UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner

v.

GREE, INC.,
Patent Owner

Case: PGR2018-00047
U.S. Patent No. 9,770,659

PATENT OWNER'S SUR-REPLY

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Patent Owner's Exhibit List

Exhibit No.	Exhibit Description
2001	Biography of Steven D. Moore
2002	Declaration of David Crane
2003	JP2007252696 and Machine Translation of Description
2004	File History of Patent Application No. 15/686268
2005	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
2006	Kevin Mullet & Darrell Sano, Designing Visual Interfaces – Communication Oriented Techniques (1995)
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

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 misrepresents Patent Owner's expert testimony with respect to § 112. For the reasons below, the claims are patentable.

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

The claims are not abstract. *First*, under the Office's revised guidance regarding § 101, the claims are not abstract because the claims 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 limitations of the claims as a whole recite improvements to video-game graphical user interfaces ("GUI"). *Third*, the claims are analogous to other claims that the Federal Circuit has found patentable.

In the Reply, Petitioner presents a new argument not found in the Petition—namely, that the '659 patent is directed to a "way of managing a game and playing a game." Paper 27 ("Reply"), at 11. This argument should be rejected at least because Petitioner never raised it in the Petition, and furthermore this contradicts Petitioner's previous assertion that the claims are directed to "*controlling a video game display* based on a received selection of panel information." Paper 1

("Pet."), at 24 (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 therefore patentable.

The remaining Reply arguments 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, the claims 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 §101 analysis. *See* Ex. 2007. This guidance was not available to Patent Owner prior to submission of the Response. *See* Paper 20. Petitioner did not address this guidance in its Reply.

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

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

Ex. 2007, at 9-11 (footnotes omitted).

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