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1. [2017 Pat. App. LEXIS 13191](#)

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[2017 Pat. App. LEXIS 13191](#)

Patent Trial and Appeal Board Representative Orders, Decisions and Notices

March 21, 2017, Decided

Case IPR2016-01918, Paper 14; Patent 7,682,243 B2

USPTO Bd of Patent Appeals & Interferences; Patent Trial & Appeal Bd Decs.

Reporter

2017 Pat. App. LEXIS 13191 *

ACTIVISION BLIZZARD, INC.,; Petitioner,; v.; GAME AND TECHNOLOGY CO., LTD.,; Patent Owner.

Notice:

[*1]

ROUTINE OPINION. Pursuant to the Patent Trial and Appeal Board Standard Operating Procedure 2, the opinion below has been designated a routine opinion.

Core Terms

pilot, sync, patent, spell, coefficient, recite, teach, proportional, player, weapon, ratio, database, disclosure, update, independent claim, maximum, sight, inter partes, morph, hero, multiply, battle, prelim, speed, proposed construction, combat, online, map

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Panel: Before BARBARA A. BENOIT, STACEY G. WHITE, and DANIEL J. GALLIGAN, Administrative Patent Judges.

Opinion By: DANIEL J. GALLIGAN

Opinion

GALLIGAN, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review

[37 C.F.R. § 42.108](#)

I. INTRODUCTION

Activision Blizzard, Inc. ("Petitioner") filed a Petition requesting *inter partes* review of claims 1-8 of U.S. Patent No. [7,682,243](#) B2 ("the '243 patent," Ex. 1001). Paper 1 ("Pet."). Game and Technology Co., Ltd. ("Patent Owner") timely filed a Preliminary Response. Paper 11 ("Prelim. Resp."). We have jurisdiction under [35 U.S.C. § 314](#) and [37 C.F.R. § 42.4\(a\)](#) [*2] .

The standard for instituting an *inter partes* review is set forth in [35 U.S.C. § 314\(a\)](#), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

For the reasons that follow, we deny institution of an *inter partes* review.

A. Real Parties in Interest

Petitioner identifies the following additional real parties in interest: Blizzard Entertainment, Inc., Activision Publishing, Inc., and Activision Entertainment Holdings, Inc. Pet. 1.

B. Related Matters

Petitioner and Patent Owner cite a number of judicial and administrative matters involving the '243 patent and other patents owned by Patent Owner. Pet. 1-2; Paper 5, 2-3.

C. The '243 Patent and Illustrative Claim

The '243 patent generally relates to "providing an online game, in which ability information of a unit associated with a pilot is enabled to change as ability information of the pilot changes." Ex. [*3] 1001, 1:23-25. The '243 patent has eight claims, of which claims 1, 6, and 7 are independent. Claim 1 is illustrative and is reproduced below:

1. An online game providing method for providing a pilot and a unit associated with the pilot at an online game, the method comprising the steps of:

controlling an online game such that a player can manipulate a pilot and a unit associated with said pilot, said pilot being a game character operated by a player, said pilot representing the player, said unit being a virtual object controlled by the player;

maintaining a unit information database, the unit information database recording unit information on said unit, in which the unit information includes ability of said unit and sync point information;

maintaining a pilot information database, the pilot information database recording pilot information on said pilot, in which the pilot information includes a unit identifier indicating said unit associated with said pilot, ability of said pilot and the ability of said unit associated with said pilot;

receiving a request for update on first pilot ability information of a first pilot;

searching for unit identifier [*4] information associated with the first pilot by referring to the pilot information database; searching for sync point information associated with the searched unit identifier information by referring to the unit information database; and

updating and recording the first pilot ability information and unit ability information associated therewith in accordance with the searched sync point information such that said ability of unit is changed proportionally to changes in ability of the pilot by referring to said sync point,

wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit, and said steps of searching for unit identifier information and of searching for sync point information are performed by a processor.

D. References

Petitioner relies upon the following references:

| | | | |
|----------|---------------|---------------|-----------------------|
| Matsui | JP2000-135272 | May 16, 2000 | Ex. 1003 ¹ |
| Kurosawa | JP2002-200350 | July 16, 2002 | Ex. 1010 ² |

[*5]

"Warlords Battlecry III User's Guide" ("Battlecry Manual"), Ex. 1004³ (C) 2004 Enlight Interactive Inc. and Infinite Interactive Pty. Ltd.

"Warlords Battlecry III - Hero Creation" [*6] ("Battlecry Heroes Ex. 1005 Table"), bearing a date of May, 2004.

"Warlords Battlecry III - Spells" ("Battlecry Spells Table"), Ex. 1006 bearing a date of May, 2004.

Warlords Battlecry III Units ("Battlecry Units Table"), allegedly Ex. 1007 available online before June 28, 2004. See Pet. 6.

¹ As Patent Owner correctly notes, Exhibit 1003 filed with the Petition includes an English translation of Matsui but does not include the original Japanese language document. See Prelim. Resp. 3-4. Petitioner filed a motion to correct the Petition along with a corrected exhibit including the Japanese language document. See Paper 12; Ex. 1014. Because we deny for other reasons, we need not address Petitioner's motion to correct further.

² As Patent Owner correctly notes, Exhibit 1010 filed with the Petition includes an English translation of Kurosawa but does not include the original Japanese language document. See Prelim. Resp. 3-4. Petitioner filed a motion to correct the Petition along with a corrected exhibit including the Japanese language document. See Paper 12; Ex. 1015. Because we deny for other reasons, we need not address Petitioner's motion to correct further.

³ Patent Owner does not substantively argue that the Battlecry Manual and other game documentation are not printed publications at this stage. See Prelim. Resp. 3 n.1 ("Patent Owner reserves the right to contest whether the game manuals are prior art printed publications."). For purposes of this Decision, we treat the Battlecry game documentation as prior art printed publications.

E. Asserted Grounds of Unpatentability

Petitioner challenges claims 1-8 of the '243 patent based on the asserted grounds of unpatentability set forth in the table below.

| Reference(s) | Basis | Claims Challenged |
|---|----------|-------------------|
| Matsui alone or in combination with Battlecry Manual, Battlecry Heroes Table, Battlecry Spells Table, and Battlecry Units Table (collectively, "the Battlecry Documents") | § 103(a) | 1, 6, and 7 |
| Matsui alone or in combination with Kurosawa | § 103(a) | 2-5 and 8 |

II. ANALYSIS

A. Claim Construction

In an *inter partes* 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. § 42.100\(b\)](#); see [Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131, 2144-46 \(2016\) \[*7\]](#) (upholding the use of the broadest reasonable interpretation standard in an *inter partes* review). In applying a broadest reasonable construction, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. See [In re Translogic Tech., Inc., 504 F.3d 1249, 1257 \(Fed. Cir. 2007\)](#). This presumption may be rebutted when a patentee, acting as a lexicographer, sets forth an alternate definition of a term in the specification with reasonable clarity, deliberateness, and precision. [In re Paulsen, 30 F.3d 1475, 1480 \(Fed. Cir. 1994\)](#).

Petitioner proposes constructions for the following claim terms: "pilot," "unit," "sync point information," and "database." Pet. 12. Petitioner, however, merely lists its proposed constructions with citations to the '243 patent and the testimony of its Declarant David Crane (Ex. 1002) but provides no substantive argument explaining why its proposed constructions are correct. See Pet. 12.

For purposes of this Decision, we need only address the proper construction [*8] of the term "sync point information," and we determine that the remaining terms of the challenged claims do not require express constructions.

1. "Sync point information"

The term "sync point information" appears in all claims of the '243 patent. Petitioner contends "sync point information" means "information indicating a relationship between a unit and its associated pilot such that a change in a first pilot ability information is applied to associated unit ability information according to said relationship." Pet. 12 (citing Ex. 1001, 3:19-23; Ex. 1002 PP 37-38). Patent Owner argues that Petitioner's proposed construction is incomplete because each independent claim requires the "sync point information" to be a ratio. Prelim. Resp. 17. We agree with Patent Owner.

Each of the independent claims recites "wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit." Petitioner's proposed construction of "information indicating a relationship" ignores this express requirement of the claim, and it is also unreasonably broad in view of the '243 patent's disclosure [*9] that "sync point 304 is information indicating a *numeric* relationship between a unit and its associated pilot, that is, information indicating a ratio or proportion of which changes in pilot ability information are applied to unit ability information." Ex. 1001, 5:7-11 (emphasis added).

Therefore, we reject Petitioner's proposed construction of "sync point information" because it is not the broadest reasonable interpretation. The claims themselves define "sync point information" to be "a ratio of which changes in said ability of pilot are applied to said ability of unit." Thus, we apply the plain language of the claims in addressing the merits of Petitioner's contentions.

B. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. [*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 \(2007\)](#). The question of obviousness is resolved on the basis of underlying [*10] factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. [*Graham v. John Deere Co.*, 383 U.S. 1, 17-18 \(1966\)](#).

C. Obviousness over Matsui Alone or in Combination with the Battlecry Documents

Petitioner contends independent claims 1, 6, and 7 of the '243 patent are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Matsui alone or in combination with the Battlecry Documents. Pet. 4, 13-31.

The term "sync point information" appears in several limitations of independent claims 1, 6, and 7, and as discussed above with respect to claim construction, each of these claims recites that "said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit." Petitioner identifies various disclosures in each of Matsui and the Battlecry Documents it contends teach the recited "sync point information." See Pet. 13-31. As we explain in detail below, we are not persuaded [*11] that the various disclosures Petitioner cites as teaching the recited "sync point information" satisfy the limitations of the claim.

1. Matsui

Petitioner does not consistently identify any one disclosure in Matsui as teaching the recited "sync point information." Rather, as discussed below, Petitioner contends that the "Item ID" field and "coefficient y" teach the recited "sync point information" in different limitations.

a. Item ID

The term "sync point information" first appears in claim 1 in the limitation reciting "maintaining a unit information database, the unit information database recording unit information on said unit, in which the unit information includes ability of said unit and sync point information." Petitioner contends that "[t]he equipment data tables include an Item ID field that serves as the sync point to link the item database record to a pilot information database as discussed below." Pet. 19 (citing Ex. 1003 P 51, Figs. 7, 9; Ex. 1002 PP 68-72, 210-212). The term next appears in the limitation of claim 1 reciting "searching for sync point information associated with the searched unit identifier information by referring to the [*12] unit information database." Petitioner again contends the "Item ID" field of Matsui's equipment data tables teaches "sync point information." Pet. 23 (citing Ex. 1003 P 51, Figs. 7, 9; Ex. 1002 PP 68-72, 210-212).

Patent Owner argues that Matsui's Item ID field is simply a number indicating an item and, therefore, does not teach "sync point information" because it is not a ratio by which a unit ability is changed. Prelim. Resp. 19-20. We agree. Matsui discloses that "each item that makes appearance in the game is assigned an ID (IDentity) number (referred to as the 'Item ID')." Ex. 1003 P 47. Matsui further discloses: "FIG. 8 shows an item table that describes the correspondence between items and item IDs. In the figure shown, the items 'herb', 'tent', 'key', 'letter', 'XX's shield', and 'XX's sword' are assigned item IDs '00', '01', '02', '03', '04', and '05', respectively." Ex. 1003 P 48. Therefore, these Item IDs are simply identification numbers for items used in the game. Petitioner does not direct us to disclosure within Matsui or other evidence demonstrating that these Item IDs are "ratio [s] of [*13] which changes in said ability of pilot are applied to said ability of unit," as recited in each independent claim.

b. Coefficient y

Claim 1 further recites "updating and recording the first pilot ability information and unit ability information associated therewith in accordance with the searched sync point information such that said ability of unit is changed proportionally to changes in ability of the pilot by referring to said sync point." Petitioner contends "Matsui discloses updating and recording pilot abilities and unit abilities corresponding to the searched sync point information," but Petitioner does not mention Matsui's "Item ID" field nor identify what in particular it contends teaches the "sync point information" in this limitation. Pet. 24. However, with respect to the limitation "wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit," Petitioner for the first time identifies Matsui's "coefficient y " as the claimed "sync point information." Pet. 25.

Petitioner's contentions are not persuasive. In its discussion of the "updating and recording" limitation of claim 1, Petitioner identifies various [*14] operations in Matsui that allegedly teach changing unit abilities. See Pet. 24. First, Petitioner contends Matsui discloses "the unit abilities ATP and ATPMAX are updated and recorded when weapon items are used in battle, along with pilot ability AT." Pet. 24 (citing Ex. 1003 PP 52, 93, Fig. 9; Ex. 1002 PP 98-100). The cited disclosures from Matsui are reproduced below.

Here, the attacking power addition value ATP is the correction value that increases the attacking power AT for a character when the player character is outfitted with the weapon item. The maximum attacking power addition value ATPMAX represents an upper limit under which the attacking power addition value ATP is increased according to the combat count BT which is the number of times combat is waged when the player character is outfitted with said weapon item. The calculation processing for these parameters will be described later.

Ex. 1003 P 52.

Next, by using weapons items in a battle, the maximum attacking power addition value ATPMAX which is an upper limit on increasing the attacking power addition value ATP is computed (Step S129), and the processing is terminated. In the computation [*15] processing on the maximum attacking power addition value ATPMAX in Step S129, the basic maximum value UMAX for said weapons item is read from the fabricatable equipment item information table. By adding to the UMAX value the product of basic maximum correction coefficient γ and the difference between the creation ability value SK for said player character and the basic creation ability value S_b , an ATPMAX value is computed.

Ex. 1003 P 93.

Although these passages may describe updating limits on unit abilities after a battle, Petitioner does not explain how coefficient y , the alleged "sync point information," is used in this process. See Pet. 24. Rather, "basic maximum correction coefficient γ " is used in the process. See Ex. 1003 P 93. Furthermore, with respect to this particular operation, Petitioner does not explain how "said ability of unit is changed *proportionally* to changes in ability of the pilot by referring to said sync point," as recited in claim 1. (Emphasis added). Therefore, Petitioner's contentions with respect to the first operation are not persuasive.

Second, Petitioner contends Matsui discloses [*16] "the pilot creation ability SK can change during gameplay, which then changes the created unit abilities such as ATPMAX and ARTMAX." Pet. 24 (citing Ex. 1003 PP 97, 103; Ex. 1002 PP 101-02). According to Petitioner, "[a]s the pilot creation ability gets higher, the created unit abilities also get higher," such that "the change in unit ability is proportional to the change in pilot ability." Pet. 24 (citing Ex. 1003 P 91; Ex. 1002 P 106). The cited disclosures of Matsui describe different processes for changing or setting various values.

Paragraph 97 of Matsui refers to a process of setting certain unit values during the creation of the unit. See Ex. 1003 P 97 ("By the processing as described above, given the same type of equipment item, if the player plays a game that increases the player character's creation ability value SK, the player can acquire higher-performance equipment items during the game."). Petitioner cites this process in its discussion of "coefficient y ." See Pet. 25 (citing Ex. 1003 P 90, Fig. 20). According to Petitioner, coefficient y "is used to apply [*17] changes in the pilot

ability to the unit abilities," such that, "[f]or example, the unit's attacking power AT⁴ is calculated by multiplying the change in the pilot's creation ability SK by coefficient y (a ratio)." Pet. 25 (citing Ex. 1003 P 90, Fig. 20; Ex. 1002 P 110). Petitioner's contentions do not accurately characterize the use of coefficient y in the equipment creation process.

Matsui discloses:

First, the basic creation ability value S_b and the basic addition value correction coefficient y for the equipment item for which creation was selected are read from the creatable equipment item information table (Step S126). Next, a test is made to determine whether *the equipment item to be created* is a weapon item (Step S127). If it is a weapon item (Step S127: Yes), the attacking power addition value ATP for **[*18]** the weapon item to be fabricated is computed by adding to the attacking power AT which is a basic correction value for that type of preset weapon item the value which is computed by *multiplying the difference* between the creation ability value SK for the player character that creates said weapon item and the basic creation ability value S_b , *by the basic addition correction coefficient y* (Step S128).

Ex. 1003 P 90 (emphases added). Thus, according to Matsui, coefficient y is multiplied by the difference between SK and S_b .⁵ Ex. 1003 P 90, Fig. 20.

In further describing this operation, Matsui discloses:

In this manner, if the player character's creation ability value SK is higher than the basic creation ability value S_b , a weapon item with capabilities higher **[*19]** than that type of standard weapon item can be created. On the other hand, if the player character's creation ability value SK is lower than the basic creation ability value S_b , the created weapon item will have capabilities lower than that of the standard weapon item of that type.

Ex. 1003 P 91. Petitioner relies on this disclosure in support of its contentions that, "[a]s the pilot creation ability gets higher, the created unit abilities also get higher" and that "the change in unit ability is proportional to the change in pilot ability." Pet. 24 (citing Ex. 1003 P 91; Ex. 1002 P 106). The created unit abilities, however, are only increased if SK exceeds S_b . As the disclosure of paragraph 91 makes clear, if SK is lower than S_b , the equipment capabilities will be lowered. Thus, an increase in SK that still results in a value of SK lower than S_b will actually result in a lowering of the equipment capabilities.

Therefore, Petitioner's contention that coefficient y is multiplied by a change in SK is not supported by Matsui, and Petitioner has not demonstrated that a change in the value of SK results **[*20]** in a proportional change in unit ability. See Pet. 24-25.

Petitioner also cites paragraph 103 of Matsui, which concludes the description of a procedure by which "the performance of the equipment item gradually improves up to the maximum attacking power addition value ATMAX or the maximum defensive power addition value ARTMAX." Ex. 1003 P 103 (cited at Pet. 24). In this procedure, certain values are incremented by one after a battle if their maximum values have not been reached. Ex. 1003 PP 98-103, Fig. 21. Petitioner does not explain how incrementing certain equipment values based on the use of the equipment in battle teaches a change proportional to a change in pilot ability, as recited in claim 1. Nor does Petitioner explain how coefficient y , the alleged "sync point information," is used in the process of incrementing values following a battle.

Therefore, Petitioner has not identified consistently one value in Matsui it contends teaches "sync point information" in each limitation in which that term appears, nor has Petitioner demonstrated that any value it identifies as "sync point information" teaches "a ratio of which changes in said ability of pilot **[*21]** are applied to

⁴ Elsewhere, Petitioner contends "AT" is a pilot ability. See Pet. 20 ("The fields 'HPMAX,' 'SPD,' 'AT,' and 'AR' are pilot abilities.").

⁵ The value " S_b " is the "basic creation ability value," which "represents the degree of difficulty for a player character to create equipment items." Ex. 1003 P 81.

said ability of unit," as recited in each independent claim. As such, Petitioner's contentions as to Matsui are not persuasive.

2. Matsui in Combination with the Battlecry Documents

Petitioner also contends that the Battlecry Documents' disclosures of spell casting teach updating unit ability in proportion to the ability of the "hero" (the alleged "pilot" of the claims). See Pet. 24-26. In particular, Petitioner argues:

[T]he spell "True Sight" allows the unit to "see" farther into the game's map. (Ex. 1006 at 5; Ex. 1002 at PP 135-136.) For every level the pilot has attained, the unit's ability to "see" is increased by a distance of one map grid. (See *id.*) Thus, the unit ability is changed proportionally to the change in pilot ability. (Ex. 1006 at 5; Ex. 1002 at P 137.).

Pet. 25. Furthermore, according to Petitioner, this teaches the required "ratio" because, "[a]s the pilot's level increases by one level, the 'seeing' ability of the unit increases by one grid." Pet. 26 (citing Ex. 1006, 5; Ex. 1002 P 150).

We are not persuaded by Petitioner's contentions. The Battlecry Spells Table discloses that the "True Sight" spell [*22] "[a]dds a permanent vision bonus to the caster's side" whose "area of effect" is the "[e]ntire map." Ex. 1006, 5. The bonus is "+ 1 grid per level." Ex. 1006, 5. However, unlike other spells, such as the "morph" spells discussed below, the "True Sight" spell makes no mention of affecting particular unit abilities. Although Petitioner alleges that the "True Sight" spell increases the "seeing" ability of the unit, Petitioner has not identified a "seeing" unit ability in the Battlecry Documents. Petitioner identifies "Life," "Speed," "Damage (causing)," and "Armor" as exemplary unit abilities in the Battlecry Documents. Pet. 19 (citing Ex. 1007; Ex. 1002 PP 125-26). Petitioner does not direct us to, nor do we find, a "sight" or "seeing" unit ability in the Battlecry Documents. See Ex. 1007.

Regarding the "True Sight" spell, Petitioner's Declarant, David Crane, testifies:

This spell applies a bonus to an ability value to every unit in the Hero's retinue, allowing each one to "see" farther into the game's map. ([Ex. 1006, 5].) *The spell's effect is again multiplied by the hero's level as shown in column 3.* (See *id.*) For every level the Hero has attained, the unit's ability [*23] to see is increased by one map grid. (See *id.*) This increase of the unit's ability is based on an ability value of the pilot, further showing the interoperation of pilot sync point information and unit sync point information. (See *id.*)

Ex. 1002 P 136. As with Petitioner, Mr. Crane does not identify a "sight" or "seeing" unit ability in the Battlecry Documents. See Ex. 1002 P 125-26. Rather, Mr. Crane identifies the same unit abilities as Petitioner--life, speed, damage (causing), and armor. Ex. 1002 P 125. Because Mr. Crane has not identified a particular "seeing" unit ability in the Battlecry Documents, we do not find this testimony probative as to whether the Battlecry Documents disclose "updating" this unidentified unit ability. See [37 C.F.R. 42.65\(a\)](#) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.").

Mr. Crane identifies additional spells that Petitioner does not expressly rely on in the Petition, referring to the "Chaos Sphere" table reproduced below:

[*24]

CHAOS SPHERE

| SPELL | DESCRIPTION | EACH MASTERY LEVEL | COST (Mana) | AREA OF EFFECT | DURATION | NOTES |
|------------------|--|---|-------------|----------------|------------------|--|
| Morph Combat | Randomly changes combat values of nearby units by up to +/- 3 – friend and foe | Up to +/- 3 more per level | 6 | Command radius | Instant | Retinue troops will reset back to normal after the battle |
| Morph Speed | Randomly change speed values of nearby units by up to +/- 3 – friend and foe | Up to +/- 3 more per level | 8 | Command radius | Instant | Retinue troops will reset back to normal after the battle |
| Morph Health | Randomly change health values of nearby units by up to +/- 30 – friend and foe | Up to +/- 30 more per level | 5 | Command radius | Instant | Retinue troops will reset back to normal after the battle |
| Morph Damage | Randomly change damage values of nearby units by up to +/- 3 – friend and foe | Up to +/- 3 more per level | 7 | Command radius | Instant | Retinue troops will reset back to normal after the battle |
| Morph Tower | Randomly changes one of combat, speed or damage by +/- 3, or hits by +/- 30, of nearby towers – friend and foe | Up to +/- 3 more per level for combat, speed and damage Up to +/- 30 more per level for hits | 12 | Command radius | Instant | |
| Drain Mana | Drains 50 mana from any enemy unit nearby | +25 mana per level +50% area of effect | 24 | Command radius | Instant | |
| Morph Resources | Transmute one resource into another at a rate of 40-60% | +10% to rate | 30 | Self | Instant | Rate may not exceed 100% |
| Increase Casting | The caster increases his casting skill by +1 in a random spell sphere | + 1 casting per 2 levels | 55 | Self | Current scenario | |
| Wildfire | Black lightning shoots from the caster, hitting enemy units for 50 fire damage | +50 fire damage | 32 | Command radius | Instant | |
| Chaos Plague | Nearby enemy units have their hit points reduced to 50% of their current hits and are diseased | +3% more hits | 70 | Command radius | Instant | Hits may not be reduced below 5%. No effect on mechanical units or titans |

Ex. 1006, 4. This table describes spells that are in the "Chaos Sphere." Mr. Crane testifies:

This table is laid out to show that for each spell in the first column "SPELL," a spell which causes the effect shown in "DESCRIPTION" is performed. ([Ex. 1006, 4].) The spell's effect is multiplied by the hero's level as shown in column 3. (See *id.*) The first four "Morph" spells affect units within the Hero's command radius to a degree directly related to the Hero's mastery level, showing the interoperation of pilot sync point information and unit sync point information. (See *id.*)

Ex. 1002 P 134.

In contrast to the "True Sight" spell, several of the spells in the "Chaos Sphere" are directed to particular characteristics identified by Petitioner as unit abilities. For example, the table above describes that "morph combat," "morph speed," and "morph damage" spells affect "combat values," "speed values," and "damage values" of "nearby units." Ex. 1006, 4. However, the Battlecry Spells Table discloses that these spells "[r]andomly change[] [combat, speed, [*25] and damage] values of nearby units by up to +/- 3 - friend and foe." Ex. 1006, 4. Therefore, although the Battlecry Documents disclose that these morph spells affect particular unit values, the changes are random, not proportional to changes in pilot ability.

In sum, Petitioner has not sufficiently demonstrated that the "True Sight" spell causes "updating and recording" of a "seeing" unit ability in proportion to a change in pilot ability. Furthermore, the ability of morph spells to "[r]andomly change[]" certain unit values does not demonstrate the proportional change required by the claims.

3. Conclusion

We are not persuaded by Petitioner's contentions that either Matsui or the Battlecry Documents teach

updating and recording the first pilot ability information and unit ability information associated therewith in accordance with the searched sync point information such that said ability of unit is changed proportionally to changes in ability of the pilot by referring to said sync point,

wherein said sync point information is a ratio of which changes in said ability of pilot are applied to said ability of unit,

as recited in claim 1 and similarly recited in independent claims [*26] 6 and 7. Because Petitioner's contentions rely on either Matsui or the Battlecry Documents to teach this limitation, Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that the challenged claims would have been obvious over Matsui alone or in combination with the Battlecry Documents.

D. Obviousness over Matsui alone or in Combination with Kurosawa

Petitioner contends dependent claims 2-5 and 8 are unpatentable under 35 U.S.C. § 103(a) as having been obvious over Matsui alone or in combination with Kurosawa. Pet. 4, 31-36. Petitioner's contentions with respect to dependent claims 2-5 and 8 depend on, but do not cure, its contentions with respect to independent claim 1. As such, we are not persuaded the record before us establishes a reasonable likelihood that Petitioner would prevail on its assertions that dependent claims 2-5 and 8 would have been obvious as alleged in the Petition.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied*, and no trial is instituted.

USPTO Bd of Patent Appeals & Interferences; Patent Trial & Appeal Bd Decs.

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