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

UNILOC USA, INC. and UNILOC LUXEMBOURG, S.A.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
AVG TECHNOLOGIES USA, INC.,	§	**CIVIL ACTION NO. 2:16-CV-00393-RWS (LEAD)**
Defendant.	§	
	§	
BITDEFENDER LLC,	§	**CIVIL ACTION NO. 2:16-CV-00394–RWS**
	§	
Defendant.	§	
	§	
PIRIFORM, INC.	§	**CIVIL ACTION NO. 2:16-CV-00396-RWS**
	§	
Defendant.	§	
	§	
UBISOFT, INC.	§	**CIVIL ACTION NO. 2:16-CV-00397-RWS**
	§	
Defendant.	§	
	§	
KASPERSKY LAB, INC.,	§	**CIVIL ACTION NO. 2:16-CV-00871-RWS**
	§	
Defendant.	§	
	§	
SQUARE ENIX, INC.,	§	**CIVIL ACTION NO. 2:16-CV-00872-RWS**
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant BitDefender LLC's Motion to Dismiss for Failure to State a Claim (Docket No. 23 in Case No. 2:16-cv-394[1]), which is joined by Defendant Piriform, Inc. (collectively with BitDefender LLC, "Defendants").[2] Docket No. 20 in Case No. 2:16-cv-396. The Motion was fully briefed (*see* Docket Nos. 26, 29 and 32), and the Court held a hearing on Friday, December 2, 2016. *See* Docket No. 91 in Case No. 2:16-cv-393 ("Tr.") at 2:1. Defendants' Motion alleges that the asserted patent claims are drawn to ineligible subject matter under 35 U.S.C. § 101 and *Alice Corp. v. CLS Bank, Int'l*, 134 S. Ct. 2347 (2014). For the reasons that follow, Defendants' Motion is **GRANTED-IN-PART** and **DENIED-IN-PART**.

BACKGROUND

This is a consolidation of six patent-infringement actions in which Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg S.A. (collectively, "Uniloc") assert infringement of U.S. Patent Nos. 6,510,466 ("the '466 Patent"), entitled "Methods, Systems and Computer Program Products for Centralized Management of Application Programs on a Network," and 6,728,766 ("the '766 Patent"), entitled "Methods, Systems and Computer Program Products for License Use management on a Network" (collectively, the "Asserted Patents"). *See* Docket No. 1 at ¶¶ 10, 22, 27, 29; Docket No. 39. The Defendants are providers of software, and the accused products are Defendants' software licensing and delivery systems. Docket No. 23 at 2.

The Asserted Patents relate to "application program management on a computer network." '466 Patent, col. 1:21–23; '766 Patent, col. 1:21-23.[3] The computer network includes a server

[1] Unless specifically stated otherwise, "Docket No." refers to the docket in Case No. 2:16-cv-394.

[2] BitDefender's motion was originally also joined by Defendant AVG Technologies USA, Inc., which has since been dismissed. *See* Case No. 2:16-cv-393, Docket No. 21 (joining motion); Docket No. 127 (dismissing AVG).

[3] Although the Asserted Patents are related to each other, their specifications are somewhat different.

supporting client stations and can be called a "client-server environment." Docket No. 26 at 2 (citations omitted). The client-server environment is characterized by the possibility than any given user may use different clients at different times. *See* '466 Patent at col. 1:44–56. In the context of the client-server environment, the claimed inventions of the Asserted Patents seek to centralize application management so that "the entire process [can] be controlled from a single point for an entire managed network environment." *Id.* at col. 3:35–36; '766 Patent, col: 3:35–36.

"Application management" is not explicitly defined in the Asserted Patents. However, the '466 Patent specification describes "an application management system for managing configurable application programs using both user and administrative preferences for various application programs." '466 Patent, col. 7:25–28. The specification further explains that "application management information may include configurable user preference information for the plurality of application programs," *id.* at col. 4:53–55, or may include "user, software, device, preference and access control information." *Id.* at col. 7:62–64. Application management thus includes many aspects of providing software to users in the context of a client-server environment. *See id.* at col 1:44–56.

Claim 1 of the '466 Patent provides:

> **1.** A method for management of application programs on a network including a server and a client comprising the steps of:
>
> installing a plurality of application programs at the server;
>
> receiving at the server a login request from a user at the client;
>
> establishing a user desktop interface at the client associated with the user responsive to the login request from the user, the desktop interface including a plurality of display regions associated with a set of the plurality of application programs installed at the server for which the user is authorized;
>
> receiving at the server a selection of one of the plurality of application programs from the user desktop interface; and
>
> providing an instance of the selected one of the plurality of application programs to the client for execution responsive to the selection.

Claim 1 of the ’766 Patent provides:

> **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 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;
>
> 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 the plurality of application programs for the user based on the maintained license management policy information; and
>
> providing an unavailability indication to the client responsive 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 license is available for the user.

The ’466 and ’766 Patents address different aspects of application management in the client-server environment. The ’466 Patent addresses installing application software on the server and providing instances of that software to the clients for execution. ’466 Patent, col. 3:48–50. The ’466 Patent further addresses establishing a user-specific desktop interface for clients from which users may select display regions associated with the application software. *See id.* at col. 4:39–44. By contrast, the ’766 Patent addresses the management of licenses for the application software, including maintaining license-related policies and information in the client-server environment such that license availability can be communicated to clients on a user-specific basis. ’766 Patent, col. 3:24–28, 3:40–45, 5:38–60.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), the Court must dismiss a complaint that does not state a claim for relief that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678

(2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To state a plausible claim, Plaintiffs must plead facts sufficient to allow the Court to draw a reasonable inference that Defendants are liable for the alleged patent infringement. *See id.* (citing *Twombly*, 550 U.S. at 556). At this stage, the Court accepts all well-pleaded facts as true and views those facts in the light most favorable to the Plaintiffs. *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 461 (5th Cir. 2010).

Eligibility Under 35 U.S.C. § 101

In determining whether a claim is patent-ineligible under *Alice*, the Court must "first determine whether the claims at issue are directed to a patent-ineligible concept." *Alice*, 134 S. Ct. at 2355. Claims directed to software inventions do not automatically satisfy this first step of the inquiry. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). Rather, "the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on . . . an 'abstract idea' for which computers are invoked merely as a tool." *Id.* at 1335–36.

If the Court determines that the claims are directed to an abstract idea, it then determines whether the claims contain an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application. *Alice*, 134 S. Ct. at 2357. An inventive concept is "some element or combination of elements sufficient to ensure that the claim in practice amounts to 'significantly more' than a patent on an ineligible concept." *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014). The Court "consider[s] the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (internal quotation omitted). Even if each claim element, by itself, was known in the art, "an inventive concept can

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