UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner

v.

GREE, INC.,
Patent Owner

Case: PGR2018-00029
U.S. Patent No. 9,636,583

PATENT OWNER'S SUR-REPLY

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Patent Owner's Exhibit List

Exhibit No.	Exhibit Description
2001	April 26, 2018 "Guidance on the impact of SAS on AIA trial proceedings," *available at* https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial
2002	Declaration of David Crane
2003	JP2007252696 and Machine Translation of Description
2004	Biography of Steven D. Moore
2005	*Not used*
2006	*Not used*
2007	U.S.P.T.O. 2019 Revised Patent Subject Matter Eligibility Guidance, effective January 7, 2019
2008	Remarks by Director Iancu at the Intellectual Property Owners Association 46th Annual Meeting, Sept. 24, 2018, *available at* https://www.uspto.gov/about-us/news-updates/remarks-director-iancu-intellectual-property-owners-46th-annual-meeting

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I. Introduction.

Petitioner's Reply presents no new evidence of what it contends was well-understood, routine, or conventional. Instead, Petitioner presents new arguments that appeared nowhere in the Petition about why the claims are allegedly abstract and invalid under § 112. As explained herein, the claims are patentable under *Alice*, and Petitioner has failed to meet its burden under § 112.

II. The Claims Are Not Directed to an Abstract Idea.

The claims are not directed to an abstract idea and the analysis ends at step one. *First*, under the Office's revised §101 guidance, the claims are not directed to abstract ideas because they do not recite mathematical concepts, methods of organizing human activity, or mental processes. *Second*, under this guidance the claims recite a practical application of Petitioner's alleged abstract ideas because the claims as a whole are an improvement to known video-game user interfaces and game mechanics. *Third*, the claims are analogous to other claims found patentable under *Alice*.

In the Reply, Petitioner belatedly presents a new argument not found anywhere in the Petition—namely, that the '583 patent is directed to a "way of managing a game and playing a game." Paper 33 ("Reply"), at 9. This argument should be rejected at least because Petitioner never raised it in the Petition, and this contradicts Petitioner's previous assertions that the '583 patent is directed to

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"*displaying* a video game based on stored panel information." Paper 1 ("Pet."), at 21 (emphasis added). Petitioner's contradictory arguments are an admission that the claims are directed to more than *either* of Petitioner's two alleged abstract ideas by themselves, and are therefore patentable.

The remaining arguments in the Reply regarding *Alice* fail to prove the claims are abstract. Software can make non-abstract improvements to computer technology just as hardware can. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). The Federal Circuit has frequently found claims that recite functional results non-abstract. And as explained below, the claims of the '583 patent are analogous to those found patentable in other cases.

A. The Claims are Not Abstract Under the Office's Revised Guidance.

On January 7, 2019, the Office promulgated revised guidance regarding the analysis under § 101. *See* Ex. 2007. This guidance was not available to Patent Owner prior to submission of the Response. *See* Paper 26. Petitioner did not address this guidance in its Reply.

Under this revised guidance, three "groupings" of abstract ideas are identified:

- "Mathematical concepts";
- "Certain methods of organizing human activity"; and
- "Mental processes."

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