IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CG TECHNOLOGY DEVELOPMENT, LLC, INTERACTIVE GAMES LIMITED, and INTERACTIVE GAMES LLC, Plaintiffs, v. FANDUEL, INC., Defendant.	Civil Action No. 1:17-cv-01041-RGA

MEMORANDUM OPINION

Daniel M. Silver, Alexandra M. Joyce, MCCARTER & ENGLISH, LLP, Wilmington, DE; Robert F. Shaffer (argued), Scott A. Allen, Abdul Ghani S. Hamadi, FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP, Washington, DC;

Attorneys for Plaintiffs

Kenneth L. Dorsney, MORRIS JAMES LLP, Wilmington, DE; Eric A. Buresh, Megan J. Redmond (argued), Carrie A. Bader, ERISE IP, P.A., Overland Park, KS;

Attorneys for Defendant

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ANDREWS, U.S. DISTRICT JUDGE:

Before the Court is Defendant's Rule 12(c) Motion for Judgment on the Pleadings. (D.I. 340). The Court has considered the parties' briefing. (D.I. 341, 348, 350). The Court heard oral argument on February 13, 2020. (D.I. 374).

I. BACKGROUND

Plaintiffs filed this action on April 8, 2016 in the District of Nevada, eventually alleging infringement of twelve patents including U.S. Patent No. 8,771,058 ("the '058 patent"). (D.I. 31). The District of Nevada transferred the instant case to this Court on July 27, 2017. (D.I. 219). Defendant has been successful at invalidating asserted claims. (D.I. 341 at 1). Claim 6 of the '058 patent is the only remaining claim at issue.

The '058 patent is directed to determining game configurations on a mobile device based on the location of that device. ('058 patent, Abstract, col. 12:22-28, col. 60:2-28). Claim 6 is dependent on claim 1. The Patent Trial and Appeal Board found claim 1 invalid under § 103. (D.I. 341, Ex. A at 48). Claim 1 reads as follows:

> 1. A method comprising:
> determining a first location of a mobile gaming device;
> determining a first game configuration associated with the first location;
> generating, by a computer system, a first game outcome using the first game configuration;
> instructing a display screen of the mobile gaming device to display an indication of the first game outcome;
> determining a first payout associated with the first game outcome;
> crediting a player account with a first amount based on the first payout;
> determining a second location of the mobile gaming device, wherein the second location is different from the first location;
> determining a second game configuration associated with the second location, wherein the second game configuration is different from the first game configuration;
> generating, by the computer system, a second game outcome using the second game configuration;
> instructing the display screen of the mobile gaming device to display an indication of the second game outcome;
> determining a second payout associated with the second game outcome; and

crediting the player account with a second amount based on the second payout.

Claim 6 reads:

> 6. The method of 1, in which determining the first game configuration includes:
> accessing a lookup table which contains an ordered list of locations and associated game configurations;
> finding within the lookup table the first location; and
> determining that the first game configuration is associated with the first location.

At claim construction, I determined that "lookup table" means "an array or matrix of data that contains items that are searched." (D.I. 337 at 4).

II. LEGAL STANDARD

A. Rule 12(c)

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is reviewed under the same standard as a Rule 12(b)(6) motion to dismiss when the Rule 12(c) motion alleges that the plaintiff failed to state a claim upon which relief can be granted. *See Turbe v. Gov't of the Virgin Islands*, 938 F.2d 427, 428 (3d Cir. 1991); *Revell v. Port Auth.*, 598 F.3d 128, 134 (3d Cir. 2010). The court must accept the factual allegations in the complaint and take them in the light most favorable to the non-moving party. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). "When there are well-ple[d] factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The court must "draw on its judicial experience and common sense" to make the determination. *See id.* In ruling on a motion for judgment on the pleadings, the court is generally limited to the pleadings. *Mele v. Fed. Reserve Bank of N.Y.*, 359 F.3d 251, 257 (3d Cir. 2004). The court may, however, consider documents incorporated into the pleadings and those that are in the public record. *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

B. 35 U.S.C. § 101

Section 101 of the Patent Act defines patent-eligible subject matter. It provides: "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. The Supreme Court has recognized an implicit exception for three categories of subject matter not eligible for patentability—laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). The purpose of these carveouts is to protect the "basic tools of scientific and technological work." *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012). "[A] process is not unpatentable simply because it contains a law of nature or a mathematical algorithm," as "an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection." *Id.* at 1293–94 (cleaned up). "[T]o transform an unpatentable law of nature into a patent-eligible application of such a law, one must do more than simply state the law of nature while adding the words 'apply it.'" *Id.* at 1294 (emphasis omitted).

The Supreme Court reaffirmed the framework laid out 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*, 134 S. Ct. at 2355. First, the court must determine whether the claims are drawn to a patent-ineligible concept. *Id.* If the answer is yes, the court must look to "the elements of the claim both individually and as an 'ordered combination'" to see if there is 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.* (alteration in original). "A claim that

recites an abstract idea must include 'additional features' to ensure that the [claim] is more than a drafting effort designed to monopolize the [abstract idea]." *Id.* at 2357. Further, "the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the idea] to a particular technological environment." *Id.* at 2358 (quoting *Bilski v. Kappos*, 561 U.S. 593, 610-11 (2010)). Thus, "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention." *Id.* For this second step, the machine-or-transformation test can be a "useful clue," although it is not determinative. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014).

"Whether a claim is drawn to patent-eligible subject matter under § 101 is an issue of law," and "is a matter of both claim construction and statutory construction." *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008), *aff'd sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010). "Claim construction is a question of law . . . ." *In re Nuijten*, 500 F.3d 1346, 1352 (Fed. Cir. 2007). At *Alice* step two, however, "[w]hether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018).

III. DISCUSSION

A. Law of the Case

"The law-of-the-case doctrine generally provides that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Musacchio v. United States*, 136 S. Ct. 709, 716 (2016) (cleaned up). Plaintiffs argue that the law-of-the-case doctrine applies here because the Nevada court already decided that the claims of the '058 patent are not directed to a patent-ineligible abstract idea. (D.I. 348 at 1). Plaintiffs

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