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Paper 26
Entered: October 25, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UBISOFT, INC. and SQUARE ENIX, INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2017-01291
Patent 6,728,766 B2

Before SALLY C. MEDLEY, MIRIAM L. QUINN, and
JESSICA C. KAISER, *Administrative Patent Judges.*

QUINN, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a); 37 C.F.R. § 42.73(a)

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I. INTRODUCTION

In this *inter partes* review, instituted pursuant to 35 U.S.C. § 134, Petitioner, as listed in the caption above, challenged the patentability of claims 1, 3, 7, 9, 13, and 15 of U.S. Patent No. 6,728,766 B2 ("the '766 patent"), owned by Uniloc 2017 LLC, ("Patent Owner" or "Uniloc").[1] This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, Petitioner has not shown by a preponderance of the evidence that claims 1, 3, 7, 9, 13, and 15 of the '766 patent are unpatentable.

A. Procedural History

Petitioner filed a Petition to institute *inter partes* review of claims 1, 3, 7, 9, 13, and 15 of the '766 patent. Paper 4 ("Pet."). Patent Owner filed a Preliminary Response. Paper 7 ("Prelim. Resp."). On November 1, 2017, we instituted *inter partes* review as to claims 1 and 3 only.

After institution, Patent Owner filed a Patent Owner Response. Paper 13 ("PO Resp."). Petitioner filed a Reply. Paper 15 ("Reply"). On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on fewer than all claims challenged in a petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018). Consistent with *SAS*, we modified our Institution Decision to institute on all of the challenged claims, including claims 7, 9, 13, and 15, on the grounds

[1] Patent Owner's Mandatory Notice filed on May 10, 2017 identified both Uniloc USA, Inc. and Uniloc Luxembourg S.A. as the patent owners in this case. Paper 5, 1. Updated Mandatory Notices, however, indicate that the patent owner entity changed to Uniloc Luxembourg S.A., and most recently to Uniloc 2017 LLC. Papers 17, 25.

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presented in the Petition and authorized Petitioner to respond to these modifications to our Institution Decision. Paper 18, 3 (stating that "Petitioner's Institution Response Brief is for identifying matters that Petitioner believes the Board misapprehended or overlooked, or otherwise erred in its institution decision discussing the newly-added claims" (emphasis omitted)). Petitioner then filed a Petitioner's Institution Response Brief. Paper 21 ("Pet. Inst. Resp.").

We heard oral arguments on August 7, 2018. A transcript of the hearing is in the record. Paper 24 ("Tr.").

B. RELATED MATTERS

Petitioner identifies the '766 patent as the subject of two district court cases pending in the U.S. District Court for the Eastern District of Texas (Case No. 2:16-cv-00397-RWS and Case No. 2:16-cv-00872-RWS). Pet. 32; Ex. 1006; Ex. 1007.

C. THE '766 PATENT (EX. 1001)

The '766 patent is entitled "Methods, Systems and Computer Program Products for License Use Management on a Network." Ex. 1001, (54). The '766 patent relates in particular to application program management on a computer network. *Id.* at 1:22–24. According to the '766 patent, control over software, such as application programs, is a challenge with respect to "maintaining proper licenses for existing software and deploying new or updated applications programs across the network." *Id.* at 1:45–57. In particular, the '766 patent states that "[a] distributed network environment with a plurality of client stations and a plurality of different users accessing the applications from different clients increases the challenge associated

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with managing license use to [ensure] compliance with limitations established by software designers." *Id.* at 3:28–32. According to the '766 patent, management of license use for a network is provided as follows:

> License management policy information for a plurality of application programs is maintained at a license management server. Requests are received at the license management server for a license availability of a selected one of the plurality of application programs from a user at a client. The license management server determines the license availability for the selected one of the plurality of application programs for the user based on the maintained license management policy information and provides an unavailability indication to the client responsive to the selection if the license availability indicates that a license is not available for the user or an availability indication if the licensed availability indicates that a license is available for the user.

Id. at 5:39–52.

D. ILLUSTRATIVE CLAIM

Challenged claims 1, 7, and 13 of the '766 patent are independent. Illustrative claim 1 is reproduced below.

> 1. A method for management of license use for a network comprising the steps of:
>
> maintaining license management policy information for a plurality of application programs at a license management server, the license management policy information including at least one of a user identity based policy, an administrator policy override definition or a user policy override definition;
>
> receiving at the license management server a request for a license availability of a selected one of the plurality of application programs from a user at a client;
>
> determining the license availability for the selected one of the plurality of application programs for the user based on the maintained license management policy information; and
>
> providing an unavailability indication to the client

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> responsive to the selection if the license availability indicates that a license is not available for the user or an availability indication if the licensed availability indicates that a license is available for the user.

Ex. 1001, 14:64–15:16.

E. ASSERTED REFERENCE AND GROUND OF UNPATENTABILITY

Petitioner asserts one ground of unpatentability based on the anticipation of claims 1, 3, 7, 9, 13, and 15 by U.S. Patent No. 5,758,069, issued to Olsen (Ex. 1002, "Olsen"). Pet. 2.

I. 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) (2012); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142–46 (2016). Consistent with that standard, claim terms also 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).

In our Institution Decision, we analyzed two terms drafted in means-plus-function format: "means for maintaining" and "computer readable program code means." Paper 9, 6–9 ("Dec."). We recognized that construing a means-plus-function limitation requires first defining the particular function of the limitation and then identifying the corresponding structure for that function in the specification. *Golight, Inc. v. Wal-Mart*

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