

**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-00070-JRG

§

2:19-cv-00071-JRG

§

2:19-cv-00161-JRG

§

2:19-cv-00172-JRG

§

2:19-cv-00200-JRG

§

2:19-cv-00237-JRG

§

§

§ JURY TRIAL DEMANDED

**SUPERCELL OY'S MOTION FOR RELIEF IN VIEW OF GOVERNMENTAL/PUBLIC
HEALTH RESTRICTIONS IN RESPONSE TO COVID-19 VIRUS IMPACT**

TABLE OF CONTENTS

	Page
I. FACTUAL BACKGROUND.....	2
A. Background on the Related Cases.....	2
B. Governmental/Public Health Restrictions Prevent Necessary Rule 30(b)(6) Corporate Depositions of GREE and 30(b)(1) Depositions of GREE’s Witnesses.....	3
C. Governmental/Public Health Restrictions Prevent Necessary Review of GREE’s Source Code and Third-Party Source Code	8
II. REQUESTED RELIEF.....	10

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Elan Microelectronics Corp. v. Pixcir Microelectronics Co. Ltd.</i> , No. 2:10-cv-00014-GMN-PAL, 2013 U.S. Dist. LEXIS 114164 (D. Nev. Aug. 7, 2013)	7
<i>EVS Codec Tech., LLC v. T-Mobile USA, Inc.</i> , Case No. 2:19-cv-00057 (Order dated April 13, 2020)	10, 11
<i>Kentucky v. Stincer</i> , 482 U.S. 730, 107 S. Ct. 2658 (1987)	7
<i>Kress v. PriceWaterhouse Coopers, LLP</i> , No. 2:08-cv-0965 LKK AC, 2013 U.S. Dist. LEXIS 77897 (E.D. Cal. June 3, 2013)	8
<i>Nat’l Life. Ins. Co. v. Hartford Accident & Indem. Co.</i> , 615 F.2d 595 (3d Cir. 1980)	8
STATUTES AND RULES	
Local Rule 3.1(f)	8
Rule 30(b)(1)	5
Rule 30(b)(6)	<i>passim</i>
OTHER AUTHORITIES	
Ministry of Foreign Affairs of Japan, https://www.mofa.go.jp/ca/fna/page4e_001053.html	5, 7
Standing Order During the Present COVID-19	1

Pursuant to the Court’s Standing Order Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic (“Standing Order During the Present COVID-19 Pandemic”), Defendant Supercell Oy (“Supercell”) respectfully moves for a continuance of the case deadlines in view of the extraordinary impact caused by the COVID-19 virus on the Parties.¹

The parties have continued to move the cases forward as much as possible during the COVID-19 pandemic. In particular, since travel restrictions and shelter-in-place orders have been put in place, Supercell has already made five of its witnesses, all of whom are based in Finland, available to be deposed by video. Supercell is also making two additional witnesses available to be deposed between April 22 and April 24, 2020.

However, while Supercell has continued to make its witnesses available, it has been unable to obtain reciprocal discovery from GREE, due in large part to governmental and public health restrictions imposed throughout the United States and in Japan in response to the COVID-19 pandemic. Specifically, those restrictions have prevented Supercell from conducting depositions of GREE’s witnesses in Japan, and the parties have been unable to find an alternative solution for Supercell to obtain the needed deposition testimony. Moreover, the governmental and public health restrictions have prevented Supercell from reviewing critical source code, including both third party source code for prior art products, and GREE’s source code that pertains to products that GREE only recently (after the COVID-19 related restrictions were put in place) informed Supercell allegedly practice the patents-in-suit and may constitute invalidating prior art.

¹ Pursuant to the Court’s Standing Order, Supercell requested that GREE agree to a joint motion for extension. However, GREE rejected Supercell’s request.

Supercell thus respectfully moves for a 45- to 60-day continuance of the remaining case deadlines, including the pretrial and trial dates, in order to conduct depositions and review GREE and third-party source code, then incorporate information into its expert reports. The requested extension would extend discovery through the end of June 2020, allowing time for the governmental restrictions, particularly those in Japan that are preventing Supercell's depositions of GREE's witnesses in Japan from going forward, to be lifted. During this time, Supercell will also continue to make its witnesses available for deposition by video, and will review GREE's source code once GREE makes it available for remote access.

I. FACTUAL BACKGROUND

A. Background on the Related Cases

The present motion concerns six related cases currently pending before this Court. Two of the cases, the 2:19-cv-00070 and -071 cases (hereinafter, the "first set" of cases), are governed under the same schedule, and four of the cases, the 2:19-cv-00161, -172, -200 and -237 cases (hereinafter, the "second set" of cases) are governed under a separate schedule. The deadlines for fact and expert discovery and the deadline to file dispositive motions between the first and second sets of cases are about 3 weeks apart, and the deadlines for the pretrial conference and trial between the first and second sets of cases are about 6 weeks apart, as shown below:

First Set of Cases (070, 071)	Second Set of Cases (161, 172, 200, 237)	Event
April 24, 2020	May 18, 2020	Deadline to Complete Fact Discovery
May 1, 2020	May 18, 2020	Deadline to Serve Opening Expert Reports
June 5, 2020	June 22, 2020	Deadline to Complete Expert Discovery
June 8, 2020	June 29, 2020	Deadline to File Dispositive Motions

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.