

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SUPERCELLOY,  
Petitioner,

v.

GREE, INC.,  
Patent Owner.

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Case PGR2018-00061  
Patent 9,700,793 B2

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Before LYNNE H. BROWNE, HYUN J. JUNG, and  
CARL M. DEFRANCO, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

DECISION TO INSTITUTE  
*35 U.S.C. § 324(a)*

## I. INTRODUCTION

Supercell Oy (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting institution of a post-grant review of claims 1–20 of U.S. Patent No. 9,700,793 B2 (Ex. 1001, “the ’793 patent”). Gree, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”). Patent Owner also filed a disclaimer pursuant to 37 C.F.R. § 1.321(a) for claim 8. Prelim. Resp. 1–2; Ex. 2003. Under 35 U.S.C. § 324, a post-grant review may not be instituted “unless . . . 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 one of the claims challenged in the petition is unpatentable.”

Upon consideration of the Petition and Preliminary Response and for the reasons explained below, we determine that Petitioner has shown that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. As such, we institute a post-grant review of all challenged claims that have not been disclaimed on all presented challenges, and thus, institute a post-grant review of claims 1–7 and 9–20 of the ’793 patent. *See* 37 C.F.R. § 42.207(e) (“No post-grant review will be instituted based on disclaimed claims.”).

## II. BACKGROUND

### A. *Related Proceedings*

The parties indicate that there are no related matters. Pet. 1; Paper 5, 2.

*B. The '793 Patent (Ex. 1001)*

The '793 patent issued July 11, 2017, from an application filed November 21, 2014, and claims priority to a foreign application filed February 26, 2014. Ex. 1001, [22], [30], [45].

The '793 patent “relates to a recording medium storing a game program, a game processing method, and an information processing apparatus.” *Id.* at 1:8–10. According to the '793 patent, it “reduce[s] the influence of a communication state or performance of hardware.” *Id.* at 5:1–2. Figure 1 of the '793 patent is reproduced below.

FIG. 1

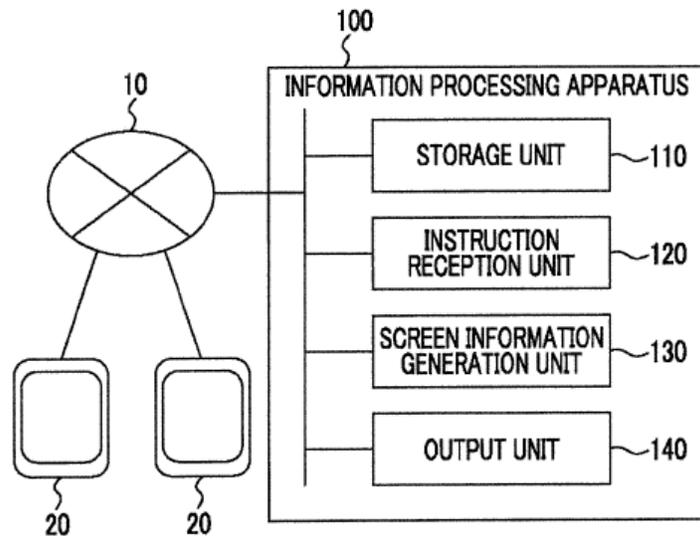


Figure 1 shows a schematic block diagram showing an information processing apparatus. *Id.* at 5:9–10. Information processing apparatus 100 processes a game and includes storage unit 110, instruction receiving unit 120, screen information generation unit 130, and output unit 140. *Id.* at

7:12–17. Information processing unit 100 can connect to user terminals 20 through network 10. *Id.* at 7:17–20.

First game screen 200 can display two groups of characters engaged in a battle. *Id.* at 8:13–15, Fig. 2A. Second game screen 300 can display state information 330, such as vitality, defensive power, offensive power, and the like of each character in the first game screen. *Id.* at 7:29–32, 8:19–24, Fig. 2B. Both screens 200, 300 have update buttons 220, 320 that update state information 330. *Id.* at 8:33–36.

Information processing apparatus 100 generates information related to second game screen 300 based on the latest state information 330 when instruction receiving unit 120 receives an instruction, for example, by pressing update button 220 or 320. *Id.* at 8:37–43. Generating such information can be performed “when there is a margin in the processing of the game” so as “to allow the game to progress without being affected by communication state or hardware performance.” *Id.* at 8:46–51.

Both screens 200, 300 also have switching buttons 210, 310 to switch between first and second game screens 200, 300. *Id.* at 8:33–36. Screen information generation unit 130 can generate second game screen 300 as a screen having transparency, and output unit 140 can provide first and second game screens 200, 300 to allow switching between game screens 200, 300. *Id.* at 8:56–64.

### *C. Illustrative Claim*

The '793 patent has 20 claims, all of which Petitioner challenges. Claims 1, 11, and 17 are independent, and claim 1 is reproduced below.

1. A non-transitory recording medium for storing a game program which processes progress of a game, the game

program when executed on a computer causes the computer to execute instructions for:

storing basic information of game contents and state information changing according to the progress of the game;

receiving an instruction from a user;

generating information relating to a game screen based on a received instruction; and

outputting information relating to the generated game screen to a user terminal at a predetermined time,

wherein the screen information relates to a first game screen that displays game contents and information relating to a second game screen that displays state information of the game contents, and

the second game screen includes latest state information at a time when receiving a first instruction which is an instruction to update the state information.

Ex. 1001, 13:49–67.

*D. Asserted Grounds*

Petitioner challenges claims 1–20, (1) under 35 U.S.C. § 101, as relating to unpatentable subject matter, (2) under 35 U.S.C. § 112(a), as having inadequate written description, and (3) under 35 U.S.C. § 112(b), as being indefinite. Pet. 9.

Petitioner does not provide any expert testimony in support of its grounds and does not propose a level of ordinary skill. Patent Owner proffers a declaration of David Crane (Ex. 2001) in support of its Preliminary Response. Patent Owner also statutorily disclaims claim 8 under 37 C.F.R. § 1.321(a). Prelim. Resp. 1–2; Ex. 2003.

### III. ANALYSIS

#### *A. Eligibility for Post-Grant Review*

The post-grant review provisions of the Leahy-Smith America Invents Act (“AIA”)<sup>1</sup> apply only to patents subject to the first inventor to file provisions of the AIA. AIA § 6(f)(2)(A). Specifically, the first inventor to file provisions apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time a claim to a claimed invention that has an effective filing date on or after March 16, 2013. AIA § 3(n)(1). Furthermore, “[a] petition for a post-grant review may only be filed not later than the date that is 9 months after the date of the grant of the patent or of the issuance of a reissue patent (as the case may be).” 35 U.S.C. § 321(c); *see also* 37 C.F.R. § 42.202(a) (setting forth the same).

Petitioner contends that the “effective filing date of the challenged claims is no earlier than February 26, 2014” (Pet. 9), which is after March 16, 2013. The ’793 patent issued on July 11, 2017 (Ex. 1001, [45]), and the instant Petition was filed on April 10, 2018 (*see also* Paper 3, 1 (according the Petition a filing date of April 10, 2018)), which is within nine months of the date of the grant of the ’793 patent. On this record, we determine that the ’793 patent is eligible for post-grant review.

#### *B. Claim Construction*

In a post-grant review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.200(b);

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<sup>1</sup> Pub. L. No. 112-29, 125 Stat. 284 (2011).

*Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016)

(upholding the use of the broadest reasonable interpretation standard).

Petitioner proposes interpretations for “instruction” in a receiving step, “information relating to a game screen,” and wherein clauses related to an outputting step of independent claims 1, 11, and 17. Pet. 15–21 (citing Ex. 1001, 7:53–58; Ex. 1003). Petitioner also proposes an interpretation for “non-communication state” of claim 8 which has been disclaimed. Pet. 21–23; Prelim. Resp. 1–2; Ex. 2003. Patent Owner contends that Petitioner’s proposed interpretations are improper because Petitioner does not interpret the claims in light of the specification. Prelim. Resp. 21–22.

For the purposes of determining whether Petitioner demonstrates it is more likely than not that at least one of the claims challenged in the petition is unpatentable, we determine that no express interpretation is required for any claim term. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (construing explicitly only those claim terms in controversy and only to the extent necessary to resolve the controversy).

### *C. Challenge Under 35 U.S.C. § 101*

The U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to exclude from patenting “[l]aws of nature, natural phenomena, and abstract ideas.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). In determining whether a claim falls within the excluded category of abstract ideas, we are guided by the U.S. Supreme Court’s two-step framework in *Alice* and *Mayo*. *Id.* at 2356 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–78 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. *Id.* at 2356 (“On their face, the claims before

us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

If the claim is “directed to” a patent-ineligible abstract idea, we turn to the second step of the *Alice* and *Mayo* framework and consider the elements of the claim, both individually and as an ordered combination, to determine whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This second step involves a search for an “inventive concept”—an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

*1. Whether the Claims Are Directed to an Abstract Idea*

Petitioner argues that the “claims of the ’793 patent are directed to the abstract idea of generating and outputting information relating to game screen(s) in response to an instruction received from a user.” Pet. 34; *see also id.* at 10 (contending that each of the independent claims “is directed to the same concept of receiving an instruction from a user and generating and outputting for display information relating to a game screen and information relating state information screen in response to the user instruction”).

Petitioner also argues that the claims recite abstract steps and fail to recite any non-abstract way of performing those steps. *Id.* at 34; *see also id.* at 11 (arguing that the “independent claims recite nearly identical steps”).

Petitioner further argues that the claims “do not recite any specific improvement in video game technology or programming,” and instead, “recite functions without any preference as to how those functions are

achieved.” *Id.* at 38 (citing *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015)).

According to Petitioner, claims similar to the ’793 patent have been rejected as abstract. *Id.* at 35 (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016); *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 612–613 (Fed. Cir. 2016); *Internet Patents*, 790 F.3d at 1348). Petitioner compares the claims to those in *Two-Way Media Ltd. v. Comcast Cable Commc’n, LLC*, 874 F.3d 1329, 1337–1338 (Fed. Cir. 2017) and *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258–1259 (Fed. Cir. 2016). *Id.* at 37. Petitioner also contrasts the claims of the ’793 patent to those discussed in *McRO Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–1316 (Fed. Cir. 2016) (*id.* at 35–37) and *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). *Id.* at 35–38 (also citing *Elec. Power Grp.*, 830 F.3d at 1355).

Patent Owner responds that “Petitioner improperly picks and chooses only fragments of the claim language without viewing the claim as whole” and “broadly oversimplifies the invention by relying on only a few handpicked terms of the claims.” Prelim. Resp. 44 (citing Pet. 34). Patent Owner compares Petitioner’s characterization of the claims to the language of claim 1 and argues that “Petitioner’s analysis omits consideration of the claim preamble, which constitutes substantive features,” such as “non-transitory recording medium” and “game program.” *Id.* at 45–47. Patent Owner also argues that Petitioner ignores the difference between “game contents” and “state information.” *Id.* at 47–48.

Based on our review of the Petition, we determine that Petitioner’s analysis does not pick and choose fragments of claim language and does not

overgeneralize the independent claims, as asserted by Patent Owner. Petitioner alleges an abstract idea to which the challenged claims are directed, and that abstract idea addresses certain steps of the independent claims. *See* Pet. 34. Petitioner also contends that, like the claims in *Two-Way Media* and *Affinity Labs*, the independent claims “recite a sequence of abstract steps” and identifies those steps, which addresses the remaining steps of the claims. *See id.* As for the wherein clauses, Petitioner argues that they fail to include any detail as to how screen information is generated. *See id.* at 34–35. At this stage, we are satisfied that Petitioner sufficiently addresses the independent claims as a whole.

Also, Petitioner uses an approach that it contends follows the analysis in *Alice*. *See id.* at 11 n.1. Petitioner’s analysis considers claim 1 to be representative, and Petitioner contends that the all the claims are directed to the same abstract idea in a manner similar to *Alice* without completing a claim-by-claim analysis. *See id.* We understand Petitioner’s position to be that features, such as “non-transitory recording medium” and “game program,” do not affect its analysis in step 1 of *Alice*. At this stage, Petitioner’s approach is sufficient for instituting review.

Further, Petitioner’s asserted abstract idea of “generating and outputting information relating to game screen(s) in response to an instruction received from a user” does not ignore the difference between “game contents” and “state information,” as asserted by Patent Owner. Petitioner contends that the “claims recite a sequence of abstract steps” and that the wherein clause “fails to include any detail of **how** the screen information is generated.” Pet. 34–35. The Petition, thus, indicates that,

even considering the difference between “game contents” and “state information,” the claims are directed to an abstract idea.

Patent Owner further responds that Petitioner incorrectly asserts that the claims do not recite any improvements to computers or video game technology. Prelim. Resp. 49 (citing Pet. 37). Patent Owner compares the challenged claims to *Enfish* and contends that the ’793 patent reduces load time and allows smoother transition between game screens. *Id.* at 50–53 (citing Ex. 1001, 1:10–14, 1:33–41, 1:43–47; Ex. 1002, 33; Ex. 2001 ¶¶ 19, 20).

Petitioner for purposes of instituting review sufficiently shows that the ’793 patent does not disclose any specific improvement in video game technology or programming. *See* Pet. 38. At this stage, Petitioner adequately demonstrates that independent claims 1, 11, and 17 do not require a specific means or technology for performing the recited steps or functions, other than a conventional “non-transitory recording medium” (claim 1), “computer” (claim 1), “storage device” (claims 11, 17), “information processing apparatus” (claims 11, 17), “receiving device” (claims 11, 17), “screen information generator” (claims 11, 17), “output device” (claims 11, 17), and “user terminal” (claims 11, 17). The present record indicates that these recitations are each generic, conventional components that do not require any special means for performing the claimed steps. For example, under “Background,” the specification of the ’793 patent states that a published patent application “discloses a game played on a client terminal . . . while performing communication between the client terminal and a server apparatus.” Ex. 1001, 1:21–25. It also states that “a method which simply reduces the amount of information displayed

on one screen is commonly used.” *Id.* at 1:42–44; *see also id.* at 7:42–8:5 (describing storage unit 110, instruction receiving unit 120, screen information generation unit 130, output unit 140 of information processing apparatus 100), 11:28–34 (describing that information processing apparatus 100 can be a server apparatus or user terminal 20), 11:42–45 (describing that user terminal 20 can be a smartphone, home video game machine, or portable game machine). Thus, based on the present record, Petitioner sufficiently shows that the independent claims do not provide any technical improvements to computers or video game technology. *See* Pet. 37–39.

For the dependent claims, Patent Owner responds that the Petition does not address step 1 of *Alice* for these claims. Prelim. Resp. 72–73 (citing Pet. 33–39). We understand Petitioner to be asserting that all the challenged claims are directed to the same abstract idea, and thus, Petitioner addresses step 1 of *Alice* for the dependent claims. *See* Pet. 34 (arguing that the “*claims of the ’793 patent are directed to the abstract idea of generating and outputting information relating to game screen(s) in response to an instruction received from a user*”) (emphasis added), 48 (arguing that “[n]one [of the dependent claims] discloses a concrete solution that transforms the *basic abstract idea* into a patent-eligible invention”) (emphasis added).

Thus, for the foregoing reasons, Petitioner sufficiently shows at this stage that the independent claims of the ’793 patent are directed to an abstract idea.

## 2. *Whether the Claims Include an Inventive Concept*

We next turn to the second step of the *Alice* and *Mayo* framework. For this step, we consider the elements of the claims “individually and ‘as an

ordered combination” to determine whether the additional elements “transform the nature of the claim into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78, 79) (internal quotation marks omitted).

Petitioner argues that the “independent claims do not recite generation of screen information during a ‘margin’ in the processing of the game, as purported in the specification” and do not recite “any other manner of ‘reducing the influence of a communication state or performance of hardware,’ which is the purported advance proffered by the specification.” Pet. 40; *see also id.* at 39–40 (discussing Ex. 1001, 1:49–55, 8:46–51). According to Petitioner, the “claims never recite ‘generating’ a game screen at all” and “do not require that the game screen including ‘the latest state information’ is displayed.” *Id.* at 40–41. Petitioner also contends that the independent claims “do not recite limitations capturing the purported inventive concept described in the specification,” particularly the “concept of generating information relating to the second game screen when there is a margin in the processing of the game to purportedly reduce the influence of a communication state or performance of hardware.” *Id.* at 41–42.

Petitioner further contends that the claims “fail to recite an inventive concept sufficient to transform the abstract idea into a patent-eligible application” because the claims recite conventional, generic, and well-understood activities when considered individually and as an ordered combination. *Id.* at 42–48 (citing *Smartflash LLC v. Apple Inc.*, 680 F. App’x 977, 983 (Fed. Cir. 2017); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016); *Affinity Labs*, 838 F.3d at 1261; *Electric Power Group, LLC*, 830 F.3d at 1355; *TLI Commc’ns*, 823 F.3d at 613, 615; *Mortg.*

*Grader v. First Choice Loan Services*, 811 F.3d 1314, 1324 (Fed. Cir. 2016); *Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1370 (Fed. Cir. 2015); *Vehicle Intelligence & Safety, LLC v. Mercedes-Benz USA, LLC*, 635 Fed. App'x 914, 915 (Fed. Cir. 2015); Ex. 1001, 6:23–25, 7:42–45, 11:35–45). Petitioner additionally argues that the dependent claims do not add anything inventive. *Id.* at 48–51 (discussing *Affinity Labs*, 838 F.3d at 1261; *Intellectual Ventures I*, 792 F.3d at 1370; Ex. 1001, 1:49–55, 2:55–58, 5:1–5, 8:46–51, 10:59–62, 11:13–16; Ex. 1002, 33).

Patent Owner responds that Petitioner incorrectly seeks a verbatim recitation of the improvements of the '793 patent in the claims, instead of determining if the claims capture the improvements. Prelim. Resp. 53–54 (citing Pet. 39–40). Patent Owner also contends that Petitioner's contention is refuted by the '793 patent prosecution history and lacks support. *Id.* at 54–55 (citing Ex. 1002, 33). Patent Owner further argues that Petitioner does not consider the elements of the claims both individually and as an ordered combination. *Id.* at 56–58 (citing Pet. 47). According to Patent Owner, Petitioner strips away limitations instead of considering them as an ordered combination. *Id.* at 58. Patent Owner also asserts that the prosecution history refutes Petitioner's analysis. *Id.* at 58–59 (citing Pet. 47; Ex. 1002, 33). Patent Owner contends that Petitioner provides insufficient evidentiary support for its *Alice* step two analysis and that the intrinsic record of the '793 patent refutes Petitioner's arguments. *Id.* at 59–61 (citing Pet. 44, 47; Ex. 1002, 33, 35).

At this stage of the proceeding, even if we agreed that the claims “capture” the improvement asserted by Patent Owner, Petitioner's analysis under step 2 of the *Alice* and *Mayo* framework is sufficient for instituting

review. Petitioner demonstrates sufficiently that the claims do not recite “additional features” that prevent monopolizing the abstract idea but simply append conventional steps at high level of generality. *See* Pet. 42–48. Petitioner argues that the claims recite conventional, generic, and well understood elements and that the recited steps are similar to those found to be insufficient for supplying an inventive concept or constitute generic computer functions. *See id.*; *see also Alice*, 134 S. Ct. at 2357 (stating that a “claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea]’ and “[s]imply appending conventional steps, specified at a high level of generality,’ was not ‘*enough*’ to supply an ‘inventive concept’”). Petitioner sufficiently shows at this stage that computer implementation does not supply the necessary inventive concept and the process can be carried out in existing computers. *See* Pet. 42–48; *see also Alice*, 134 S. Ct. at 2357 (stating that “computer implementation did not supply the necessary inventive concept” because “the process could be ‘carried out in existing computers long in use’”). Petitioner further points to the specification of the ’793 patent to argue that recited elements are conventional, generic, and well-understood and perform well-understood, routine, and conventional activities already known. *See* Pet. 42–48 (citing Ex. 1001, 6:23–25, 7:42–45, 11:35–45).

For the reasons above, Petitioner sufficiently shows on the present record that the additional elements of the challenged claims do not transform the nature of the claims into a patent-eligible application.

3. 35 U.S.C. § 325(d)

After describing Office guidance on subject matter eligibility issued during the prosecution of the '793 patent, Petitioner contends that the Examiner erred in allowing the challenged claims in response to Applicant arguments regarding the asserted technological improvement (reducing the influence of communication state or hardware performance in generating information for two screen). Pet. 28–29. Petitioner argues that the claims do not capture the asserted improvement and the asserted improvement is not an improvement in computer technology as in *McRO*. *Id.* at 29–31. Petitioner also argues that the asserted improvement is not unconventional in the manner of *BASCOM*. *Id.* at 31–33. Petitioner further notes that no analysis has been provided as to how or why generating information related to two screens is an improvement in computer technology or unconventional. *Id.* at 31, 33.

Patent Owner urges us to deny the Petition under 35 U.S.C. § 325(d). Prelim. Resp. 4–16. Patent Owner argues that the claims were considered in view of *McRO* and *BASCOM* (*id.* at 4), that *Berkheimer* did not substantively change the law regarding § 101 (*id.* at 4–5), that similar Petitions have been denied under § 325(d) (*id.* at 5–8), and that arguments similar to Petitioner's were overcome during prosecution (*id.* at 8–16).

Based on the particular circumstances of this case, we are not persuaded to exercise our discretion under 35 U.S.C. § 325(d). For example, the Examiner determined that the claims were directed to the abstract idea of “processing progress of a game.” Ex. 1002, 47. Petitioner's asserted abstract idea is “generating and outputting information relating to game screen(s) in response to an instruction received from a user” (Pet. 34), which

is different from the Examiner's abstract idea. Moreover, Petitioner cites cases such as *Two-Way Media* and *Thales Visionix* that were issued after substantive examination had ended and thus, not considered during prosecution.

#### 4. Conclusion

After considering the evidence and arguments presented in the Petition and Preliminary Response, we determine that Petitioner more likely than not will prevail in showing that at least one of the challenged claims is unpatentable under 35 U.S.C. § 101. As such, we institute post grant review of all the challenged claims. *See* 35 U.S.C. § 324(a).

##### *D. Challenge Under 35 U.S.C. § 112(a)*

Petitioner contends that “the ’793 patent fails to provide adequate written description of generating information relating to a game screen based on a received instruction.” Pet. 53. Petitioner particularly points to the limitations “generating information relating to a game screen based on a received instruction” and “wherein the screen information relates to a first game screen that displays game contents and information relating to a second game screen that displays state information of the game contents.” *Id.* (quoting Ex. 1001, 13:57–58). According to Petitioner, the ’793 patent does not describe how information relating to a game screen is generated based on a received instruction and how information relating to the first and second game screens is generated. *Id.* at 52–53 (citing Ex. 1001, 7:59–61, 8:56–64, 9:9–14).

Petitioner also contends that the ’793 patent fails to provide adequate written description for the limitations “storing basic information of game contents and state information changing according to the progress of the

game” and “the second game screen includes the latest state information at a time when receiving a first instruction which is an instruction to update the state information.” *Id.* at 55. Petitioner argues that the specification fails to describe how to determine or store state information that changes according to the progress of the game or how the latest state information is included in the second game screen. *Id.* at 56–57 (citing Ex. 1001, 7:42–43, 8:37–41, 8:46–49, 9:60–67, 12:29–44). Petitioner also argues that the instruction received from the user can be any user instruction. *Id.* at 57 (citing Ex. 1001, 7:54–58).

Patent Owner responds that “Petitioner’s arguments are insufficient as a matter of law” because Petitioner “never addresses the level of ordinary skill in the art,” “fails to present facts from the perspective of a [person of ordinary skill in the art],” and “there are no facts on the level of skill.” Prelim. Resp. 63, 64 (citing Pet. 51–59). Patent Owner also explains how the specification provides adequate written description support for these limitations. *Id.* at 65–66 (citing Pet. 53–57; Ex. 1001, 4:32–34; Ex. 2001 ¶¶ 23–38).

At this stage, the claims appear to have adequate written description. Petitioner does not assert an ordinary level of skill and does not provide sufficient evidence that the ’793 patent’s written description fails to demonstrate possession of the claimed invention to one of ordinary skill in the art. *See* Pet. 52–57. Petitioner also does not indicate adequately that one of ordinary skill in the art, when comparing the scope of the claims with the scope of the specification, would have determined that the applicant did not demonstrate possession of the claimed invention.

Moreover, in its challenge based on 35 U.S.C. § 101, Petitioner asserts that the “storing” and “generating” steps are generic functions and the limitations asserted to lack adequate written description are generic computer functions, thereby constituting “well-understood, routine, conventional activities previously known to the industry.” *See id.* at 44–46 (quoting *Alice*, 134 S. Ct. at 2358–2359).

Petitioner additionally contends that the ’793 patent does not provide adequate written description for a limitation recited by claim 8. *Id.* at 58–59. As discussed above, Patent Owner statutorily disclaims claim 8. Prelim. Resp. 1–2; Ex. 2003.

In the absence of any other arguments from Petitioner, we believe further analysis of this challenge is best left for trial after full development of the record.

*E. Challenge Under 35 U.S.C. § 112(b)*

Petitioner contends that the phrases “the generated game screen” of claims 1, 11, and 17 and “the screen information” of claim 1 lack antecedent basis. Pet. 61–63. Patent Owner responds that Petitioner’s arguments regarding antecedent basis are untenable because the claims provide one of ordinary skill in the art with an understanding of the metes and bounds of the claims. Prelim. Resp. 68–70. On the present record, we agree with Patent Owner that “generated game screen” and “screen information” would be understood by one of ordinary skill in the art to refer to the previously recited “generating information related to a game screen.” *See id.*

Petitioner also contends that “generating information relating to a game screen based on a received instruction,” and storing and generating game screen information that includes the latest state information lack

written description support and therefore are indefinite. Pet. 63–65. Petitioner also presents arguments regarding claim 8, which has been disclaimed by Patent Owner. *Id.* at 63, 65–66; Prelim. Resp. 1–2; Ex. 2003.

Patent Owner responds that Petitioner’s indefiniteness arguments focus on the specification and not on the claims. Prelim. Resp. 67–68 (citing Pet. 63). Patent Owner also argues that Petitioner does not assert a level of ordinary skill and does not present arguments from the perspective of a person having ordinary skill in the art. *Id.* at 68.

On the record before us, Petitioner provides insufficient argument and evidence to demonstrate it is more likely than not that at least one of the challenged claims is indefinite. Petitioner relies on its arguments that the challenged claims lack written description, which for the reasons above are unpersuasive. *See* Pet. 53–55. These arguments are also directed to a different statutory requirement. Furthermore, Petitioner does not provide adequate evidence showing that the challenged claims are not sufficiently clear and precise under 35 U.S.C. § 112(b) to a person of ordinary skill in the art reading the challenged claims in light of the specification. *See id.*

In the absence of any other arguments from Petitioner, we believe further analysis of the indefiniteness ground is best left for trial after full development of the record. Because “[e]qual treatment of claims and grounds for institution purposes has pervasive support in *SAS*,” we institute post-grant review of all grounds raised in the Petition. *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018); *see also Adidas AG v. Nike, Inc.*, 894 F.3d 1256, 1258 (Fed. Cir. 2018) (remanding for the Board to consider non-instituted ground).

*F. Patent Owner's Remaining Argument*

Patent Owner further responds that, by analyzing a representative claim and not addressing each claim individually, the Petition fails to meet the requirements of 35 U.S.C. § 322 (a)(3) and 42 C.F.R. § 42.204(b)(4). Prelim. Resp. 70–71. Patent Owner contends that the dependent claims, such as claim 2, recite features not found in claim 1. *Id.* at 71–72 (citing Ex. 1002, 33). On the present record, we do not agree. Petitioner specifically addresses the dependent claims under both steps of *Alice*. *See* Pet. 34 (arguing all claims are directed to an abstract idea), 49 (arguing claim 2 does not recite the purported improvement), 50–51 (arguing dependent claims recite generalized, functional steps).

#### IV. CONCLUSION

After considering the evidence and arguments presented in the Petition and the Preliminary Response, we determine that Supercell Oy has demonstrated it is more likely than not that at least one of claims 1–7 and 9–20 of the '793 patent is unpatentable. *See* 37 C.F.R. § 42.207(e) (“No post-grant review will be instituted based on disclaimed claims.”).

At this stage of the proceeding, the Board has not made a final determination as to the patentability of any challenged claim or any underlying factual and legal issues.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 324(a), a post-grant review of claims 1–7 and 9–20 of U.S. Patent No. 9,700,793 B2 is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 324(c) and 37 C.F.R. § 42.4(b), post-grant review of U.S. Patent No. 9,700,793 B2 shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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