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

GREE, INC., *Plaintiff*, v. SUPERCELL OY, *Defendant*.	§ § § § § § § § §	Case No. 2:19-cv-00200-JRG-RSP Case No. 2:19-cv-00237-JRG-RSP Case No. 2:19-cv-00310-JRG-RSP Case No. 2:19-cv-00311-JRG-RSP

REPORT AND RECOMMENDATION

Before the Court are the four motions for summary judgment of invalidity under 35 U.S.C. § 101 filed by Defendant Supercell Oy in the above captioned matters. The first motion is in Case No. 2:19-cv-00200-JRG-RSP (the "200 Case"): Supercell's Motion for Summary Judgment of Invalidity for Failure to Claim Patent-Eligible Subject Matter Under 35 U.S.C. § 101 (the "200 MSJ"). **200 Case Dkt. No. 159**. The second is in Case No. 2:19-cv-00237-JRG-RSP (the "237 Case"): Supercell's Motion for Summary Judgment of Invalidity for Failure to Claim Patent-Eligible Subject Matter Under 35 U.S.C. § 101 (the "237 MSJ"). **237 Case Dkt. No. 142**. The third is in Case No. 2:19-cv-00310-JRG-RSP (the "310 Case"): Supercell's Motion for Summary Judgment of Invalidity for Failure to Claim Patent-Eligible Subject Matter Under 35 U.S.C. § 101 (the "310 MSJ"). **310 Case Dkt. No. 119**. The fourth is in Case No. 2:19-cv-00311-JRG-RSP (the "311 Case"): Supercell's Motion for Summary Judgment of Invalidity for Failure to Claim Patent Eligible Subject Matter Under 35 U.S.C. § 101 (the "311 MSJ"). **311 Case Dkt. No. 126**.

Across each of these motions for summary judgment Supercell seeks invalidity of several patents. In the time since the filing of this motion, the parties have significantly narrowed the asserted patents in the above-captioned matter to nine remaining asserted patents and twelve

claims. 200 Case Dkt. No. 250. Of these remaining asserted patents, Supercell's 200 MSJ seeks invalidity of Claim 7 of U.S. Patent No. 10,335,683 (the "'683 Patent"), Claim 6 of U.S. Patent No. 10,307,676 (the "'676 Patent"), and Claim 4 of U.S. Patent No. 10,329,347 (the "'347 Patent"). 200 Case Dkt. No. 159 at 10. Supercell's 237 MSJ seeks invalidity of Claim 3 of U.S. Patent No. 10,328,346 (the "'346 Patent) and Claim 8 of U.S. Patent No. 10,335,689 (the "'689 Patent"). 237 Case Dkt. No. 142 at 5. Supercell's 310 MSJ seeks invalidity of Claim 1 of U.S. Patent No. 10,076,708 (the "'708 Patent") and Claims 2 and 3 of U.S. Patent No. 10,413,832 (the "'832 Patent"). 310 Case Dkt. No. 119 at 11. Finally, Supercell's 311 MSJ seeks invalidity of Claims 1 and 6 of U.S. Patent No. 9,079,107 (the "'107 Patent") and Claims 1 and 5 of U.S. Patent No. 9,561,439 (the "'439 Patent). 311 Case Dkt. No. 126 at 5, 9.

I. BACKGROUND

A. 200 Case[1]

The '683 Patent, '676 Patent, and '347 Patent all share a common specification and claim priority to the application that was issued as Patent No. 9,597,594 (the "'594 Patent"). Dkt. No. 159 at 5; *see* Dkt. No. 169 at 5–6; *see also* Dkt. No. 159-9. The '594 Patent is directed to games played on portable devices where multiples players can fight against, help, and communicate with each other. *Id.* at col.1 ln.20–26. Such games include city building games where players build a city within a virtual space. *Id.* at col.1 ln. 27–30. The '594 Patent further describes the perceived problem of difficulty in reorganizing the virtual cities. *Id.* at col.1 ln. 42–60. According to the '594 Patent, "[t]he present invention has been devised to address the above problem, and an object of the invention is to provide a method for controlling a computer, a recording medium and a

[1] All citations in this subsection refer to the Dkt. Nos. in the 200 Case.

computer that improve the usability of city building games and continuously attract players to the game." *Id.* at col.1 ln.61–65.

Claims 1–4 and 8–20 of the '594 Patent were determined to be invalid under 35 U.S.C. § 101 by the Federal Circuit. *GREE, Inc. v. Supercell Oy*, 2019-1864, 834 Fed.Appx. 583 (Fed. Cir. Nov. 19, 2020). In that decision, the Federal Circuit found that the claims of the '594 Patent were directed to the abstract idea of "creating and applying a template of positions of one or more game contents" and "are so broad that they encompass automation of the 'well-understood, routine, conventional activity' of correspondence chess." *GREE, Inc.*, 834 Fed.Appx. at 588–89. However, the Federal Circuit also found that Claims 5–7 did claim eligible subject matter because "they claim a solution to [a] technological problem encountered in the creation and application of templates in a computer game." *Id*.

The Court previously ordered GREE and Supercell to submit additional briefing with respect to this Federal Circuit decision and how the analysis affects the remaining asserted claims at issue in Supercell's Motion. Dkt. No. 257. On April 8, 2021, GREE submitted its supplemental briefing. Dkt. No. 259. Shortly thereafter Supercell submitted its supplemental briefing. Dkt. No. 260.

In the time since the filing of this motion, the parties have further narrowed the claims in this matter. On March 12, 2021, GREE and Supercell filed an updated Section D ("Contentions of the Parties") to the joint pretrial order. Dkt. No. 250. In the updated Section D the '385 Patent, '675 Patent, and '677 Patent are no longer asserted in the above-captioned matter, and only the '676 Patent's Claim 6, '347 Patent's Claim 4, and '683 Patent's Claim 7 remain asserted. *Id.* at 2–3.

B. 237 Case[2]

The '346 Patent is titled "Storage Medium Storing Game Program, Game Processing Method, and Information Processing Apparatus." Dkt. No. 142 at 5–6 (citing Dkt. No. 142-2 at Cover). It regards game program, game processing method, and an information processing apparatus for managing and playing a game by selecting panels and divisions to display the panel. *Id.* at 6 (citing Dkt. No. 142-2 at Abstract, col. 1 ln. 22–28).

The '689 Patent is titled "Non-Transitory Computer Readable Recording Medium, Game Control Medium, Server Device, and Information Processing System." Dkt. No. 142 at 10 (citing Dkt. No. 142-3 at Cover) It regards battle games where units deployed on a battlefield may have a unit parameter varied based on its position relative to another unit. *Id.* (citing Dkt. No. 142-3 at Abstract).

C. 310 Case[3]

The '708 Patent and '832 Patent are both entitled "Game Control Method, Game Server, and Program" and have identical specifications. Dkt. No. 119 at 5 (citing Dkt. Nos. 119-2 and 119-3). The '832 Patent is a continuation of the '708 Patent. *Id.* (citing Dkt. Nos. 119-2 and 119-3). Both patents regard "increas[ing] variations on methods for acquiring items, increase the predictability of acquisition of an item with a high rarity value or the like, and heighten interest in the game." Dkt. No. 119-2 at 2. More specifically, the asserted claims of the '708 Patent and '832 Patent regard an interactive display of cells associated with items. Dkt. No. 119-2 at 20; Dkt. No. 119-3 at 20.

D. 311 Case[4]

[2] All citations in this subsection refer to the Dkt. Nos. in the 237 Case.
[3] All citations in this subsection refer to the Dkt. Nos. in the 310 Case.
[4] All citations in this subsection refer to the Dkt. Nos. in the 311 Case.

The '107 Patent and '439 Patent are both entitled "Game Control Method, Game Control Device, and Recording Medium" and share a common specification. Dkt. No. 126 at 5 (citing Dkt. Nos. 127-1 and 127-2). The '439 Patent is a divisional of the '107 Patent. *Id.* at 5–6 (citing Dkt. No. 127-2 at Cross Reference to Related Application). Both patents regard a game control method and device for grouping users, giving game pieces to users in accordance with user operation, and granting a reward if a set of required game pieces are given. Dkt. No. 127-2 at Abstract. More specifically, the asserted claims of the '107 Patent and '439 Patent claim this based on either a parameter value for each of a plurality of users or skill level information. Dkt. No. 127-2 at 28; Dkt. No. 127-1 at 27–28.

II. LEGAL STANDARDS

The Court evaluates a motion for summary judgment under the law of the Fifth Circuit. *See Enplas Display Device Corp. v. Seoul Semiconductor Co.*, 909 F.3d 398, 405 (Fed. Cir. 2018) ("We review the district court's grant of summary judgment under regional circuit law."). In the Fifth Circuit, "[s]ummary judgment is appropriate when 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Warren v. Fed. Nat'l Mortg. Ass'n*, 932 F.3d 378, 382 (5th Cir. 2019) (citing Fed. R. Civ. P. 56(a)). Put another way, since the movant bears the burden on summary judgment, the movant's failure to wholly foreclose the existence of genuine disputes of material fact will preclude summary judgment. *See id.*; Fed. R. Civ. P. 56(a).

"A fact is material if it would affect the outcome of the case, and a dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.* (quoting *Renwick v. PNK Lake Charles, L.L.C.*, 901 F.3d 605, 611 (5th Cir. 2018)) (internal quotation marks omitted). "Evidence at the summary judgment stage must be viewed in the light

DOCKET ALARM

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.