

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**SAVVY DOG SYSTEMS, LLC, POM OF
PENNSYLVANIA, LLC,**
Plaintiffs-Appellants

v.

**PENNSYLVANIA COIN, LLC, PA COIN HOLDINGS,
LLC,**
Defendants-Appellees

2023-1073

Appeal from the United States District Court for the
Middle District of Pennsylvania in No. 3:19-cv-01470-JPW,
Judge Jennifer P. Wilson.

Decided: March 21, 2024

STEVEN G. HILL, Hill, Kertscher & Wharton LLP, At-
lanta, GA, argued for plaintiffs-appellants. Also repre-
sented by DAVID KEELER LUDWIG.

JOHN V. GORMAN, Morgan, Lewis & Bockius LLP, Phil-
adelphia, PA, argued for defendants-appellees. Also repre-
sented by JULIE S. GOLDEMBERG; AMY M. DUDASH,
Wilmington, DE.

Before TARANTO, CHEN, and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

Savvy Dog Systems, LLC and POM of Pennsylvania, LLC (collectively, “Savvy Dog”) appeal from the United States District Court for the Middle District of Pennsylvania’s summary judgment holding the asserted claims of U.S. Patent No. 7,736,223 ineligible for patenting under 35 U.S.C. § 101. Because we agree with the district court’s conclusion, we affirm.

BACKGROUND

I

“Tic-Tac-Fruit” is an electronic game in the prior art where—like tic-tac-toe—a player wins by having three symbols of the same type in a row. A game processor sets up the game by populating a three-by-three grid filled with symbols, selecting the winning combination(s), testing the display to ensure that the player cannot obtain a more valuable winning outcome than the outcome determined by the game, and then displaying the grid to the player. The player then selects a “symbol to be replaced with a ‘Wild Card’ to obtain a winning game outcome.” J.A. 1485. Figures 1A and 1B show the game display before and after a “Wild Card” is placed by a user.

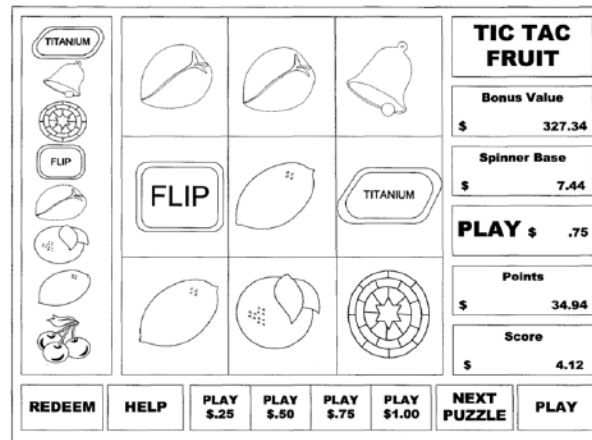


FIG. 1A

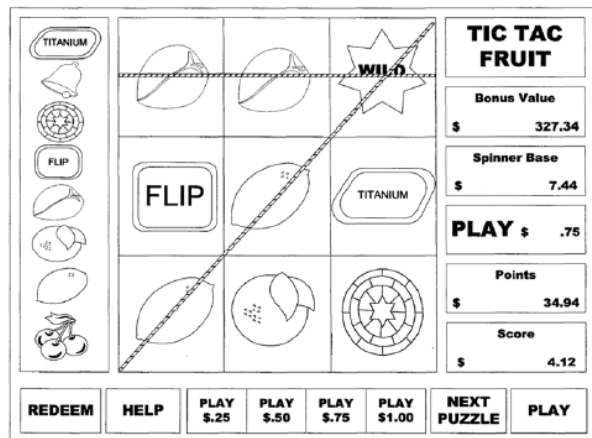


FIG. 1B

'223 patent Figs. 1A, 1B. In the prior art version of Tic-Tac-Fruit (“prior art Tic-Tac-Fruit”), the grid generation and testing occur after the player committed to playing. Appellants’ Br. 5 (citing J.A. 1510–11 (Harrigan Depo. at 112:5–113:8)).

To address the rise in electronic gambling games, Ohio prohibited gambling games but permitted “skill-based” games, i.e., where “the outcome of play during the game must be controlled by the person playing the game and not

by predetermined odds or random chance controlled by the machine.” ’223 patent col. 1 ll. 21–30.

The ’223 patent, entitled “Electronic Gaming Method and System Having Preview Screen,” purports to be a more skill-based and less chance-based implementation of the prior art Tic-Tac-Fruit. *See* ’223 patent col. 3 ll. 59–63. The abstract describes displaying the game field “to the player as a preview for deciding whether or not to play the displayed game.” ’223 patent Abstract, col. 1 ll. 15–17. Unlike the prior art Tic-Tac-Fruit, the invention described in the ’223 patent previews the game to the player before the player commits to playing the game. ’223 patent col. 9 ll. 56–64; *see* Appellants’ Br. 6; J.A. 1509–11 (Harrigan Depo. at 111:23–113:23). According to Savvy Dog, this preview reduces the role of chance in relation to the role of skill because “[t]he player would play the displayed game knowing the outcome.” ’223 patent col. 11 ll. 23–25; *see* Appellants’ Br. 13.

Representative claim 44 of the ’223 patent recites:

44. An electronic gaming system comprising:

an electronic game terminal including a touch screen display;

a game processor for generating an interactive electronic game on the game terminal, the game processor configured for:

constructing a field having a plurality of elements for the interactive game display wherein each element includes a game symbol from a plurality of predetermined game symbols;

determining at least one winning combination for each play of the game;

testing the game field prior to displaying the game to the player to ensure that a

winning combination more valuable than the determined winning combination is not generated inadvertently in completing the field;

automatically displaying an actual game to be played on the touch screen game display to a player prior to initiating activation of game play;

determining if the player has decided to play the displayed game; and

displaying an outcome resulting from play of the displayed game.

'223 patent col. 16 l. 46–col. 17 l. 2.

II

Savvy Dog filed suit against Pennsylvania Coin, LLC and PA Coin Holdings, LLC (collectively, “Appellees”) in the Middle District of Pennsylvania for allegedly infringing certain claims of the '223 patent.

Appellees moved to dismiss, arguing—among other things—that the asserted claims of the '223 patent were directed to ineligible subject matter under 35 U.S.C. § 101. After reviewing representative claim 44's language, the parties' arguments, and case law, the district court “conclude[d] that claim 44 describes the rules for playing a game, and is thus an abstract idea within the meaning of *Alice* step one.” *Savvy Dog Sys., LLC v. Penn. Coin, LLC*, No. 3:19-cv-01470, 2020 WL 1550676, at *4–6 (M.D. Pa. Apr. 1, 2020) (citing *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 218 (2014)). The district court, however, denied the motion to dismiss because “[w]hether the technology embedded into the game processor is an improvement and ‘inventive concept’ is a question of fact that the court cannot determine at this early stage of litigation.” *Id.* at *8.

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