

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC. and RIOT GAMES, INC.,
Petitioner,

v.

GAME AND TECHNOLOGY CO., LTD.,
Patent Owner.

Case IPR2016-01885
Patent 8,253,743 B2

Before STACEY G. WHITE, DANIEL J. GALLIGAN, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
Inter Partes Review
35 U.S.C. § 318(a)

I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 314 and 37 C.F.R. § 42.108, Activision Blizzard, Inc. and Riot Games, Inc. (collectively “Petitioner”) challenge the patentability of claims 1–11 of U.S. Patent No. 8,253,743 B2 (“the ’743 patent,” Ex. 1001), which is owned by Game and Technology Co., Ltd. (“Patent Owner”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision, issued pursuant to 35 U.S.C. § 318(a), addresses issues and arguments raised during the trial in this *inter partes* review. For the reasons discussed below, we determine that Petitioner has proven by a preponderance of the evidence that claims 1–11 of the ’743 patent are unpatentable. *See* 35 U.S.C. § 316(e) (“In an *inter partes* review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.”).

A. Procedural History

On September 23, 2016, Petitioner requested *inter partes* review of claims 1–11 of the ’743 patent. Paper 2 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 12 (“Prelim. Resp.”). Trial was instituted as to claims 1–11 of the ’743 patent on the following grounds of unpatentability:

1. Whether claims 1–11 are unpatentable under 35 U.S.C. § 103(a) as obvious over the Diablo II Manual¹ alone or in combination with Rogers;² and
2. Whether claims 1–11 are unpatentable under 35 U.S.C. § 103(a) as obvious over the DAoC Manual³ alone or in combination with Rogers.

Paper 15 (“Dec. on Inst.”), 25–26.

During the trial, Patent Owner filed a Response (Paper 18, “PO Resp.”), and Petitioner filed a Reply (Paper 22, “Reply”). In addition, Petitioner filed a Motion to exclude evidence. Paper 26. Patent Owner filed an Opposition to Petitioner’s Motion to Exclude (Paper 30), and Petitioner filed a Reply in support of its Motion to Exclude (Paper 31).

An oral hearing was held on November 29, 2017, a transcript of which appears in the record. Paper 34 (“Tr.”).

¹ Diablo II Game Manual (Ex. 1013), © 2000 Blizzard Entertainment. Petitioner argues that the Diablo II Manual is a prior art printed publication under 35 U.S.C. § 102(b). *See* Pet. 5–6 (citing Exs. 1002, 1013, 1014, 1018, 1021); Dec. on Inst. 3 n.1. Patent Owner does not raise any arguments regarding the prior art status of the Diablo II Manual. Based on our review of the evidence of record, we determine the Diablo II Manual is a prior art printed publication within the meaning of 35 U.S.C. § 102(b). *See* Exs. 1013, 1014, 1018, 1021.

² U.S. 2005/0137015 A1, filed Aug. 19, 2004, published June 23, 2005 (Ex. 1017).

³ Dark Age of Camelot Game Manual (Ex. 1015), © 2001–02 Mythic Entertainment, Inc. Petitioner argues that the DAoC Manual is a prior art printed publication under 35 U.S.C. § 102(b). *See* Pet. 6 (citing Exs. 1015, 1016, 1019); Dec. on Inst. 4 n.2. Patent Owner does not raise any arguments regarding the prior art status of the DAoC Manual. Based on our review of the evidence of record, we determine the DAoC Manual is a prior art printed publication within the meaning of 35 U.S.C. § 102(b). *See* Exs. 1015, 1016, 1019.

B. Real Parties in Interest

Petitioner identifies the following additional real parties in interest: Blizzard Entertainment, Inc., Activision Publishing, Inc., Activision Entertainment Holdings, Inc., and Tencent Holdings Ltd. Pet. 1.

C. Related Matters

Petitioner and Patent Owner cite a number of judicial and administrative matters involving the '743 patent and other patents owned by Patent Owner. Pet. 1–2; Paper 5, 2–3; Paper 11, 1–2.

D. The '743 Patent and Illustrative Claim

The '743 patent generally relates to providing game characters having game items functions by combining an avatar with a game item function to create a gamvatar. Ex. 1001, Abstract. As examples of game item functions, the '743 patent identifies “the function of charging and restoring cyber money, a function of reinforcing power of the gamvatar, and a function of attacking or defending other ga[m]ers.” Ex. 1001, 6:18–21.

Figure 5 of the '743 patent, reproduced below, illustrates gamvatars 530 and 540.

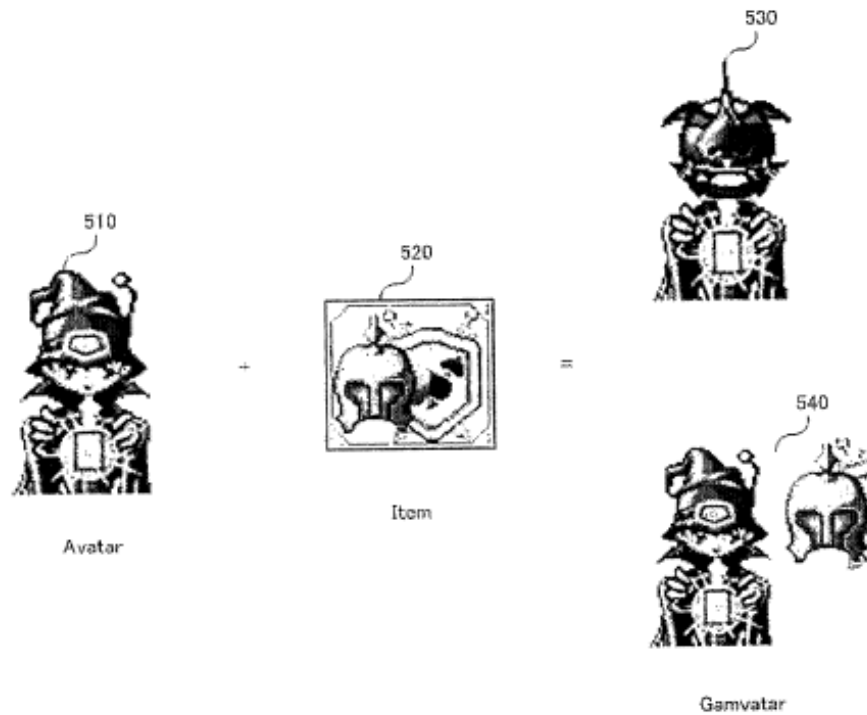


Figure 5 depicts “characters having a game item function according to an embodiment of the present invention.” Ex. 1001, 4:66–67. The ’743 patent states:

FIG. 5 shows avatars (gamvatars) having a game item function according to an embodiment of the present invention, and it exemplifies gamvatars 530 and 540 generated by combining an avatar 510 which wears clothes purchased at the avatar shop 430 and a game item 520 purchased at the item shop 440. The gamvatar 530 shows the avatar 510 wearing the item 520, and the gamvatar 540 shows that the item 520 is not attached to the avatar 510 but is arranged in the background layer. As described above, it is possible for the avatar 510 to wear the item 520 or not to wear the item 520 depending on the user’s setting.

Ex. 1001, 6:33–43. Thus, the ’743 patent describes that both gamvatars 530 and 540 have items arranged in a layer, but in gamvatar 540 the layer is a background layer, so the item is not attached to the gamvatar.

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