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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 _____)
7 CG TECHNOLOGY DEVELOPMENT, LLC)
8 et al.,)
9 Plaintiffs,)
10 vs.)
11 BWIN.PARTY (USA), INC. et al.,)
12 Defendants.)

2:16-cv-00871-RCJ-VCF

ORDER

13 This case arises out of the alleged infringement of eleven patents relating to online
14 gambling. Pending before the Court is a Motion to Dismiss (ECF No. 31).

15 **I. FACTS AND PROCEDURAL HISTORY**

16 Plaintiff CG Technology Development, LLC (“CG Tech”) is a wholly owned subsidiary
17 of non-party CG Technology, L.P. (“CG”), which provides technology solutions for lottery,
18 gaming, racing, and sports wagering. (Am. Compl. ¶ 2, ECF No. 23). “[CG] specializes in
19 providing secure, scalable, mobile technology and risk management solutions to integrated
20 resorts, gaming partners, race and sports books, and lottery industries.” (*Id.*). CG and CG Tech
21 produce mobile phone applications for real-money and social casino gaming, as well as account-
22 based wagering systems. (*Id.*).

1 CG Tech is the assignee of U.S. Patent No. RE39,818. Plaintiff Interactive Games
2 Limited (“IG Ltd”) is the assignee of U.S. Patent Nos. 6,899,628; 6,979,267; 8,342,924;
3 7,029,394; and 9,111,417. Plaintiff Interactive Games LLC (“IG LLC”) is the assignee U.S.
4 Patent Nos. 7,534,169; 8,771,058; 8,814,664; 9,355,518; and 9,306,952. Plaintiffs have sued
5 Defendants Bwin.Party Digital Entertainment, PLC (“Bwin”), Bwin.Party (USA), Inc. (“Bwin
6 USA”), and Bwin.Party Entertainment (NJ), LLC (“Bwin NJ”) in this Court for direct and willful
7 infringement via operation of its various online casino games. Bwin USA and Bwin NJ
8 (collectively, “Movants”) have asked the Court to dismiss the infringement claims as to the ‘058,
9 ‘664, ‘518, and ‘952 Patents (collectively, “the Patents”) based on unpatentability under 35
10 U.S.C. § 101. The Patents are all owned by IG LLC.¹

11 **II. LEGAL STANDARDS**

12 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
13 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of
14 what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47
15 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
16 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
17 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720
18 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for
19 failure to state a claim, dismissal is appropriate only when the complaint does not give the
20 defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell*

21
22 1 The Court has already ruled in a related case brought by Plaintiffs against another defendant
23 that the claims of the ‘924, ‘267, ‘628, ‘394, ‘417, and ‘169 Patents asserted in that case were
24 invalid as being directed to unpatentable subject matter under § 101. (*See Order*, ECF No. 36 in
CG Tech. Dev., LLC v. Big Fish Games, Inc., No. 2:16-cv-857). The Court ruled that the ‘818
Patent was not invalid under § 101 and gave Plaintiffs leave to amend to allege infringement of
claims not depending from the invalid claims. (*See id.*).

1 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is
2 sufficient to state a claim, the court will take all material allegations as true and construe them in
3 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
4 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
5 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
6 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

7 A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a
8 plaintiff must plead facts pertaining to his own case making a violation “plausible,” not just
9 “possible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–79 (2009) (citing *Twombly*, 550 U.S. at 556)
10 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
11 draw the reasonable inference that the defendant is liable for the misconduct alleged.”). That is,
12 under the modern interpretation of Rule 8(a), a plaintiff must not only specify or imply a
13 cognizable cause of action (*Conley* review), but also must allege the facts of his case so that the
14 court can determine whether the plaintiff has any basis for relief under the cause of action he has
15 specified or implied, assuming the facts are as he alleges (*Twombly-Iqbal* review). Put
16 differently, *Conley* only required a plaintiff to identify a major premise (a cause of action), but
17 *Twombly* and *Iqbal* require a plaintiff also to allege minor premises (facts of the plaintiff’s case)
18 such that the syllogism showing liability is logically complete and that liability necessarily, not
19 only possibly, follows (assuming the allegations are true).

20 “Generally, a district court may not consider any material beyond the pleadings in ruling
21 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
22 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
23 *& Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents
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1 whose contents are alleged in a complaint and whose authenticity no party questions, but which
2 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
3 motion to dismiss” without converting the motion to dismiss into a motion for summary
4 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule
5 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
6 *Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court
7 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for
8 summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.
9 2001).

10 **III. ANALYSIS**

11 Movants ask the Court to dismiss the infringement claims, arguing that the Patents are
12 patent-ineligible under *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014). An
13 inventor may obtain a patent on “any new and useful process, machine, manufacture, or
14 composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. However,
15 the Supreme Court “ha[s] long held that this provision contains an important implicit exception:
16 Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp.*, 134 S.
17 Ct. at 2354 (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107,
18 2116 (2013)). The driving concern behind this exclusionary principle is one of pre-emption—
19 “that patent law not inhibit further discovery by improperly tying up the future use of” these
20 building blocks of human ingenuity.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus*
21 *Labs., Inc.*, 132 S. Ct. 1289, 1301 (2012)). Notably, though, “an invention is not rendered
22 ineligible for patent simply because it involves an abstract concept,” *id.* (citing *Diamond v.*
23 *Diehr*, 450 U.S. 175, 187 (1981)); “[a]pplications of such concepts to a new and useful end . . .

1 remain eligible for patent protection,” *id.* (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))
2 (internal quotation marks and alterations omitted). In other words, “in applying the § 101
3 exception, [courts] must distinguish between patents that claim the buildin[g] block[s] of human
4 ingenuity and those that integrate the building blocks into something more, thereby
5 transform[ing] them into a patent-eligible invention.” *Id.* (quoting *Mayo Collaborative Servs.*,
6 132 S. Ct. at 1294, 1303) (internal quotation marks omitted; second through fourth alterations in
7 original).

8 The Supreme Court has adopted a two-step test for “distinguishing patents that claim
9 laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible
10 applications of those concepts.” *Id.* at 2355. First, a court determines whether the claim is
11 “directed to one of those patent-ineligible concepts.” *Id.* If not, the analysis ends. If so,
12 however, a court must consider the elements of each claim “both individually and ‘as an ordered
13 combination’ to determine whether the additional elements ‘transform the nature of the claim’
14 into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1298). Step two is “a search
15 for an “‘inventive concept’”—i.e., an element or combination of elements that is ‘sufficient to
16 ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible
17 concept] itself.’” *Id.* (quoting *Mayo*, 132 S. Ct. at 1294). Such a transformation requires “more
18 than simply stat[ing] the [abstract idea] while adding the words ‘apply it.’” *Id.* (quoting *Mayo*,
19 132 S. Ct. at 1294) (alterations in original).

20 A district court may determine whether a patent is eligible under § 101 at the dismissal
21 stage. *See generally Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343 (Fed. Cir.
22 2015) (affirming such a dismissal). Plaintiffs argue that to invalidate a patent under § 101
23 requires clear and convincing evidence. They cite two published cases to support their argument.
24

1 In the first case, however, the only mention of the requirement of a standard of clear and
2 convincing evidence was in a concurring opinion. *See CLS Bank Int’l v. Alice Corp. Pty.*, 717
3 F.3d 1269, 1304–05 (Fed. Cir. 2013) (Rader, C.J., concurring in part and dissenting in part). In a
4 separate concurring opinion, Judge Lourie determined that patent claims should receive a
5 presumption of validity when § 101 is raised as a basis for invalidity. *Id.* at 1284. However,
6 there was no majority opinion on the issue, and as Chief Judge Rader observed, “[t]hough much
7 is published today discussing the proper approach to the patent eligibility inquiry, nothing said
8 today beyond our judgment has the weight of precedent.” *Id.* at 1292 n.1 (Rader, C.J., concurring
9 in part and dissenting in part). Furthermore, the Supreme Court affirmed the Court of Appeals’
10 decision in *Alice Corp.*, but it did not discuss the issues of presumption of validity and burden of
11 proof in its § 101 analysis. *See* 134 S. Ct. at 2354–60.

12 In the other case, the Court of Appeals held that “any attack on an issued patent based on
13 a challenge to the eligibility of the subject matter must be proven by clear and convincing
14 evidence.” *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1342 (Fed. Cir. 2013). However,
15 *Ultramercial* lacks precedential effect because the Supreme Court vacated the judgment in the
16 case “for further consideration in light of *Alice*.” *WildTangent, Inc. v. Ultramercial, LLC*, 134 S.
17 Ct. 2870 (2014). On remand, the Court of Appeals reconsidered the validity issue in light of
18 *Alice Corp.* and affirmed the district court’s ruling dismissing the patent claims while not
19 discussing any presumption of validity or standard of clear and convincing evidence.
20 *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716–17, 720 (Fed. Cir. 2014). In a concurring
21 opinion, Judge Mayer stated that “no presumption of eligibility should attach when assessing
22 whether claims meet the demands of section 101.” *Id.* (Mayer, J., concurring).

1 As these cases demonstrate, and as several courts have noted, there is uncertainty as to
2 whether a presumption of invalidity or a clear and convincing standard applies in § 101
3 challenges. *See, e.g., Esoterix Genetic Labs. LLC v. Qiagen Inc.*, 133 F. Supp. 3d 349, 355 (D.
4 Mass. 2015); *Affinity Labs of Texas, LLC v. DirecTV, LLC*, 109 F. Supp. 3d 916, 932 (W.D. Tex.
5 2015); *Communique Lab., Inc. v. Citrix Sys., Inc.*, 151 F. Supp. 3d 778, 786–87 (N.D. Ohio
6 2015). The Court agrees with other district courts that the most reasonable approach is to apply a
7 clear and convincing standard to invalidity defenses under § 101 when the analysis involves
8 underlying factual issues but not when it involves purely legal issues. *See Communique Lab*, 151
9 F. Supp. 3d at 786–87; *Affinity Labs*, 109 F. Supp. 3d at 932–33. In the present context, where
10 the Court is tasked with determining the patentability of claims as a matter of law under *Alice*
11 *Corp.* based on the nature of the claims themselves, the content of which is not disputed,
12 standards of proof are inapposite. Unlike with factual issues, a court conducting pure legal
13 analysis does not ask itself “how sure” it is of the result.

14 **A. The ‘058 Patent**

15 Movants argue Claim 19 is representative of the ‘058 Patent and that it is invalid under
16 *Alice Corp.* More importantly, Claim 19 is the only claim Plaintiffs have accused Defendants of
17 infringing. (*See* Am. Compl. ¶ 113–18). Claim 19 reads in full:

18 A computer system comprising:

19 a processor operable to execute a set of instructions; and

20 a memory having stored thereon the set of instructions, in which the set of
21 instructions, when executed by the processor, cause the computer system to
perform a method comprising:

22 determining a first location of a mobile gaming device,

23 determining a first game configuration associated with the first location,

1 generating a first game outcome using the first game configuration,
2 determining a first payout associated with the first game outcome,
3 crediting a player account with a first amount based on the first payout,
4 determining a second location of the mobile gaming device, wherein the
5 second location is different from the first location,
6 determining a second game configuration associated with the second
7 location, wherein the second game configuration is different from the first
8 game configuration,
9 generating a second game outcome using the second game configuration,
10 determining a second payout associated with the second game outcome,
11 and
12 crediting the player account with a second amount based on the second
13 payout.

14 U.S. Patent No. 8,771,058 col. 62, ll. 1–27. The claim consists of a two-element apparatus (a
15 generic processor and a generic memory) wherein the memory contains instructions to execute a
16 ten-element method. *See id.*

17 The process itself is one that can largely be conducted in the abstract. The Court of
18 Appeals has held that collecting, recognizing, and storing data is an abstract idea because it is a
19 concept that is “undisputedly well-known” and “humans have always performed these
20 functions.” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d
21 1343, 1347 (Fed. Cir. 2014). Determining game configurations (based on some set of rules, e.g.,
22 an algorithm, list, etc.), generating game outcomes based on the configurations (based on some
23 set of rules, e.g., an algorithm, list, etc.), determining payouts based on game outcomes (based on
24 some set of rules, e.g., an algorithm, list, etc.), and crediting players based on payouts
(accounting) are abstract ideas that can be conducted in one’s mind. At least one aspect of the
process, however, requires activity outside of one’s mind: determining the physical location of

1 the mobile gaming device. Claim 19 is limited to using a computer system to locate a mobile
2 gaming device. The specifications note that location verification technology may be network- or
3 satellite-based and may use methods such as geo-fencing or triangulation. *See* U.S. Patent No.
4 8,771,058 col. 17, ll. 16–29. Although the invention disclaims any limitations based on these
5 methods, *see id.*, determining an actual, physical location is not an abstract concept. One cannot
6 perform the function in one’s head. Claim 19 does not simply instruct a practitioner to use a
7 computer to perform calculations using pre-existing location data; it requires as an essential step
8 that the computer actually determine the location of the mobile gaming device.

9 *Alice Corp.* stands for the proposition that a method directed to an unpatentable abstract
10 concept does not become patentable simply because the practitioner is directed to use a generic
11 computer to perform it or because the invention is claimed as a generic computer apparatus used
12 to perform the unpatentable method. But it is unpatentable methods that are impugned under
13 *Alice Corp.* Methods utilizing a generic computer apparatus are not per se infirm under *Alice*
14 *Corp.*; it is just that the bare addition of a generic computer will not make an otherwise
15 unpatentable method patentable. Here, Claim 19 requires the location of a mobile gaming device
16 via the computer system. That is concrete enough to take the claim outside the scope of *Alice*
17 *Corp.*’s “abstract idea” exception to patentability under § 101. The location of the mobile
18 gaming device via computer is a limited, concrete, physical task.² Claim 19 does not monopolize
19 purely abstract concepts or all of their applications. Even if the act of locating a remote object
20 could be considered an abstract idea—and it probably can’t be—Claim 19 does not cover all of

21
22 2 Even the location of the mobile gaming device via closed circuit camera or via spies with
23 telephones would be a concrete, physical task. Movants argue that similar methods of location-
24 based gaming options, such as providing certain gaming options only in certain areas of casinos
straddling the California–Nevada border, are well known and long-practiced, but that goes to
anticipation or obviousness under §§ 102 or 103, respectively, not patentability under § 101.

1 its applications, but only the limited application of determining the location of a mobile gaming
2 device using a computer. The computer system in Claim 19 is not applied purely in its capacity
3 as a generic computing device, i.e., as a substitute for a human mind, but at least in part as a
4 communication tool. The fact that the computer system is also used to perform functions that are
5 abstract (determining game outcomes and accounting for winnings) does not render the claim
6 unpatentable. The integration of the non-abstract function of determining the mobile gaming
7 device location via computer with the other processes for which the computer is used renders the
8 invention as a whole patentable even if certain elements might not be separately patentable. The
9 Court therefore denies the motion to dismiss Claim 19 of the '058 Patent under § 101.

10 **B. The '664 Patent**

11 Movants argue Claim 17 is representative of the '058 Patent and that it is invalid under
12 *Alice Corp.* More importantly, Claim 17 is the only claim Plaintiffs have accused Defendants of
13 infringing. (*See* Am. Compl. ¶ 126–34). Claim 17 reads in full:

14 An apparatus comprising:

15 a non-transitory medium having stored thereon a plurality of instructions that
16 when executed by a computing device, cause the computing device to:

17 determine that a mobile device associated with a first player is located in a
18 first location that is designated as a non-monetary, points only wagering
19 area;

19 in response to determining that the mobile device is located in the first
20 location, automatically enable points wagering and automatically disabling
21 monetary wagering from the mobile device while the mobile device
22 remains in the first location;

21 receive, from the mobile device, a challenge by the first player, in which
22 the challenge identifies an amount of points selected by the player and a
23 second player selected by the player against whom to place the challenge;

23 in response to receiving the challenge, identify the challenge to the second
24 player;

1 receive an acceptance of the challenge from the second player;
2 in response to receiving the acceptance, form a wager between the first
3 player and the second player based on the challenge;
4 adjust points in an account of a winning player of the challenge in
5 response to determining an outcome of the challenge;
6 determine mobile device is located in a second location that is designated
7 as a monetary wagering area; and
8 in response to determining that the mobile device is located in the second
9 location, automatically enable monetary wagering and automatically
10 disable points wagering from the mobile device while the mobile device
11 remains in the second location;
12 wherein the second location is geographically different from the first
13 location.

14 U.S. Patent No. 8,814,664 col. 32, ll. 1–38. The claim consists of a single-element apparatus (a
15 generic “non-transitory medium,” i.e., firmware) containing instructions to execute a ten-element
16 method. *See id.* The Court finds that this claim is not invalid under § 101. As with Claim 19 of
17 the ‘058 Patent, the requirement in Claim 17 of the ‘664 Patent of physically locating a mobile
18 device via computer to determine the game configuration (monetary versus non-monetary)
19 makes the process sufficiently concrete to survive *Alice Corp.*

20 **C. The ‘518 Patent**

21 Movants argue Claim 1 is representative of the ‘518 Patent and that it is invalid under
22 *Alice Corp.* Plaintiffs have accused Defendants of infringing Claims 1 and 9 of the ‘518 Patent.
23 (See Am. Compl. ¶ 144–48).³ Claim 1 reads in full:

24 ³ Although Plaintiffs allege Defendants have also infringed Claim 1 of the ‘518 Patent, they have only made factual allegations as to Claim 9. The Court will address both claims under § 101, because the analysis requires only an examination of the patent claims themselves, not the allegations of infringement.

1 A method for supporting multiple users in an electronic gaming system, the
method comprising:

2 establishing for a user of the electronic gaming system a user profile on a data
3 storage device, wherein the user accesses the electronic gaming system via an
electronic device;

4 receiving by at least one processor via a communications network from the
5 electronic device location data of the electronic device, wherein:

6 the electronic device comprises sensor for detecting location,
the electronic device obtains the location data from the sensor, and

7 the electronic device communicates the location data via the
8 communications network;

9 recognizing by the at least one processor an occurrence of an event;

10 updating by the at least one processor the user profile in response to the event,

11 wherein recognizing the occurrence of the event comprises determining,
12 based on the location data, an existence of the user in a particular location,
and

13 wherein updating the user profile in response to the event
14 comprises storing the particular location; and

15 based on determining the existence of the user in the particular location, initiating
16 by the at least one processor a gaming session, wherein initiating the gaming
17 session includes communicating via the communications network information to
18 the electronic device, wherein the information causes the electronic device to
19 present via a display of the electronic device a gaming environment to the user or
to present via the display to the user a modified gaming environment that
20 indicates to the user a last gaming activity of a plurality of gaming activities
accessed by the user during a prior gaming session, a determination as to whether
to display the gaming environment or the modified gaming environment being
based on whether there is or is not a stored indication of a last one of the plurality
gaming activities accessed by the user during the prior gaming session.

21 U.S. Patent No. 9,355,518 col. 26, l. 62–col. 27, l. 35. The claim is a five-element method claim,
22 wherein the third element contains three sub-elements and the fourth element contains two sub-
23 elements which further limit the third and fourth elements, respectively. *See id.* The Court finds
24 that this claim is not invalid under § 101. As with Claim 19 of the ‘058 Patent, the requirement

1 in Claim 1 of the ‘518 Patent of physically locating an electronic device via computer as a trigger
2 to present a visual display of a gaming environment makes the process sufficiently concrete to
3 survive *Alice Corp.* Claim 9 is for an apparatus to perform the method of Claim 1. *See id.* col.
4 27, l. 66–col. 28, l. 38. For the same reason, it is not unpatentable under § 101.

5 **D. The ‘952 Patent**

6 Movants argue Claim 1 is representative of the ‘952 Patent and that it is invalid under
7 *Alice Corp.* More importantly, Claim 1 is the only claim Plaintiffs have accused Defendants of
8 infringing. (*See Am. Compl.* ¶ 156–61). Claim 1 reads in full:

9 An apparatus, comprising:

10 at least one processor; and

11 a memory that stores instructions which, when executed by the at least one
12 processor, direct the at least one processor to:

13 determine a plurality of selectable betting parameters for a wager in a
game,

14 each selectable betting parameter comprising a game parameter
that affects an outcome of a bet by a first user in the game,

15 the plurality of selectable betting parameters comprising at least a
16 first selectable betting parameter and a second selectable betting
parameter,

17 the game being played by at least one user using a corresponding at
18 least one wireless gaming terminal associated with each of the at
least one user, each of the at least one wireless gaming terminal
19 having a wireless network interface operable to transmit and
receive gaming information, the at least one user comprising the
20 first user,

21 in which each wireless gaming terminal is in communication with
22 a location determination system that determines a location of the
wireless gaming terminal, each wireless gaming terminal further
23 having a user interface for interacting with a corresponding user of
the wireless gaming terminal to implement a game, wherein the
24 game depends on the determined location;

1 determine a plurality of different locations in a gaming area,

2 each location corresponding to at least one of the plurality of
3 selectable betting parameters,

4 the plurality of locations comprising at least a first location
5 corresponding to the first betting parameter and a second location
6 corresponding to the second betting parameter,

7 in which the first location is different from the second location,

8 in which the first selectable betting parameter is different from the
9 second selectable betting parameter such that a selection of the first
10 selectable betting parameter would cause a different result for the
11 bet than a selection of the second selectable betting parameter;

12 during the game, determine a location of at least one wireless gaming
13 terminal corresponding to each of the at least one user in the game, in
14 which the act of determining the location of the at least one wireless
15 gaming terminal comprises determining a location of the first user by
16 determining a location of a first wireless gaming terminal of the first user;

17 determine at least one of the plurality of selectable betting parameters
18 associated with the at least one user in the game based on the determined
19 location of the at least one user, in which the act of determining at least
20 one of the plurality of selectable betting parameters comprises determining
21 at least one of the plurality of selectable betting parameters associated
22 with the first user based on the determined location of the first user; and

23 determine the outcome of the bet based at least in part on the determined
24 at least one betting parameter in accordance with one or more
predetermined rules of the game.

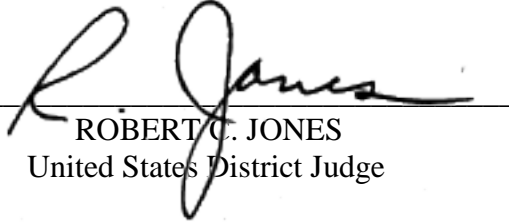
18 U.S. Patent No. 9,306,952 col. 34, l. 51–col. 35, l. 48. The claim consists of a two-element
19 apparatus (a generic processor and a generic memory) wherein the memory contains instructions
20 to execute a five-element method. *See id.* The Court finds that this claim is not invalid under
21 § 101. As with Claim 19 of the ‘058 Patent, the requirement in Claim 1 of the ‘952 Patent of
22 physically locating wireless gaming terminals via computer to determine one or more betting
23 parameters makes the process sufficiently concrete to survive *Alice Corp.*

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 31) is DENIED.

3 IT IS SO ORDERED.

4 DATED: This 18th day of October, 2016.

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6 _____
7 ROBERT C. JONES
8 United States District Judge
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