

**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-00413-JRG-RSP

CLAIM CONSTRUCTION MEMORANDUM OPINION AND ORDER

Before the Court is the opening claim construction brief of GREE, Inc. (“Plaintiff”), Dkt. No. 65, filed on September 9, 2020,¹ the response of Supercell Oy (“Defendant”), Dkt. No. 67, filed on September 23, 2020, and Plaintiff’s reply, Dkt. No. 68, filed on September 30, 2020. The Court held a hearing on the issues of claim construction and claim definiteness on October 27, 2020. Having considered the arguments and evidence presented by the parties at the hearing and in their briefing, the Court issues this Order.

¹ Citations to the parties’ filings are to the filing’s number in the docket (Dkt. No.) and pin cites are to the page numbers assigned through ECF.

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I. BACKGROUND

Plaintiff alleges infringement of two U.S. Patents: No. 10,518,177 (the “’177 Patent”) and No. 10,583,362 (the “’362 Patent”) (collectively, the “Asserted Patents”). The ’362 Patent issued from a continuation of the application for the ’177 Patent and both patents list a priority claim to a Japanese patent application filed on February 25, 2014.

In general, the Asserted Patents are directed to technology for providing a computer game to client devices over a network.

The abstracts of the Asserted Patents are identical and provide:

Players with a wide range of levels or attack strength can enjoy a time-limited group battle, and the participation rate can be expected to improve throughout the set time slot. A battle time managing unit refers to a timer and a memory resource to manage the time of a battle between groups. A battle condition extraction unit refers to the memory resource and checks whether to change a battle condition during the time of the battle. A target changing unit refers to the memory resource to set a target of change based on the battle condition. A battle condition changing unit changes the battle condition for the target of change that was selected by the target changing unit. Based on the changed battle condition, a battle rendering unit executes rendition processing for the game related to the battle.

Claims 15 and 16 of the ’177 Patent, exemplary method and system claims respectively, recite as follows, with terms in dispute emphasized:

15. A battle game control method executed by one or a plurality of computers capable of being used by a player, the method comprising:
displaying, on a first field, a plurality of cards selected from a deck which is a *stack of virtual cards*;
during a first term of the battle game, conducting a battle to a first opponent character based on *a parameter set on a card selected by a player’s operation under a first battle condition* on a second field different from the first field, wherein the first battle condition is not changed during the first term; and
at a conclusion of the first term of the battle game, *automatically initiating a second term of the battle game*, and during the second term of the battle game continued from the first term, conducting the battle to a second opponent character based on *the parameter set on the card selected by the player’s operation under a second battle condition*, wherein the second battle condition is different from the first battle condition and is predetermined independent from a battle result of the first term, and the first opponent

character and the second opponent character are same or different, and wherein the second battle condition is not changed during the second term.

16. A battle game control system comprising:

one or more computers;

a memory storing instructions; and

a processor, by executing the instructions, programmed to:

display, on a first field, a plurality of cards selected from a deck which is a *stack of virtual cards*;

during a first term of the battle game, conducting a battle to a first opponent character based on *a parameter set on a card selected by a player's operation under a first battle condition*, wherein the first battle condition is not changed during the first term;

at a conclusion of the first term of the battle game, *automatically initiating a second term of the battle game*, and during the second term of the battle game continued from the first term, conducting the battle to a second opponent character based on *the parameter set on the card selected by the player's operation* under a second battle condition, wherein the second battle condition is different from the first battle condition and is predetermined independent from a battle result of the first term, and the first opponent character and the second opponent character are same or different, and wherein the second battle condition is not changed during the second term; and

during *a third term of the battle game continued from the second term*, conducting the battle to a third opponent character based on *the parameter set on the card selected by the player's operation under a third battle condition*, wherein *the third battle condition is different from the second battle condition and is dependent on a battle result of the second term*, and the second opponent character and the third opponent character are same or different, and wherein the third battle condition is not changed during the third term.

II. LEGAL PRINCIPLES

A. Claim Construction

“It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). To determine the meaning of the claims, courts start by considering the intrinsic evidence. *Id.* at 1313; *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc 'ns Grp., Inc.*, 262 F.3d

1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *Phillips*, 415 F.3d at 1314; *C.R. Bard, Inc.*, 388 F.3d at 861. The general rule—subject to certain specific exceptions discussed *infra*—is that each claim term is construed according to its ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the patent. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003); *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014) (quotation marks omitted) (“There is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time.”) *cert. granted, judgment vacated*, 135 S. Ct. 1846 (2015).

“The claim construction inquiry . . . begins and ends in all cases with the actual words of the claim.” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998). “[I]n all aspects of claim construction, ‘the name of the game is the claim.’” *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1298 (Fed. Cir. 2014) (quoting *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998)) *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015). First, a term’s context in the asserted claim can be instructive. *Phillips*, 415 F.3d at 1314. Other asserted or unasserted claims can also aid in determining the claim’s meaning, because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term’s meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

“[C]laims ‘must be read in view of the specification, of which they are a part.’” *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc)). “[T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive;

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