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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2018-00029
Patent 9,636,583 B2

Before MICHAEL W. KIM, LYNNE H. BROWNE,
and CARL M. DEFRANCO, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

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

I. INTRODUCTION

Supercell Oy ("Petitioner") filed a Petition ("Pet.") for post-grant review of claims 1–15 of U.S. Patent No. 9,636,583 B2 ("the '583 patent") (Ex. 1001) pursuant to 35 U.S.C. §§ 321–329. Paper 1. GREE, Inc. ("Patent Owner") filed a Preliminary Response ("Prelim. Resp."). Paper 13. With our authorization, Petitioner filed a Reply to Patent Owner's Preliminary Response and Patent Owner filed a Sur-Reply. Papers 18, 19.

On August 21, 2018, we issued a Decision ordering that "pursuant to 35 U.S.C. § 324, a post-grant review is hereby instituted for claims 1–15 of the '583 patent with respect to all grounds set forth in the Petition." Paper 21, 21 ("Dec.")[1] After institution, Patent Owner filed a Patent Owner's Response (Paper 26; "PO Resp."), Petitioner filed a Petitioner's Reply to Patent Owner's Response (Paper 33; "Pet. Reply"), and Patent Owner filed a Patent Owner's Sur-Reply (Paper 35; "PO Sur-Reply."). On oral hearing was held on June 19, 2019. Paper 43; "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 1–15 of the '583 patent are unpatentable.

A. The '583 Patent

The '583 patent relates generally to a method of displaying a battle scene for a computer game in which users do battle against each other using cards or "panels" collected in the game. Ex. 1001, 1:31–44, 4:18–22. The '583 patent states that a card game system in which "the user configures a deck with cards used

[1] Patent Owner filed a Request for Rehearing (Paper 23), which was denied. Paper 25 ("Req.").

in a play which is selected from a plurality of cards that the user owns, and plays a rock-paper-scissors game or the like with an opponent using the deck. . . . is familiar to many users today." Ex. 1001, 1:36–41. According to the '583 patent, "since the use of a two-dimensional card in the battle scene is sometimes boring, there have been calls for improvement." Ex. 1001, 1:42–43. To address this problem, the '583 patent describes consecutively emphasizing panels when displaying the battle scene, so that the battle proceeds in a cartoon or movie-like format, thus, giving the user an improved visual effect. Ex. 1001, 6:36–46, 7:36–38, 7:54–58.

B. Related Matters

Petitioner identifies the following matter: *GREE, Inc. v. Supercell K.K.*, Case 2017 (Yo) No. 22165 in Tokyo District Court, associated with related patent JP 6,125,128. Pet. 1–2. Petitioner indicates that the '583 patent is a continuation of U.S. Application Ser. No. 14/291,358, which claims the benefit of Japanese Patent Application No. 2013-116039, which published as JP 6,125,128. Pet. 1; *see* Ex. 1001, (63), (30). Patent Owner identifies PGR2018-00047 as involving U.S. Patent No. 9,770,659 B2, which is related to the '583 patent. Paper 6, i.

C. Illustrative Claim

Claims 1–15 are pending and challenged, of which claims 1, 14, and 15 are independent. Independent claim 1, which is representative, is reproduced below:

> 1. A non-transitory computer readable recording medium storing game program code instructions for a game in which a first user and a second user do battle, and when the game program code instructions are executed by a computer, the game program code instructions cause the computer to perform:
>
> a data storage function of storing a first panel database that includes a plurality of panels that the first user possesses, and a second

panel database that includes a plurality of panels that the second user possesses;

a panel selection function of selecting one or more panels to be disposed in one or more divisions of a game display screen including a display region formed by the divisions, from the first panel database and the second panel database;

a panel layout function of disposing the panels selected by the panel selection function in the divisions; and

a screen display control function of displaying the game display screen on a screen display unit, wherein

the data storage function further stores points set for the first user, which are decreased by disposing a panel,

the panel selection function selects a panel from the first panel database according to the points set for the first user,

the divisions include a division where a panel selected from the first panel database is allowed to be disposed and a division where a panel selected from the second panel database is allowed to be disposed, and

the panel layout function disposes the panel selected by the panel selection function in a target division when the panel is allowed to be disposed in the target division.

D. The Alleged Grounds of Unpatentability

The Petition asserts that claims 1–15 of the '583 patent are unpatentable as being directed to patent ineligible subject matter under 35 U.S.C. § 101 (Pet. 16–31), lacking adequate written description under 35 U.S.C. § 112(a) (Pet. 31–38), and being indefinite under 35 U.S.C. § 112(b) (Pet. 39–42).

E. Eligibility of Patent for Post-Grant Review

The post-grant review provisions of the Leahy-Smith America Invents Act ("AIA")[2] apply only to patents subject to the first inventor to file provisions of the

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

AIA. AIA § 6(f)(2)(A). Specifically, the first inventor to 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 is being filed within nine months of the May 2, 2017 issue date of the '583 patent. Pet. 2. Further, the '583 patent was filed on September 1, 2016 and claims benefit of several priority dates, the earliest of which is May 31, 2013. Ex. 1001, (22), (30). Patent Owner does not contest Petitioner's assertions. *See generally* PO Resp.; PO Sur-Reply. We are persuaded that Petitioner has met its burden of showing, by a preponderance of the evidence, that the '583 patent is eligible for post-grant review.

II. ANALYSIS

We turn now to Petitioner's asserted grounds of unpatentability to determine whether Petitioner has met its burden of showing, by a preponderance of the evidence, that claims 1–15 of the '583 patent are unpatentable.

A. Claim Construction

As a step in our analysis for determining whether to institute a review, we determine the meaning of the claims. The instant Petition was filed prior to the effective date of the rule change that replaces the broadest reasonable interpretation ("BRI") standard. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (final rule) (codified at 37 C.F.R. § 42.200(b) (2019)) ("This rule is effective on November 13, 2018 and applies to all IPR, PGR

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