claim 19 as unpatentable over Lutnick and Lancaster.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–9, 11–18	102(a)(2)	Lutnick	1–9, 11–18	
19	103	Lutnick, Lancaster	19	
Overall Outcome			1–9, 11–19	

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