IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GREE, INC.,

Plaintiff,

v.

SUPERCELL OY,

Defendant.

Case No. 2:19-cv-00310-JRG-RSP
Case No. 2:19-cv-00311-JRG-RSP

CLAIM CONSTRUCTION MEMORANDUM OPINION AND ORDER

This Order addresses the claim-construction disputes presented by the parties in Case No. 2:19-cv-00310-JRG-RSP (the "'310 Case") and Case No. 2:19-cv-00311-JRG-RSP (the "'311 Case"). Before the Court are the opening claim construction briefs of GREE, Inc. ("Plaintiff") ('310 Case Dkt. No. 63 and '311 Case Dkt. No. 62, both filed on July 24, 2020), the responses of Supercell Oy ("Defendant") ('310 Case Dkt. No. 65 and '311 Case Dkt. No. 64,[1] both filed on August 10, 2020), and Plaintiff's replies ('310 Case Dkt. No. 68 and '311 Case Dkt. No. 68,[1] both filed on August 17, 2020). The Court held a hearing on the issues of claim construction and claim definiteness on September 1, 2020. Having considered the arguments and evidence presented by the parties at the hearing and in their briefing, the Court issues this Order.

[1] '311 Case Dkt. Nos. 64 and 68 were both filed under seal. Redacted versions were filed as Dkt. Nos. 67 and 69, respectively.

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I. BACKGROUND

In the two cases addressed in this Order, Plaintiff alleges infringement of four U.S. Patents. In the '310 Case, Plaintiff asserts two U.S. Patents: No. 10,076,708 (the "'708 Patent") and No. 10,413,832 (the "'832 Patent"). In the '311 Case, Plaintiff asserts two U.S. Patents: No. 9,079,107 (the "'107 Patent") and No. 9,561,439 (the "'439 Patent"). The '107, '439, '708, and '832 Patents are collectively referred to herein as the "Asserted Patents."

A. The '708 and '832 Patents

The '708 and '832 Patents are related. As stated on the face of the patents, the application that issued as the '832 Patent is a continuation of the '708 Patent's application and both patents ultimately claim priority to a Japanese application filed June 21, 2012.

The patents are generally directed to a computer-game control method, server, and program "that can increase the variations on methods for acquiring battle cards and the like, increase the predictability of acquisition of a card or the like with a high rarity value or the like, and heighten interest in the game." '708 Patent col.1 ll.47–53. The two patents have the same abstract, which provides:

> A game control method, game server, and program can increase variations on methods for acquiring items, increase the predictability of acquisition of an item with a high rarity value or the like, and heighten interest in the game. Included are the steps of presenting a communication terminal, connected over a communication line, with acquirable item information that, for each item type, includes a total count and an acquisition count or a non-acquisition count of items when receiving, from the communication terminal, a request to present information related to items acquirable by the communication terminal, determining an item to provide to the communication terminal when receiving an item acquisition request from the communication terminal, and changing the acquirable item information when receiving a reset request from the communication terminal.

Claim 1 of the '708 Patent and Claim 4 of the '832 Patent, exemplary method and system claims respectively, recite as follows (with terms in dispute in bold italics and those Defendant contends render claims indefinite underlined):

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'708 Patent Claim 1. A game control method comprising the steps of:
(a) initializing a virtual game;
(b) displaying, during the virtual game, a plurality of cells and acquirable item information that is received from a server over a communication line, the plurality of cells being displayed in the same size, ***wherein each of a plurality of items extracted from an item information table pertaining to a user is associated with each of the plurality of cells***, the plurality of items being ***selected randomly*** only from items in the item information table, ***and at least one of the cells including a character which indicates a rarity value of an item associated with the at least one of the cells***;
(c) receiving, during the virtual game, a selection request selecting one of the plurality of cells and sending the selection request to the server; and
(d) ***displaying, during the virtual game, an item associated with the selected cell, which is determined by the server based on the selection request***.

'832 Patent Claim 4. A game server comprising:
a memory in which each of a plurality of cells is associated with each of extracted items extracted from the memory; and
a controller configured to
send information to a user terminal for displaying, in a virtual game, a sheet comprising the plurality of cells and obtainable item information, the obtainable item information comprising at least one of (i) a total number of items for each item type, (ii) a number of obtained items and (iii) a number of un-obtained items,
receive, in the virtual game, a selection request from the user terminal to select one cell among the plurality of cells,
send information for differentiating, in the virtual game, a display of the one cell from another cell of the plurality of cells in the sheet, wherein the differentiating of the display of the one cell is done in response to the selection request to select the one cell, and
provide, in the virtual game, an item of the extracted items that is associated with the one cell to a user of the user terminal.

B. The '107 and '439 Patents

The '107 and '439 Patents are related. As stated on the face of the patents, the application that issued as the '439 Patent is a division of the '107 Patent's application and both patents ultimately claim priority to a Japanese application filed March 12, 2013.

The patents are generally directed to a computer-game control method, server, and program "in which a plurality of users plays in cooperation with one another." '107 Patent col.2 ll.26–29. The two patents have the same abstract, which provides:

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