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Paper 10
Entered: May 19, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUPERCELL OY,
Petitioner,

v.

GREE, INC.,
Patent Owner.

PGR2021-00014
Patent 10,583,362 B2

Before LYNNE H. BROWNE, HYUN J. JUNG, and
RICHARD H. MARSCHALL, *Administrative Patent Judges.*

BROWNE, *Administrative Patent Judge*.

DECISION
Denying Institution of Post-Grant Review
35 U.S.C. § 324(a)

I. INTRODUCTION

GREE, Inc. ("Patent Owner" or "GREE") is the owner of U.S. Patent No. 10,583,362 B2 ("the '362 patent"). Supercell Oy ("Petitioner" or "Supercell") filed a petition requesting post-grant review of claims 1–27 of the '362 patent. Paper 2 ("Pet."). Patent Owner, in turn, filed a preliminary response. Paper 7 ("Prelim. Resp."). With our prior authorization, Petitioner filed a preliminary reply. Paper 8 ("Prelim. Reply"). Also, with our prior authorization, Patent Owner filed a preliminary sur-reply. Paper 9 ("Prelim. Sur-Reply").

Having considered the arguments and evidence of record, and for the reasons explained below, we exercise our discretion under 35 U.S.C. § 324(a) and deny institution of post-grant review.

A. Related Proceedings

Petitioner indicates that the '362 patent is the subject of *GREE, Inc. v. Supercell Oy*, No. 2:19-cv-00413-JRG (E.D. Tex.). Pet. 1 (the "parallel district court proceeding"); *see also* Paper 5, 2–3 (Patent Owner identifying the same district court proceeding).

B. The '362 Patent

The '362 patent is directed to "a game control method, a system, and a non-transitory computer-readable recording medium for providing client devices with a battle game over a network." Ex. 1003, 1:19–22. Specifically, the '362 patent relates to "games with a function to allow groups of players to battle each other" during predetermined time slots. *Id.* at 1:40–46. According to the '362 patent, in this type of time slot group battle, "the participation rate of group members in the battle tends to increase in the last half of the time slot," but game providers want "players

to participate actively in the battle throughout the entire time set." *Id.* at 2:3–5, 2:20–22. Another problem with this type of time slot group battle identified by the '362 patent is that these battles "are often not divided up by level" such that "beginners may end up passively participating in a group battle" and "may therefore be unsuccessful." *Id.* at 2:25–28, 2:33–35.

In order to increase player participation throughout the entire time set and even the playing field for beginner players, the '362 patent divides the battle game time slot into "a first portion, middle portion, and last portion" subdivisions and changes a battle condition in at least one of the subdivided time slots. Ex. 1003, 2:65–3:2. According to the '362 patent, these modifications increase participation at the beginning of the battle time slot and allow beginners to enjoy the battle by, for example, setting a battle condition that increases the attack strength of low-level characters during a subdivision. *Id.* at 3:2–17.

C. Representative Claim

The '362 patent includes twenty-seven claims, of which claims 1, 12, 20, and 27 are independent. Claim 1 is directed to a method. Ex. 1003, 13:11–34. Claim 12 is directed to an apparatus. *Id.* at 14:23–55. Claims 20 and 27 are directed to a "non-transitory computer-readable medium . . . [causing the one or a plurality of computers] to perform the steps of." *Id.* at 15:44–16:5, 16:59–17:28. Representative claim 1 is reproduced below:

> 1. A method for controlling a battle game, comprising:
> displaying a game screen comprising a first field at a lower position in the game screen and a second field above the first field, wherein in the first field, a plurality of cards selected from a deck which is a stack of virtual cards are arranged in a horizontal direction;

during a first term of the battle game, in the second field, under a first battle condition, conducting a battle against a first-term opponent character appearing in the first term using a first-term parameter based on a first-term card selected by a player, and concluding the first term of the battle game at a predefined end timing based on a start timing of the battle game; and

starting a second term of the battle game at a predefined start timing based on the start timing of the battle game, and during the second term after the first term, in the second field, under a second battle condition which is different from the first battle condition, conducting a battle against a second-term opponent character appearing in the second term using a second-term parameter based on a second-term card selected by the player, and concluding the second term of the battle game at a second predefined end timing based on the start timing of the battle game.

Ex. 1003, 13:11–34.

D. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–27 are unpatentable based on the following grounds.

Claims Challenged	35 U.S.C. §	References/Basis
1–27	101	Ineligible Subject Matter
1–27	103(a)	Master Hearthstone,[1] Gilson[2]

Petitioner relies on the Declaration of Steve Meretzky (Ex. 1005).

II. ANALYSIS

A. Discretion Under 35 U.S.C. § 324(a)

Patent Owner urges the Board to exercise discretion to deny institution of post-grant review under 35 U.S.C. § 324(a) "because Petitioner

[1] "Master Hearthstone in 10 Minutes!" (Ex. 1012, "MH").

[2] US 2013/0281173 A1, published October 24, 2013 (Ex. 1013, "Gilson").

raises substantially the same arguments and prior art in a parallel district court proceeding filed more than one year ago and scheduled for trial in less than five months (August 2, 2021)." Prelim. Resp. 1 (citing *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 19–20 (PTAB Sept. 12, 2018) (precedential)); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv*"). Patent Owner asserts that "it would be an inefficient use of Board, party, and judicial resources to institute the present proceeding under these circumstances. Indeed, the possibility of duplication of efforts here is high, as is the potential for inconsistent results, due to both tribunals considering substantially the same issues." *Id.* at 2 (citations omitted). Petitioner disagrees. Prelim. Reply 1–5.

1. Legal Standards

35 U.S.C. § 324(a) states that

> [t]he Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

The portion of the statute reading "[t]he Director may not authorize . . . unless" mirrors the language of 35 U.S.C. § 314(a), which concerns *inter partes* review. This language of sections 314(a) and 324(a) provides the Director with discretion to deny institution of a petition. *See Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016) ("[T]he agency's decision to deny a petition is a matter committed to the Patent

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