UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/427,040	04/21/2009	Renald Poisson	1664.002A	6191

29637 7590 02/27/2015

BUSKOP LAW GROUP, P.C.
4511 Dacoma Street
HOUSTON, TX 77092

EXAMINER
LAYNO, BENJAMIN

ART UNIT	PAPER NUMBER
3711	

MAIL DATE	DELIVERY MODE
02/27/2015	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RENALD POISSON

Appeal 2012-011084
Application 12/427,040
Technology Center 3700

Before MICHAEL C. ASTORINO, NINA L. MEDLOCK, and CYNTHIA L. MURPHY, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We reverse.

Claimed Subject Matter

Claim 1, the sole independent claim, is representative of the subject matter on appeal and is reproduced below.

> 1. A method for playing a card game that simulates a game of football with kibitz and side bet options, the method comprising:
>
> providing a table as a playing area comprising:
>
> a simulated football field and a simulated line of scrimmage;
>
> areas for placing a deck of playing cards;
>
> a plurality of yard markers;
>
> a first football goal and a second football goal; and
>
> indicators comprising: tabular means, numeric means, chips, numbers, markers, or game pieces for indicating bets, game information, game statistics, or combinations thereof;
>
> providing a the [sic] deck of playing cards comprising offensive play cards and defensive play cards;
>
> providing a deck of special teams cards;
>
> randomizing the deck of playing cards and the deck of special teams cards;
>
> permitting placement of at least one bet from at least one spectator;
>
> dealing a first plurality of cards from the deck of playing cards to a first player;
>
> dealing a second plurality of cards from the deck of playing cards to a second player;
>
> designating a football offense player and a football defense player;
>
> permitting selection and play of a first card by the football offense player, wherein the first card is a first offensive card or a first defensive card;
>
> indicating a first outcome with the first offensive card or the first defensive card;
>
> dealing a replacement card for the first card from the deck of playing cards to the football offense player;
>
> determining a game outcome based on the first card;

> positioning the simulated line of scrimmage within the simulated football field based on the game outcome;
> awarding winnings based on the at least one bet and the game outcome;
> placing, displaying, and tracking: the bets, the game information, the game statistics, or combinations thereof using the playing area and the indicators;
> visually displaying a progress and a status of the card game that simulates the game of football with kibitz and side bet options using the playing area and the indicators; and
> updating the progress and the status of the card game that simulates the game of football with kibitz and side bet options using the playing area and the indicators.

ANALYSIS

In rejecting claims 1–20 under 35 U.S.C. § 101, the Examiner applied the law on patentable subject matter as it existed on April 25, 2011 (the mailing date of the Final Rejection). However, more recently, in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the Supreme Court clarified the law regarding patentable subject matter.

In doing so, the Supreme Court, in *Alice*, reiterated the "framework [previously set forth in *Mayo*] for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp.*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S. Ct. 1289, 1294 (2012)). According to the Supreme Court's framework, we must first determine whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, and abstract ideas). *Id.* If so, we must secondly "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.*

The Supreme Court characterizes the second step of the analysis as "a search for an 'inventive concept' – *i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.*

Here, the Examiner finds that Appellant is attempting to claim a new set of rules for playing a card game, which the Examiner opines is an abstract idea, and, therefore, non-statutory subject matter:

> Applicant's claimed method, while arguably reciting a number of physical steps of dealing cards is viewed here as **an attempt to claim a new set of rules for playing a card game**. In this Examiner's opinion, **a set of rules qualifies as an abstract idea**.

Ans. 8.

We begin with a construction of the claim. *Cf. State St. Bank & Trust Co. v. Signature Fin. Group*, 149 F.3d 1368, 1370 (Fed. Cir. 1998) ("[W]hether the . . . patent is invalid for failure to claim statutory subject matter under § 101[ ] is a matter of both claim construction and statutory construction.") Claim 1, the sole independent claim, is directed to a "method for playing a card game that simulates a game of football with kibitz and side bet options." Claim 1 recites that the method comprises providing a table and two decks of playing cards, the table and the card decks simulate a football game. A game simulating a football game is then played using the table and cards.

We cannot agree with the Examiner that claim 1 is directed to "a new set of rules for playing a card game." Indeed, inasmuch the rules governing football games are old and well-known, it is more accurate to find the rules used in the claimed invention – which simulate a football game – likewise

old and well-known, notwithstanding that the rules are implemented using a table and two decks of cards. In our view, claim 1 is directed to the playing of a football game, using a table and cards, with kibitzing and betting features, i.e., a simulation of a football game using a table and cards.[1]

Thus, in the first step of the *Alice* analysis, the question is whether claim 1, i.e., as a simulation of a football game using a table and cards, is directed to an abstract idea. That determination has not been made in this case based on evidence. Instead, the Examiner merely expresses an opinion that "a set of rules qualifies as an abstract idea." Yet, absent supporting evidence in the record — of which there is none, the Examiner's opinion is an inadequate finding of fact on which to base the *Alice* analysis. Moreover, it does not comport with the broadest reasonable construction of claim 1 which, as we conclude, is not directed to a new set of rules for playing a card game.

The PTO bears the initial burden of establishing a prima facie case of patent-ineligible subject matter under 35 U.S.C. § 101. Because the facts and evidence do not support the finding that claim 1 is "an attempt to claim a new set of rules for playing a card game" and therefore, necessarily, is an abstract idea, a prima facie case of patent-ineligible subject matter under 35 U.S.C. § 101 has not been established in the first instance by a preponderance of the evidence.

[1] This is consistent with the description of the invention in the Specification. *See* Spec. ¶ 2 ("The simulated football game closely follows how professional football games are played and includes kibitzing and betting features useable by both players and spectators for placing bets based on game outcome.").

For these reasons, we do not sustain the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.

DECISION

We reverse the Examiner's rejection of claims 1–20.

REVERSED

Klh