

March 1, 2018

Miguel J. Bombach
MBombach@perkinscoie.com
D. +1.858.720.5747
F. +1.858.720.5847

Leslie L. Jacobs, Jr.
ljacobs@rubinrudman.com

Dear Mr. Jacobs:

I write in response to your letter to Playsaurus, Inc. (“Playsaurus”) dated February 20, 2018. Perkins Coie LLP represents Playsaurus.

Clicker Heroes does not infringe any claim of U.S. Pat. No. 7,177,838 (the “’838 patent”) nor are any of its claims valid. Your letter also includes many false assumptions regarding Clicker Heroes’ operation.

The claims of the ’838 patent are directed toward a server; Clicker Heroes, in contrast, is client software. Your letter emphasizes the alleged novelty of the server and its applicability to the claims in many instances (*see* Ex. B at ¶¶ 26-28) and your allegations assume that Playsaurus operates a server that performs the recited routines of claim 27. Ex. B at ¶ 34 (“upon information and belief, the Playsaurus ‘server’ ... includes a computer having at least one processor that executes software stored in a memory, the software including one or more programmed routines.”). But, this assumption is incorrect and the ’838 patent is clearly not infringed.

Claim elements directed to server routines cannot be satisfied by client software. *See* ’838 patent at 22:7-43 (claim 27 is directed at a server that has a processor programmed to perform various routines). This is most evident in Ex. B, ¶¶ 36-40 of your letter. ¶36 illustrates the sale of Rubies, but the software that allows the sale is client-side. The claims also require that the server maintain a database entry (*e.g.*, ’838 patent at 22:11-11) and emphasizes that the only manifestation of tokens is the database entry (*e.g.*, *id.* at 22:11-12). Clicker Heroes, however, stores Rubies on the client device. Playsaurus does not track users’ Rubies, nor does it track how users spend their Rubies. For this same reason, Clicker Heroes cannot practice any of the claimed selection/authorizing/purchasing routines (*id.* at 22:16-31)—any theoretical selection/authorization/purchase of an item using a Ruby is done by the client. Furthermore, ¶37 illustrates a display of various items but, again, the this is client-side. Your allegations are baseless—the claims of the ’838 patent are directed to something entirely different than Clicker Heroes.

The fact that Clicker Heroes operates client-side can easily be verified via a simple test that you are obligated to perform. Take a mobile device with Clicker Heroes installed, disable all Internet connections, then begin to purchase items with Rubies. You will be able to play Clicker Heroes and select, display, and purchase items with Rubies. From this, it should become very apparent

to you that your allegations are meritless and that you do not have a Rule 11 basis to proceed in any infringement allegations against Playsaurus.

Beyond the server, there are many other differences between the claims and Clicker Heroes. The claims of the '838 patent require selection of a subset of products. *See* '838 patent at 22:16-17. After selection, the products must be downloaded. *Id.* at 22:33-34. Clicker Heroes, in contrast, does not download items after selection. *See* Ex. B at ¶ 37 (showing some items). These items are part of the client-side software, as installed, and nothing is downloaded after selection. In addition to this, the claim requires that the selection be from a “participating vendor website.” '838 patent at 22:17. But, as is very apparent from your Ex. B at ¶37, the selection occurs locally via client software and a website is never involved.¹ The lack of a connection to a “vendor website” and a lack of a “download” should also be made very clear to the by the Internet-disconnected test that you are obligated to perform. Your infringement allegations are simply meritless.

The previous discussion of non-infringement should, in no way, be seen by you that the '838 patent is valid. It is not. In fact, the '838 patent is a perfect example of a patent that is subject matter ineligible under 35 U.S.C. § 101. The '838 patent recites an abstract idea: issuing tokens to use in purchases, applied to the Internet and the computers. *See Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2360 (2014) (invalidating claims directed to claims that recite the abstract idea of intermediated settlement using some generic computers.). This abstract idea is no different than using tickets to purchase drinks at a party, or going to an arcade and using tokens to play games. Applying the idea with a “server” or reciting “memory” does not transform this concept into something that is patent eligible. After *Alice*, buying and using tokens for transactions (like a kid would do at Chuck E. Cheese's), cannot be patented by simply reciting computers and the Internet. Furthermore, GTX's attempted preemption of using tokens on the Internet clearly signals patent ineligible subject matter under *Alice*. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (stating that preemption may signal patent ineligible subject matter).

Beyond *Alice*, the claims of the '838 patent are invalid in light of the prior art. The use of tokens to purchase in game assets is not a new thing, and is a well-recognized tool employed by game developers for decades. One of the most recognizable games is Neopets, which was launched prior to the filing of the provisional application of the '838 patent. *See, e.g.*, <http://www.neopets.com/newfeatures/jan2000.phtml>. In Neopets, users could buy and use

¹ The “vendor website” was a point of emphasis in an appeal brief filed by the inventor before the USPTO in the prosecution of the '838 patent. *See* 2006-01-26 Appeal Brief.

Neocash within the game. This is clearly the same idea you claim to have invented with the '838 patent.²

Beyond games, the concepts described in the '838 patent were well-known and discussed in printed publications. *Ferreira, et al.*, *A Scheme for Analyzing Electronic Payment Systems* (1999) (ISBN 0-8186-8789-4) ("Ferreira") describes token-based systems (for micro to large payments), where users buy tokens from a central authority, and use those tokens as E-Cash to purchase goods online. The USPTO did not know about Ferreira when it issued the '838 patent, and would not had it known of its existence.

It is also very noteworthy that a continuation of the '838 patent (U.S. App. 10/057420, the "'420 app") which shares the same disclosure and substantively similar claims was abandoned by the inventor after a USPTO rejection. The USPTO provided an obviousness combination over U.S. Pat. Nos. 6,999,936 (the "'936 patent") and 7,124,101 (the "'101 patent") refusing to grant the '420 app's claim to patent. The USPTO felt that these references taught (*see* '420 app, March 2, 2010, Office Action Rejection) at least some of the below limitations:

- "issuing a plurality of electronic tokens from a micro payment service provider server of a micro payment service provider to a user device suitable for use in micro payment transactions"
- "providing a plurality of micro payment user account at the micro payment service provider server to the user, each micro payment user account in the plurality of micro payment accounts storing a subset of the electronic tokens purchased with a different currency"
- "providing a micro payment vendor account to each one of the plurality of vendors for set payments for electronic tokens used by the user; accepting, from a vendor server a request at the micro payment service provider server for a micro payment transaction between the user device and the vendor for specific tangible goods, content, or services, authorizing the micro payment transaction responsive to the request completing the purchase, responsive to the authorization"
- "completing the purchase responsive to the authorizing of the tangible goods, content, or services from one or more of the plurality of vendors servers and for each electronic transaction between the user device and a vendor server"

Rather than providing substantive argument in response, the inventor appears to have conceded that his alleged invention was not novel by abandoning the '420 app. These ideas are the same

² Playsaurus developers know and have worked with developers of Neopets.

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that you claim to have invented with the '838 patent. Neither of the '936 or '101 patents were before the USPTO when it was examining the '838 patent, and it would not have issued had the USPTO been aware of them.

We also believe that all mobile game developers are already licensed to the '838 patent. The '838 patent has been previously asserted against Apple and Google, and these cases appear to have reached settlement in 2009. You cannot now take that same patent and, a decade later, try to extract more money against developers who list their games on the Apple and Google store. Your attempted double-dipping is inappropriate.

For all of the above reasons, should my client need to defend itself on such a meritless claim, we intend to seek attorney's fees.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Bombach". The signature is fluid and cursive, with the first letter being a large, stylized 'M'.

Miguel J. Bombach