

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

GREE, INC.,

Plaintiff,

v.

SUPERCELL OY,

Defendant.

§ The Honorable Rodney Gilstrap

§

§

§

§

§

§

§

§

§

§

Civil Action No. 2:19-cv-000311-JRG-RSP

JURY TRIAL DEMANDED

EXPERT REPORT OF JOSÉ ZAGAL

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. QUALIFICATIONS	1
III. MATERIALS REVIEWED.....	3
IV. LEVEL OF ORDINARY SKILL IN THE ART	4
V. LEGAL PRINCIPLES	5
A. Invalidity	5
B. Anticipation.....	7
C. Obviousness	7
D. Secondary Considerations.....	12
E. Independent Invention	13
F. Written Description, Enablement, and Indefiniteness	13
G. Ineligibility.....	15
H. Willful Infringement	17
VI. THE PATENTS IN SUIT	17
A. OVERVIEW OF THE '107 AND '439 PATENTS	17
1. The Specification and Claims of the '107 and '439 Patents	17
2. Patent Prosecution History of the '107 Patent and '439 Patent	24
a. U.S. Patent Prosecution History of the '107 Patent	24
b. U.S. Patent Prosecution History of the '439 Patent	25
B. CLAIM CONSTRUCTION FOR THE PATENTS IN SUIT.....	26
C. GREE'S COMMERCIAL EMBODIMENT RELATING TO THE PATENTS IN SUIT.....	29
VII. GENERAL STATE OF THE PRIOR ART RELATING TO THE PATENTS IN SUIT	31

A.	Playing as a Group was Well Known Concept Long Before the Priority Dates of the '107 and '439 Patents.....	31
1.	Group Play was Common Concept in Board Games.....	32
2.	Group Play was Common Concept in Video Games.....	33
a.	Groups of Character Controlled by One Player	33
b.	Groups of Players Playing Together in the Game	34
B.	Players Collecting Points as Awards or Achievements for Completing Tasks or Actions (and Including as Part of Group Play) was Well Known Long Before the Priority Dates of the '107 and '439 Patents	43
1.	Collecting Points as Awards or Achievements in Boardgames.....	43
2.	Collecting Points as Awards or Achievements in MMO and MMORPG Games	43
3.	Collecting Points as Awards or Achievements in Social Networking Games	49
C.	Collecting Points or Multiple Virtual Assets to Collect a Reward or Item was Well Known Long Before the Priority Dates of the '107 and '439 Patents	50
D.	The Concept of Awarding Points or Virtual Assets to Guild or Group Members Based on Skill Level or Other Rules Set by the Game was Well Known Long Before the Priority Dates of the '107 and '439 Patents	58
1.	Collecting Points or Virtual Assets According to Skill Level of the Group Member in MMO/MMORPG Games.....	59
2.	Collecting Points or Virtual Assets According to Skill Level of the Group Member in Social Networking Games.....	73
3.	Collecting Points or Virtual Assets According to Skill Level of the Group Member in Patents and Patent Publications Relating to Games	76
E.	Use of Generic Game Servers Involving Generic Storage Units and Generic Processors for Running and Managing Games Was Well Known Long Before the Time of the '107 and '439 Patents Priority Date	79

VIII. THE ASSERTED CLAIMS OF THE '107 AND '439 PATENTS ARE PATENT-INELIGIBLE

A.	THE ASSERTED CLAIMS OF THE '107 AND '439 PATENTS ARE DRAWN TO AN ABSTRACT IDEA.....	82
B.	THE CLAIM LIMITATIONS OF THE '107 AND '439 PATENTS ADD NOTHING INVENTIVE.....	84

IX. INVALIDITY OF THE PATENTS IN SUIT AS ANTICIPATED AND/OR OBVIOUS.. 90

A.	SUMMARY OF THE ASSERTED PRIOR ART FOR THE PATENTS IN SUIT	90
1.	U.S. Patent Publication 2011/0300926 to Englman.....	90
2.	Warhammer Online Age of Reckoning (“Warhammer”)	94
a.	Game Description	101
b.	Character Progression and Skill Level in Warhammer.....	105
c.	Player Groups in Warhammer	108
d.	Group Events in Warhammer	113
3.	US Patent Application Publication No. 2013/0190094 to Ronen.....	118
4.	US Patent Application Publication No. 2006/0003824 to Kobayashi	121
5.	U.S. Patent Application Publication No. 2014/0024462 to Qiang	127
B.	INVALIDITY BASED ON ENGLMAN	130
1.	Englman Invalidates the Asserted Claims of the ’107 Patent.....	130
a.	Element 1-pre: A game control method carried out by a game control device for providing a game to a plurality of communication terminals respectively used by a plurality of users, the game control device communicating with the plurality of communication terminals and having a storage unit, the method comprising the steps of	130
b.	Element 1-A: (a) storing skill level information indicative of skill levels of each of the plurality of users of the game, in the storage unit;	133
c.	Element 1-B: (b) grouping the plurality of users into one or more groups;.....	134
d.	Element 1-C: (c) providing one or more of a plurality of game pieces to a first plurality of users in a first group of said one or more groups, based on the skill level information, while the first plurality of users are at certain events in the game;.....	135
e.	Element 1-D: (d) storing allocation information indicating which game piece has been provided to which user with a respective skill level, and a number and type of game pieces required to obtain a game item as a reward, in the storage unit;.....	140
f.	Element 1-E: (e) determining whether all of the game pieces required to obtain said game item have been provided to the first	

	group, based on the allocation information stored in the storage unit; and	145
g.	Element 1-F: (f) allocating in a memory, the game item to the first group or at least one of the first plurality of users, when it is determined that all the required game pieces have been provided.	147
h.	Element 2: The game control method according to claim 1, further comprising the step of (g) creating, in response to a request from a communication terminal of one of the plurality of users, a new group to which one of the plurality of users belongs.....	151
i.	Element 3: The game control method according to claim 1, further comprising the step of (h) allowing a user who plays the game to join a group only if the game control device has received approval from a communication terminal of at least one of the users in the group.	153
j.	Element 4: The game control method according to claim 1, wherein in step (c), the plurality of game pieces are respectively provided to users with skill levels in different ranges with different probabilities, based on the skill level information.	153
k.	Element 5: The game control method according to claim 1, wherein in step (c), the plurality of game pieces are respectively provided to users with skill levels in different ranges, based on the skill level information.	155
l.	Element 6: The game control method according to claim 1, wherein in step (c), each, of the plurality of game pieces is only provided to users with skill levels in a predetermined range, based on the skill level information.	156
m.	Element 7: The game control method according to claim 1, wherein in step (c) only one of the plurality of game pieces is provided to each of the first plurality of users.	159
n.	Element 8: The game control method according to claim 1, further comprising the steps of: (i) controlling a battle between two users in the game; and (j) transferring a game piece provided to one of the users in step (c) to the other user, depending on the outcome of the battle.	159
o.	Element 9-pre: A game control device for providing a game to a plurality of communication terminals respectively used by a plurality of users, the device comprising . . .	160

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.