

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

Case PGR2020-00053
U.S. Patent No. 10,335,683

**PATENT OWNER'S PRELIMINARY RESPONSE
PURSUANT TO 37 C.F.R. § 42.207**

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Petition Should Be Denied Under § 324(a).....	2
A.	<i>NHK Spring</i> and Its Progeny.....	4
B.	Analysis of the <i>Fintiv</i> Factors Compels Denial.	8
i.	Factor 1: whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted	9
ii.	Factor 2: proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision	10
iii.	Factor 3: investment in the parallel proceeding by the court and the parties	13
iv.	Factor 4: overlap between issues raised in the petition and in the parallel proceeding.....	18
v.	Factor 5: whether the petitioner and the defendant in the parallel proceeding are the same party	23
vi.	Factor 6: other circumstances that impact the Board’s exercise of discretion, including the merits	23
III.	Petitioner Has Not Demonstrated a Reasonable Likelihood of Success for the Grounds Advanced in the Petition.	27
A.	Petitioner Has Not Demonstrated a Reasonable Likelihood of Success for Ground 1 (Patent Eligibility)	27
i.	Patent Eligibility Under § 101 Was Previously Considered During Prosecution.	27
ii.	The Board’s Prior Decision Regarding the ’594 Patent Does Not Control the Analysis Here	31
B.	Petitioner Has Not Demonstrated a Reasonable Likelihood of Success for Ground 2 (Obviousness)	33

i.	Petitioner Has Failed to Demonstrate That GSB (Ex. 1010) Is a “Printed Publication” That Was “Publicly Accessible” Prior to the Critical Date.....	35
ii.	Petitioner’s Alleged Motivation to Combine Is Insufficient.	44
IV.	Conclusion	50
	CERTIFICATE OF WORD COUNT	51
	CERTIFICATE OF SERVICE	52

TABLE OF AUTHORITIES

Cases

<i>Adobe Sys. Inc. v. Grecia</i> , IPR2018-00418, Paper 7 (P.T.A.B. June 21, 2018)	43
<i>Adobe Sys. Inc. v. Grecia</i> , IPR2018-00418, Paper 9 (P.T.A.B. Sept. 7, 2018).....	42
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020)	<i>passim</i>
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 15 (P.T.A.B. May 13, 2020)	<i>passim</i>
<i>Apple Inc. v. Maxell, Ltd.</i> , IPR2020-00203, Paper 12 (P.T.A.B. July 6, 2020).....	11, 13, 26
<i>Blue Calypso, LLC v. Groupon, Inc.</i> , 815 F.3d 1331 (Fed. Cir. 2016)	<i>passim</i>
<i>Celltrion, LLC v. Biogen, Inc.</i> , IPR2017-01230, Paper 10 (P.T.A.B. Oct 12, 2017).....	40, 42, 43
<i>Cisco Systems, Inc. v. Ramot at Tel Aviv University Ltd.</i> , IPR2020-00122, Paper 14 (P.T.A.B. May 15, 2020)	6, 11
<i>Edwards Lifesciences Corp. v. Evalve, Inc.</i> , IPR2019-01479, Paper 7 (P.T.A.B. Feb. 26, 2020).....	5, 8, 11
<i>E-One, Inc. v. Oshkosh Corp.</i> , IPR2019-00161, Paper 16 (P.T.A.B. May 15, 2019)	8, 14
<i>Ethicon, Inc. v. Bd. of Regents</i> , IPR2019-00406, Paper 27 (P.T.A.B. June 10, 2020)	11
<i>Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha</i> , IPR2016-01357, Paper 19 (P.T.A.B. Sept. 6, 2017).....	3
<i>Google LLC v. IPA Techs. Inc.</i> , IPR2018-00384, Paper 11 (July 3, 2018)	40, 41, 43, 44

<i>GREE, Inc. v. Supercell Oy</i> , No. 2:19-cv-00200 (E.D. Tex. filed May 28, 2019).....	4, 23
<i>Hulu, LLC v. Sound View Innovations, LLC</i> , IPR2018-01039, Paper 29 (P.T.A.B. Dec. 20, 2019)	<i>passim</i>
<i>In re Hall</i> , 781 F.2d 897 (Fed. Cir. 1986)	37
<i>In re Magnum Oil Tools Int’l, Ltd.</i> , 829 F.3d 1364 (Fed. Cir. 2016)	34, 46, 48
<i>Intel Corp. v. VLSI Tech. LLC</i> , IPR2020-00106, Paper 17 (P.T.A.B. May 5, 2020)	<i>passim</i>
<i>Intel Corp. v. VLSI Tech. LLC</i> , IPR2020-00113, Paper 15 (P.T.A.B. May 19, 2020)	7
<i>Intel Corp. v. VLSI Tech. LLC</i> , IPR2020-00141, Paper 16 (P.T.A.B. June 4, 2020)	7
<i>Intel Corp. v. VLSI Tech. LLC</i> , IPR2020-00142, Paper 16 (P.T.A.B. June 4, 2020)	7
<i>Intel Corp. v. VLSI Tech. LLC</i> , IPR2020-00158, Paper 16 (P.T.A.B. May 20, 2020)	7
<i>Kinetic Techs., Inc. v. Skyworks Solutions, Inc.</i> , IPR2014-00529, Paper 8 (P.T.A.B. Sept. 23, 2014).....	48
<i>Kingston Tech. Co., Inc. v. Memory Techs., LLC</i> , IPR2019-00654, Paper 9 (P.T.A.B. Aug. 13, 2019).....	40, 41, 44
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	34, 45, 46, 47
<i>Laird Techs. Inc. v. A.K. Stamping Co., Inc.</i> , IPR2017-02038, Paper 6 (P.T.A.B. Mar. 14, 2018).....	38
<i>Next Caller Inc. v. TrustID, Inc.</i> , IPR2019-00961, -00962, Paper 10 (P.T.A.B. Oct. 16, 2019)	8, 17

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.