

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PLR WORLDWIDE SALES LIMITED,

Petitioner,

v.

FLIP PHONE GAMES INC.,

Patent Owner.

Case No. IPR2024-00200

U.S. Patent No. 11,117,056

**PETITIONER'S RESPONSE TO PATENT OWNER'S REQUEST FOR
DIRECTOR REVIEW**

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I. INTRODUCTION

Patent Owner (“PO”) only challenges the Board’s determination that Claims 9-16 of the ’056 are unpatentable, asserting that they “materially differ” from Claims 1-8, which it concedes are unpatentable. But the Board expressly addressed the limitations of Claim 9 that PO now challenges, finding support for them in the Petition. PO merely repeats arguments the Board already rejected and asks the Director to reach the opposite conclusion. But the FWD was well supported and explained. The Board correctly gave the terms “for use” and “pre-selected” their plain and ordinary meaning, refused to import unsupported limitations (that PO did not even properly advance by failing to offer constructions for either term), and explained how the Petition demonstrates that Hays discloses both limitations. In addition, the Board properly gave Dr. Zagal’s testimony due weight.

II. THE PETITION ADDRESSED THE FULL SCOPE OF CLAIM 9

PO incorrectly argues the Petition did not address the “for use” and “pre-selected” limitations in Claim 9 (from which the other challenged claims depend), and thus the Board could not have properly found Claims 9-16 unpatentable. Paper 32 (“Request”) 2-5. The Board considered and rejected identical arguments. Paper 30 (“FWD”) 20-28. Indeed, the Board expressly pointed out where the Petition demonstrates that Hays discloses “pre-selected” in-game advertising that is “for use” in a video game. FWD 18 (“Petitioner argues that Hays[] ... store[s] advertisements

that are usable” and “cites Hays’s disclosure of ad targeting in support of its argument that ‘Hays discloses that the advertisements are ***pre-selected***.’” (citing Paper 2 (“Pet.”) 14-15 and quoting Pet. 20)); *see also id.* 20-28. PO nonetheless argues that the cited pages of the Petition only discuss “pre-selected” ***messages***, not “pre-selected” ***content***. Request 3. But the analysis in the Petition (that the Board relied on) explained that Hays discloses ***both*** pre-selected messages ***and*** pre-selected advertisements (*i.e.*, content). Pet. 18-20; FWD 18, 19 (separately addressing the “content” and “message” limitations); *see also* FWD 20-28.

III. THE BOARD’S ANALYSIS OF “PRE-SELECTED” IS CORRECT

PO does not challenge the Board’s interpretation of “pre-selected,” which was based on PO’s own arguments. FWD 13-16 (discussing PO’s interpretation and concluding that Hays discloses “pre-selected in-game video game content” under PO’s interpretation).¹ Instead, PO argues that Hays’s sub-channels refer to advertisement spaces, not advertising content. Request 6. But the very examples cited by PO—which include sub-channels such as “time of day” and “game play date”—contradict this assertion. Indeed, the Board considered and rejected PO’s argument for the same reason, explaining that this disclosure in Hays shows that “Hays’s ad campaign targeting involves selecting the advertising content itself ahead of time, *i.e.*, pre-selecting it.” FWD 24; *see also id.* 23 (“Petitioner’s contentions

¹ PO never offered an express construction of “pre-selected.” FWD 6.

and Hays's disclosure of selecting ads to serve from a pool of ads that are selected ahead of time are consistent with the written description of the '056 patent."). PO repeats its rejected argument without identifying any error in the Board's reasoning.²

IV. THE BOARD PROPERLY GAVE "FOR USE" ITS PLAIN MEANING

Contrary to PO's arguments, the Board did not expressly construe "for use," but instead analyzed and rejected PO's attempts to artificially limit the term to less than its plain and ordinary meaning by importing an "interactive" requirement. FWD 8 (noting that PO "seeks to add several requirements" but "offers no persuasive support for these restrictions"). The Board found that the claim language on its face is "broad" and "includes none of the restrictions [PO] would place on it." *Id.*

PO's argument that the Board interpreted the term based on the prior art is equally flawed: the Board addressed the term "ad unit" only insofar as PO sought to distinguish Hays's "ad units" from content that is "for use" in a video gamemade clear that it interpreted "for use" based on the claim language, the specification, and the prosecution history of the related '202 Patent. *Id.* FWD 7-13.

Although PO asserts that the Board "excluded the plain meaning of 'for use'," PO does not explain what it even contends the plain meaning should be, or why the Board's reasoning is contrary to the plain meaning. Request 8-9; FWD 8. Instead,

² PO also repeats the argument, addressed above, that the Petition only addresses pre-selected messages and not pre-selected advertising. The Petition expressly argues that Hays's sub-channels relate to pre-selected **advertisements**. Pet. 20.

PO criticizes the Board's finding that the ***preferred embodiment*** contradicts PO's imported restrictions by arguing that the preferred embodiment should be excluded from the scope of the claims. Request 9. As the Board correctly noted, black-letter claim construction law militates against PO's interpretation that excludes a preferred embodiment. FWD 10. Moreover, the Board considered the single example on which PO bases its argument and explained that ***the same specification paragraph also*** describes non-interactive elements such as "the shape, design, coloring" of objects "or the texture or coloring of [the] background" as content that may be "updated" and "used." FWD 11 (quoting Ex. 1001, 7:9-15). Nothing in the specification supports PO's attempt to limit "for use" to ***interactive*** content.

PO's citation to the prosecution history of the related '202 Patent similarly does not support its improperly narrow interpretation. PO does not challenge the FWD's finding that the prosecution history distinguished Gatto because its updated content "did not appear in the ... video game," not because it "did not alter game play." FWD 13. Indeed, PO acknowledges that Gatto's updated content was "an entirely separate program or Internet page." Request 10 (quoting Ex. 2002, 142). PO's argument that the prosecution history limits "for use" to interactive content that alters gameplay is thus a complete non-sequitur.

V. HAYS DISCLOSES INTERACTIVE, UPLOADED AD UNITS

As the Board correctly concluded, even under PO's improper construction,

Hays describes uploaded advertisements that alter game functionality. FWD 26-28. PO argues Hays only discloses “chang[ing] the branding” of an in-game object. Request 11-13. The Board rejected this exact argument as contrary to Hays’s teaching, which describes “insert[ing] a bot or agent that was not part of the game before it was inserted.” FWD 27-28 (citing Ex. 1005, ¶79). Despite Hays’s express disclosure, PO argues (based on a completely different embodiment) that only the “logo” or “packaging” is uploaded in Hays. Request 13-14. This is a new argument never raised below, that is nonetheless contradicted by Hays’s express disclosure, which the Board properly relied on. FWD 27-28; *compare* Ex. 1005, ¶¶ 57-58 (cited by PO, describing “some embodiments”) *with id.* ¶79 (relied upon by the Board, and citing a different set of “embodiments”).

VI. DR. ZAGAL’S TESTIMONY WAS PROPERLY CONSIDERED

PO repeats its twice-rejected argument, citing *Xerox*, that the Board should have afforded no weight to Dr. Zagal’s testimony because it repeats the Petition. Request 14-15. The Board responded directly to this argument, explaining that PO misreads *Xerox*, which was limited to “unsupported, conclusory assertions without any additional supporting evidence or reasoning.” FWD 47-48. As the Board explained, and PO does not rebut, that is not the case here. *Id.*

VII. CONCLUSION

For these reasons, all challenged claims are unpatentable.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 3, 2025, true and correct copies of the foregoing document and supporting materials were served in its entirety on the Patent Owner at the following email addresses:

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