

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERNATIONAL INTERNET TECHNOLOGIES, LLC and
RED ROCK INVESTMENTS, LLC,
Petitioner,

v.

SWEEPSTAKES PATENT COMPANY, LLC,
Patent Owner.

Case CBM2015-00105
Patent 5,569,082

Before TRENTON A. WARD, STACEY G. WHITE,
and ROBERT A. POLLOCK, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

DECISION

Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. BACKGROUND

International Internet Technologies, LLC (“IIT”) and Red Rock Investments, LLC, f/k/a Gateway Systems, LLC, f/k/a Gateway Gaming, LLC (“Red Rock”) (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) seeking a covered business method patent review of claims 1–17 of U.S. Patent No. 5,569,082 (Ex. 1001, “the ’082 patent”). Sweepstakes Patent Company, LLC (“Patent Owner”) affirmatively waived any preliminary response. Paper 6. We have jurisdiction under 35 U.S.C. § 324, which provides that a post-grant review may not be instituted “unless . . . the information presented in the petition . . . would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.”

For the reasons that follow, Petitioner has established that the ’082 patent is a covered business method patent and that it is more likely than not that claims 1–17 are unpatentable under 35 U.S.C. § 101.

A. *Petitioner’s Standing*

Section 18 of the Leahy-Smith America Invents Act (“AIA”) governs the transitional program for covered business method patent reviews.¹ Section 18(a)(1)(B) of the AIA limits such reviews to persons, or their privies, that have been sued or charged with infringement of a covered business method patent. Petitioner asserts that at least IIT was sued for infringement of the ’082 patent in related district court cases titled *Sweepstakes Patent Co. v. Chase Burns*, No. 6:14-CV-151-ACC-KRS (M.D.

¹ See Section 18(a) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011); 37 C.F.R. § 42.302(a).

Fla.), and *Sweepstakes Patent Co. v. Chase Burns*, No. 0:14-CV-62351-JEM (S.D. Fla.). Pet. 5. Petitioner asserts that at least Red Rock was sued for infringement of the '082 patent in a related district court case titled *Sweepstakes Patent Co v. Mosley*, Case No. 0:14-cv-62354-DMM (S.D. Fla.). *Id.* at 5–7.² On this record, we conclude that Petitioner has met this requirement. *See* 37 C.F.R. § 42.302(a).

B. Related Proceeding

Petitioner concurrently filed a petition seeking covered business method patent review of claims 1–17 of related U.S. Patent No. 5,709,603 (CBM2015–00106).

C. The '082 Patent (Ex. 1001)

The '082 patent is directed to “administering, operating, and playing of a game in which a player acquires a chance to win and the outcome of that chance is displayed in an interesting, fun, and exciting fashion.” Ex. 1001, 1:13–16. According to the Specification, the invention addresses failings of traditional lotteries and games of chance, such as “scratch off” tickets, including, “(a) the low level of excitement that is generated from the display of the games outcome; (b) the fact that it takes just a few moments to play the game; [and] (c) insufficient player interaction with the game except for boring scratching of the coating.” *Id.* at 1:25–51.

² Petitioner contends that Case No. 6:14-CV-151-ACC-KRS has been dismissed and the appeal of the dismissal order is before the Federal Circuit as Case No. 14–1851. Pet. 6. Petitioner indicates that the remaining two district court cases remain pending. *See id.* at 6–7.

In particular, the Specification discloses a “personal computer lottery game” comprising “an interactive lottery/casino type game which allows players to purchase game tickets in the form of data storage media to be used in a personal computer.” *Id.* at Title, 1:5–9. Figure 2 of the '082 patent is reproduced below.

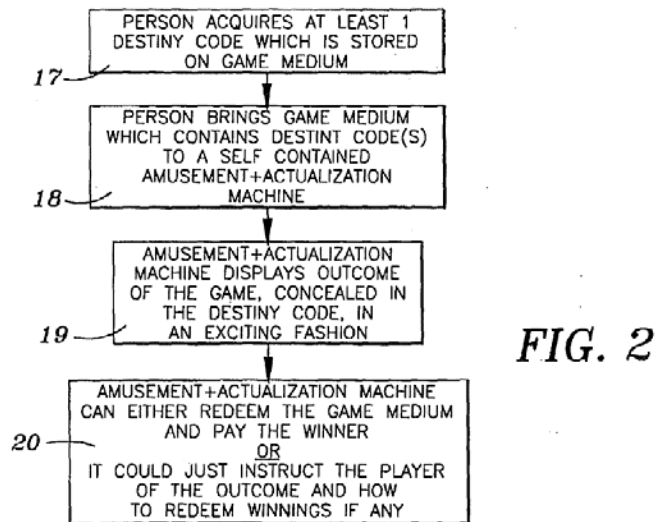


Figure 2 illustrates the basic components of one embodiment. *See generally id.* at Figs. 2 and 5, 2:34–35, 4:29–5:19. In Figure 2, block 17, a player “acquires a gaming piece which includes a predetermined code having data indicating whether the player wins or loses the game, the data being unrecognizable to the player, such that the player does not know the outcome of the game prior to play of the game.” *Id.* at 2:9–15. “These codes are called ‘Destiny Codes’ because their primary function is to store the outcome of the game of chance.” *Id.* at 2:59–60. In block 18, “[t]he code is entered by the player into a processor” or “self-contained amusement + actualization machine.” *Id.* at 2:15–16, 5:13–14. “The processor presents

a game of chance to the player on a display for interactive play by the player, and the player controls game play by inputting game parameters to the processor.” *Id.* at 2:16–19. Exemplary games include lottery tickets, hands of cards, and horse races. *Id.* at 3:22–4:21, Fig. 8 (“Play Horses,” “Play 21,” and “Play Lotto”). “The game is purely for player enjoyment, and is used to give the feel of a completely random game of chance.” *Id.* at 3:25–27. In actuality, the computer processor controls the outcome of the game based on the data concealed in the destiny code (*see id.* at 2:67–3:3) and, as shown in block 19, “provides an indication to the player of a game win or a game loss based upon the code.” *Id.* at 2:19–23. As shown in block 20, if the player wins, the “amusement + actualization device” can either pay out the prize directly or provide the player with redemption instructions, e.g., on a game screen display. *See, e.g., id.* at 5:12–17.

D. Illustrative Claims

Claim 1, from which claims 2–9 depend, recites:

1. A method for playing a player lottery game comprising the step of: acquiring by a player a game piece, the gaming piece including a code which includes data indicating whether the player wins or loses the lottery game and an amusement game, the data being unrecognizable to the player, such that the player does not know whether the player will win or lose the game prior to play of the amusement game;
entering the code by the player into a processor prior to amusement game play;
the processor generating the amusement game on a display for play by the player, the player controlling game play by inputting game parameters to the processor;

the processor controlling whether the player will win or lose the amusement game based upon the code entered by the player;
and
providing on a display an indication to the player of the amusement game win or loss based upon the code.

Claims 2–4 specify that the gaming piece includes magnetic, laser optical, or paper media for storing code, respectively. Claims 5 and 6 specify that the amusement game includes a horse race or a card game, respectively.

Independent claim 10 and its dependent claims, claims 11–17, comprise counterpart system claims for a “lottery type game.”

II. ANALYSIS

A. *Claim Interpretation*

According to Petitioner, the ’082 patent expired as of April 6, 2015. Pet. 29. Although we accord claims of an unexpired patent their broadest reasonable interpretation in light of the specification, our review of claims of an expired patent is similar to that of a district court. *See In re Rambus, Inc.*, 694 F.3d 42, 46 (Fed. Cir. 2013). Specifically, claim terms are given their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art, at the time of the invention, in light of the language of the claims, the specification, and the prosecution history of record. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313–17 (Fed. Cir. 2005) (en banc).

Petitioner urges us to apply this standard to construe the following terms: “game piece” or “gaming piece” and “amusement piece.” Pet. 30–36. At this stage of the proceeding, however, the scope of these terms is not necessary to our analysis, and we decline to adopt the constructions sought

by Petitioner. *See, e.g., Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

B. Covered Business Method Patent

Under § 18(a)(1)(E) of the AIA, the Board may institute a transitional proceeding only for a patent that is a covered business method patent. A “covered business method patent” is one that “claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.” AIA § 18(d)(1); 37 C.F.R. § 42.301(a). To determine whether a patent is eligible for a covered business method patent review, the focus is on the claims. *See* Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012). A patent need have only one claim directed to a covered business method for all of the patent’s claims to be eligible for review. *Id.*

1. Financial Product or Service

In promulgating rules for covered business method patent reviews, the Office considered the legislative intent and history of the AIA’s definition of “covered business method patent.” *Id.* at 48,735–36. The legislative history explains that the definition of covered business method patent was drafted to encompass patents “claiming activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.” *Id.* at

48,735 (citing 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer)). The legislative history indicates that “financial product or service” should be interpreted broadly. *Id.* at 48,735–36. Thus, “[a]t its most basic, a financial product is an agreement between two parties stipulating movements of money or other consideration now or in the future.” 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer). In accord with the legislative history, the Federal Circuit construed covered business method patents as encompassing “a wide range of finance-related activities” and “not limited to products and services of only the financial industry, or to patents owned by or directly affecting the activities of financial institutions such as banks and brokerage houses.” *Versata Dev. Grp. v. SAP Am., Inc.*, No. 2014-1194, slip. op. at 34–36 (Fed. Cir. July 9, 2015) (determining that a claim directed to “a method for determining a price of a product offered to a purchasing organization” is subject to covered business method review).

Petitioner argues that the challenged claims encompass financial products or services because they are “directed at lottery games, which the ’082 patent describes as financial in nature.” Pet. 15–21. The independent claims at issue, for example, recite “a player lottery game” (claim 1) and “[a] lottery type game” (claim 10). We understand a lottery to mean “a *method of raising money* by selling numbered tickets and giving a proportion of the money raised to holders of numbers drawn at random.” Ex. 3000 (emphasis added).³

³ Lottery. *Collins English Dictionary – Complete and Unabridged*. (2003), available at <http://www.thefreedictionary.com/lottery> (last retrieved July 7, 2015).

Consistent with the above discussion, Petitioner notes that “the specification and accompanying figures are replete with descriptions demonstrating that the claimed method of playing a lottery game and the claimed lottery game system contemplate money being paid by the player and a player winning or losing awards, including monetary awards.” Pet. 17 (citing Ex. 1001, 1:10–13, 1:21–24; Ex. 1014 ¶ 21). With respect to claim 1, for example, the ’082 patent’s Specification discloses that the step of “acquiring by a player a game piece” encompasses a financial transaction wherein a player “purchases a chance to win” from a salesperson or “Automated Destiny Code Machine.” *See* Ex. 1001, Figs. 4 (“How many tickets do you want to buy?”), 9, 10, 11, 1:5–10, 1:17–20, 2:38–41 (“FIG. 4 illustrates a sales device used to purchase game media”), 4:35–39, 4:41–45 (player wishing to purchase Destiny Codes places money into a bill validator).

Similarly, with respect to Petitioner’s contention that the invention at issue contemplates “a player winning or losing awards, including monetary awards” (Pet. 17), the Specification makes clear that the claimed step of “providing on a display an indication to the player of the amusement game win or loss” encompasses informing a winning player about the value of a monetary payout. *See, e.g., id.* at Figs. 1–3, 5, 7, 9, 10, and 13, 3:47–50 (“If the Destiny Code indicates that player is to win \$25.00, then the system will select and display numbers that match the player’s fictitious lottery tickets in a combination that wins the person \$25.00.”), 4:9–19 (system displays poker hands having various payout values depending on Destiny Code, e.g., “1 Pair=\$10.00, 3 Of A Kind=\$15.00, 2 Pair=\$20.00, a Straight=\$50.00, and a Royal Flush=\$100.00”), 6:58–62 (“Program information includes . . . the

amount of money that the Destiny Code wins.”), Fig. 12 and 10:17–22 (“If the Destiny Code contains [] a \$75 winner, the computer can let one lotto ticket win \$75 or 3 lotto tickets win \$25 each, if the player has three lotto tickets.”).

The claims at issue are drawn to methods and systems for computer-assisted playing of lottery games. As read in light of the Specification, the instant claims are applicable to—and indeed contemplate—situations wherein players will pay to acquire a game piece and receive a monetary payout when the computer display indicates a winning ticket. Thus, we determine that, at a minimum, independent claims 1 and 10 are “financial in nature, incidental to a financial activity or complementary to a financial activity.” 77 Fed. Reg. 48,734, 48,735 (Aug. 14, 2012) (quoting 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011)). Accordingly, Petitioner has made a sufficient showing that at least one challenged claim satisfies the “financial product or service” requirement of Section 18.

2. Technological Invention

The definition of a “covered business method patent” in § 18(d)(1) of the AIA excludes patents for “technological inventions.” When determining whether a patent is for a technological invention, we consider “whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.” 37 C.F.R. § 42.301(b).

The following claim drafting techniques typically do not render a patent a “technological invention”:

- (a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software,

memory, computer-readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.

(b) Reciting the use of known prior art technology to accomplish a process or method, even if that process or method is novel and non-obvious.

(c) Combining prior art structures to achieve the normal, expected, or predictable result of that combination.

Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,763–64 (Aug. 14, 2012). The Federal Circuit in *Versata* accepted the PTAB’s determination that a computer-implemented method of “determining a price” was not a technological invention under § 18(d)(1) because the method could be practiced “in any type of computer system or programming or processing environment,” absent “specific, unconventional software, computer equipment, tools or processing capabilities.” *Versata*, No. 2014-1194, slip op. at 38 (referencing *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012)).

Petitioner contends, with supporting evidence, that none of the challenged claims are directed to technological features or solve a technical problem using a technical solution. Pet. 21–29. In sum, Petitioner argues that the claims recite a generic computer system, processor, to implement a well-known game of chance and, according to the Specification, address non-technical problems associated with traditional lotteries such as “(a) the low level of excitement that is generated from the display of the games outcome; (b) the fact that it takes just a few moments to play the game; [and] (c) insufficient player interaction.” *See id.*; Ex. 1001, 1:13–16, 1:36–39. Based on the current record, we are persuaded that Petitioner has made a sufficient showing that the technological exception does not apply.

In view of the above, we determine that the '082 patent is eligible for covered business method patent review.

C. Asserted Ground of Unpatentability

Petitioner asserts that claims 1–17 are directed to abstract ideas that are not patentable under 35 U.S.C. § 101. Pet. 1–5, 37–53. The Federal Circuit has confirmed recently that § 101 challenges are permissible under AIA § 18. *Versata*, No. 2014-1194, slip. op. at 45.

1. Overview

“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.” 35 U.S.C. § 101. Supreme Court precedents, however, provide three specific exceptions to the broad categories of § 101: laws of nature, natural phenomena, and abstract ideas. *Bilski v. Kappos*, 561 U.S. 593, 625 (2010). “The ‘abstract ideas’ category embodies the longstanding rule that ‘[a]n idea of itself is not patentable.’” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court referred to the two-step analysis set forth in *Mayo Collaboration Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012), as providing “a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. 2355 (citing *Mayo*, 132 S. Ct. at 1289). Under *Mayo*, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Id.*

Next, “we 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.* (citing *Mayo*, 132 S. Ct. at 1297–98).

Under *Mayo*, to be patentable, a claim must do more than simply state the law of nature or abstract idea and add the words “apply it.” *Mayo*, 132 S. Ct. at 1294; *Benson*, 409 U.S. at 67. For example, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358. “Thus, if a patent’s recitation of a computer amounts to a mere instruction to ‘implemen[t]’ an abstract idea ‘on . . . a computer,’ that addition cannot impart patent eligibility.” *Id.* (internal citation omitted).

A challenged patent claim, properly construed, must incorporate enough meaningful limitations to ensure that it claims more than just an abstract idea and not just a mere “drafting effort designed to monopolize the [abstract idea].” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1297). “Simply appending conventional steps, specified at a high level of generality,” is not “enough” for patent eligibility. *Id.* (quoting *Mayo*, 132 S. Ct. at 1300). Thus, we analyze the claims of the ’082 patent to determine whether the claims embody a patent-eligible application of an abstract idea or merely the abstract idea itself.

2. *Whether Claims 1–17 Are Directed to an Abstract Idea*

We first “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 134 S. Ct. at 2355. In *Alice*, the Supreme Court determined that the claims at issue were “drawn to the

concept of intermediated settlement,” i.e., the use of a third party to mitigate settlement risk. *Id.* at 2356. The Supreme Court determined that “[l]ike the risk hedging in *Bilski*, the concept of intermediated settlement is ‘a fundamental economic practice long prevalent in our system of commerce.’” *Id.* With respect to the first step of the “*Mayo* framework,” the Supreme Court concluded in *Alice* that “there is no meaningful distinction between the concept of risk hedging in *Bilski* and the concept of intermediated settlement” in *Alice*, and that “[b]oth are squarely within the realm of ‘abstract ideas’ as we have used that term.” *Alice*, 134 S. Ct. at 2357.

Petitioner asserts that the challenged claims are drawn to the abstract idea of “using an amusing game to reveal the results of a lottery game.” Pet. 39–41. With respect to claim 1, for example, Petitioner asserts that:

a player acquires a “game piece” that includes a code indicating “whether the player wins or loses” a “lottery game,” but the player does not know the outcome until he or she plays an “amusement game.” *Id.* at 10:66-11:5 The player enters the code into “a processor,” and the processor “generat[es] an amusement game on a display,” allows the player to input “game parameters,” and controls whether the player will win or lose based upon the code. *Id.* at 11:7–15. Finally, the outcome, or whether the player has won or lost, is “provid[ed] on a display.” *Id.* at 11:16–17.

Pet. 39.

As an initial matter, the underlying concept of a lottery is, like the concept of risk hedging in *Bilski* and intermediated settlement in *Alice*, an economic practice long prevalent in our system of commerce. *See Alice*, 134 S. Ct. at 2355 (citations omitted). Petitioner argues that lotteries were implemented long before the ’082 patent’s priority date. Pet. 3–4. More particularly, Petitioner argues that the idea of revealing lottery results in the

format of a game was well known prior to the application date of the '082 patent as disclosed, for example, in U.S. Patent Nos. 5,641,167 (“instant bingo game card”) and 5,037,099 (poker game). Pet. 42, 22–23.

By way of context, we note that lotteries have been used for raising money for centuries. For example, Queen Elizabeth chartered a lottery in 1566 to raise funds for harbor repairs. Ex. 3001, 3–4;⁴ Ex. 3002, 5–6.⁵ Lotteries were even a part of everyday life in the American colonies, as evidenced by numerous advertisements in broadsides and newspapers printed in the first half of the 17th century. *See* Ex. 3003.⁶). The practice remains prevalent today, as evidenced by a recent U.S. Census Bureau report showing that Americans spend in excess of \$53 billion per year on state-sponsored lotteries alone, of which nearly \$33 billion is distributed as prize money. Ex. 3004.⁷

On the record before us, we are persuaded that Petitioner has demonstrated adequately that claims 1–17 are directed to the abstract concept of using an amusing game to reveal the results of a lottery.

⁴ C. L’Estrange Ewen, *Lotteries and Sweepstakes* (1932).

⁵ John Ashton, *A History of English Lotteries* (1893) (advertising the sale of 400,000 lots and a top prize of “five thousand poundes sterling”).

⁶ John Samuel Ezel, *Fortune’s Merry Wheel: The Lottery in America* (1960).

⁷ *Income and Apportionment of State-Administered Lottery Funds: 2010*, available at http://www2.census.gov/govs/state/10_methodology.pdf (last retrieved July 10, 2015).

3. Whether Claims 1–17 Are Limited to a Patent-Eligible Application of Using an Amusing Game to Reveal the Results of a Lottery

The second step of the “*Mayo* framework” requires us to determine whether the claims recite 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.’” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1294). Thus, “a claim reciting an abstract idea must include additional features to ensure that the claim is more than a drafting effort designed to monopolize an abstract idea.” *Versata*, No. 2014-1194, slip op. at 48 (citing *Alice*, 134 S. Ct. at 2357). “This requires more than simply stating an abstract idea while adding the words ‘apply it’ or ‘apply it with a computer.’” *Id.* (citing *Alice*, 134 S. Ct. at 2358.)

Petitioner contends that the challenged claims recite “generic and conventional computer hardware . . . to implement the idea of using an ‘amusement game’ to reveal the results of a ‘lottery game,’” and fail to provide any inventive concept separate from the abstract idea itself. Pet. 40–41. Petitioner contends, *inter alia*, that all of the claim elements and their functions were well-understood and known prior to the filing date of the ’082 patent; that neither the Specification nor the claims describe special purpose computers, algorithms, or programming (*id.* at 45–46); and that the stated purpose of the invention is “to solve the non-technical problem of the ‘administration, operation, and playing’ of a game of chance by displaying the outcome in ‘an interesting, fun, and exciting fashion.’” (*id.* at 46 (citing Ex. 1001, 1:13–16, 1:64–66)). Accordingly, Petitioner argues, the challenged claims amount to nothing more than a mere instruction to

implement an abstract concept on a computer, and, thus, monopolize the practice of that idea. *Id.* at 42.

On this record, we determine that Petitioner has established sufficiently for purposes of this decision that the features of the challenged claims are nothing more than the application of an abstract idea on a computer through “well-understood, routine, conventional activity.” *See Mayo*, 132 S. Ct. at 1298. As there is no recitation in the claims of improved computer technology or advanced programming techniques, the claimed subject matter does not “improve the functioning of the computer itself,” or “effect an improvement in any other technology or technical field.” *See Alice*, 134 S. Ct. at 2359. To the contrary, all steps in the claimed methods reflect mental processes that could be executed as dialog and common human interactions.

When viewed as a whole based on the present record, we determine that Petitioner has established sufficiently for purposes of this decision that the challenged claims simply recite the concept of using an amusing game to reveal the results of a lottery game as performed by a generic computer processor. With respect to claim 1, for example, the concept of a lottery is well known, whereas the steps attributed to the processor—generating an amusing game, controlling whether the player will win or lose, and communicating the outcome with a display—are analogous to actions performed by a carnival pitchman thrilling the crowd at a shell game booth, but all the while completely aware of the outcome of the purported game of chance.

At this stage of the proceeding, we determine that Petitioner has established sufficiently for purposes of this decision that that reproducing

the experience as a computer simulation provides “nothing significantly more” than applying an abstract idea on a generic computer system, which is not enough to transform an abstract idea into a patent-eligible invention. *Id.* at 2360; *see also Bancorp Servs. LLC v. Sun Life Assurance Co. of Canada*, 687 F.3d 1266, 1279 (Fed. Cir. 2012) (determining that a claim is not patent-eligible when “the computer simply performs more efficiently what could otherwise be accomplished manually”).

In light of the above, for purposes of this decision we determine that Petitioner has established sufficiently that claims 1–17 recite no limitations, individually or as an ordered combination, that transform the challenged claims into a patent-eligible application of the abstract idea of using an amusing game to reveal the results of a lottery game. Petitioner has demonstrated that claims 1–17 are more likely than not directed to patent ineligible subject matter under 35 U.S.C. § 101.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 324(a), a covered business method patent review is instituted for claims 1–17 as unpatentable under 35 U.S.C. § 101; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 324(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial commencing on the entry date of this Decision.

CBM2015-00105
Patent 5,569,082

PETITIONER:

Michael J. LaBrie
McAFEE & TAFT, P.C.
mike.labrie@mcafeetaft.com

Ashley B. Summer
NELSON MULLINS RILEY &
SCARBOROUGH LLP
ashley.summer@nelsonmullins.com

PATENT OWNER:

Jerold I. Schneider
Diana Mederos
SCHNEIDER ROTHMAN INTELLECTUAL
PROPERTY LAW GROUP, PLLC
patents@sriplaw.com