**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Implicit, LLC, 　　　　　　*Plaintiff*, 　　v. Trend Micro, Inc., 　　　　　　*Defendant.*	Case No. 6:16-cv-80-JRG LEAD CASE

CLAIM CONSTRUCTION MEMORANDUM OPINION AND ORDER

Before the Court is the opening claim construction brief of Implicit, LLC ("Plaintiff") (Dkt. No. 101, filed on January 17, 2017),[1] the response of Trend Micro, Inc., Ericsson Inc., and Huawei Technologies USA, Inc. (collectively "Defendants") (Dkt. No. 103, filed on January 31, 2017), and the reply of Plaintiff (Dkt. No. 106, filed on February 10, 2017). The Court held a hearing on the issues of claim construction and claim definiteness on February 28, 2017. Having considered the arguments and evidence presented by the parties at the hearing and in their briefing, the Court issues this Order.

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[1] Citations to the parties' filings are to the filing's number in the docket (Dkt. No.) and pin cites are to the page numbers assigned through ECF.

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I.   BACKGROUND

Plaintiff alleges infringement of five U.S. Patents: No. 6,324,685 (the "'685 Patent"), No. 8,694,683 (the "'683 Patent"), No. 8,856,779 (the "'779 Patent"), No. 9,270,790 (the "'790 Patent"), and No. 9,325,740 (the "'740 Patent") (collectively, the "Asserted Patents"). The '685 Patent is entitled "Applet Server That Provides Applets in Various Forms." The application leading to the '685 Patent was filed on March 18, 1998 and the patent issued on November 27, 2001. The '683 Patent is entitled "Method and System for Data Demultiplexing." The application leading to the '683 Patent was filed on June 6, 2013 and the patent issued on April 8, 2014. The '779 Patent is entitled "Application Server for Delivering Applets to Client Computing Devices in a Distributed Environment." The application leading to the '779 Patent was filed on October 10, 2011 and the patent issued on October 7, 2014. The '790 Patent is entitled "Method and System for Data Demultiplexing." The application leading to the '790 Patent was filed on March 31, 2014 and the patent issued on February 23, 2016. The '740 Patent is entitled "Application Server for Delivering Applets to Client Computing Devices in a Distributed Environment." The application leading to the '740 Patent was filed on October 6, 2014 and the patent issued on April 26, 2016.

The Asserted Patents are part of two patent families: the Demultiplexing Patents (the '683 Patent and the '790 Patent) and the Applet Patents (the '685 Patent, the '779 Patent, and the '740 Patent). With respect to the Demultiplexing Patents: The '790 Patent claims priority to the '683 Patent's application as a continuation. Through a series of continuation applications, the '790 Patent and the '683 Patent each claim priority to an application filed on December 29, 1999 and issued as U.S. Patent No. 6,629,163 (the "'163 Patent"). With Respect to the Applet Patents: The '740 Patent claims priority to the '779 Patent's application as a continuation. The '740 Patent and

the '779 Patent each claim priority to the application that issued as the '685 Patent, through a series of continuation applications.

A.   The Demultiplexing Patents

A-1.   Technology

The Demultiplexing Patents are generally directed to technology for computer message-exchange processing and more specifically to technology for dynamically converting the form of the messages as the messages are being exchanged.

The abstract of the '683 Patent provides:

> A method and system for demultiplexing packets of a message is provided. The demultiplexing system receives packets of a message, identifies a sequence of message handlers for processing the message, identifies state information associated with the message for each message handler, and invokes the message handlers passing the message and the associated state information. The system identifies the message handlers based on the initial data type of the message and a target data type. The identified message handlers effect the conversion of the data to the target data type through various intermediate data types.

The abstract of the '790 Patent provides:

> A method and system for demultiplexing packets of a message is provided. The demultiplexing system receives packets of a message, identifies a sequence of message handlers for processing the message, identifies state information associated with the message for each message handler, and invokes the message handlers passing the message and the associated state information. The system identifies the message handlers based on the initial data type of the message and a target data type. The identified message handlers effect the conversion of the data to the target data type through various intermediate data types.

Claim 1 of the '683 Patent, provided here as an example, recites:

> 1. A first apparatus for receiving data from a second apparatus, the first apparatus comprising:
>   a processing unit; and
>   a memory storing instructions executable by the processing unit to:
>   create, based on an identification of information in a received packet of a message, a path that includes one or more data structures that indicate a sequence of routines for processing packets in the message;
>   store the created path; and

> process subsequent packets in the message using the sequence of routines indicated in the stored path, wherein the sequence includes a routine that is used to execute a Transmission Control Protocol (TCP) to convert one or more packets having a TCP format into a different format.

Claim 8 of the '790 Patent, provided here as an example, recites:

> 8. An apparatus, comprising:
> a processing unit; and
> a memory storing instructions executable by the processing unit to:
>> receive one or more packets of a message;
>> identify, using an IP address and one or more port addresses located in one of the received packets, a sequence of two or more routines for processing packets in the message; and
>> process the one or more received packets using the identified sequence of routines, wherein the sequence includes a routine that is executable to perform a Transmission Control Protocol (TCP) to convert at least one of the packets of the message into a different format.

A-2.   Related Litigation

Two of the Demultiplexing Patents have previously been litigated in the U.S. District Court for the Northern District of California. That court construed the '163 Patent in *Implicit Networks, Inc. v. F5 Networks, Inc.*, No. 3:10-cv-3365-SI, 2012 U.S. Dist. LEXIS 27238 (N.D. Cal. Feb. 29, 2012) ("*F5 Networks I*"). The California court later construed the '683 Patent in *Implicit L.L.C. v. F5 Networks, Inc.*, No. 3:14-cv-2856-SI, 2015 U.S. Dist. LEXIS 60197 (N.D. Cal. May 6, 2015) ("*F5 Networks II*"). The *F5 Networks I* and *F5 Networks II* constructions relate to the "sequence of routines," "sequence of two or more routines" and "list of conversion routines" limitations of the Asserted Patents.

In *F5 Networks I*, the court construed the term "non-predefined sequence of components" found in claims of the '163 Patent. First, the court held that the term "components" was defined in the '163 Patent to mean "software routines." 2012 U.S. Dist. LEXIS 27238, at *9–10. Then the court determined that a description of the prior art found in the '163 Patent and patent-owner statements made during reexamination of the '163 Patent amounted to disclaimer of ***preconfigured***

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