

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UBISOFT, INC. AND SQUARE ENIX, INC.,
Petitioners

v.

UNILOC USA, INC. AND UNILOC LUXEMBOURG, S.A.,
Patent Owners.

Case No. IPR2017-01291
U.S. Patent No. 6,728,766

**PETITIONERS' REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(D)**

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. APPLICABLE STANDARDS	5
III. ARGUMENT	7
IV. CONCLUSION	12

I. INTRODUCTION

In response to the Decision of Partial Institution of *Inter Partes* Review entered November 1, 2017, (Paper 9, hereinafter “Decision”) and pursuant to 37 C.F.R. § 42.71(d), Ubisoft, Inc. and Square Enix, Inc. (“Petitioners”) hereby respectfully request the Patent Trial and Appeal Board (“Board”) reconsider its decision denying institution for *inter partes* review of claims 7, 9, 13, and 15 of U.S. Patent No. 6,728,766 (EX1001, “the ‘766 Patent”).

The grounds of invalidity raised by Petitioners in the Petition (Paper 1, hereinafter “Petition”) are based on U.S. Patent 5,758,069 (“Olsen”). Decision at 4. The Board instituted *inter partes* review of the two challenged method claims (claims 1 and 3) of the ‘766 Patent in view of Olsen, finding that “the Petition reasonably maps the limitations of claims 1 and 3 to pertinent disclosures in Olsen.” Decision at 14-16). The Decision references the “Petitioner’s Overall Contentions” section as support for institution, noting that “Olsen describes methods and apparatus for licensing software in a network environment, where a distributed database stores license information among several servers.” Decision at 10; *see also id.* at 15-16.

However, the Decision denied institution of claims drafted in means-plus-function format based on the Board’s construction of the “means for maintaining license management policy information” limitation recited in claims 7 and similar

“computer readable program code means for maintaining” limitation recited in claim 13 (collectively, the “means for maintaining” limitations). Decision at 16-18.

The “means for maintaining” limitations are as follows:

- **Claim 7:** means for 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;
- **Claim 13:** computer readable program code means for 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

As to these claims, the Petition proposed that the corresponding structure be construed as “a database and equivalents thereof.” Petition at 3; Decision at 6. At the urging of Patent Owners, the Board disagreed with Petitioners’ proposed construction, and construed the “means for maintaining” limitations to require the following corresponding structure:

a processor programmed to carry out the algorithms for maintaining license management policy information for a plurality of application programs at a license management server, where the algorithms are setting policies such as limiting the number of users, whether crossing the limit of users is allowed or not, and how users are counted.

Decision at 6-8, 16. The Board determined that the Petition did not show how Olsen met this construction, and denied institution on this basis. Decision at 17 (“Petitioner fails to show how the Olsen database is the required processor programmed to carry out the specified algorithms”).

Petitioners respectfully request rehearing of the Decision as to the construction of the “means for maintaining” limitations found in claims 7 and 13, as the Board’s construction does not identify algorithmic structure that is clearly linked to the recited function. Specifically, the Board’s construction appears to have overlooked or misapprehended the disclosure of the ‘766 Patent, as the specification does not disclose – and the Board’s construction does not identify – any actual algorithmic structure. The Board’s construction appears to require a “processor to carry out algorithms” that are “setting policies,” but does not identify any actual steps or instructions that could constitute an “algorithm” or how such an “algorithm” would set the required policies. Decision at 6-8. Thus, at best, the construction merely restates functional steps recited in the claim language, but

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.