UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner

v.

GREE, INC.,
Patent Owner

Case PGR2018-00070
Patent 9,770,656

PATENT OWNER'S PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.207(a)

TABLE OF CONTENTS

EXHIBIT LIST

Exhibit	Description
2001	Declaration of Dr. Michael Shamos in Support of the Patent Owner's Preliminary Response
2002	Bauckhage, et al., H*ow Players Lose Interest in Playing a Game: An Empirical Study Based on Distributions of Total Playing Times*, 2012 IEEE Conference on Computational Intelligence and Games (Sept. 11, 2012)
2003	Declaration of Andrew J. Sutton In Support of the Patent Owner's Preliminary Response

Pursuant to 37 C.F.R. §42.207[1], Patent Owner Gree, Inc. ("Gree") submits this Preliminary Response to the above-captioned Petition ("Pet.," Paper 2) for *post-grant* review (PGR) of claims 1-6 of U.S. Patent No. 9,770,656 ("the '656 Patent"), which should be denied institution for failure to show a reasonable likelihood of prevailing on any asserted grounds and for all challenged claims.

I. INTRODUCTION

The Board should deny the Petition because it fails to present any legitimate basis for instituting a post-grant review. ***First***, Petitioner's arguments that the challenged claims are invalid under 35 U.S.C. § 112(a) and (b) are meritless. Petitioner's § 112(a) argument is facially defective, as the challenged limitations were recited in the ***originally filed claims***. Of course, original claims are part of the specification therefore there is explicit support for these terms — the Board need go no further in this regard. Yet, even if further review were in order, Petitioner readily admits that analysis of written description under § 112(a) and indefiniteness under § 112(b) requires the understanding of a POSITA. But, the Petition fails to define the level of skill of a POSITA, much less offer evidence regarding the understanding of one. Petitioner's arguments are little more than word-matching exercises that have no relation to the actual law of § 112, and not surprisingly, rest solely on misguided

[1] Section cites are to 35 U.S.C. or 37 C.F.R., and emphasis is added unless noted.

attorney argument. In contrast, Patent Owner presents the testimony of Dr. Michael Shamos, Distinguished Career Professor in the School of Computer Science at Carnegie Mellon University, who testifies that a person of ordinary skill in the art (POSITA) reviewing the specification and claims would have known that the specification discloses the elements challenged by Petitioner as lacking. Patent Owner's expert also testifies that a POSITA reviewing the claims and specification would understand the scope of the claimed invention with reasonable certainty.

Second, Petitioner has failed to demonstrate a reasonable likelihood that it will prevail on its § 101 argument. Petitioner's proposed abstract idea is also defective on its face as it is incomplete, for it fails to even include the "exchange element" which is a focus of the claims. Further the proposed abstract idea fails to recognize the multi-player aspect of the computer game problem solved by the '656 patent. The abstract idea proposed by Petitioner (in an attempt to satisfy step one of the *Alice* framework) requires "generating a mission list ***in a video game.***" Thus, even under Petitioner's definition, the claims cannot be directed to a "method of organizing human activity." Petitioner's inability to articulate an abstract idea that could satisfy *Alice* step one plainly demonstrates that the claims are not directed to an abstract idea. Indeed, the claims are not simply directed to any "video game" but to innovative improvements to the particularized operation of "online social games," *e.g.*, online multi-player computer games for portable devices. Ex. 1001, 1:19-24,

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