

Supercell OY v. Gree, Inc.

Finding The Patent Eligibility Line

For Technology Inventions

Dale Lazar
DLA Piper LLP (US)
March 12, 2020



Supercell v. Gree, PRG2018-00039, September 6, 2019

- U.S. Patent 9,669,308 entitled “Non-Transitory Computer Readable Recording Medium, Game Server, and Control Method” relates to a networked multiplayer battle game wherein the battle operates either in a first mode or a second mode.
- The specification refers to the first mode as a manual mode and the second mode as an automatic mode. When a game is played manually, a user must select a series of commands to fight the battle, which makes operation troublesome. The object of the invention is to make the user operation in a battle game less troublesome.
- The game computer stores a battle history of past opponents and outcomes. When a player encounters an enemy, the computer determines whether the enemy is a past opponent. If the enemy is a past opponent and the player has won against this enemy, the player is offered a choice to conduct the battle in the first, manual mode or the second, automatic mode. In the second, automatic mode, the computer plays to at least some extent on behalf of the player, requiring fewer player operations by the player than in the first, manual, mode, speeding up play and requiring less detailed graphics. If the player selects the first, manual mode, or the player has never won against the enemy, the battle is conducted in the first, manual mode.

Claim 1

1. A non-transitory computer readable recording medium having stored thereon instructions to be executed on a computer transmitting a battle game to a communication terminal that is connected to the computer over a network, the instructions causing the computer to perform the steps of:

communicating with the communication terminal over the network;

receiving an input signal from the communication terminal to configure a battle of the battle game, wherein the input signal comprises at least one user operation of a user of the communication terminal;

determining an opponent with whom the user is to battle in the battle of the battle game;

when the user has not battled with the determined opponent in the past, automatically determining a procedure for executing the battle to be a first mode for executing the battle based on at least one user operation received from the communication terminal;

when the user has battled with the determined opponent in the past, determining, based on at least one user operation received from the communication terminal, the procedure to be one of the first mode and a second mode for executing the battle with fewer user operations received from the communication terminal than in the first mode; and

executing the battle with the determined procedure.

Claim 1 Patent Eligibility Analysis

- PTAB determines claim 1 is NOT patent eligible, and therefore invalid.
- PTAB mentions *Alice/Mayo* framework but applies PTO 2019 Revised Patent Subject Matter Eligibility Guidance
- Step 2A Prong 1: Claim 1 recites an abstract idea
- Petitioner characterized claim 1 as determining a procedure for a video game. PTAB agrees. “[T]he first step in the *Alice* inquiry in this case asks whether the focus of the claims is on” *Enfish v. Microsoft*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016); “[W]e have described the first-stage inquiry as looking at the ‘focus’ of the claims, their ‘character as a whole.’” *Elec. Power Grp. v. Alstom*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)

Step 2A Prong 1 Abstract Idea Analysis

- The following claim limitations are directed to determining a procedure for a video game (the “determining steps”):
 - determining an opponent with whom the user is to battle in the battle of the battle game;
 - when the user has not battled with the determined opponent in the past, automatically determining a procedure for executing the battle to be a first mode for executing the battle based on at least one user operation received ...;
 - when the user has battled with the determined opponent in the past, determining, based on at least one user operation received from the communication terminal, the procedure to be one of the first mode and a second mode for executing the battle with fewer user operations received ... than in the first mode;

Step 2A Prong 1 Abstract Idea Analysis

- The determining steps are a mental process
 - The determining steps can be “concepts performed in the human mind (including observation, evaluation, judgement, opinion).” *2019 Revised Guidance*, 84 Fed. Reg. at 52.
 - A human could determine the procedure based on whether the opponent was battled before and/or based on user selection.
 - The “determining” clause of each “when” element is arguably something performed on a computer. But if the claim covers performance by the mind but for the recitation of generic computer components, it is still in the mental processes category unless the claim cannot practically be performed in the mind.
- The determining steps are a method of organizing a human activity
 - The Federal Circuit, in *In re Smith*, 815 F.3d 816,818 (Fed. Cir. 2016), concluded that claims directed to rules for conducting a wagering game are abstract.
 - The determining steps of claim 1 recite how to conduct the battle.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Supercell OY v. Gree, Inc.: Finding the Patent Eligibility Line for Technology Inventions

Also available as part of the eCourse

[2020 Advanced Patent Law \(USPTO\) eConference](#)

First appeared as part of the conference materials for the
15th Annual Advanced Patent Law Institute session
"Section 101: High Tech v. Life Sciences"