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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*.

DECISION
Granting Institution of Post-Grant Review
35 U.S.C. § 324(a)

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. §§ 321–329. Paper 1. GREE, Inc. ("Patent Owner") filed a Preliminary Response ("Prelim. Resp."). Paper 15. We have jurisdiction under 35

U.S.C. § 324(a), which provides that a post-grant review may be instituted only if "the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable."

Petitioner challenges the patentability of claims 1–15 of the '659 patent under 35 U.S.C. §§ 101, 112(a), and 112(b). After considering the Petition and the Preliminary Response, as well as all supporting evidence, we are persuaded that it is more likely than not that Petitioner would prevail in showing that at least one of the challenged claims is unpatentable under § 101.

Applying the standard set forth in 35 U.S.C. § 324(a), we institute a post-grant review of claims 1–15 of the '659 patent.

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.

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 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 non-statutory 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")[1] 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 Dec. 27, 2016, and claims benefit of several priority dates, the earliest of which is May 31, 2013. Ex. 1001, (22), (30). On this record, we agree with Petitioner that the '659 patent is eligible for post-grant review.

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

II. ANALYSIS

We turn now to Petitioner's asserted grounds of unpatentability to determine whether Petitioner has met the threshold standard, under 35 U.S.C. § 324(a), for instituting review.

A. Claim Construction

As a step in our analysis for determining whether to institute a review, we determine the meaning of the claims for purposes of this Decision. 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. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). However, a "claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history." *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). We determine that it is unnecessary to expressly construe any claim terms at this time.

B. Claims 1–15 as Directed to Non-Statutory Subject Matter Under 35 U.S.C. § 101

Petitioner contends that claims 1–15 do not recite patent eligible subject matter under 35 U.S.C. § 101. Pet. 16–38 (citing Exs. 1001–1008). Patent Owner disagrees. Prelim. Resp. 10–37 (citing Exs. 1001, 1005, 1006, 2002, 2004).

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