

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UBISOFT ENTERTAINMENT S.A. and SQUARE ENIX,
Petitioner

v.

UNILOC USA, INC. and UNILOC LUXEMBOURG S.A.,
Patent Owner.

Case IPR2017-01827
Patent 7,069,293 B2

Before SALLY C. MEDLEY, BARBARA A. BENOIT, and
JESSICA C. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Ubisoft Entertainment S.A. and Square Enix (collectively, “Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–19 to institute an *inter partes* review of claims 1, 12, and 17 of U.S. Patent No. 7,069,293 B2, issued on June 27, 2006 (Ex. 1001, “the ’293 patent”). Paper 3 (“Pet.”). Uniloc USA, Inc. and Uniloc Luxembourg S.A.¹ (collectively, “Patent Owner”) filed a preliminary response. Paper 7 (“Prelim. Resp.”). Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we deny Petitioner’s request and do not institute an *inter partes* review of any challenged claim.

I. BACKGROUND

A. *The ’293 Patent (Ex. 1001)*

The ’293 patent relates to centralized control of software distribution for a computer network managed by a network management server. Ex. 1001, 4:14–16. Figure 1 of the ’293 patent is reproduced below.

¹ The Preliminary Response identifies only Uniloc Luxembourg S.A. as the patent owner (Prelim. Resp. 1), but its Mandatory Notice identifies Uniloc Luxembourg S.A. as Patent Owner and Uniloc USA Inc. as the exclusive licensee in this case. Paper 4, 1.

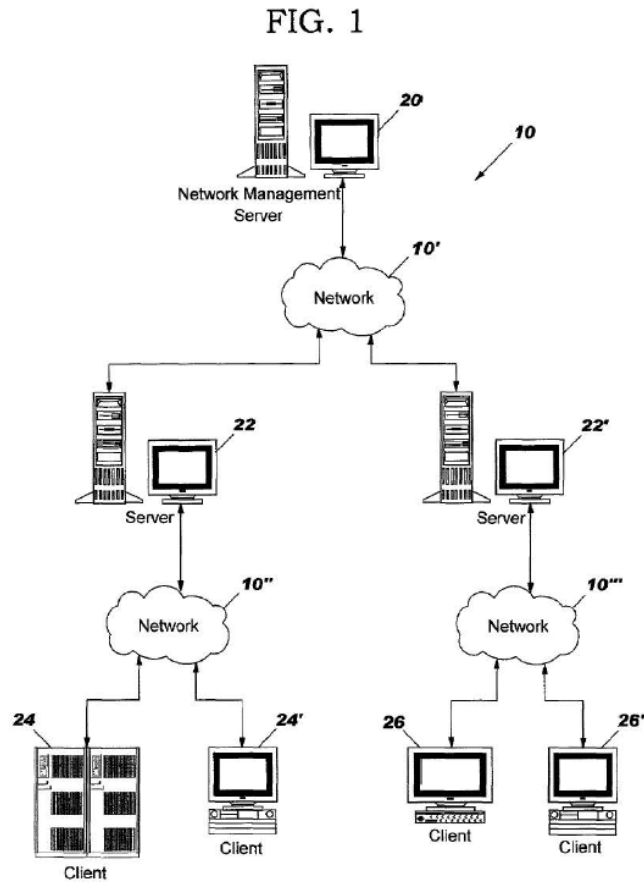


Figure 1 illustrates a computer network according to an embodiment of the invention. *Id.* at 6:60–63. In particular, network management server 20 is connected to on-demand servers 22 and 22' which are in turn connected to client stations 24 and 24' and 26 and 26' respectively. *Id.* at 6:63–7:9. The '293 patent describes a method of distributing software from the network management server to the on-demand servers. *Id.* at 17:20–18:36.

B. Illustrative Claim

Claims 1, 12, and 17 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below:

1. A method for distribution of application programs to a target on-demand server on a network comprising the following

executed on a centralized network management server coupled to the network:

- providing an application program to be distributed to the network management server;

- specifying a source directory and a target directory for distribution of the application program;

- preparing a file packet associated with the application program and including a segment configured to initiate registration operations for the application program at the target on-demand server; and

- distributing the file packet to the target on-demand server to make the application program available for use by a user at a client.

Id. at 21:22–36.

C. Related Proceedings

Petitioner identifies a number of related lawsuits involving the '293 patent filed in the Eastern District of Texas. Pet. 50–51. Patent Owner also identifies lawsuits pending in the Eastern District of Texas as well as the Northern District and Central District of California. Paper 4, 2.

D. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are construed according to their broadest reasonable interpretation in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under that standard, claim terms are generally 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. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner offers constructions of a number of claim terms in its Petition. Pet. 2–6. Patent Owner disputes several of Petitioner's proposed

constructions. Prelim. Resp. 6–9. For purposes of this decision, we need not construe any terms, except as discussed below in the context of Petitioner’s asserted ground. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that “only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy”); *see also Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs.* in the context of an *inter partes* review).

E. Asserted Ground

Petitioner relies on The TME Deployment Cookbook (“TME Cookbook”) dated April 1997 as anticipating claims 1, 12, and 17 of the ’293 patent under 35 U.S.C. § 102(b). Petitioner further relies on testimony from Mark C. Lang, an attorney with Erise IP, P.A., as establishing that TME Cookbook qualifies as a printed publication. Pet. 10–11 (citing Ex. 1004). Patent Owner does not challenge the printed publication status of TME Cookbook at this stage of the proceeding. *See* Prelim. Resp. For purposes of this decision, we assume without deciding that Petitioner has sufficiently shown TME Cookbook qualifies as a printed publication under 35 U.S.C. § 102(b).

Petitioner does not provide any expert testimony in support of its asserted ground.

II. ANALYSIS

Petitioner contends that claims 1, 12, and 17 are anticipated by TME Cookbook. Pet. 10–50. For the reasons that follow, we are persuaded,

based on this record, that Petitioner has not demonstrated a reasonable likelihood of prevailing on this challenge.

1. Overview of TME Cookbook

TME Cookbook is dated April 1997, and Petitioner contends it qualifies as prior art under 35 U.S.C. § 102(b). Pet. 10–11. TME Cookbook states that its “pages are web versions of some embryonic IBM Redbook material” and “provides guidance on how to understand and use TME 10 Software Distribution.” Ex. 1002, 1, 17.² It spans 812 pages with 450 figures. *Id.* at 7–15.

2. Analysis of Petitioner’s Challenge

To establish anticipation, each and every element in a claim, arranged as recited in the claim, must be found in a single prior art reference. *See Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). Although the elements must be arranged or combined in the same way as in the claim, “the reference need not satisfy an *ipsissimis verbis* test,” i.e., identity of terminology is not required. *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009); *accord In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

Independent claims 1, 12, and 17 all recite “preparing a file packet associated with the application program and including a segment configured to initiate registration operations for the application program at the target on-demand server” (the “file packet” limitation). Ex. 1001, 21:31–34 (claim 1),

² We refer to the page numbers of Exhibit 1002 added by Petitioner in the bottom right corner.

22:26–30 (claim 12, reciting means for the same), 23:4–8 (claim 17, reciting computer readable program code means that prepares the same). Petitioner contends TME Cookbook discloses this limitation. Pet. 12, 28–39, 50.

Specifically, Petitioner contends TME Cookbook’s Tivoli Management Region (“TMR”) server discloses a centralized network management server, its managed nodes disclose target on-demand servers, and its PC managed nodes disclose clients. *Id.* at 13–14. Petitioner further contends that TME Cookbook names an exemplary network management server FOXTROT, an exemplary on-demand server ROMEO, and an exemplary client JULIET. *Id.* at 14–15. Petitioner also contends TME Cookbook’s file package or file package block discloses the recited “file packet.” *Id.* at 28.

Regarding the recited “segment configured to initiate registration operations for the application program at the target on-demand server,” Petitioner contends in TME Cookbook “[w]hen the ‘User ID or User Name’ parameter is set for a file package, the file package includes a segment configured to initiate ‘registration operations’ for the application at the target on-demand server.” *Id.* at 29. Specifically, Petitioner states “[t]his parameter allows an administrator to provide a list identifying various application files and/or directories available for execution by specified users, including a designation of which application files and/or directories are authorized with respect to individual users.” *Id.* at 29–31 (citing Ex. 1002, 153, 155, 162, 163, 203). Petitioner also points to TME Cookbook’s “During Commit script,” its before and after distribution programs, and its log file path. *Id.* at 31–34.

Patent Owner contends that Petitioner has not shown TME Cookbook teaches the “file packet” limitation. Prelim. Resp. 9–14. Patent Owner

contends that TME Cookbook does not disclose registration “as a function performed at a ‘target on-demand server.’” *Id.* at 10–11. Patent Owner further argues that even if the recited registration operations include “maintaining at the on-demand server a profile management list identifying application programs available for use by the user,” as argued by Petitioner, TME Cookbook does not teach maintaining such a list. *Id.* at 11–14.

We have reviewed Petitioner’s arguments and evidence, and find they do not sufficiently show that TME Cookbook discloses the “file packet” limitation. In particular, Petitioner has not sufficiently shown that TME Cookbook’s file package or file package block includes “a segment configured to initiate registration operations for the application program at the target on-demand server” as recited in the challenged claims.

For the recited “segment,” Petitioner points to TME Cookbook’s “User ID or User Name.” Pet. 29. Petitioner cites a table in TME Cookbook which lists User ID and User Name as “Included Files Options,” which specify a user ID that can be assigned to a file or a directory. *Id.* at 30 (citing Ex. 1002, 162–163). Petitioner also points to a pkgadd command, which requires the user ID to be set as a “super user.” *Id.* at 31 (quoting Ex. 1002, 203).

As an initial matter, we note that Petitioner relies on dependent claims 4 and 5 to support its argument that “a segment configured to initiate registration operations for the application program at the target on-demand server” includes “a segment configured to designate a list of authorized users for the application program.” Pet. 4. Claim 4 depends indirectly from claim 1 and recites, in relevant part, “registration operations include maintaining at the target on-demand server a profile management list identifying

application programs available for use by the user.” Ex. 1001, 21:47–50. Claim 5 depends from claim 4 and further recites “the profile management list includes a designation of authorized users for application programs identified in the profile management list.” *Id.* at 21:54–57. While we agree that these dependent claims, as well as the portions of the ’293 patent Petitioner cites (Pet. 4), inform the meaning of “registration operations” in claim 1, we disagree with Petitioner’s contention that “a segment configured to initiate registration operations for the application program at the target on-demand server” includes “a segment configured to designate a list of authorized users for the application program.” In particular, we note that Petitioner’s contention omits the recited location for the “registration operations,” namely “at the target on-demand server,” and the recited operation in claim 4, namely maintaining the list. In other words, the recited “segment” cannot simply be a list contained in the file package; it must be configured to “initiate registration operations for the application program at the target on-demand server.”

We agree with Patent Owner that Petitioner has not sufficiently shown TME Cookbook discloses such a segment. As discussed above, Petitioner cites portions of TME Cookbook that allow a User ID to be assigned to a specific file or directory and run a certain command to install a package (pkgadd) when the User ID of a “super user” is specified. *Id.* at 29–31 (citing Ex. 1002, 162–63, 203).³

³ Petitioner also cites without explanation pages 153 and 155 of TME Cookbook. Pet. 30. These cited pages mention specifying the user under which a script must run and UNIX default access privileges for users or groups. *See* Ex. 1002, 153, 155. Without further evidence or argument from

The portions of TME Cookbook cited by Petitioner, however, do not establish that such a User ID or User Name disclose “a segment configured to initiate registration operations for the application program at the target on-demand server.” In particular, the table cited by Petitioner identifies that a User ID or User Name can be assigned to each file or directory to be packed for distribution (Ex. 1002, 162–63), but does not disclose how the User ID or User Name is used at the target on-demand server once the file package or file package block is received. In other words, the cited table does not disclose that the User ID or User Name initiates registration operations for the application program at the target on-demand server.

In addition, TME Cookbook discloses that a command (pkgadd) can run if a certain parameter is set with the user ID of a super user. Pet. 31 (citing Ex. 1002, 203). Petitioner, however, does not explain how, if at all, the user ID for the pkgadd command relates to the user ID specified for the files in the file package discussed above. Petitioner also does not provide evidence or explanation regarding the meaning of “super user” in the context of TME Cookbook or how the pkgadd command relates to registration operations. Indeed, pkgadd appears to be a command in TME Cookbook for installing a package (Ex. 1002, 198), and as Patent Owner points out (Prelim. Resp. 10), the ’293 patent distinguishes between installation and registration. *E.g.*, Ex. 1001, 4:18–22 (“install and register the application program on the on-demand server”), 4:25 (“install and register the program”), 17:49–50 (“install and register a transferred file packet”), 18:31–33 (“[A]n administrator both sends a new application package to all

Petitioner, we determine these citations do not sufficiently show the recited “segment.”

supported on-demand servers and installs the program and configures (registers) it to be available for use.”).

Petitioner also points to TME Cookbook’s “During Commit script,” its before and after distribution programs, and its log file path. Pet. 31–34. The Petition is unclear whether these are being relied on as disclosing “a segment configured to initiate registration operations for the application program at the target on-demand server.” Assuming they are, Petitioner again provides insufficient evidence or explanation to show the cited portions of TME Cookbook teach that limitation.

For the “During Commit script,” Petitioner states: “TME Cookbook discloses that an administrator can provide a During Commit script to control when a distributed application program becomes available for use at each target on-demand.” Pet. 31 (citing Ex. 1002, 248–250, 715–720). We are not persuaded that this script discloses the recited segment at least in part because Petitioner has not shown this script is part of TME Cookbook’s file package or file package block. Instead, TME Cookbook appears to suggest that its commit.bat is either available on a subscriber or stored on a host. Ex. 1002, 248, 715.

Petitioner further states “TME Cookbook additionally discloses that, like the [’]293 Patent, the administrator can specify before and after distribution programs” and “an exemplary After Distribution script that will ‘generate a program icon after file package distribution.’” Pet. 31–32 (citing Ex. 1002, 91, 240–41, 696). Again, however, Petitioner has not shown such scripts are part of TME Cookbook’s file package or file package block. *See* Ex. 1002, 241 (“Select the Subscribers radio button in the Get

BAT/EXE/C[O]M file from field to specify the node where the script file is stored.”).

Petitioner concedes the cited example provides that the After Distribution script is stored at the “‘Subscriber’ (i.e., target) node,” but Petitioner contends that “selection of the ‘Source Host’ is also an option, in which case the script can be distributed as a file with the file package.” Pet. 33–34 (citing Ex. 1002, 256–257, 750–752). Petitioner neglects to recognize, however, that in the cited example, the source host is “romeo” which Petitioner maps to the target on demand server, and the file package is being distributed to PC managed nodes, which Petitioner maps to the recited clients. Ex. 1002, 256 (“Select romeo as the Source Host,” and “[s]elect the four files that we previously copied, to distribute them to the PC managed nodes.”); *see also id.* at 254 (stating that the AGENT007.DIF file and the UPDAGENT.BAT script file are copied to the managed node romeo (i.e., the target on-demand server)); Pet. 13–14. In other words, TME Cookbook appears to suggest that files are copied to the managed nodes such as romeo and distributed in file packages to the PC managed nodes. Petitioner does not explain how this example shows “a segment configured to initiate registration operations for the application program *at the target on-demand server*” (emphasis added) (i.e., at romeo). The same is true for the other exemplary before distribution and after distribution scripts cited by Petitioner (Pet. 34): they pertain to file packages distributed from romeo (a target on-demand server) to juliet (a client). Ex. 1002, 246 (“select the data from romeo you want to distribute”), 247 (“create the directories . . . on juliet”).

Finally, Petitioner states in TME Cookbook, “the administrator can provide a log file path allowing the TMR server to track the results of the software distribution operation, including detecting any errors.” Pet. 34 (citing Ex. 1002, 147, 240, 694⁴). Petitioner does not adequately explain how setting the name of a log file on a host that is used for distribution errors and progress teaches a segment that is configured to initiate registration operations. In addition, the cited example again pertains to file packages distributed to juliet, a client. *See* Ex. 1002, 241.

In sum, Petitioner has not persuasively explained, or provided sufficient evidence to show, that TME Cookbook discloses “preparing a file packet associated with the application program and including a segment configured to initiate registration operations for the application program at the target on-demand server,” as recited in the challenged claims.⁵ For the reasons discussed above, Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that claims 1, 12, and 17 are anticipated by TME Cookbook.

III. SUMMARY

We determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenges to claims 1, 12, and 17 of the ’293 patent.

⁴ Petitioner’s citation to page 294 of Exhibit 1002 appears to be a typographical error because Figure 372 is on page 694 of that exhibit.

⁵ Because we find Petitioner has not shown a reasonable likelihood of prevailing on this challenge for the reasons discussed above, we do not reach Patent Owner’s other arguments as to this challenge.

IV. ORDER

It is, therefore,

ORDERED that the Petition is DENIED and no trial is instituted.

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