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“Bust!” — Federal Circuit Deals Tough News to Inventors of Card Game

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In applying *Mayo*, the panel decided to stick with the Board’s reasoning that the rules of a wagering game are like the ineligible methods from *Alice* (reducing risk in escrow settlement) and *Bilski* (reducing risk in price fluctuations) — wagering is “effectively, a method of exchanging and resolving financial obligations based on probabilities created during the distribution of the [playing] cards.” Turning to the next step, the panel reasoned that the additional elements in the claims (shuffling and dealing) were like the additional elements in *Alice* of using a computer to implement an abstract idea. The panel found that these additional elements were not the ace in the hole that the applicants needed to trump the second step of *Mayo*.

While the panel kept these particular claims in the discard pile, it threw some dicta into the pot, stating that claims to “a game using a new or original deck of cards” might not be foreclosed from patenting under § 101.

In re Smith, No. 2015-1664 (Fed. Cir. Mar. 10, 2016).
[Stoll (opinion), Moore, Hughes]

Categories

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