UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

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Case PGR2018-00008
Patent 9,597,594 B2

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

KIM, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING
37 C.F.R. § 42.71

I.   INTRODUCTION

Supercell Oy ("Petitioner") filed a Petition for post-grant review of claims 1–20 of U.S. Patent No. 9,597,594 B2 (Ex. 1001, "the '594 patent"). Paper 1 ("Pet."). On May 1, 2018, the Board instituted trial for claims 1–20 of the '594 patent with respect to all grounds set forth in the Petition. Paper 15 ("Institution Dec."). During trial, Patent Owner filed a Patent Owner Response (Paper 24), Petitioner filed a Reply (Paper 27, "Pet. Reply"), and, with Board authorization (Paper 30), Patent Owner filed a Sur-Reply (Paper 34).

On January 2, 2019, the Board issued a Final Written Decision holding that claims 1, 8, and 10–12 are unpatentable as being directed to patent ineligible subject matter, and further holding that claims 2–7 and 9 had not been shown to be unpatentable. Paper 42, 49, 58 ("Final Dec.").

On February 1, 2019, Petitioner filed a Request for Reconsideration of the Decision. Paper 43 ("Req." or "Request"). On March 5, 2019, Petitioner filed a Notice of Appeal. Paper 44. On March 6, 2019, Petitioner informed the Board that it wished to withdraw the Notice of Appeal and continue with the Request. On March 13, 2019, the Federal Circuit issued, as a mandate, an Order indicating that Petitioner's appeal of the Board's Final Written Decision was dismissed. Ex. 3005. On April 17, 2019, the Board entered an Order deeming Petitioner's Notice of Appeal as being withdrawn, and further indicating that the Request will be considered by the Board in due course. Paper 45.

We have considered Petitioner's Request. For the reasons that follow, the Request is *denied*.

II.   ANALYSIS

A request for rehearing must identify specifically all matters the requesting party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

The sole issue on which Petitioner requests rehearing in the Final Written Decision is with respect to the Board's determination that dependent claims 2 and 3 were not shown to be unpatentable. *See* Req. 1–11. Petitioner contends dependent claims 2 and 3 are directed to patent ineligible subject matter. *Id.* Generally, Petitioner contends the Board overlooked that (1) dependent claims 2 and 3 differ in scope from dependent claim 9, and that (2) dependent claims 2 and 3 only add a multi-player environment, which was accounted for in the claimed concept. Req. 2, 5, 8.

In support of its argument, Petitioner points to disparate statements, located under different headings in the Petition, discussing the multi-player environment. Req. 2, 8 (citing Pet. 6, 33–34). In addition, Petitioner refers to other statements, in the Petition under yet another heading, in asserting that the Board misapprehended or overlooked that a multi-player environment was accounted for in its assertions concerning "creating and applying a template of positions of one or more game contents." Req. 5 (citing Pet. 22–23).

As an initial matter, we note that it is not the Board's role to cobble together bits from the Petition, combining disparate statements found throughout the record, in this case under three completely different headings, in order to piece together Petitioner's argument. *See DeSilva v. DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999) ("A brief must make all arguments accessible to the judges, rather than ask them to play archeologist with the

record."). Notwithstanding, we address the substance of Petitioner's
Request.

First, Petitioner contends that the Board overlooked that dependent
claims 2 and 3 differ in scope from dependent claim 9 (Req. 2) and therefore
erred in applying the same analysis to all of those claims (Req. 9). We
disagree.

The Final Written Decision explains that Petitioner's analysis and
evidence as to dependent claim 9 was insufficient. Final Dec. 43. The
Board determined that Petitioner's analysis and evidence for dependent
claims 2 and 3, which was essentially limited to a sentence on page 33 of the
Petition, was similarly insufficient.[1] *Id.* Accordingly, as Petitioner's
analysis and evidence for all of those claims were insufficient, applying the
similar analyses was correct.

Second, we consider Petitioner's contention that the Board overlooked
that dependent claims 2 and 3 only add a multi-player environment, and that
the addition of a multi-player environment was properly accounted for in the
claimed concept.

In the Final Written Decision, we determined that independent claim 1
is directed to the concept of "creating and applying a template of positions of
one or more game contents." Final Dec. 37. We further determined that
dependent claims 2 and 3 recite "additional details" beyond that concept. *Id.*
at 43. Indeed, we agreed with Petitioner's summary of those additional
details. *Id.* Specifically, the Petition summarizes claims 2 and 3 as follows:

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[1] In its Reply, Petitioner does not address any dependent claim with any
specificity. *See generally* Pet. Reply.

> Dependent claim 2 and its dependent claim 3 describe the method of claim 1, but *add that the method is conducted in a multi-player environment wherein a second player can also create and apply templates within the game space*.

Pet. 33 (emphasis added). In other words, according to the Petition itself, dependent claims 2 and 3 contain the additional details of "in a multi-player environment." We are unclear how the Board was supposed to ascertain that the Petition intended to account for "in a multi-player environment" within the claimed concept, when the Petition itself, by the use of the word "add," labels "in a multi-player environment" as additional details.

Even assuming that the Board did overlook or misapprehend that the Petition articulated that "in a multi-player environment" was subsumed within "creating and applying a template of positions of one or more game contents," we note that the aforementioned portion of the Petition also identifies, as additional details, "wherein a second player can also create and apply templates within the game space." Neither the Petition nor the Request explains why these additional details should be considered a part of the claimed concept.

Furthermore, delving into the merits of those latter additional details, we were, and continue to be, unpersuaded that a second player, that can both "create" and "apply" a template, is accounted for adequately in the Petition. Specifically, even if we were to agree the Petition accounts for a second player "applying" a template "in a multi-player environment" (*see* Req. 5, citing Pet. 6), the Petition makes *no mention* of the second player being able t*o also create* the template. As discussed in the Final Written Decision, Petitioner did not provide sufficient evidence or analysis that a second player able to also create and apply templates is included in the claimed concept of

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