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DETAILED ACTION

Response to Amendment

In response to the amendment filed 23 October 2018 wherein applicant submits arguments and claims 24-45 are pending in this application.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 24-45 are rejected under 35 U.S.C. 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. Each of Claims 24-45 recites a set of instructions or steps (i.e., rules) for managing a game and collecting, analyzing and transmitting game data including, for example, (receiving information about a first set of games that are based on one or more events, in which the one or more events are held at a venue, in which the first set of games are played by first players that are not located at the venue, allocating a portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access, receiving information about a second set of games that are based on the one or more events, in which the second set of games are played by second players that are located at the venue, in which no portion of second money used to play has been analyzed to determine whether it is directed to any the second set of games is allocated to the bonus pool, based on the second players being located at the venue, allocating bonus currency to the second players, in

which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool; receiving, a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held at the venue, determining, an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event, in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a monetary value, in which each of the first games and second games includes an wager entry into a same pari-mutuel pool) . Conducting the game as recited in Claims 24-45 are similar to the kind of “fundamental economic practices” and “idea of itself” at issue in *Alice Corp.* Although these claims are not drawn to the same subject matter, the abstract idea of managing a game is similar to the abstract ideas of rules for conducting a game (*In re Smith*), and collecting information, analyzing it and displaying certain results of the collection and analysis (*Electric Power Group*). The present claims are not limited by rules or steps that establish how the focus of the system and method is achieved. Instead, these claims embrace the abstract idea of conducting a game by collecting, displaying and transmitting game data and therefore directed to an abstract idea (Step 2A: YES).

Next, each of Claims 24-45 is analyzed to determine whether there are additional limitations recited that amount to significantly more than the abstract idea. These claims require the additional limitations of (computing device, a non-transitory medium, a network, GPS coordinates of devices). Adding these generic computer elements to perform generic functions that are well-understood, routine and conventional, such as gathering data, performing calculations, and outputting a result as evidence by *Alice Corp.*, 134 S. Ct. at 2355–56 (mere instruction to implement an abstract idea (game rules) on a computer "cannot impart patent eligibility), and *Versata Dev. Group, Inc. v. SAP Am.*

(Storing and retrieving information in memory) see MPEP (2106.05(d)(II)), does not transform the claims into eligible subject matter. Furthermore determining geographic location of an electronic mobile type device using GPS location is conventional in the art as evidenced by Aaland (US Pub. No. 2003/0036428) in paragraph 17 and Aaron (US Pub. No. 2008/0167129 in paragraph 49). Nothing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information. These computer components are generically claimed to enable the game to be conducted by performing the basic functions of: (i) performing repetitive calculations, (ii) receiving, processing, and storing data, (iii) electronic recordkeeping, and (iv) receiving or transmitting data over a network, e.g., using the Internet to gather data. The courts have recognized these function(s) to be well understood, routine, and conventional functions when claimed in a merely generic manner. Adding hardware that performs “well understood, routine, conventional activit[ies]’ previously known to the industry” will not make claims patent-eligible (US Pat No: 7,510,474 to Carter, col 6, lines 10-20, col 5, lines 21-35). Thus, taken alone, the additional elements do not amount to significantly more than the above-identified judicial exception (the abstract idea). Looking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually. There is no indication that the combination of elements improves the functioning of a computer itself or improves any other technology. Their collective functions merely provide conventional computer implementation. Therefore the claims do not have an “inventive concept” sufficient to “transform” the claimed subject matter into a patent-eligible application of the abstract idea, especially since *Genetic Technologies Limited v. Merial LLC* (Fed Cir., 2016) held that the inventive concept cannot be supplied by the abstract idea ([t]he inventive concept necessary at step two of the *Mayo/Alice* analysis cannot be furnished by the unpatentable law of nature (or natural phenomenon or abstract idea) itself. That is, under the

Mayo/Alice framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility; instead, the application must provide something inventive, beyond mere “well-understood, routine, conventional activity.” Mayo, 132 S. Ct. at 1294; see also Myriad, 133 S. Ct. at 2117; Ariosa, 788 F.3d at 1379.).

As such, the recitation of the computer limitations in Claims 24-45 amounts to mere instructions to implement the abstract idea on a computer. Taking the additional elements individually and in combination, the computer components at each step of the game perform purely generic computer functions. More specifically, when viewed individually, the additional limitations of Claims 24-45 do not add significantly more because they are simply an attempt to limit the abstract idea to a particular technological environment. That is, the general computer elements do not add meaningful limitations to the abstract idea because these additional elements represent insignificant extra-solution activity and would be routine in any computer implementation. When viewed as a combination, the additional limitations of Claims 24-45 simply instruct the practitioner to implement the concept of managing a game with routine, conventional activity specified at a high level of generality in a particular technological environment. As such, there is no inventive concept sufficient to transform the claimed subject matter into a patent-eligible application. Because the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity, these additional claim elements, when viewed as whole, do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself. In other words, these claims merely apply an abstract idea to a computer and do not (i) improve the performance of the computer itself (as in *McRO*, *Bascom* and *Enfish*), or (ii) provide

a technical solution to a problem in a technical field (as in DDR). Thus, none of the Claims 24-45 amounts to significantly more than the abstract idea itself (Step 2B: NO). Accordingly, Claims 24-45 are not patent eligible and rejected under 35 U.S.C. 101 as being directed to abstract ideas implemented on a generic computer in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on nonstatutory double patenting provided the reference application or patent either is shown to be commonly owned with the examined application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. See MPEP § 717.02 for applications subject to examination

under the first inventor to file provisions of the AIA as explained in MPEP § 2159. See MPEP §§ 706.02(l)(1) - 706.02(l)(3) for applications not subject to examination under the first inventor to file provisions of the AIA. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO Internet website contains terminal disclaimer forms which may be used. Please visit www.uspto.gov/patent/patents-forms. The filing date of the application in which the form is filed determines what form (e.g., PTO/SB/25, PTO/SB/26, PTO/AIA/25, or PTO/AIA/26) should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp.

4. Claims 24-45 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 9,123,202. Although the claims at issue are not identical, they are not patentably distinct from each other because claims 1-225 of the U.S. Patent No. 9,123,202 "anticipates" claims 24-45 of application serial number 14/840965. Accordingly, claims 24-45 of Application No. 14/840965 are not patentably distinct from claims 1-22 of U.S. Patent No. 9,123,202. Here, claims 1-12 of U.S. Patent No. 9,123,202 requires elements of claim 1, a A method comprising: receiving, by a computing device, information about a first set of games that are based on one or more events, in which the one or more events are held at a venue, in which the first set of games are played by first players that are not located at the venue; based on the first players not being located at the venue, allocating, by the computing device, a portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access; receiving, by the computing device, information about a second set of games that are based on the one or more events, in which the second set of games are played by second players that are located at the venue, in which no portion of second money used to play the second set of games is

allocated to the bonus pool; based on the second players being located at the venue, allocating, by the computing device, bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool; receiving, by the computing device, a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held at the venue; and determining, by the computing device, an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event; in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a monetary value, and in which the bonus game may not be played without using bonus currency; and claim 22, an apparatus comprising: a computing device; and a non-transitory medium having stored thereon a plurality of instructions that when executed by the computing device cause the apparatus to: receive information about a first set of games that are based on one or more events, in which the one or more events are held at a venue, in which the first set of games are played by first players that are not located at the venue; based on the first players not being located at the venue, allocate portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access; receive information about a second set of games that are based on the one or more events, in which the second set of games are played by second players that are located at the venue, in which no portion of second money used to play the second set of games is allocated to the bonus pool; based on the second players being located at the venue, allocate bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool; receive a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held

at the venue; and determine an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event; in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a monetary value, and in which the bonus game may not be played without using bonus currency while claims 24-45 of Application No. 14/840965 only requires elements of claim 1, a method comprising: receiving, by a computing device, information about a first set of games that are based on one or more events, in which the one or more events are held at a venue, in which the first set of games are played by first players that are not located at the venue; based on the first players not being located at the venue, allocating, by the computing device, a portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access; receiving, by the computing device, information about a second set of games that are based on the one or more events, in which the second set of games are played by second players that are located at the venue, in which no portion of second money used to play the second set of games is allocated to the bonus pool; based on the second players being located at the venue, allocating, by the computing device, bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool; receiving, by the computing device, a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held at the venue; and determining, by the computing device, an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event; in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a

monetary value, in which each of the first games and second games includes an wager entry into a same pari-mutuel pool; and claim 45, an apparatus comprising: a computing device; and a non-transitory medium having stored thereon a plurality of instructions that when executed by the computing device cause the apparatus to: receive information about a first set of games that are based on one or more events, in which the one or more events are held at a venue, in which the first set of games are played by first players that are not located at the venue; based on the first players not being located at the venue, allocate portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access; receive information about a second set of games that are based on the one or more events, in which the second set of games are played by second players that are located at the venue, in which no portion of second money used to play the second set of games is allocated to the bonus pool; based on the second players being located at the venue, allocate bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool; receive a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held at the venue; and determine an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event; in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a monetary value, in which each of the first games and second games includes an wager entry into a same pari-mutuel pool. Thus it is apparent that the more specific claims 1-11 of U.S. Patent No. 9,123,202 encompasses claims 24-45 of Application No. 14/840965. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention,

applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Response to Arguments

5. Applicant's arguments with respect to claims 24-45 have been considered but are moot because the arguments do not apply to any of the references being used in the current rejection.
6. Applicant arguments are drawn to 35 U.S.C. 101 are answered in the rejection above.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEX P RADA whose telephone number is (571)272-4452. The examiner can normally be reached on M-F 8-5.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like

assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A.P.R/
Examiner, Art Unit 3716

/Jay Trent Liddle/
Primary Examiner, Art Unit 3716

REMARKS

Claims 24, 35, 37-38 and 45 have been amended. No new subject matter has been added based on the claim amendments. Claims 24-45 are pending in this application.

Double Patenting

Applicant asks that any double patenting rejection be held in abeyance until such time as the claims are otherwise allowable.

35 USC 101

All the claims stand rejected under 35 U.S.C. §101 (Section 101) as being directed to non-statutory subject matter. Applicant respectfully submits that the rejection of the claims under Section 101 in the Office Action is not consistent with the 2019 Revised Patent Subject Matter Eligibility Guidance (“Guidance”), and the claims should be found patent eligible in accordance with the Guidance.

Notwithstanding Applicant’s belief that the Section 101 rejection is improper, Applicant submits that the claims as presented fully satisfy the requirements of Section 101, particularly in view of current case law and USPTO guidance. When the limitations of the present claims are properly considered in a reasoned analysis in the manner required, it is readily apparent that the various elements, and combinations of such elements, amount to significantly more than the purported “abstract idea” created in the rejection.

Representative claim 24 recites, in relevant part:

A method comprising:

receiving, by a computing device, **over a communication network, from respective first computing devices, first information** about a first set of games that are based on one or more events and played by first players, in which the one or more events are held at a venue and the **first information indicates locations respectively of the first computing devices** used to play the first set of games;

determining, by the computing device, that the first players that are playing the first set of games are not located at the venue, **based on the first information from** the first computing devices;

receiving, by the computing device, **over the communication network, from respective second computing devices, second information** about a second set of games that are based on the one or more events and played by second players, in which the **second information indicates**

locations respectively of the second computing devices used to play the second set of games;

determining, by the computing device, that the second players that are playing the second set of games are located at the venue, **based on the second information from the second computing devices**, in which no portion of second money used to play the second set of games is allocated to the bonus pool;

based on the determining that the second players are located at the venue, allocating, by the computing device, bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool;

(Emphasis added, see specification, for example, at paragraphs [0035]-[0036], [0039] and [0058]) Claim 45 recites similar limitations.

Applicant submits that the claims as presented fully satisfy the requirements of Section 101, particularly in view of current case law and the Guidance. In particular, the Guidance provides that a patent claim is patent eligible if the claim “as a whole **integrates the recited judicial exception [i.e., abstract idea] into a practical application of the exception.**” (See Guidance at 18). According to the Guidance, any additional elements recited in the claim beyond the judicial exception must be evaluated, individually and in combination, to determine whether the additional elements integrate the exception into a practical application. The following are exemplary considerations for making this determination:

An additional element of the claim reflects an **improvement in the functioning of a computer, or an improvement to other technology or technical field**

An additional element of the claim implements the abstract idea with, **or uses the abstract idea in conjunction with, a particular machine** or manufacture that is integral to the claim

An additional element of the claim effects a transformation or reduction of a particular article to a different state or thing

An additional element of the claim applies or uses the abstract idea in some other meaningful way beyond generally linking the use of the abstract idea to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the abstract idea

Referring to the emphasized features of amended claim 24 indicated above, Applicant respectfully submits that at least these features constitute an additional element(s) that **integrates an abstract idea into a practical application**, and in particular provides an **improvement in the functioning of a computer, or an improvement to other technology or technical field, and implements the abstract idea in conjunction with a particular machine**. For example, these claimed features help to improve computer performance by using a **location indication** of electronic computing **devices** used to play given sets of games by players where the games are based on events held at a venue, and in particular **receiving, over a communication network** by a computing device, **from** first and second **computing devices, information indicating the locations** of the first and second computing devices, which are used to play respective first and second sets of games by first and second players, and **determining, based on the locations indicated** by the first and second information respectively, that the first players are playing the first set of games not at the venue and that the second players are playing the second set of games at the venue, and where, for example, the second **location information may be based on GPS coordinates of the second computing devices or a network through which the second set of games were played**.

In one example, the claimed features may help control activity over the network and control computer workload including computer resources. The claimed features allow a computer to perform a function not previously performable by a computer and are implemented using a particular machine. In one example, the application (see paragraphs [00035] and [00058] reproduced below) describes problems with current techniques as well as **advantages to solutions to problems** and contains **a teaching in the specification about how the claimed invention improves a computer or other technology** and **is implemented using a particular machine** as discussed in the Guidelines above.

[00035] In some embodiments, a **location of a player when a game action is taken** may define a source and/or may otherwise be **used to determine how to allocate** money to a bonus pool. For example, a source may include a location at which a game action is taken (e.g., a wager is placed). A mobile device may be used to take a game action. If that device is on a grounds of a race track, then allocation to the pool may not be performed. If that device is off of a grounds of a race track, then allocation to the pool may be performed. Accordingly, some embodiments may include **determining a location of the mobile device (e.g., receiving GPS**

coordinates, determining if the device is connected to a Wi-Fi network that spans the grounds, determining a location based on IP location, determining a location based on a geofence, etc.). Some examples of a mobile device operation that may be used in some embodiments is described in US patent application 13/780157, which is hereby incorporated herein by reference.

[00058] Venue 201 may include a gaming server and/or one or more other computing devices that may perform one or more actions such as those of figure 1. For example, such a computing device may include a kiosk, a teller computer, a mobile device of a user, and so on. Such a computing device may display a gaming interface, display balance information, accept money risked in gameplay, transmit information, maintain balance information, communicate with a totalizer, determine outcomes, display information about outcomes, and so on. For example, in one example, a mobile device of a user may risk money by taking one or more game actions through a router or other network component that operates a gaming network at the venue. A gaming action may be taken by transmitting information through the network to a totalizer. The information may identify that the mobile device is located at the venue (e.g., an IP address, a GPS location, a network ID to which the device is connected, a username and/or password that is associated with the venue, and so on. Such information may be used to determine allocation of bonus points and/or money into a bonus pool. A system of such a venue may perform a method of figure 1 and/or some other method that may encourage players to game at the venue rather than off the venue. Such a method may be performed solely by such a system and/or in connection with a totalizer and/or other component of figure 2 or otherwise.

(Emphasis added) Thus, the claimed invention is directed to improvements in **computer performance**, particularly by determining, based information indicating location of computing devices, received over a communication network from the computing devices, that players that are playing given games using the computing devices, are located or are not located at the venue, where the location indication may be from GPS or network information. The claimed features may help **improve computer performance** which may help **control activity over the network** and control computer workload including computer resources such as memory, processor and network resources such as network bandwidth.

In particular, the present claims are similar to those of *Bascom*, *Amdocs*, and *DDR Holdings*. In these cases, the CAFC followed the Supreme Court's guidance and clearly identified that improvements rooted in computer technology that included an inventive concept add something significantly more to an abstract idea. The CAFC in *DDR Holdings* stated:

these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

Here, like in *DDR Holdings*, the claims clearly recite improvements to technology that are rooted in networking and computers and, thus, integrate a judicial exception into a practical application. Among other things, speed, usability and efficiency are technological improvements addressed by the claims that are rooted in computers and networking.

Further, in the event it is found that the claims do not integrate the recited abstract idea under Step 2A of the Guidance, which is not admitted, it is respectfully submitted that the claims nonetheless are patent eligible under Step 2B of the Guidance. The considerations to be performed under Step 2B include considering whether the claim includes a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept is present. The Memorandum from the Deputy Commissioner for Patent Examination Policy issued on April 19, 2018 titled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (the “*Berkheimer Memo*”) explicitly requires that claim elements cannot be well understood, routine, or conventional unless the examiner finds, and expressly supports a rejection in writing with:

1. A citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the additional element(s). (...)
2. A citation to one or more of the court decisions discussed in MPEP § 2106.05(d)(II) as noting the well-understood, routine, conventional nature of the additional element(s). (...)
3. A citation to a publication that demonstrates the well-understood, routine, conventional nature of the additional element(s). (...) or
4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of the additional element(s).

It is respectfully submitted that the rejection here does not satisfy any of these requirements because it merely provides conclusory statements and does not comport with the *Berkheimer Memo*. Furthermore, for the reasons set forth above, it is submitted that the claims include

additional subject matter that is not well-understood, routine, conventional activity and thus an “inventive concept” at Step 2B.

In view of the foregoing, Applicant respectfully requests withdrawal of the 35 U.S.C. § 101 rejection.

Conclusion

Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant’s undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, Applicant petitions for that extension of time required to make this response timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938.

Respectfully submitted,

Dated: March 11, 2019

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Claims

1-23. (canceled)

24. (currently amended) A method comprising:

receiving, by a computing device, over a communication network, from respective first computing devices, first information about a first set of games that are based on one or more events and played by first players, in which the one or more events are held at a venue and the first information indicates locations respectively of the first computing devices used to play the first set of games;

determining, by the computing device, that the first players that are playing the first set of games are not located at the venue, based on the first information from the first computing devices, ~~in which the first set of games are played by first players that are not located at the venue;~~

based on the determining that the first players are not being located at the venue, allocating, by the computing device, a portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access;

receiving, by the computing device, over the communication network, from respective second computing devices, second information about a second set of games that are based on the one or more events and played by second players, in which the second information indicates locations respectively of the second computing devices used to play the second set of games;

determining, by the computing device, that the second players that are playing the second set of games are played by second players that are located at the venue, based on the second information from the second computing devices, in which no portion of second money used to play the second set of games is allocated to the bonus pool;

based on the determining that the second players are being located at the venue, allocating, by the computing device, bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool;

receiving, by the computing device, over the communication network, a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held at the venue; and

determining, by the computing device, an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event;

in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a monetary value, in which each of the first games and second games includes an wager entry into a same pari-mutuel pool.

25. (previously presented) The method of claim 24, in which the request to play the bonus game is a wager of an amount of bonus currency that the winning condition will occur, in which the winning condition includes at least one guess at a winner of a race.

26. (previously presented) The method of claim 24, comprising: determining a date at which the bonus currency expires if the bonus currency is not used and identifying the date to the one of the second players.

27. (previously presented) The method of claim 24, comprising: determining that the second event is eligible to be a basis of the bonus game and allowing the use of bonus currency to play the bonus game on the second event in response.

28. (previously presented) The method of claim 27, in which determining that the second event is eligible includes determining that the second event is a last event of a day held at the venue, and in which the method includes preventing use of the bonus currency on other events of the day.

29. (previously presented) The method of claim 27, comprising: determining that no one wins a bonus game based on the second event and carrying forward a balance of the bonus pool to a future event on which a future bonus game may be based.

30. (previously presented) The method of claim 29, comprising: determining that a bonus pool must be won on the future event; determining that no one wins a bonus game based on the future event; and awarding the bonus pool to at least one player of the bonus game based on the future event that did not win based on a determination that the bonus pool must be won on the future event.

31. (previously presented) The method of claim 27, in which non-bonus games may be played based on the second event with non-bonus currency.

32. (previously presented) The method of claim 24, in which any event qualifies to be a basis of the bonus game.

33. (previously presented) The method of claim 24, comprising: requiring that the bonus game be a wager with a particular risk characteristic.

34. (previously presented) The method of claim 33, in which requiring that the bonus game be the wager with the particular risk characteristic includes requiring that the bonus game be a superfecta wager.

35. (currently amended) The method of claim 24, comprising: based on the determining that first players are not being-located at the venue, not allocating, by the computing device, any bonus currency to the first players.

36. (previously presented) The method of claim 24, comprising: determining that no portion of the second money should be allocated to the bonus pool based on the second set of games being played at the venue.

37. (currently amended) The method of claim 36, in which the second information indicates comprising-determining-the location-locations respectively of the second computing devices based on at least one of a-GPS coordinates of the second computing devices used to play the second games-and or a network through which the second set of games were played.

38. (currently amended) The method of claim 36, in which the second set of game-games are played through the venue.

39. (previously presented) The method of claim 36, in which determining that no portion of the second money should be allocated to the bonus pool includes determining that no portion of the second money should be allocated to the bonus pool based on the second set of games being played at the venue and through an approved gaming provider.

40. (previously presented) The method of claim 39, comprising allocating a portion of third money used to play a third set of games to the bonus pool based on the third set of games being played at the venue and with an unapproved gaming provider.

41. (previously presented) The method of claim 24, in which bonus currency includes points that may be used to play the bonus game.

42. (previously presented) The method of claim 24, in which the first set of games are first wagers related to one or more horse races run at the venue and the second set of games are second wagers related to the same one or more horse races.

43. (previously presented) The method of claim 42, in which the first money is money risked in the first wagers and the second money is money risked in the second wagers.

44. (previously presented) The method of claim 24, in which the portion differs for each game based on a riskiness of the game and the method comprises determining the portion.

45. (currently amended) An apparatus comprising:

a computing device; and

a non-transitory medium having stored thereon a plurality of instructions that when executed by the computing device ~~cause~~ causes the apparatus to:

receive, over a communication network, from respective first computing devices, first information about a first set of games that are based on one or more events and played by first players, in which the one or more events are held at a venue and the first information indicates locations respectively of the first computing devices used to play the first set of games;

determine that the first players that are playing the first set of games are not located at the venue, based on the first information from the first computing devices, in which the first set of games are played by first players that are not located at the venue;

based on a determination that the first players are not being located at the venue, allocate portion of first money used to play the first set of games to a bonus pool to which players located at the venue may gain access;

receive, over the communication network, from respective second computing devices, second information about a second set of games that are based on the one or more events and played by second players, in which the second information indicates locations respectively of the second computing devices used to play the second set of games;

determine that the second players that are playing the second set of games are played by second players that are located at the venue, based on the second information from the second computing devices, in which no portion of second money used to play the second set of games is allocated to the bonus pool;

based on a determination that the second players being are located at the venue, allocate bonus currency to the second players, in which the bonus currency may be used by the second players to play a bonus games that may win at least part of the bonus pool;

receive, over the communication netowr, a request to play a bonus game using the bonus currency from one of the second players, in which the request identifies a winning condition of a second event held at the venue; and

determine an outcome of the bonus game, in which the one of the second players wins money from the bonus pool if the winning condition occurs in the second event;

in which a respective amount of bonus currency allocated to each second player is proportional to an amount risked by each respective second game that is a winning game played by the second player, in which the bonus currency is not exchangeable for a monetary value, in which each of the first games and second games includes an wager entry into a same pari-mutuel pool.