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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 SANTA ANA DIVISION

<p>20 UNILOC 2017 LLC, 21 Plaintiff, 22 v. 23 INFOR, INC., 24 Defendant.</p>	<p>Case No. 8:19-cv-01150-JLS-ADS JOINT 26(f) REPORT Hearing: November 8, 2019 Courtroom: 10-A Judge: Josephine L. Staton</p>
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25 Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff, Uniloc 2017
26 LLC, and Defendant, Infor, Inc., file this Joint Rule 26(f) Report, per the Court's
27 Order, Dkt. No. 29.
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1 **a. Statement of the case:**

2 *Uniloc 2017's Position:* This is a patent infringement action. Uniloc 2017
3 accuses Infor products of infringing United States Patent Nos. 6,344,578 and
4 7,069,293, including Infor Workforce Management and Infor CRM Cloud, among
5 others. Uniloc 2017 expects Infor to argue the patents are invalid and not infringed.

6 *Infor's Position:* This is the fourth time Uniloc has filed a complaint accusing
7 one of Infor's products of infringing the two asserted patents. Uniloc first filed a
8 complaint in the Eastern District of Texas in 2017, accusing Infor's Workforce
9 Management of infringing claims of four patents, including the two patents in suit.
10 Uniloc then waited for Infor to fully brief a motion to dismiss for lack of venue
11 before unilaterally withdrawing that complaint and refiled in the Northern District
12 of Texas, accusing the same product. Uniloc dismissed that case after a court in a
13 separate litigation held the asserted patents to be ineligible. When that decision was
14 reversed in part by the Federal Circuit (with respect to the two patents now at issue),
15 Uniloc filed the original Complaint before this Court, again accusing Workforce
16 Management of infringement. Infor explained to Uniloc that there was no basis to
17 accuse Infor Workforce Management, as Uniloc's own allegations showed that this
18 product could not infringe, and asked Uniloc to dismiss the case. Uniloc refused,
19 forcing Infor to file a motion to dismiss this action. In response, on the last day
20 permitted under the Federal Rules, Uniloc filed its First Amended Complaint,
21 dropped its allegations against Infor Workforce Management, and for the first time
22 accused a whole new product, Infor CRM Cloud, of infringement.

23 Infor does not agree with Uniloc's assertion that Infor Workforce Management
24 remains an accused product. Uniloc accused that product in the original complaint,
25 included allegations of infringement related to that product, and dropped them all in
26 response to Infor's motion to dismiss. Uniloc does not deny any of these facts, but
27 rather asserts that Infor CRM Cloud is only "exemplary," and that Infor Workforce
28 Management is somehow still in the case, even though Uniloc could not maintain its

1 allegations of infringement against that product in the face of Infor’s motion. Infor
2 disagrees, and believes that Uniloc has abandoned any claim with respect to
3 Workforce Management.

4 Infor denies the allegations set forth in Uniloc’s statement above and in its
5 First Amended Complaint. Infor contends that the asserted claims of the asserted
6 patents are not infringed, directly or indirectly, by CRM Cloud or any other Infor
7 product. Infor also contends that the asserted claims of the asserted patents are
8 invalid, ineligible, and unenforceable, and that Uniloc should take nothing by way of
9 its operative complaint. Infor further contends that this case is exceptional and that
10 it is entitled to reasonable attorneys’ fees, expenses, and costs incurred in this actions
11 pursuant 35 U.S.C. § 285.

12 By October 31, 2019, Infor will file a renewed motion to dismiss Uniloc’s
13 First Amended Complaint, because Uniloc has failed to plead—and cannot plead—
14 infringement for any of the asserted claims, and because, by virtue of Uniloc’s
15 amendment accusing an entirely new product, Uniloc’s damages case is now
16 severely limited by its failure to plead—and inability to plead—pre-suit notice of
17 infringement under 35 U.S.C. § 287.

18 In light of specific circumstances of this case, Infor is filing a motion next
19 week to stay discovery and all related proceedings, except for service of Initial
20 Disclosures, pending resolution of Infor’s motion to dismiss. As explained more
21 fully in that motion, the equities strongly favor a stay, given the strength of Infor’s
22 motion to dismiss, Uniloc’s accusation of a new a product identified for the first time
23 in Uniloc’s recently filed amended complaint, Uniloc’s threats to seek discovery
24 regarding Workforce Management (for which Uniloc abandoned its allegations of
25 infringement) and “other products” for which Uniloc has no Rule 11 basis to plead
26 infringement, and the complete lack of harm to Uniloc if discovery is stayed by a
27 few months.

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1 **b. Legal issues:** The key legal issues will include the construction of the
2 asserted claims.

3 **c. Damages:**

4 *Uniloc 2017's Position:* Uniloc 2017 seeks damages in the nature of a
5 reasonable royalty for infringing use. As there has been no discovery as yet as to the
6 extent of use of the accused products, the parties cannot presently give a realistic
7 range of provable damages.

8 *Infor's Position:* The Court's September 20, 2019 Order Setting Scheduling
9 Conference required Uniloc to identify a realistic range of provable damages, and
10 Uniloc has failed to do so. In any case, any hypothetical damages recoverable by
11 Uniloc would be minimal, due at least in part to Uniloc's failure to comply with 35
12 U.S.C. § 287(a) by either marking or giving actual notice of the product now
13 accused for infringement for the first time in Uniloc's amended complaint.

14 **d. Insurance:** The parties are not currently aware of any insurance that
15 would affect the outcome of this litigation.

16 **e. Motions:** The parties do not contemplate motions to add parties or
17 claims, to file amended pleadings, to dismiss for lack of jurisdiction, or to transfer
18 venue.

19 **f. Complexity:** The Manual for Complex Litigation need not be used in
20 this case.

21 **g. Status of discovery:** No discovery has taken place, as yet. Uniloc 2017
22 has made its Initial Disclosures. Infor will make its Initial Disclosures by November
23 25, 2019.

24 **h. Discovery plan:**

25 The subjects on which discovery may be needed include the patents and
26 inventors, the accused products, infringement, damages, limitations on damages
27 (including for failure to mark or provide pre-suit notice of alleged infringement for
28

1 the accused product), prior art, validity, standing, licensing, enforceability, and
2 equitable defenses including unclean hands.

3 The parties have exchanged a draft ESI order to govern the e-discovery
4 procedures in this case. The parties anticipate submitting that proposed order to the
5 Court by November 25, 2019. The parties are also negotiating a proposed Protective
6 Order. In the interim, they have agreed to be bound by Judge Guilford's Standing
7 Protective Order.

8 There are currently no disputes about initial disclosures or preservation of
9 electronically stored information. There are currently no disputes about claims of
10 privilege or of protection on trial-preparation materials. The parties agree that
11 privilege logs need not include any documents or information dated or created after
12 May 2, 2017.

13 The parties dispute the timing of discovery.

14 *Uniloc 2017's Position:* Discovery should not be conducted in phases, and it
15 should not be stayed. Uniloc 2017 proposes a discovery cutoff date in the attached
16 Exhibit B. Uniloc 2017 does not propose changes to the limitations on the scope of
17 discovery imposed by the local and Federal rules, and opposes Infor's proposal.

18 *Infor's Position:* Infor proposes that discovery should be stayed pending
19 resolution of the motion to dismiss, for the reasons discussed above and in Infor's
20 motion to stay filed next week. Infor proposes that the Court order the parties to
21 propose these deadlines after consideration of these motions. In the alternative, and
22 to the extent the Court wishes to set dates for fact discovery now, Infor proposes
23 discovery deadlines as identified in the attached Exhibit B. In addition, Infor
24 proposes that in the event discovery proceeds, Fed. R. Civ. P. Rule 30(a)(2)'s limit
25 on depositions taken without further leave of Court should be set at 5 depositions per
26 side.

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