

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GREE, INC.,

Plaintiff,

v.

SUPERCELL OY,

Defendant.

§ The Honorable Rodney Gilstrap
§
§
§ Civil Action No. 2:19-cv-00413-JRG-RSP
§
§
§ JURY TRIAL DEMANDED
§
§

EXPERT REPORT OF STACY FRIEDMAN

197. A POSITA would understand that depicting cards in a player's hand as shown in Baten Kaitos mimicked the real-world arrangement of holding cards in a player's hand and a "Next" card ready to replace it.

VIII. THE ASSERTED CLAIMS OF THE '177 AND '362 PATENTS ARE PATENT-INELIGIBLE

198. In my opinion, the claims of the '177 patent and the '362 patent are directed to the abstract idea of organizing a game with different rules for different phases of the game, and rely solely on generic computer components to carry out that abstract idea. They are therefore patent ineligible.

A. The Asserted Claims of the '177 and '362 Patents are Drawn to An Abstract Idea

199. The asserted patents describe computer-implemented methods or systems for managing a game, specifically, organizing a computer battle game with different rules for different periods of the game. Both the '177 and '362 patents are directed to the abstract idea of managing a game on a computer by setting a different battle condition for at least one of multiple terms of the battle game. See '177 and '362 patents (the claims of both patents are described as a virtual battle under which certain rules can be changed and battle conditions vary based on a different term of the battle game). The specification for both patents is identical and describes the claims of both patents as a "game control method, a system, and a non-transitory computer-readable recording and/or storage medium that allow a wide range of players to enjoy a group battle without regard for difference in level, degree of attack strength, or the like and that improve the participation rate in a group battle throughout the set time slot." '177 patent, 3, 11. 14-20 and '362 patent, 3:18-24. In other words, the claims cover nothing more than managing a game involving different rules for different periods within the game.

200. I understand that the Patent Owner has agreed with the assessment of the claims as directed to managing a game on a computer by setting a different battle condition for at least one of multiple terms of the battle game, having described the '177 and '362 patents' claims as "a virtual battle under which certain rules can be changed and battle conditions vary based on the time slot of the battle game." Dkt. 34 at 9. Likewise, during prosecution of the application that led to the '177 patent, Patent Owner described the claimed invention as "also includ[ing] a specific set of rules for operating a game." '177 prosecution history at 6/19/2018 Response to Office Action p. 11.

201. The shared specification notes several "issues" with prior art "time slot group battle" games, and proposes to change the rules of such games to "improve the participation rate." The particular rule changes take the form of subdividing the time slot into portions and either (a) giving an advantage to certain players (e.g., beginners or low-level players) in earlier portions, or (b) giving an advantage to players who participate earlier based on their "tallied results." Both types of rule changes are intended to encourage play in earlier portions of the battle game and to increase the participation rate. As noted below, the claims are broader than "subdividing a time slot into portions" because the claimed "terms" of the battle game are not necessarily subdivisions of a predetermined time slot as described in the specification. Also as noted below, the claims are broader than "time slot group battle" games because the claimed "player" can play the game alone, without interacting with any other player.

202. In my opinion, managing a game on a computer by setting a different battle condition for at least one of multiple terms of a battle game is an abstract idea. The '177 and '362 patents propose to implement this idea using generic and conventional technology behaving in its ordinary and expected manner. The asserted claims provide no inventive concept to transform the abstract idea into something patent eligible.

203. The '177 and '362 patents claimed concept of managing a game on a computer by setting a different battle condition for at least one of multiple terms of a battle game consists entirely of mental steps that can be carried out by a human, either mentally, using pen and paper, or with real world game pieces, and thus is abstract.

204. Consider the well-known trivia game show Jeopardy, in which players compete against each other for monetary rewards, during three rounds that each have a different condition for point values. In the second round of Jeopardy, point values are doubled over those in the first round. In the final round, a player wagers an amount up to their total score from the previous rounds.²⁵ Though a timer is not visible, each round is timed to fit within the allotted broadcast time for each episode, and an audible beeping noise can be heard at the end of the allotted period for each round.

205. This real-world analogy reads on each of the claimed steps in each of the independent claims: (1) in the first round or “term” of Jeopardy, the competition between the players is conducted based on conditions for the first term, namely a set of point values, (2) in the second round or “term,” the competition between the players is conducted based on conditions for the second term that are different from those in the first term, namely a set of point values that are doubled as compared to those in the first term, and (3) in the final round (“Final Jeopardy”) or third “term,” the competition between the players is conducted based on conditions for the third term that are different from those in the first and second terms, namely a wager by the players, with the available wager amount dependent upon a player’s total score prior to the final round. This analogy demonstrates that the claimed process is both a well-known mental process which

²⁵ <https://web.archive.org/web/20140222052504/https://en.wikipedia.org/wiki/Jeopardy!>

can be accomplished with pen and paper, and a method of organizing human activity – and is therefore abstract.

206. Further, many other games such as sports and boardgames demonstrate that the claimed method of managing a game on a computer by setting a different battle condition for at least one of multiple terms of a battle game is merely automation of a manual process, and is therefore abstract.

207. Sports matches that include different terms with different conditions applied during those terms include soccer and American football, both of which implement an overtime round when the allotted game time runs out before a winner is declared (e.g., a tie). An overtime round typically has different conditions than the regular game play, such as reduced time, and changed rules as to scoring and ball placement. For example, NFL football games have different rules for the first 28 minutes of each half, the time period after the two-minute warning in each half, and overtime.²⁶

208. Similarly, FIFA World Cup soccer games in knock-out rounds had different rules for regular time, extra time, and penalty kicks.²⁷ Likewise, Olympic hockey had 5-v-5 regular time, 4-v-4 overtime, and shoot-out terms.²⁸

209. Similarly, baseball may go into additional innings when there is a tie score at the end of the allotted nine innings, however, the conditions for winning in additional innings differ from the regular allotted innings, such that the game ends immediately if the home team gets ahead, even if there have not yet been three outs. Likewise, in hockey and soccer, a tie at the end

²⁶ <http://static.nfl.com/static/content/public/image/rulebook/pdfs/2013%20-%20Rule%20Book.pdf>

²⁷ <https://www.fifa.com/worldcup/news/golden-goal-rule-applied-for-the-first-time-the-world-cup-finals-71652>

²⁸ http://www.nhl.com/ice/m_news.htm?id=513766

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