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15 *Attorneys for Defendant Infor, Inc.*

16
17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 SANTA ANA DIVISION

20 UNILOC 2017 LLC,
21 Plaintiff,
22 v.
23 INFOR, INC.,
24 Defendant.

Case No. 8:19-cv-01150-DOC(KESx)

**INFOR'S SUPPLEMENTAL RULE
26(F) REPORT**

Hearing: December 4, 2019, 3 p.m.
Judge: David O. Carter

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1 Pursuant to Federal Rules of Civil Procedure 26 and 34, defendant, Infor, Inc.
2 (“Infor”) files this Supplemental Rule 26(f) Report. Plaintiff Uniloc 2017
3 (“Uniloc”) and Infor previously filed a Joint Rule 26(f) report on October 25, 2019.
4 D.I. 34. The Court subsequently transferred this case pursuant General Order 19-03,
5 vacated the prior scheduling conference before Judge Staton, and set a new
6 scheduling conference for December 4, 2019. D.I. 37, 39. The parties in several
7 related cases pending before the Court have been ordered to attend this same
8 conference. *See Uniloc 2017 v. NetSuite Inc. et al.*; 8:19-cv-1061-DOC(KESx),
9 *Square Enix, Inc. and Square Enix LLC v. Uniloc 2017*; 8:19-cv-1062-DOC(KESx),
10 *Ubisoft, Inc. v. Uniloc 2017*.

11 Infor contacted counsel for Uniloc in advance this filing in an effort to submit
12 a new Joint Rule 26(f) report that would comply with this Court’s requirements
13 regarding standard deadlines and procedures, and to coordinate scheduling across the
14 related cases. As Infor explained, the prior Joint Rule 26(f) report that Infor and
15 Uniloc filed was based on Judge Staton’s default practices and model scheduling
16 order, and does not comply with this Court’s requirements. Moreover, that report
17 was submitted before this Court issued its transfer order, so the proposed deadlines
18 were not coordinated across the related cases. Accordingly, Infor prepared this
19 supplemental Rule 26(f) report, coordinated with Netsuite, Square Enix, and Ubisoft,
20 all of whom agreed to the proposed schedule attached as Exhibit A.

21 Uniloc declined to join this filing. Uniloc contended that the parties’ prior
22 Rule 26(f) report was sufficient, objected to coordinating scheduling among the
23 related cases, and stated that this Court never ordered the parties to file a new Rule
24 26(f) report or propose a coordinated schedule. Because Infor believes that the
25 parties should make a proposal in accordance with this Court’s practices, and should
26 endeavor to coordinate scheduling across the related cases, Infor submits this
27 supplemental Rule 26(f) report.

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1 **(1) Statement of the case:**

2 Infor denies the allegations set forth in Uniloc's First Amended Complaint
3 (D.I. 30). Infor contends that the asserted claims of the asserted patents are not
4 infringed, directly or indirectly, by Infor products. Infor also contends that the
5 asserted claims of the asserted patents are invalid, ineligible, and unenforceable.
6 Infor further contends that Uniloc's failure to mark or give pre-suit notice of
7 infringement in accordance with 35 U.S.C. § 287(a) wholly bars any claim for relief
8 with respect to the 578 patent. Infor contends that this case is exceptional and that
9 Infor is entitled to reasonable attorneys' fees, expenses, and costs incurred in this
10 actions pursuant 35 U.S.C. § 285.

11 On October 31, 2019, Infor filed a renewed motion to dismiss Uniloc's First
12 Amended Complaint, because Uniloc cannot plead infringement for any of the
13 asserted claims, and because Uniloc's claim for relief with respect to the 578 patent
14 is barred by Uniloc's inability to plead pre-suit notice of infringement under 35
15 U.S.C. § 287. *See* Motion to Dismiss (D.I. 35). Infor also filed a motion to stay
16 discovery pending the resolution of those motions. *See* Motion to Stay Discovery
17 Pending Motion to Dismiss (D.I. 36). This Court vacated the hearing dates for those
18 motions when it ordered the December 4, 2019, scheduling conference. Order
19 Setting Scheduling Conference (D.I. 39). Infor submits that its motion to dismiss is
20 likely to resolve the entire case, or at least substantially narrow it, and to thus
21 eliminate or reduce the need for discovery. Accordingly, Infor respectfully proposes
22 that the Court set hearing dates for these motions.

23 **(2) Principal issues:**

24 Infor asserts that some of the disputed issues include, but are not limited to,
25 the following:

- 26 • Construction of the asserted claims;
27 • Whether the Patents-in-Suit have been infringed;

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- 1 • Whether the Patents-in-Suit are invalid under 35 U.S.C.
- 2 §§ 101, 102, 103, and/or 112;
- 3 • Whether the Patents-In-Suit are unenforceable;
- 4 • Whether Uniloc has standing to assert the Patents-in-Suit;
- 5 • Whether Uniloc is collaterally estopped, either now or at a later
- 6 time, in view of other litigation history on the Patents-in-Suit;
- 7 • Whether Uniloc has complied with 35 U.S.C. § 287 and
- 8 whether Uniloc’s alleged damages are limited under the same;
- 9 • The amount of damages, if any, under 35 U.S.C. § 284;
- 10 • Whether this case is exceptional.

11 Infor reserves the right to revise or supplement this list as the case progresses.

12 **(3) Motions to Amend, Joining Parties:** Infor does not contemplate
13 motions to add parties or claims, to file amended pleadings, to dismiss for lack of
14 jurisdiction, or to transfer venue.

15 **(4) Dispositive motions:**

16 To the extent Uniloc’s claims survive Infor’s motion to dismiss, Infor expects
17 to file motions for summary judgment relating to non-infringement, invalidity,
18 ineligibility, and/or failure to comply with 35 U.S.C. § 287.

19 **(5) Settlement efforts:** The parties have engaged in preliminary
20 discussions through their counsel. Infor believes that the mediation would be most
21 effective after the parties have more visibility on threshold issues, including Infor’s
22 motions to dismiss and stay. Infor therefore requests that mediation be set some
23 time in 2020, after its motion to dismiss has been resolved. Infor prefers ADR
24 Procedure No. 3, but would further confer with Uniloc about which ADR procedure
25 would be most appropriate when the parties are closer to mediation.

26 **(6) Discovery plan:**

27 Infor submits a proposed schedule that should govern discovery, attached as

28 Exhibit A. NetScite, Square Enix, and Ubisoft have agreed to this same schedule.

1 Infor proposes that Fed. R. Civ. P. Rule 30(a)(2)'s limit on depositions taken
2 without further leave of Court for good cause should be set at 5 depositions per
3 party, given the scope of the case and the fact that neither an injunction or lost
4 profits (two issues that often require additional discovery) are in play.

5 Infor also believes that discovery should be stayed pending its motion to
6 dismiss, for the reasons explained in Infor's co-pending motion to stay discovery.
7 *See* Motion to Dismiss (D.I. 35) and Motion to Stay Discovery Pending Motion to
8 Dismiss (D.I. 36). Infor believes that the proposed schedule set forth in Exhibit A
9 provides sufficient time for these motions and for the parties to conduct discovery
10 after the motion to dismiss is decided in the event that it is denied.

11 **(7) Preliminary trial estimate:** Infor believes that a four (4) day jury trial
12 is appropriate.

13 **(8) Other issues and specific proposed dates:**

14 Because this is a patent case, the parties propose adoption of the Northern
15 District of California patent rules, with the following modification to the deadlines
16 specified therein to streamline the issues and discovery in this case:

- 17 • Assuming Uniloc serves its P.R. 3-1 and 3-2 disclosures by
18 November 22, 2019 (a date Uniloc proposed), Infor will serve
19 P.R. 3-3 and 3-4 disclosures on February 14, 2020, or 30 days
20 after the ruling on the applicable motion to dismiss, whichever
21 is later.¹

22 Infor proposes a schedule, attached as Exhibit A, which includes the following
23 dates:

- 24 a. Discovery cut-off date: November 6, 2020
25 b. Final motion cut-off date: Monday, March 1, 2021

26 _____
27 ¹ If Uniloc delays service of its infringement contentions, Infor believes
28 that it should receive a corresponding extension on service of invalidity

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