IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNILOC USA, INC. and UNILOC LUXEMBOURG, S.A., Plaintiffs, v. APPLE INC., Defendant.	§ § § § § § § § § §	Civil Action No. 2:17-cv-00258-JRG

OPENING BRIEF OF PLAINTIFF ON CLAIM CONSTRUCTION

Plaintiffs ("Uniloc") submit this opening brief, supporting their position on identified claim construction issues.

'852 Patent

The disputes, as to this patent, pertain to claim 18. In the below presentation of that claim, we have underlined those phrases or terms as to which the parties have competing constructions, and have put in italics any language Apple claims to be indefinite:

> 18. A client device configured to execute a computer program to perform a remote update of a program configuration on the client device, the client device comprising:
>
> a processor;
>
> a memory coupled to the processor and storing the computer program which, when executed by the processor, (i) performs physical device recognition on the client device to determine machine parameters including account information for a user of the client device and features of software that the user of the client device is entitled to use, (ii) generates a unique device identifier for the client device, the unique device identifier is generated based at least in part on the determined machine parameters, and (iii) collects a unique software identifier for the software on the client device, the unique software identifier being unique to a particular copy of the software and to a particular user of the software; and

> a transceiver configured to (i) send the unique device identifier and the unique software identifier to an update server via the Internet to determine, based on analyzing the unique device identifier and the unique software identifier, an updated program configuration, and (ii) receive, from the update server, the updated program configuration if the user associated with the unique device identifier is entitled to use features of the updated program configuration according to a license associated with the unique software identifier.

CLAIM	TERMS AND PHRASES	UNILOC'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
18	"performs physical device recognition on the client device"	examines or identifies software or hardware features of the client device or a geolocation environment of the client device	measures physical properties of a client device

This phrase, where it appears in claim 18, is followed by "to determine machine parameters." That combined phrasing ("physical device recognition … to determine machine parameters") seems to track the following language from the specification:

> Physical device recognition of at least one of a software, hardware and geo-location environment of the client device is performed to determine machine parameters.

3:7-10 (emphasis added). The parallelism between the claim language and the above suggests that when physical device recognition on the client device is performed, what is recognized is "at least one of a software, hardware and geo-location environment of the client device." Uniloc's construction thus incorporates that language, while Apple's does not.

Otherwise, the difference between the competing constructions is that Apple asks the Court to limit this phrase to "measures physical properties" of the device, a narrower construction than Uniloc's "examines or identifies software or hardware features."

But not all machine parameters discussed in the specification can be determined by "measuring" physical properties. Adopting Apple's narrow construction would thus exclude,

from even the broadest claims, a number of described embodiments. Examples of machine parameters in the specification that could not be determined by measuring physical properties include "hard disk volume name, user name, computer name, user password, hard disk initialization date, or combinations thereof," 5:39-41; and "user account information, program information (e.g., serial number); location of a user within a given application program, and features of the software/hardware the user is entitled to use," 5:52-55.

As stated in Oatey Co. v. IPS Corp., 514 F.3d 1271, 1276–77 (Fed. Cir. 2008):

> We normally do not interpret claim terms in a way that excludes embodiments disclosed in the specification. E.g., Verizon Servs. Corp. v. Vonage Holdings Corp., 503 F.3d 1295, 1305 (Fed.Cir.2007) (rejecting proposed claim interpretation that would exclude disclosed examples in the specification); Invitrogen Corp. v. Biocrest Mfg., L.P., 327 F.3d 1364, 1369 (Fed.Cir.2003) (finding district court's claim construction erroneously excluded an embodiment described in an example in the specification, where the prosecution history showed no such disavowal of claim scope); see also Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1583 (Fed.Cir.1996) (finding that a claim interpretation that excludes a preferred embodiment is "rarely, if ever, correct"). … Where claims can reasonably [be] interpreted to include a specific embodiment, it is incorrect to construe the claims to exclude that embodiment, absent probative evidence on the contrary.

CLAIM	TERMS AND PHRASES	UNILOC'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
18	"machine parameters"	data representative of hardware components, software components, or data components specific to the client device	data determined by a hardware component, software component, or data component specific to the client device

Apple draws its construction from the following sentence in the specification: "Each machine parameter is data determined by a hardware component, software component, or data component specific to the client device." 7:1-3 (emphasis added). In common parlance, however, "determined" could have two meanings. For example, "determining" an outcome could mean

simply obtaining data representative of the outcome ("I checked the box score to determine the outcome of last night's baseball game"), or it could mean causing the particular outcome ("His stellar pitching determined the outcome of last night's baseball game.")

Uniloc believes the Court should avoid ambiguity in its jury instructions, and thus requests the instruction not include the ambiguous "determined." Uniloc suggests "representative of," but would accept any other unambiguous phrase that comports with all the embodiments in the specification.

CLAIM	TERMS AND PHRASES	UNILOC'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
18	"generating a unique device identifier…based at least in part on the determined machine parameters"	ordinary meaning	generating, from at least the determined machine parameters, a unique device identifier
18	"updated program configuration"	ordinary meaning	a software update
18	"entitled"	ordinary meaning	determined to be licensed
18	"unique device identifier"	ordinary meaning	a composite identifier (i.e., not a list or inventory) that uniquely identifies the client device

Where a term or phrase has an ordinary meaning readily understandable by laypeople (as opposed to a technical term of art), and nothing in the patent suggests a different meaning, Uniloc will usually argue that no instruction be given. Uniloc's experience has been that unnecessarily "defining" readily understood claim language introduces unintended nuances, and creates grounds for appeal that would otherwise be avoided.

We do not object to Apple's constructions as incorrect, but rather as unnecessary, unhelpful, and potentially misleading. For example, its construction of "unique device identifier" would require a further explanation to the jury of what is meant by the more complicated phrase "composite identifier (i. e., not a list or inventory)."

CLAIM	TERMS AND PHRASES	UNILOC'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
18	"a transceiver configured to (i) send the unique device identifier and the unique software identifier to an update server via the Internet to determine…an updated program configuration"	ordinary meaning	Indefinite[1]

The only explanation Apple has given, as yet, for its indefiniteness position on this portion of the claim is: "the recited language causes the claim to improperly claim two statutory classes of invention (an apparatus and a method)."

Apple misunderstands how claims are drafted. Claim 18, drawn to the features of a client device, was drafted as an apparatus claim. As such, the claim would be infringed by the making, offering for sale, selling, or importing of the claimed device, even if the device is never used. The claim does not require, for infringement, that the device's program actually be executed. The above snippet of the claim only requires – by its use of "configured to" send certain identifiers –

[1] The '852 patent has 18 claims. Claims 1-17 of the '852 patent are system claims, where the system includes a client device with certain features and an update server configured to operate with the client device. Claim 18, by contrast, is drawn only to the client device, which Apple manufactures. Uniloc's Amended Complaint, which asserts Apple infringes "at least" claim 18, does not limit the complaint to that claim.
Uniloc believes Apple directly infringes claim 18. If so, Apple would also infringe claim 1 and various dependent claims, although perhaps only indirectly. Uniloc would likely limit its case at trial to claim 18, as proving direct infringement would obviate the need to prove indirect infringement. If, however, the Court were to rule that claim 18 was indefinite, Uniloc will instead assert claim 1 and applicable dependent claims.

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