UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

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Case PGR2018-00055
Patent 9,687,744 B2

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Before LYNNE H. BROWNE, HYUN J. JUNG, and CARL M.
DEFRANCO, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Claims Unpatentable
Denying Patent Owner's Motion to Amend

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 1–12 of U.S. Patent No. 9,687,744 B2 ("the '744 patent") (Ex. 1001) pursuant to 35 U.S.C. §§ 321–329. Paper 1. GREE, Inc. ("Patent Owner") filed a Preliminary Response. Paper 10.

On September 25, 2018, we issued a Decision ordering that "pursuant to 35 U.S.C. § 324, a post-grant review is hereby instituted for claims 1–12 of the '744 patent with respect to all grounds set forth in the Petition." Paper 11, 24, "Dec." After institution, Patent Owner filed a Patent Owner's Response (Paper 14, "PO Resp.") and a Patent Owner's Contingent Motion to Amend (Paper 15, "PO MTA"). Thereafter, Petitioner filed a Petitioner's Reply to Patent Owner's Response (Paper 23, "Pet. Reply") and a Petitioner's Opposition to Motion to Amend (Paper 24, "Pet. Opp. to MTA"). Patent Owner then filed a Patent Owner's Sur-Reply (Paper 27, "PO Sur-Reply") and a Patent Owner's Reply to Opposition to Motion to Amend (Paper 26, "PO Reply to Opp. to MTA"). Petitioner subsequently filed a Petitioner's Sur-Reply to Opposition to Patent Owner's Motion to Amend (Paper 29, "Pet. Sur-Reply to Opp. to MTA"). Patent Owner and Petitioner presented oral arguments on June 27, 2019.

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 1–12 of the '744 patent are patent ineligible. We further determine that Petitioner has met its burden by showing, by a preponderance of the evidence, that the proposed amended claims are also patent ineligible.

The '744 patent relates generally to improvement of a video battle game by:

> providing a battle game between groups, which are composed of characters operated by players through client devices . . . wherein a server device stor[es], for each character, a parameter which serves as an indicator for developing the battle game between the groups: calculates a difference in the parameter between two characters belonging to the same group . . . and performs presentation processing [for] increasing an effect of attack by the group according to the difference in the parameter.

Ex. 1001, 1:65–2:8.

The '744 patent explains that in a battle game, in order "[f]or a plurality of players to make successive attacks in cooperation with each other, the players need to be proficient in the battle game to a certain extent, and there is hardly any scene where inexperienced players can play active parts." *Id.* at 1:53–57. Consequently, "inexperienced players are not sufficiently motivated to participate in the battle game." *Id.* at 1:58–60. According to the '744 patent, this problem is solved by the operations outlined *supra*. *Id.* at 1:64–65. These operations are illustrated by the

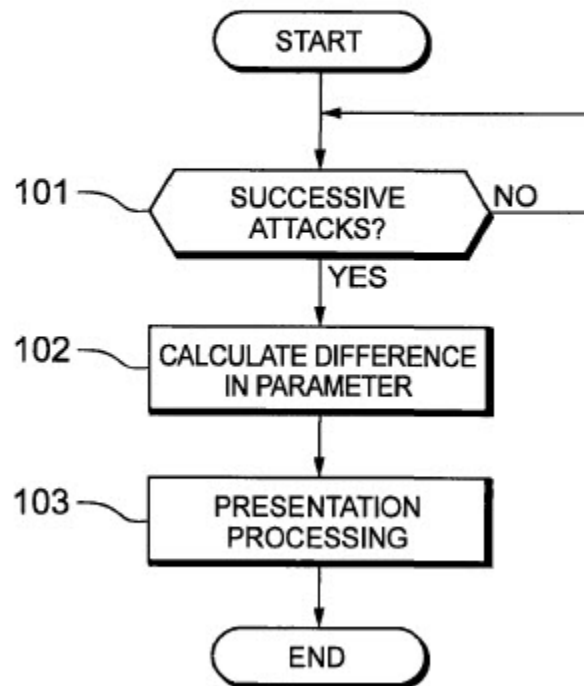flowchart shown in Figure 6 reproduced below:

FIG. 6

Figure 6 "is flowchart showing flow of 'combo' presentation processing according to the embodiment." *Id.* at 2:31–32. As shown in Figure 6:

> When the presentation processing module 41 detects successive attacks by two characters belonging to the same group (step 101: YES), the presentation processing module 41 calculates the difference in the parameter 50 between the two characters successive in the attack order (step 102), and performs presentation processing of increasing the effect of attack by the group according to the difference in the parameter 50 (step 103).

Id. at 6:49–56 (emphasis omitted).

A. Related Matters

The parties state that there are no related matters. Pet. 1; Paper 5, i–ii.

B. Illustrative Claim

Claims 1, 5, and 9 are independent. Illustrative claim 1 is reproduced below:

> 1. A method for providing a battle game to each of a plurality of client devices via a network, comprising:
>
> storing, by a server device, for each of a plurality of characters, a parameter that serves as an indicator for developing the battle game; and
>
> controlling, by a processor of the server device, an effect of attack by a group, according to a difference in the parameter between two characters belonging to the same group and successive in attack order and to a number of attacks within a predetermined time by any characters in the group.

Ex. 1001, 7:54–64.

Additionally, independent claims 5 and 9 are directed to a method and system, respectively. *Id.* at 8:12, 8:40. Each independent claim recites, with some variation, limitations directed to a network storing a parameter for each character and controlling an effect of an attack based on a difference in parameter between two characters. *See id.* at 7:54–65, 8:12–24, 8:40–54.

C. The Alleged Grounds of Unpatentability

The Petition asserts that claims 1–12 of the '744 patent are unpatentable as being directed to non-statutory subject matter under 35 U.S.C. § 101 (Pet. 23–51), lacking adequate written description under 35 U.S.C. § 112(a) (Pet. 51–63), and being indefinite under 35 U.S.C. § 112(b) (Pet. 63–68).

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