

**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 PRELIMINARY INELIGIBILITY CONTENTIONS

Pursuant to Judge Gilstrap’s Standing Order Regarding Subject Matter Eligibility Contentions Applicable to All Patent Infringement Cases Assigned to Chief District Judge Rodney Gilstrap (“Standing Order”) and the Court’s Docket Control Order (Dkt. No. 53), Defendant Supercell Oy (“Supercell” or “Defendant”) serve these Preliminary Ineligibility Contentions (“Ineligibility Contentions”) addressing how the asserted claims of the following U.S. Patent Nos.: 10,328,347 (“the ’347 Patent”); 10,300,385 (“the ’385 Patent”); 10,307,675 (“the ’675 Patent”); 10,307,676 (“the ’676 Patent”); 10,307,677 (“the ’677 Patent”); 10,307,678 (“the ’678 Patent”); 10,335,682 (“the ’682 Patent”); 10,335,683 (“the ’683 Patent”); and 10,398,978 (“the ’978 Patent”) (the “Asserted Patents”) are invalid.

I. RESERVATIONS AND OBJECTIONS

A. General Reservations

Pursuant to paragraph (c) of the Standing Order, Supercell reserves the right to amend or supplement these Preliminary Ineligibility Contentions should GREE: (1) amend its infringement contentions; or (2) if the Court’s Claim construction ruling so requires.

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 Ineligibility Contentions should be understood or deemed to be an express or implied admission or contention with respect to the absence of factual disputes relating patent ineligibility, the absence of a need for construction of any terms in an asserted claim, any proper construction of any terms in an asserted claim, or alleged infringement of that claim. There is no claim construction issue or factual issue that precludes the Court finding that the claims of the asserted patents are patent-ineligible.

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. Asserted Claims

Supercell understands that GREE asserts the following claims from the respective Asserted Patents (collectively the "Asserted Claims"):

Patent No.	Asserted Claims
10,328,347	1 – 30
10,300,385	1 – 3, 9 – 11, 17, and 18
10,307,675	1 – 30
10,307,676	1 – 24

Patent No.	Asserted Claims
10,307,677	1 – 20
10,307,678	1 – 14
10,335,682	1 – 16
10,335,683	1 – 12
10,398,978	1 – 18

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

C. Ongoing discovery

Supercell’s discovery and investigation in this lawsuit are ongoing, and therefore, Supercell reserves the right to revise, amend, and/or supplement these Preliminary Ineligibility Contentions as discovery progresses and as it discovers additional information. Discovery is ongoing, and Supercell’s prior art investigation and third-party discovery are in the initial stages. Supercell’s Preliminary Invalidity Contentions have not yet come due. As such, Supercell reserves the right to revise, amend, and/or supplement the information provided herein, including identifying, and relying on additional references, should Supercell’s further search and analysis yield additional information or references, consistent with the Local Rules, Judge Gilstrap’s Standing Order, and the Federal Rules of Civil Procedure. In particular, Supercell reserves the right to rely on, and Supercell incorporates by reference into its Preliminary Ineligibility Contentions, all prior art identified by Supercell in conjunction with its Preliminary Invalidity Contentions. Supercell also reserves the right to amend, modify, or supplement these

Ineligibility Contentions to include prior art under 35 U.S.C. §§ 102 and 103 identified in its Preliminary Invalidity Contentions.

Supercell reserves the right to rely on all documents produced Supercell, as well as Plaintiff, any predecessors in interest, the named inventors, and any other third parties, as discovery is ongoing.

II. DOCUMENT PRODUCTION REQUIRED BY P.R. 3-4

Pursuant to P.R. 3-4(b), Supercell is serving on GREE, concurrently with these Preliminary Ineligibility Contentions, documents that support that the claims of the asserted patents are patent-ineligible.

Dated: November 13, 2019

Respectfully submitted,

/s/ Jessica M. Kaempf

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