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Paper 7
Entered: January 23, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2018-00071
Patent 9,770,664 B2

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

DEFRANCO, *Administrative Patent Judge*.

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

GREE, Inc. ("GREE") is the owner of U.S. Patent No. 9,770,664 B2 ("the '664 patent"). Supercell Oy ("Supercell") filed a petition requesting post-grant review of claims 1–19 of the '664 patent. Paper 1 ("Pet."). GREE filed a preliminary response in opposition to the petition, Paper 6 ("Prelim. Resp."). Along with the preliminary response, GREE filed a

statutory disclaimer of claims 16–19 of the '664 patent (Ex. 2006); thus, those claims are no longer subject to review. *See* 37 C.F.R. § 42.207(e). After considering the petition and the preliminary response, as well as the evidence of record, we determine the petition fails to demonstrate that at least one of challenged claims 1–15 is more likely than not unpatentable. 35 U.S.C. § 324(a). Thus, institution of post-grant review of the '664 patent is *denied*.

I. BACKGROUND

A. The '664 Patent

The '664 patent issued September 26, 2017, and claims priority to a PCT application filed April 5, 2013.[1] Ex. 1001, cover. The '664 patent is directed to an online shooting game where users fire virtual weapons to hit various targets displayed in the game. *Id.* at 1:15–31. In conventional online shooting games, a player has a "field of vision" with respect to a target and "controls the shooting action by correctly aiming and firing at a remote distance" using the virtual weapon. *Id.* at 1:32–42. This manner of shooting at targets "allows the player to enjoy the game with a sense of presence or immersion as if the player appears to exist in a virtual world." *Id.* at 1:42–45. Conventional shooting games, however, are equipped with touch screen displays of "relatively small display area" or "restricted input means," such as smartphones or smart tablets, that make it more difficult for a player to "find[] a target and to aim and fire at the target." *Id.* at 1:62–2:2.

[1] Because Supercell filed the petition within nine months of the '664 patent's issue date and the earliest possible priority date for the '664 patent is after March 16, 2013 (the effective date for the first inventor to file provisions of the Leahy-Smith America Invents Act), the '664 patent is eligible for post-grant review. *See* 35 U.S.C. § 321.

As a result, new players to the game have difficulty selecting and hitting targets compared to more experienced players, which "hinders a new player's participation in or persistent use of the game." *Id*. at 1:46–55. The '664 patent overcomes these difficulties by providing a user interface that permits a player of the game to automatically find, prioritize, and track targets falling within the player's field of view. *Id.* at 2:6–3:49.

B. Representative Claim

The '664 patent includes nineteen claims, of which claims 16–19 have been disclaimed, which leaves claims 1 and 12 as the remaining independent claims. Claim 1 is directed to a "method of providing an online shooting game," and claim 12 is directed to a "game server" that performs the same steps of claim 1. Hence, claim 1 is representative and recites the following:

> 1. A method of providing an online shooting game performed by a game server communicatively connected to a player terminal and a database storing information on enemy characters in the game, the method comprising:
>
> selecting a basic identification range within a virtual online shooting game environment displayed on the player terminal;
>
> detecting one or more enemy characters that are within the basic identification range;
>
> *determining an attack priority on each of the detected one or more enemy characters based on at least one of a level of expected damage capable of being inflicted on a corresponding enemy character by a shooting from the player terminal and a level of risk of the corresponding enemy character to the player terminal based on the information on the enemy characters*; and
>
> determining one of the detected one or more enemy characters as an automatic tracking object based on the determined attack priority.

Ex. 1001, 13:43–61 (emphasis added).

C. Asserted Grounds of Unpatentability

In petitioning for post-grant review, Supercell asserts that claims 1–15 of the '664 patent are unpatentable as being directed to non-statutory subject matter under 35 U.S.C. § 101. Pet. 18–45. No declarant testimony is submitted in support of the petition. GREE, on the other hand, submits the testimony of Dr. Michael Shamos (Ex. 2001).

II. ANALYSIS

A. Claim Construction

At this stage, neither party proposes a construction for any particular claim term. *See* Pet. 10–11; Prelim. Resp. 5–16. In considering the parties' submissions, we determine that no express construction of the claim terms is necessary in order to determine whether institution is appropriate.

B. The Challenge Under 35 U.S.C. § 101

Supercell challenges claims 1–15 of the '664 patent for failing to recite patent eligible subject matter under 35 U.S.C. § 101. Pet. 18–45 (citing Exs. 1001–1005). GREE disagrees. Prelim. Resp. 17–63. The U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to exclude from patenting "[l]aws of nature, natural phenomena, and abstract ideas." *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) ("*Alice*"). Central to this case is whether the challenged claims cover the excluded category of abstract ideas. That determination involves a two-step analysis, as explained by the Supreme Court in *Alice*. *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012) ("*Mayo*")). First, we determine whether a claim is "directed to" a patent-ineligible abstract idea. *Alice*, 134 S. Ct. at 2355. If the claim is directed to an abstract idea, we then consider whether any claim elements, either

individually or as an ordered combination, transform the nature of the claim into an "inventive concept"—an element or combination of elements sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.*

Supercell contends that the claims of the '664 patent are directed to the abstract idea of "detecting enemy characters within a range and determining an enemy character for tracking." Pet. 25, 28, 40; *see also id.* at 29, 31 ("detecting enemy players within a range and determining one as an automatic tracking object"). According to Supercell, the claims recite "only results . . . without specifying any 'process or machinery' by which those results would be achieved." *Id.* at 28. In support, Supercell compares the claims of the '664 patent to those found to be abstract in *Affinity Labs of Texas, LLC v. DirecTV, LLC*, 838 F.3d 1253 (Fed. Cir. 2016); *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329 (Fed. Cir. 2017); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343 (Fed. Cir. 2015); and *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). Pet. 25–30. Supercell explains that, like those cases, the claims of the '664 patent are directed to an abstract idea because they "comprise only functional results" that "do[] not recite any technical improvements to computers or video game technology," and, instead, "were previously well known in the art." *Id.* at 29.

Even assuming Supercell is correct that the claims are directed to an abstract idea that satisfies the first step of *Alice* (Pet. 25–34), we determine that Supercell falls short on the second step of *Alice* (*id.* at 34–41). That second step requires that we consider whether a claim directed to an abstract idea nonetheless recites an "inventive concept"—an element or combination

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