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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNILOC 2017 LLC,

Plaintiff,

v.

NETSUITE, INC.,

Defendant.

Case No. 8:19-cv-01151-JLS-DFM

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NETSUITE'S MOTION TO DISMISS

Judge:	Hon. Josephine L. Staton
Date:	November 1, 2019
Time:	10:30 AM
Location:	Ronald Reagan Federal Building, Courtroom 10A

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I. INTRODUCTION

Plaintiff Uniloc 2017 LLC ("Uniloc") fails to allege infringement under a claim construction ruling that was already issued on these same two asserted patents by Judge Schroeder in the United States District Court for the Eastern District of Texas, after more than a year of contentious litigation. Accordingly, Uniloc's Complaint should be dismissed under Rule 12(b)(6) for failure to state a claim.

Uniloc's predecessors-in-interest—Uniloc USA, Inc. and Uniloc Luxembourg, S.A.—first asserted the two patents in this case, U.S. Patent No. 6,324,578 ("the '578 patent") and U.S. Patent No. 7,069,293 ("the '293 patent"), against defendant NetSuite, Inc. ("NetSuite") in August 2016 in the Eastern District of Texas, and over the years, Uniloc and its predecessors have asserted them against different companies in approximately 50 separate cases. On August 16, 2017, more than a year and 100-plus docket entries into Uniloc's suit against NetSuite, Judge Schroeder issued a 68-page claim construction order in a related case on many key terms from the '293 and '578 patents that all but ended Uniloc's chances of proving infringement against NetSuite. A month later, Uniloc voluntarily dismissed its case against NetSuite under Fed. R. Civ. P. 41(a)(1)(A)(i). The dismissal was without prejudice because NetSuite had a motion to dismiss outstanding at the time, and had not yet answered.

Now, nearly two years later, Uniloc is back. It re-filed effectively the same Complaint against NetSuite, without any attempt to address infringement under Judge Schroeder's claim construction order, which continues to govern in those ongoing related cases.

While full-blown claim construction proceedings may be inappropriate at the pleading stage, courts often decide straightforward, case-dispositive claim construction questions that turn on the intrinsic record. This is exactly that situation: another federal judge has already construed certain claim terms of the '293 and '578 patents, and this Court need only adopt a *single* construction, for "application program(s)," which turns entirely on an issue of law—whether an admitted disclaimer

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