

**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;

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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 by **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,

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