

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

Record of Oral Hearing
Held: November 28, 2018

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

Case PGR2018-00008
Patent 9,597,594 B2

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The above-entitled matter came on for hearing on Wednesday, November 28, 2018, commencing at 1:00 p.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE KIM: So, welcome. This is an oral hearing for PGR-2018-00008, U.S. Patent Number 9,597,594, Supercell Oy, Petitioner versus GREE, Incorporated. My name is Michael Kim. To my left I have Judge Amanda Wieker, and on the screen we have Judge Tim Goodson, out in our Silicon Valley office.

So, with that, can we start with appearances, starting with Petitioner, please?

MS. BUSH: Thank you, Your Honors. Jennifer Bush, lead counsel for Petitioner Supercell Oy. I'm joined by our backup counsel of record, Michael Sacksteder and Geoffrey Miller. And Mr. Sacksteder will be arguing today.

JUDGE KIM: Great. Thanks.

For the Patent Owner?

MR. ALEMANNI: Thank you, Your Honor. Good afternoon. My name is John Alemanni. I'm here on behalf of Patent Owner GREE. With me today are backup counsel, Andy Rinehart, Steve Moore, and Ms. Arneita Gray will be helping us with the monitor today. Thank you.

JUDGE KIM: All right. So a few housekeeping things. I believe 60 -- each side gets 60 minutes. The order is going to be Petitioner, Patent Owner, Petitioner, Patent Owner, with the last two sessions being reserved for rebuttal. As we know, rebuttal sessions really need to respond

1 to something said previously. Nothing new really should be brought up at
2 that time.

3 As far as in and out, if people need to do it, we ask that you restrict it
4 to when the speakers are changing, to be as minimally disruptive as possible.
5 And of course, because Judge Goodson is remote, he does have the slides in
6 front of him, so if you could please refer to the slides or any exhibits or
7 papers, he can readily find them, if necessary.

8 So with that, Mr. Sacksteder, how much time would you like to
9 reserve for rebuttal, approximately?

10 MR. SACKSTEDER: Your Honor, I'd like to reserve 15 minutes,
11 please.

12 JUDGE KIM: Okay. And Mr. Alemanni, about how much time
13 for sur-rebuttal?

14 MR. ALEMANNI: I would guess it's probably 15 to 20 minutes for
15 sur-rebuttal.

16 JUDGE KIM: Okay. We'll say 15. All right. So Mr.
17 Sacksteder, you can begin when you're ready.

18 MR. SACKSTEDER: Thank you, Your Honor. And I initially
19 have to begin with an apology. I picked up a cold on the airplane --

20 JUDGE KIM: Oh yes?

21 MR. SACKSTEDER: -- on the way out, and so I sound pretty
22 terrible right now. So I hope that what I say is both substantively and
23 audibly understandable today.

1 The Board got it right on its institution decision in this case. The
2 Board determined that the claims are directed to creating and applying a
3 template, that that's an abstract idea, that there was nothing additional in the
4 claims that would make those claims patentable.

5 I'd like to briefly, since this came up on the call, address the, what
6 the claims are directed to, issue for a moment, and then it's addressed
7 throughout our slides.

8 The point that I'd like to raise initially is that there's an argument in
9 Patent Owner's sur-reply that says, quote, all of the claims of the '594 patent
10 are directed to the movement of game contents from first positions to second
11 positions, and the claim template is how those results are achieved. That's
12 at Page 21 of the Patent Owner's sur-reply.

13 And I would like to point out that that is a completely new position.
14 It's a new argument that was raised for the first time in the sur-reply. I
15 would have handled the deposition of Patent Owner's expert differently had I
16 known that this was a position they were going to take. I think obviously,
17 first of all I would ask whether moving game pieces from one place to
18 another on a board is a, is something other than an abstract idea. So I think
19 that, that argument and the positions that are based on it should be
20 disregarded in this situation.

21 JUDGE KIM: Okay. I get your point there.

22 MR. SACKSTEDER: Sure.

23 JUDGE KIM: But I do think Patent Owner has argued that they
24 want to limit this to in-game environment, and perhaps they did not say that

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