EXHIBIT E

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNILOC 2017 LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 1:19-cv-11276
v.)	**FILED UNDER SEAL**
)	
AKAMAI TECHNOLOGIES, INC.,)	**Leave to file granted on November 11, 2019**
)	
Defendant.)	

**REPLY IN SUPPORT OF AKAMAI TECHNOLOGIES, INC.'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

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Uniloc's Opposition confirms it has no basis to maintain this case against Akamai.

Uniloc does not (and cannot) dispute the following critical facts:

- Akamai is an "IBM Strategic Partner" under the 2016 and 2018 Patent Purchase
  Agreements governing Uniloc's rights to the Asserted Patents (*see* Akamai Br. 7-8
  (Dkt. 28); Opp. 4 (Dkt. 31));

- "IBM Strategic Partners" are within the definition of a "Licensee" under the Patent
  Purchase Agreements—and thus Akamai is also a "Licensee" under the Agreements
  (*see* Akamai Br. 7-8; Opp. 2);

- Uniloc's right to sue third parties is "███████████████" listed in the Agreement,
  including that Uniloc "███████████" with IBM's contractual relationships with
  its Licensees (Dkt. 22-1, Ex. 1 (2016 Agreement) §§ 2.4, 4.2; Akamai Br. 6; Opp. 2-
  3); and

- If Uniloc knowingly sues or maintains a suit against a Licensee for infringement of
  the Asserted Patents, then it must indemnify the Licensee for all losses and expenses
  arising from the suit (Akamai Br. 8; Opp. 3).

Uniloc concedes based on these facts that the case should be dismissed. It nevertheless

argues that—even though Uniloc entities previously dismissed two suits against Akamai on the

same patents—its claims should now be dismissed a third time without prejudice. Uniloc's

arguments are wrong on the facts and the law.

First, Uniloc is wrong that it has the right to sue "anyone it chooses"—including IBM

Strategic Partners and Licensees like Akamai—for alleged infringement of the Asserted Patents.

Opp. 1. Uniloc's argument is contradicted by the "████████" on suing third parties in Section

4.2 of the 2016 Agreement, which Akamai addressed in its opening brief (Akamai Br. 6-7) and

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Uniloc ignores (Opp. 2-3). Specifically, Section 4.2 of the Agreement provides that Uniloc's

right to bring suits against third parties on the Asserted Patents is "███████████████

███████████." *See* 2016 Agreement § 4.2. Those restrictions include a bar on Uniloc from

interfering with any contractual relationship between IBM and its "Licensees" in Section 2.4.

See, e.g., id. § 2.4 (███

███

██████████████████████████████████); Akamai Br.

5-7. *See id.* As provided in Akamai's Amended Answer and Counterclaims, Akamai has an

extensive ongoing contractual relationship with IBM pursuant to which it has engaged in over

████████ of business with IBM. *See* Dkt. 23 (Declaration of William Kamenides) at ¶ 3;

Dkt. 23-1, Ex. 3 (Akamai Sales Data for IBM); Dkt. 23-7, Ex. 11 (Akamai website: "By securely

optimizing IBM's content based on type and destination, *Akamai enables IBM to ensure a*

flawless web experience for customers — no matter where they are."). Uniloc's suit plainly

interferes with this Akamai-IBM relationship: Uniloc's claims are directed to Akamai's "Luna

Control Center" that Akamai's customers—*including IBM*—use to manage their content

delivery services from Akamai. *See* Complaint, *e.g.*, ¶ 18 (alleging that "Akamai also infringed

the '578 Patent by actively inducing the use of the Luna Control Center CDN. Akamai's

customers who used the system as Akamai instructed infringed the '578 Patent, as described

above."). The Agreement thus plainly bars Uniloc from suing Licensees such as Akamai. *See*

2016 Agreement § 2.4, 4.2.

The 2016 Agreement's indemnity provision confirms this. *See* 2016 Agreement § 4.3.

Section 4.3 of the Agreement provides that if Uniloc knowingly sues a Licensee for

infringement, then Uniloc must indemnify the Licensee for *all losses, costs, and expenses*

arising from the suit—meaning that Uniloc cannot recover anything in a suit against a Licensee

like Akamai. *See* 2016 Agreement § 4.3 ███████████████████████████████

██

███. It

would thus make little sense to interpret the Patent Purchase Agreements, as Uniloc has urged, to

somehow permit Uniloc to sue Licensees for infringement of the Asserted Patents, only to then

require Uniloc to indemnify the Licensee for all losses, costs, and expenses arising from the suit.

See Agility Pub. Warehousing Co. KSCP v. Mattis, 852 F.3d 1370, 1380 (Fed. Cir. 2017) ("We

consider the contract as a whole and interpret it to harmonize and give meaning to all of its

parts."); *Farmers Ins. Exch. v. RNK, Inc.*, 632 F.3d 777, 785 (1st Cir. 2011) ("In interpreting

contractual language, we consider the contract as a whole.").

Accordingly, because Uniloc has failed to state any plausible claim for which relief can

be granted, its case should be dismissed with prejudice. *See Artrip v. Ball Corp.*, 735 F. App'x

708, 714-15 (Fed. Cir. 2018) (affirming dismissal with prejudice where the plaintiff had failed to

state a plausible infringement claim); *see also Networktwo Commc'ns Grp., Inc. v. Spring Valley

Mktg. Grp. & Communityisp, Inc.*, No. 99-cv-72913, 2003 WL 1119763, at *9 (E.D. Mich. Feb.

13, 2003) (dismissing breach of contract claim with prejudice where the alleged damages were

"barred by the terms" of the relevant contract).

Uniloc's reliance on the Federal Circuit's decision in *Uniloc USA, Inc. v. ADP, LLC*, 772

Fed. Appx. 890 (Fed. Cir. 2019) is misplaced. Specifically, Uniloc argues that the Federal

Circuit held that the indemnity provision of the 2016 Agreement applies only if IBM "considers

Uniloc to be in breach" or "has asserted a right to sublicense and release" the "ostensible third-

party beneficiary." Opp. 3. The court made no such ruling. Instead, in that case, certain parties

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