Ubisoft, Inc. et al.,

v.

Uniloc Luxembourg S.A.,

Case IPR2017-01291 (Patent 6,728,766

Hearing Before Sally C. Medley,
Mariam L. Quinn (Presiding), and
Jessica C. Kaiser

August 7, 2018

Claim 1: <u>user perspective</u> of license ava

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 managemer 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 t plurality of application programs ==for the user== based on th maintained license management policy information; and

providing an unavailability indication to the client responsi 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 licer is ==available for the user==.

Undisputed claim construction:

✓ The claim language explicitly requires that the reques
   license availability must be (1) **received from** and (2
   determined for (3) <mark>a user</mark> at a client.

✓ This claim language is distinguishable from a request
   license availability received from or determined for th
   client device itself.

✓ The intrinsic evidence indicates the claimed license
   management is related to **usage** availability for a user
   an application program.

Petitioner's arguments in litigation give rise to estoppel here

In litigation, Petitioner successfully argued that the intrins[ic] evidence indicates "determining the license availability ... [a] user" is distinct from determining that the user **is authori**[zed] for a selected application program.

EX2002 at pp. 23-27; see also District Court's Claim Construction O[rder],
Uniloc USA Inc., et al. v. AVG Tech. USA, Inc., et al., Case No. 2:16-CV-[0],
Dkt. No. 210, at pp. 55-59 (E.D.T.X. Aug. 16, 2017)

However, to the extent a party argues that determining whether a user is autho[rized to]

access a selected application program is the same as determining whether a license is ava[ilable to]

use a selected application program, the Court rejects that argument. The intrinsic evidenc[e]

a distinction between authorization and license management. Generally speaking, the [intrinsic]

evidence indicates that authorization is related to controlling access to an application p[rogram,]

whereas license management is related to usage of an application program. See, e.g., '46[patent]

at 10:57–58 ("User authorization 212 provides control over which applications may be a[ccessed]

by a particular user or group."); 11:35–38 ("The license management component 216 [usually]

provides a convenient tool for tracking the usage of specified applications.").

Petitioner's arguments in litigation give rise to estoppel here

For example, in describing Figures 6 and 7, the specification states that "[a]t block 264, the server system 22 checks the user's credentials to see if the user is authorized to bring up the user desktop interface application," and that "[i]f the user is authorized, server system 22 processes a license request to determine if a license is available for the desktop application (block 268)." *Id.* at 13:50–60. In other words, a user could be authorized to use an application, but the available license may already be allocated. The patentees argued this distinction during the prosecution of the '466 Patent. Specifically, the patentee argued the following:

> With respect to Claims 9-11, Applicants again can find no discussion of the 'license availability' recitations of these Claims in the cited portions of Oh or in Bladow. *While Bladow does discuss determining whether a user is authorized to access a resource, this is distinct from the recitations of these claims related to verifying license availability.* For example, a user could be authorized to use an application but five instances of the application may already be executing and the server may only have a five concurrent user license. Thus, an authorized user could be denied an instance of a requested application because no license is available. (*See, e.g.,* Specification, p. 18, lines 1-9; p. 21, line 31 to p. 22, line 9). Accordingly, these claims are also patentable for at least these additional reasons.

Docket No. 150-5 at 13 (emphasis added). Accordingly, to the extent a party argues that determining whether a user is authorized to access a selected application program is the same as determining whether a license is available to use a selected application program, the Court rejects

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