Trials@uspto.gov
Tel: 571-272-7822

Paper 42
Entered: January 2, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2018-00008
Patent 9,597,594 B2

Before MICHAEL W. KIM, TIMOTHY J. GOODSON, and AMANDA F. WIEKER, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

I. INTRODUCTION

A. Background

Supercell Oy ("Petitioner") filed a Petition ("Pet.") for post-grant review of claims 1–20 of U.S. Patent No. 9,597,594 B2 ("the '594 patent") (Ex. 1001) pursuant to 35 U.S.C. §§ 321–329. Paper 1. GREE Inc. ("Patent Owner") filed a Preliminary Response ("Prelim. Resp."). Paper 7. With authorization from the Board (Paper 11), Petitioner filed a Reply to Patent Owner's Preliminary Response (Paper 12) and Patent Owner filed a Sur-Reply (Paper 13).

On May 1, 2018, we ordered that "a post-grant review is hereby instituted for claims 1–20 of the '594 patent with respect to all grounds set forth in the Petition." Paper 15, 16 ("Dec."). After institution of trial, Patent Owner filed a Patent Owner Response (Paper 24, "PO Resp."), Petitioner filed a Reply (Paper 27, "Pet. Reply"), and, with Board authorization (Paper 30), Patent Owner filed a Sur-Reply (Paper 34, "PO Sur-Reply").

Patent Owner also filed a Motion to Exclude Evidence (Paper 35; "PO Mot."), to which Petitioner filed an Opposition to Patent Owner's Motion to Exclude Evidence (Paper 39; "Pet. Opp."), and Patent Owner filed a Reply to Opposition to Motion to Exclude (Paper 40; "PO Reply"). An oral hearing was held on November 28, 2018. Paper 41 ("Tr.").

The Board has jurisdiction under 35 U.S.C. § 6. In this Final Written Decision, after reviewing all relevant evidence and assertions, we determine that Petitioner has met its burden of showing, by a preponderance of the evidence, that claims 1, 8, and 10–20 of the '594 patent are unpatentable. We determine further that Petitioner has not met its burden of showing, by a

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

preponderance of the evidence, that claims 2–7 and 9 of the ’594 patent are unpatentable. We further grant Patent Owner’s Motion to Exclude.

B. Related Proceedings

Petitioner identifies the following matter: *GREE, Inc. v. Supercell K.K.*, Case 2017 (Yo) No. 22046 in Tokyo District Court, associated with related patent JP 5,676,032, which relates to PCT/JP2014/07673. Pet. 2; Ex. 1001, (63) (the ’594 patent also claiming priority to PCT/JP2014/07673).

C. The ’594 patent

The ’594 patent relates generally to a method of improving the usability of computer games, where a user builds and defends a virtual city, by using templates to allow the user to more easily change game elements within a game space. Ex. 1001, 1:42–60, 2:5–11. More specifically, the ’594 patent describes such a game where a user creates a city by arranging various game elements, where those various game elements may include facilities, characters, soldiers, weapons, cards, figures, avatars, and items. Ex. 1001, 4:26–29; 4:38–40. The user’s city may then be attacked by opposing players, and the layout and design of the user’s city becomes a factor in whether the user is able to defend successfully the city. Ex. 1001, 1:44–49. According to the ’594 patent, as a player progresses in a game and expands their city within the game space, it becomes more complicated for a player to keep track of an ever-increasing number of game elements, for example, changes to the positions, types, and levels of those game elements. Ex. 1001, 1:50–55. To address this problem, the ’594 patent describes a game play method where a user may modify the game space using templates that can be applied to a predetermined area. Ex. 1001, 1:61–2:10. Hence, a

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

user is able to automatically rearrange a group of game elements to match a predesigned template. Ex. 1001, 4:34–37.

D. Illustrative Claim

Claims 1–20 are pending and challenged, of which claims 1, 10, 11, and 12 are independent. Independent claim 12, which is representative, is reproduced below:

> 12. A device in communication with a server, comprising:
>
> a memory device storing game software instructions; and
>
> one or more hardware processors configured to execute the game software instructions perform operations including:
>
> storing first positions of game contents;
>
> creating a template defining game contents and second positions of one or more of the game contents arranged in a game space based on a template creation command by a game player,
>
> storing the created template in the memory device, and
>
> applying the template to a predetermined area within the game space based on a template application command by the game player.

E. The Alleged Ground of Unpatentability

The Petition asserts that claims 1–20 of the '594 patent are unpatentable as being directed to patent ineligible subject matter. Pet. 16–38.

F. Eligibility of Patent for Post-Grant Review

The post-grant review provisions of the Leahy-Smith America Invents Act ("AIA")[1] only apply to patents subject to the first inventor to file provisions of the AIA. AIA § 6(f)(2)(A). Specifically, the first inventor to

---

[1] Pub L. No. 112-29, 125 Stat. 284 (2011).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

file provisions apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time a claim to a claimed invention that has an effective filing date on or after March 16, 2013. AIA § 3(n)(1). Furthermore, "[a] petition for a post-grant review may only be filed not later than the date that is 9 months after the date of the grant of the patent or of the issuance of a reissue patent (as the case may be)." 35 U.S.C. § 321(c); *see also* 37 C.F.R. § 42.202(a) (setting forth the same).

Petitioner asserts that the instant Petition was filed within nine months of the March 21, 2017, issue date of the '594 patent. Pet. 2. Further, the application that issued as the '594 patent was filed on December 30, 2015. Ex. 1001, (22). Patent Owner does not dispute that the '594 patent is eligible for post-grant review. *See generally* PO Resp. We find that the '594 patent is eligible for post-grant review.

II. ANALYSIS OF GROUND OF UNPATENTABILITY

We now turn to Petitioner's asserted ground of unpatentability to determine whether Petitioner has met its burden of showing, by a preponderance of the evidence, that each of claims 1–20 are unpatentable. 35 U.S.C. § 326(e).

A. Claim Construction

In this post-grant review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.200(b); *see also Cuozzo Speed Techs.,*

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

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.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.