

PGR2020-00088

Petitioner's Request for Rehearing

Filed on behalf of Supercell Oy

By:

BRIAN HOFFMAN, Reg. No. 39,713

MICHAEL J. SACKSTEDER

KEVIN X. MCGANN, Reg. No. 48,793

JENNIFER R. BUSH, Reg. No 50,784

GREGORY HOPEWELL, Reg. No. 66,012

GEOFFREY MILLER

FENWICK & WEST LLP

555 California Street, 12th Floor

San Francisco, CA 94104

Telephone: 415.875.2300

Facsimile: 415.281.1350

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCCELL OY,
Petitioner

v.

GREE, INC.,
Patent Owner.

Case PGR2020-00088

Patent 10,518,177 B2

PETITIONER'S REQUEST FOR REHEARING

TABLE OF CONTENTS

	Page
A. INTRODUCTION AND REQUESTED RELIEF	1
B. LEGAL STANDARD	1
C. BASIS FOR THE REQUESTED RELIEF	2
1. The <i>NHK-Fintiv</i> Factors Support Institution.....	2
a. The Board’s conclusion regarding Factor 4 rests on clearly erroneous fact finding, and also impacts the analysis of Factors 2 and 3.....	3
b. The Board’s conclusion regarding Factor 6 rests on clearly erroneous fact finding and is clearly unreasonable, arbitrary, or fanciful.....	5
c. The Board misapprehended or overlooked the proper weighing of the <i>Fintiv</i> factors.	6
2. Exercising Discretion Based on the <i>NHK-Fintiv</i> Factors Is Improper	7
D. CONCLUSION.....	10

TABLE OF AUTHORITIES

Page(s)

CASES

Apple Inc. v. Fintiv, Inc.,
IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020).....*passim*

Apple Inc. v. Seven Networks, LLC,
IPR2020-00235, Paper 10 (P.T.A.B. July 28, 2020).....6

Aqua Prods., Inc. v. Matal,
872 F.3d 1290 (Fed. Cir. 2017)8

Facebook, Inc. v. Blackberry Ltd.,
IPR2019-00899, Paper 15 (P.T.A.B. Oct. 8, 2019).....4

Facebook, Inc. v. Windy City Innovations, LLC,
973 F.3d 1321 (Fed. Cir. 2020)8

Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.,
821 F.3d 1359 (Fed. Cir. 2016)1, 6

NanoCollect Biomedial, Inc., v. Cytonome/ST, LLC,
IPR2020-00551, Paper 19 (P.T.A.B. Aug. 27, 2020).....6

NHK Spring Co. v. Intri-Plex Techs., Inc.,
IPR2018-00752, Paper 8 (P.T.A.B. Sept. 12, 2018).....2

Oticon Medical AB v. Cochlear Ltd.,
IPR2019-00975, Paper 15 (P.T.A.B. Oct. 16, 2019).....3, 4

Sand Revolution II, LLC v. Cont'l Intermodal Grp.,
IPR2019-01393, Paper 24 (P.T.A.B. June 16, 2020)6

Snap, Inc. v. SRK Technology LLC,
IPR2020-00820, Paper 15 (P.T.A.B. Oct. 21, 2020).....3, 4

VMWare, Inc. v. Intellectual Ventures I LLC,
IPR2020-00407, Paper 12 (P.T.A.B. Aug. 18, 2020).....6

TABLE OF AUTHORITIES
(Continued)

Page(s)

STATUTES AND RULES

35 U.S.C. § 3143, 9
35 U.S.C. § 3167, 9
35 U.S.C. § 3242, 5, 7, 9
35 U.S.C. § 326(b)9

OTHER AUTHORITIES

37 C.F.R. § 42.711
*The Eleventh Auer: The Effect of Kisor v. Wilkie On Rulemaking and
Adjudication at the United States Patent and Trademark Office,*
19, Chi.-Kent J. Intell. Prop. 485, 501-502 (2020)8

EXHIBIT LIST (37 CFR § 42.63(e))

Exhibit	Description
1001	U.S. Patent No. 10,518,177 to Suzuki
1002	File History of U.S. Patent No. 10,518,177
1003	U.S. Patent No. 10,583,362
1004	File History of U.S. Patent No. 10,583,362
1005	Declaration of Steve Meretzky
1006	<i>Curriculum Vitae</i> of Steve Meretzky
1007	GREE's Amended Disclosure of Asserted Claims and Infringement Contentions dated August 19, 2020 in Case No. 2:19-cv-00413-JRG-RSP (E.D. Tex.)
1008	<i>Microsoft Computer Dictionary</i> , 4th Ed. (1999)
1009	YouTube - Master Hearthstone in 10 Minutes! The Ultimate Beginner's Guide ("MH") (web page print out from https://www.youtube.com/watch?v=CVZ4qyx-c2o)
1010	"Master Hearthstone in 10 Minutes! The Ultimate Beginner's Guide," webpage as captured by The Internet Archive on January 2, 2014
1011	"Master Hearthstone in 10 Minutes! The Ultimate Beginner's Guide" – Video File
1012	"Master Hearthstone in 10 Minutes! The Ultimate Beginner's Guide" – Transcript
1013	U.S. Patent Publication No. 2013/0281173 to Gilson et al.
1014	US Patent Publication No. 2014/0349723 to Nakatani et al.
1015	U.S. Patent No. 5,662,332 to Garfield
1016	"Dynamic game difficulty balancing," Wikipedia page as captured by The Internet Archive on December 12, 2011

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.