

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WARGAMING GROUP LIMITED and ACTIVISION BLIZZARD, INC.,
Petitioner,

v.

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

Case IPR2017-01082
Patent 7,682,243 B2

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

GALLIGAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

In this *inter partes* review, Wargaming Group Limited (“Wargaming”) and Activision Blizzard, Inc. (“Activision”) (collectively, “Petitioner”) challenge the patentability of claims 1–7 of U.S. Patent No. 7,682,243 B2 (“the ’243 patent,” Ex. 1001), which is assigned to 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 Petitioner has proven by a preponderance of the evidence that claims 1–7 of the ’243 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 March 13, 2017, Wargaming filed a Petition (Paper 1 (“Pet.”)) requesting *inter partes* review of claims 1–7 of the ’243 patent on two grounds of unpatentability based on the references below.

Levine	US 2003/0177187 A1	Sept. 18, 2003	Ex. 1004
	DUNGEONS AND DRAGONS: PLAYER’S HANDBOOK: CORE RULEBOOK I v.3.5 (Julia Martin & John Rateliff eds., 2003) (“D&D Handbook”)		Ex. 1005
	JOHN POSSIDENTE & DAVE ELLIS, MASTER OF ORION II: BATTLE AT ANTARES: THE OFFICIAL STRATEGY GUIDE (M. Scott Schrum ed., 1996) (“MOO Strategy Guide”)		Ex. 1009

The grounds of unpatentability presented in the Petition are set forth in the table below.

References	Basis	Claims Challenged
Levine and D&D Handbook	§ 103(a)	1–7
Levine and MOO Strategy Guide	§ 103(a)	1–7

Patent Owner filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). Petitioner filed a reply to the Preliminary Response. Paper 12; *see* Paper 11 (authorizing Petitioner to file reply limited to a particular issue).

We instituted trial as to claims 1–7 on the ground of unpatentability based on Levine and D&D Handbook. Paper 14 (“Dec. on Inst.”), 36. We determined, however, that Wargaming had not established a reasonable likelihood of prevailing on the ground of unpatentability based on Levine and MOO Strategy Guide. Dec. on Inst. 35. Following the Supreme Court’s decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018), we modified the Decision on Institution to institute on all of the grounds presented in the Petition. Paper 47, 2.

On May 22, 2018, the parties filed a Joint Motion to limit briefing and evidence as to the ground of unpatentability based on Levine and MOO Strategy Guide. Paper 52. Specifically, the parties requested that briefing and evidence on this ground be limited to what was submitted prior to the Decision on Institution. *Id.* at 2. We granted the parties’ Joint Motion, and we stated that “we do not deem the parties to have conceded patentability or unpatentability based on Ground 2 [(Levine and MOO Strategy Guide)] or to have waived any arguments based on that ground of unpatentability.” Paper 54, 3.

During the trial, the parties filed briefs addressing whether a real party-in-interest of Petitioner was served with a complaint alleging infringement of the '243 patent more than one year before the Petition was filed. Paper 24, 25, and 28. Patent Owner also filed a Response (Paper 39,¹ "PO Resp."), and Petitioner filed a Reply (Paper 53, "Pet. Reply"). Wargaming also filed a Motion to Exclude Exhibit 2027 (Paper 30), to which Patent Owner filed an opposition (Paper 31) and in support of which Wargaming filed a reply (Paper 32).

Following institution, Activision filed a petition for *inter partes* review of claims 1–7 of the '243 patent and a motion for joinder. IPR2018-00157, Papers 1 and 3. We granted Activision's motion for joinder and joined Activision as a party, on the petitioner side, to this *inter partes* review. Paper 46, 19.

An oral hearing was held on July 10, 2018, a transcript of which appears in the record. Paper 64 ("Tr.").

B. Real Parties in Interest

Wargaming identifies Wargaming Group Limited (formerly Wargaming Public Company Limited) and Wargaming.net LLP as real parties-in-interest. Pet. 72.

Activision identifies the following real parties-in-interest: Activision Blizzard, Inc.; Blizzard Entertainment, Inc., Activision Publishing, Inc., and Activision Entertainment Holdings, Inc. IPR2018-00157, Paper 1, 1.

¹ Paper 39 is a corrected Response that Patent Owner filed to address a clerical error that occurred in the filing of Paper 36. Petitioner did not oppose the submission of Paper 39, and we authorized Patent Owner's filing of Paper 39.

C. Related Matters

Petitioner and Patent Owner cite the following judicial matters involving the '243 patent: *Game and Technology Co. Ltd v. Wargaming.net LLP*, 2:16-cv-06554 (C.D. Cal.) and *Game and Technology Co. Ltd v. Blizzard Entertainment, Inc.*, 2:16-cv-06499 (C.D. Cal.). Pet. 72; Paper 3. In addition, the Board previously denied a petition for *inter partes* review of the '243 patent filed by Activision. *Activision Blizzard, Inc. v. Game and Tech. Co.*, Case IPR2016-01918, slip op. at 18 (PTAB Mar. 21, 2017) (Paper 14).

D. The '243 Patent and Illustrative Claim

The '243 patent generally relates to “providing an online game, in which ability information of a unit associated with a pilot is enabled to change as ability information of the pilot changes.” Ex. 1001, 1:23–25. The '243 patent explains that a “pilot” in a game may have associated with it certain “ability information,” such as brave point, react point, faith point, capacity point, and mentality point. Ex. 1001, 6:1–4, Fig. 5. These pilot abilities may be linked to certain abilities of a unit.

Information on the brave point (Bp) records the braveness of a pilot in a numerical value, and is associated with information on the attack power (ATP) 305 of a unit. Information on the react point (Rp) records agility or reaction of a pilot in a numerical value, and is associated with information on the evasion power (EVP) 306 of a unit. Information on the faith point (Fp) records faith about the pilot itself in a numerical value, and is associated with the defense power (DEF) 307 of a unit. Information on the capacity point (Cp) records potential capacity of a pilot in a numerical value, and may not be associated with any ability information of a unit. Information on the mentality point (Mp) records a mental ability of a pilot in a numerical value, and is associated with information on the hit power (HTP) 308 of a unit.

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