

**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-00200-JRG-RSP
§
§ JURY TRIAL DEMANDED
§
§
§

**DEFENDANT SUPERCELL OY’S INVALIDITY CONTENTIONS
AND DISCLOSURES UNDER LOCAL PATENT RULES 3-3 AND 3-4**

Pursuant to Patent Rules 3-3 and 3-4, the Court’s Amended Docket Control Order (Dkt. No. 53), and the Court’s Discovery Order (Dkt. No. 52), Defendant Supercell Oy (“Supercell” or “Defendant”) discloses its Invalidation Contentions (“Invalidation Contentions”) addressing how claims 1 – 3, 9 – 11, 17, and 18 of U.S. Patent No. 10,300,385 (“the ’385 Patent”); claims 1 – 30 of U.S. Patent No. 10,307,675 (“the ’675 Patent”); claims 1 – 24 of U.S. Patent No. 10,307,676 (“the ’676 Patent”); claims 1 – 20 of U.S. Patent No. 10,307,677 (the ’677 Patent); claims 1 – 14 of U.S. Patent No. 10,307,678 (the ’678 Patent); claims 1 – 30 of U.S. Patent No. 10,328,347 (the ’347 Patent); claims 1 – 12 of U.S. Patent No. 10,335,683 (the ’683 Patent); claims 1 – 16 U.S. Patent No. 10,335,682 (the ’682 Patent); and claims 1 – 18 U.S. Patent No. 10,398,978 (the ’978 Patent) (collectively referred to as the “Asserted Patents”) are invalid.

Supercell's discovery and investigation in this lawsuit are ongoing, and therefore, Supercell reserves the right to revise, amend, and/or supplement these Preliminary Invalidity Contentions as discovery progresses and as it discovers additional information.

I. RESERVATIONS AND OBJECTIONS

A. General Reservations

Pursuant to P.R. 3-6, Supercell reserves the right to amend or supplement these Preliminary Invalidity Contentions should GREE: (1) amend its P.R. 3-1 or 3-2 disclosures, including but not limited to amending such disclosures based on GREE's review and analysis of source code made available by Supercell; or (2) at trial, in a hearing, or during a deposition, rely upon any information that it failed to identify in its P.R. 3-1 and 3-2 disclosures. Supercell also reserves the right to amend or supplement these Preliminary Invalidity Contentions in accordance with Paragraph 3(a) of the Court's Discovery Order. Supercell provides the disclosures below, as well as the accompanying production of documents, in compliance with P.R. 3-3 and 3-4.

The information provided should not be deemed an admission regarding the scope of any claims or the proper construction of those claims or any terms contained therein. Supercell's claim construction disclosures will be provided under P.R. 4 as required by the Court's Docket Control Order. Nothing contained in these Preliminary Invalidity Contentions should be understood or deemed to be an express or implied admission or contention with respect to the proper construction of any terms in an asserted claim, or with respect to the alleged infringement of that claim.

Nothing in these disclosures should be treated as an admission that Supercell is obligated to produce documentation not under its custody or control, or that can be obtained from some other source that is more convenient, less burdensome and/or less expensive, or for which the

burden or expense outweighs its likely benefit. Supercell expressly reserves the right to revise, amend, and/or supplement its disclosures and document production should additional documentation become available.

B. GREE's Deficient Infringement Contentions

Supercell notes that GREE's Infringement Contentions and related disclosures are deficient in that they fail to comply with P.R. 3-1 and 3-2 because they fail to give adequate notice regarding the details of GREE's infringement theories. The lack of detail and deficiencies contained in GREE's Infringement Contentions have prejudiced Supercell's ability to prepare these Preliminary Invalidity Contentions, including forcing Supercell to speculate as to GREE's actual position(s) on Supercell's alleged infringement and the meaning of various claim terms.

The exhibit attached to the cover pleading purporting to disclose GREE's infringement positions also fails to put Supercell on adequate notice of GREE's positions regarding the alleged infringement of the Asserted Claims and/or Asserted Patents by Supercell's products and/or services. The exhibit is comprised of vague conclusions that fail to identify "specifically where each element of each asserted claim is found within each Accused Instrumentality" as required by P.R. 3-1(c).

Supercell's Invalidity Contentions are based on its present understanding of the Asserted Claims and GREE's apparent positions as to the scope of the Asserted Claims as applied in its P.R. 3-1 disclosures. Supercell's Invalidity Contentions (including the attached invalidity claim charts) reflect, to the extent possible, its best understanding as to GREE's potential alternative or evolving positions on claim construction and scope. Supercell reserves the right to revise, amend, and/or supplement these Preliminary Invalidity Contentions and/or its P.R. 3-4 disclosures should GREE amend its P.R. 3-1 disclosures, including but not limited to amending such disclosures based on GREE's review and analysis of source code made available by

Supercell, or attempt to rely on any information that it failed to provide in its P.R. 3-1 and 3-2 disclosures.

C. Asserted Claims

GREE purports to assert the following claims against Supercell from the Asserted Patents:

Patent Number	Claim Numbers
10,300,385	1 – 3, 9 – 11, 17, and 18
10,307,675	1 – 30
10,307,676	1 – 24
10,307,677	1 – 20
10,307,678	1 – 14
10,328,347	1 – 30
10,335,683	1 – 12
10,335,682	1 – 16
10,398,978	1 – 18

(collectively, the “Asserted Claims”).

GREE, however, has failed to comply with its obligation to provide a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality under P.R. 3-1(c). Where GREE has failed to provide such a chart and identification, Supercell has deferred providing invalidity disclosures. Should GREE seek to amend its infringement contentions to properly assert these claims, Supercell reserves the right to amend its invalidity contentions in response. These preliminary infringement contentions, thus, address only the Asserted Claims, which have been asserted in compliance with the Patent Local

Rules. Supercell reserves the right to supplement these contentions if GREE asserts infringement of any claim other than the Asserted Claims.

D. Ongoing Discovery

Discovery is ongoing, and Supercell's prior art investigation and third-party discovery are as well. As such, Supercell reserves the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional material or references. Supercell further reserves the right to amend, modify, or supplement these Invalidity Contentions to include additional prior art under 35 U.S.C. §§ 102 and 103, or assert additional bases of invalidity under 35 U.S.C. §§ 101, 102, 103, and/or 112 as discovery in this action and Supercell's investigation proceeds. In particular, Supercell intends to rely upon additional discovery, including but not limited to third party discovery, which is in its early stages, to obtain additional information regarding prior art games, including the relevant version of the prior art games, declarations and source code.

E. Claim Construction

Without conceding any express or implied claim construction suggested by GREE through its Infringement Contentions, Supercell has attempted to apply the prior art to the Asserted Claims. GREE's application of those constructions are in some instances broader than Supercell's contentions regarding the proper scope of the claims. Should the claims be construed or asserted differently than Supercell's current understanding of the claims, Supercell reserves the right to modify, amend, or supplement these Preliminary Invalidity Contentions as provided by the Local Rules and the Federal Rules of Civil Procedure.

Supercell's Preliminary Invalidity Contentions should not be construed as a suggestion or admission that GREE's apparent claim constructions are correct. Indeed, in many instances, Supercell objects and disagrees with the apparent claim constructions GREE has offered in

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.