UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNILOC 2017 LLC, Plaintiff, v. PAYCHEX, INC., Defendant.	Civil Action No. 1:19-cv-11272-RGS
UNILOC 2017 LLC, Plaintiff, v. ATHENAHEALTH, INC., Defendant.	Civil Action No. 1:19-cv-11278-RGS

CLAIM CONSTRUCTION MEMORANDUM OF UNILOC 2017

Plaintiff ("Uniloc 2017") has asserted claims from two IBM patents. The '578 patent[1] describes (what were in 1998) innovative methods of managing configurable application programs ("applications") on a computer network for a large enterprise. The '293 patent[2] describes a method of distributing applications from a central network management server ("NMS") to remote servers.

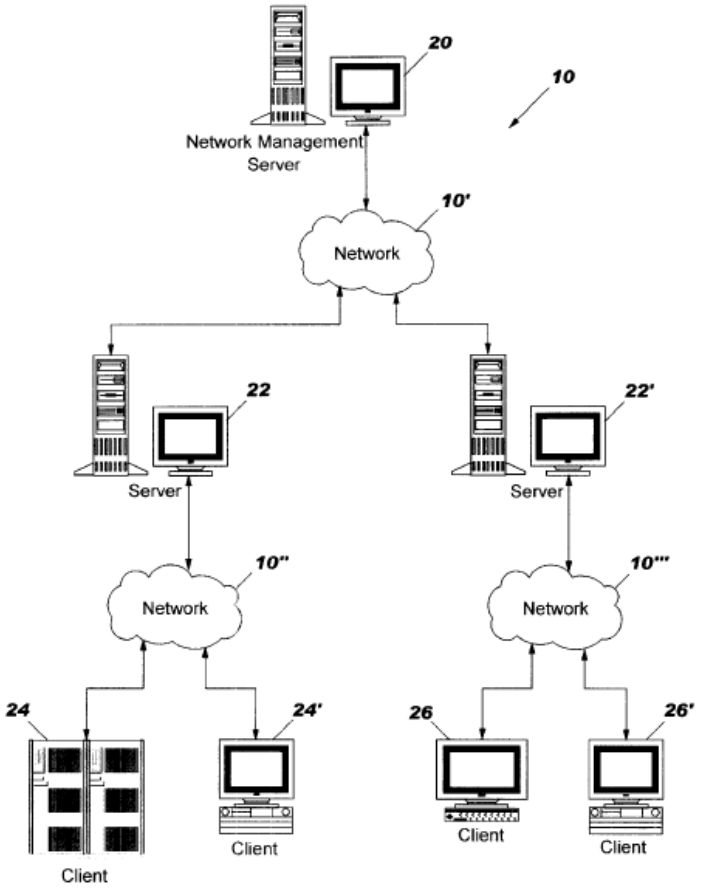
Both the '578 and '293 disclosures describe a computer network, which connects each individual user's computer terminal ("client terminal," or simply "client") to a remote server

[1] U.S. Patent No. 6,324,578 (Ex. A). Another patent, U.S. 6,728,766 ("the '766 patent") issued as a divisional of the '578 patent.

[2] U.S. Patent No. 7,069,293 (Ex. B), which was filed as a divisional of another patent, U.S. Patent No. 6,510,466 ("the '466 patent"), filed the same day as the '578 patent, December 14, 1998.

responsible for supporting that client, as well as for supporting a number of other clients. The network, in turn, connects the remote servers to a NMS. FIG. 1 of the '293 patent graphically illustrates this server/client arrangement:

FIG. 1



An application is software written to perform a particular function for a user (as opposed to system software, which is designed to operate the network). Common examples of applications are word processing (e.g., Microsoft Word) and spreadsheet (e.g., Excel) applications.

In 1998, designers of computer networks for large enterprises were confronted with the problem of peripatetic users, i.e., users who log in from different clients at different times. IBM,

in these patents, describes innovative ways, circa 1998, to allow a peripatetic user to access the user's authorized applications from any client on the network, while maintaining the user's own selected preferences. The '578 patent relates to obtaining user and administrator preferences for application programs installed at a server and, responsive to a request from a user, executing the application after an application launcher program is distributed to a client.

Network designers in 1998 were also confronted by the problems of efficiently distributing applications throughout the enterprise, and of then frequently (and efficiently) updating those applications, while maintaining consistency among users, as to both application and administrator preferences. The '293 patent relates to distributing applications from a NMS to other servers using an associated file packet that includes a segment configured to initiate registration operations on the server to make the application available for use.

Uniloc 2017 submits the accompanying Declaration of Dr. Michael Shamos on the issue of what a person of ordinary skill in the art (POSITA) in December 1998 would have understood to be the ordinary meaning of the various terms in dispute.

Claim Construction Issues

Uniloc below lists, in what it sees as the order of priority, the claim construction disputes, beginning with the '578 patent.

Claim 1 reads (emphasis added):

> *1. A method for management of configurable* ***application programs*** *on a network comprising the steps of:*
>
> *installing an* ***application program*** *having a plurality of configurable preferences and a plurality of authorized users on a server coupled to the network;*
>
> *distributing an* ***application launcher program*** *associated with the* ***application program*** *to a client coupled to the network;*

obtaining a user set of the plurality of configurable preferences associated with one of the plurality of authorized users executing the ***application launcher program****;*

obtaining an administrator set of the plurality of configurable preferences from an administrator; and

executing the ***application program*** *using the obtained user set and the obtained administrator set of the plurality of configurable preferences* ***responsive to a request from one of the plurality of authorized users***.

"Application launcher program"

Uniloc's Construction	Paychex's Construction
computer program that launches, i.e., starts another program	A program distributed to a client to initially populate a user desktop and to request an instance of the application for execution at the client

All the claims of the '578 patent require an "application launcher program." Uniloc requests the Court give this term its ordinary meaning, which is, quite simply, a program that launches another program. Dr. Shamos lists contemporaneous sources that used the term in a manner consistent with its ordinary meaning in the art of a "computer program that launches, i.e., starts, another program." Shamos Decl., ¶¶ 41-44.

Defendants propose a construction that would exclude programs that launch programs resident on a server. But Dr. Shamos cites programs -- contemporaneously described as "application launcher programs" -- that did exactly that. *Id*., ¶¶ 43-44, 48-50. Defendants' construction would thus depart from the ordinary meaning.

Courts may only depart from the ordinary meaning of a claim term in two instances: lexicography and disavowal. *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). Where (as here) nothing in the specification indicates the patentee acted as his own lexicographer, and nothing in the intrinsic record clearly and unambiguously limits the invention

to a particular form or configuration, the court may not depart from the term's plain meaning. *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001).

Dr. Shamos's review of the intrinsic record of the '578 patent finds no support for Defendants' departure from the ordinary meaning of the term. The '578 patent describes an environment where applications can be executed on the server, as well as on clients. *Id.*, ¶¶ 25-30. In particular, he finds nothing that would exclude "application launcher programs" that launch applications resident on a server. *Id.*, ¶¶ 48-63.

In support of his opinion, Dr. Shamos points out: (1) the claims of the '578 patent do not specify where an application program is executed, *id.*, ¶ 52; (2) nothing in the specification would indicate the term would be used in a manner other than its ordinary meaning, *id.*, ¶ 53; (3) the advantages the invention of the patent provides are independent of where an application is executed, *id.*, ¶ 54; (4) the "Summary of the Invention" does not limit where applications are executed, *id.*, ¶ 55; (5) the "Detailed Description of Preferred Embodiments" lists various embodiments, only one of which is executed at the client (rather than the server), which the patent refers to as an "alternative," *id.*, ¶¶ 56-57; (6) the '578 patent's figures depict distribution of an application launcher to clients, but not distribution of an application, *id.*, ¶ 58-59; (7) that client requests are coming from a variety of different operating systems strongly suggests the applications would be executed at the server, *id.*, ¶ 60.

Finally, Dr. Shamos found dispositive the reference in the specification to "client/server application program," as it clearly refers to an application being run at a server for the benefit of the client. *Id.*, ¶¶ 61-62.

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