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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 PGR2018-00047
Patent 9,770,659 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. 9,770,659 B2 ("the '659 patent") (Ex. 1001) pursuant to 35 U.S.C. §§ 321–29. Paper 1. GREE, Inc. ("Patent Owner") filed a Preliminary Response ("Prelim. Resp."). Paper 15.

On September 18, 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 '659 patent with respect to all grounds set forth in the Petition." Paper 17, 26; "Dec." After institution, Patent Owner filed a Patent Owner's Response (Paper 20; "PO Resp."), Petitioner filed a Petitioner's Reply to Patent Owner's Response (Paper 27; "Pet. Reply"), and Patent Owner filed a Patent Owner's Sur-Reply (Paper 29; "PO Sur-Reply."). An oral hearing was held on June 19, 2019. Paper 37; "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 '659 patent are unpatentable.

A. The '659 Patent

The '659 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, 1:33–46, 5:28–32. The '659 patent states that a card game system in which "the user configures a deck with cards used 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, 1:38–42. According to the '659 patent, "since the use of a two-dimensional card in the battle scene is sometimes boring, there have been calls for improvement." Ex. 1001, 1:44–46. To address this problem, the '659 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, 7:45–55, 8:46–48, 8:65–9:2.

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 '659 patent is a continuation of U.S. Application Ser. No. 15/253,964, which 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 PGR2018-00029 as involving U.S. Patent No. 9,636,583 B2, which is related to the '659 patent. Paper 4, i.[1]

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 panel selection function of receiving a selection by the first user, the selection being for one or more panels indicating characters to be disposed in one or more divisions of a game display screen including
>
> a display region formed by the divisions;
>
> a panel layout function of disposing the panels in the divisions on the basis of the selection received by the panel selection function; and
>
> a screen display control function of controlling the game display screen on a screen display unit on the basis of information regarding

[1] On August 14, 2019, a Final Written Decision was issued in PGR2018-00029 holding claims 1–15 of U.S. Patent No. 9,636,583 B2 unpatentable. *See Supercell Oy v. GREE, Inc.*, Case PGR2018-00029, slip op. at 69 (PTAB Aug. 14, 2019) (Paper 45).

the layout by the panel layout function and layout of the panel in the divisions by the second user, wherein

the panel layout function disposes the panel received by the panel selection function in a target division or receives an instruction that the panel is disposed in the target division, when the panel is allowed to be disposed in the target division, and the panel indicating the character is displayed as an animation when being disposed in the target division.

D. The Alleged Grounds of Unpatentability

The Petition asserts that claims 1–15 of the '659 patent are unpatentable as being directed to patent ineligible subject matter under 35 U.S.C. § 101 (Pet. 16–38), lacking adequate written description under 35 U.S.C. § 112(a) (Pet. 38–47), and being indefinite under 35 U.S.C. § 112(b) (Pet. 47–52).

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 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 September 26, 2017, issue date of the '659 patent. Pet. 2. Further, the '659 patent was filed on December 27, 2016, and claims benefit of several priority

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

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 '659 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 '659 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 and CBM petitions filed on or after the effective date."). We, therefore, apply the BRI standard in this proceeding. *See* 37 C.F.R. § 42.200 (2017). Under that standard, in a post-grant review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.200(b); *see also Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under the broadest reasonable construction standard, claim terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure.

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