

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELLOY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2018-00091
Patent 9,808,723 B2

Before MICHAEL W. KIM, 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. 9,808,723 B2 (“the ’723 patent”). Supercell Oy (“Supercell”) filed a petition requesting post-grant review of claims 1–19 of the ’723 patent. Paper 1 (“Pet.”). GREE filed a preliminary response in opposition to the petition. Paper 6 (“Prelim. Resp.”). 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 1–19 is more likely than not unpatentable. 35 U.S.C. § 324(a). Thus, institution of post-grant review of the ’723 patent is *denied*.

I. BACKGROUND

A. The ’723 Patent

The ’723 patent issued November 7, 2017, and claims priority to a Japanese patent application filed May 26, 2014.¹ Ex. 1001, 1:5–11. The ’723 patent is directed to a video game that improves upon a conventional game of “reversi” by providing a greater number of strategies for winning the game. *Id.* at 1:21–43. The conventional reversi game involves players taking turns placing binary-colored game pieces—either black or white—on a game board displayed on a game device. *Id.* at 1:25–30. After a first player places a game piece on the board, any pieces of a different color belonging to an opposing player that are located between the first player’s pieces are flipped so as to now belong to the first player. *Id.* at 1:31–34. But, according to the ’723 patent, the conventional reversi game “lacks a variety of strategies, resulting in a game that is not always very strategic” because the “simple operation [of flipping ownership of pieces between the players] is repeated.” *Id.* at 1:35–39. The ’723 patent improves upon the monotony of the traditional reversi game by providing multiple new criteria for determining a winner, including calculations that account for “values”

¹ Because Supercell filed the petition within nine months of the ’723 patent’s issue date and the earliest possible priority date for the ’723 patent is after March 16, 2013 (the effective date for the first inventor to file provisions of the Leahy-Smith America Invents Act), the ’723 patent is eligible for post-grant review. *See* 35 U.S.C. § 321.

associated with the game pieces and “areas” in which an opposing player’s game pieces are “sandwiched.” *Id.* at 10:66–11:31; *see also id.* at 2:4–9, 17:62–18:30, 22:11–24:12 (explaining how a “calculation module” determines “hit points” using both “values” associated with the game pieces and “specific areas” in which game pieces are “sandwiched”).

B. Representative Claim

The ’723 patent includes nineteen claims, with claims 1, 10, and 16 being independent. Claim 1 is directed to a “non-transitory computer-readable medium . . . executed by an information processing system,” claim 10 is directed to an “information processing system,” and claim 16 is directed to a “method performed by an information processing system.” All three independent claims recite essentially the same steps. Hence, claim 1 is representative and reproduced below.

1. A non-transitory computer-readable medium including computer program instructions, which when executed by an information processing system, cause the information processing system to:

store a plurality of game media in association with each of a plurality of players, the game media each having at least a first parameter associated with a state of the game media and a second parameter corresponding to a numerical value associated with the game media;

control a display to display a user interface including a game play field including a plurality of areas;

receive a selection from a first player of the plurality of players to place at least a first game medium of the plurality of game media in a first area among a plurality of areas of the game play field;

allocate the first game medium to the first area of the game play field, based on the received selection from the first player,

in association with the state of the first game medium indicated by the first parameter associated with the first game medium;

specify one or more second areas to which a second game medium of the plurality of game media has been allocated, the second game medium having a state different than the first game media indicated by the first parameter associated with the second game medium;

control the interface to display the game play field onto which the first and second game media are allocated;

calculate a value to be applied to at least one of the first or a second game player's parameter based [on] a number of the second game medium or a numerical value associated with the second game medium indicated by the second parameter associated with the second game medium;

apply the value to the at least one of the first or second game player's parameter;

control the display to update the at least one of the first or second game player's parameter after the value has been applied;
and

identify one or more areas of the game field sandwiched between the first area and a third area of the game field, on which has been allocated a third game medium having a same state as the first game medium as determined by the first predetermined parameter of the third game medium, that include one or more media having a same state as the second game medium including the second game medium along a predetermined axis on the field, wherein the value to be applied to the at least one of the first or second game player's parameter is calculated based on a number of the one or more media or a numerical value associated with the one or more media.

Ex. 1001, 26:2–52 (emphases added).

C. Asserted Grounds of Unpatentability

In petitioning for post-grant review, Supercell asserts that claims 1–19 of the '723 patent are unpatentable under 35 U.S.C. § 101 for failing to be directed to patent-eligible subject matter. Pet. 29–55. Supercell does not

submit any declarant testimony in support of the petition. GREE, on the other hand, submits the declaration of David Crane (Ex. 2001) in arguing that the claims are directed to patent-eligible subject matter.

II. ANALYSIS

A. Claim Construction

At this stage, neither party proposes a construction for any particular claim term. *See* Pet. 13–14; Prelim. Resp. 15–29. 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 1–19 of the ’723 patent for failing to recite patent-eligible subject matter under 35 U.S.C. § 101. Pet. 29–55 (citing Exs. 1001–1010). GREE disagrees. Prelim. Resp. 38–62. 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. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (“*Alice*”). Central to this case is whether the challenged claims are directed to 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*, 573 U.S. at 217. 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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.