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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 UNILOC 2017 LLC,
17
18 Plaintiff,
19 v.
20 NETSUITE INC.,
21 Defendant.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
NETSUITE'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Judge: Hon. Josephine L. Staton
Date: December 13, 2019
Time: 10:30 AM
Location: Ronald Reagan Federal
Building, Courtroom 10A

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1 I. INTRODUCTION

2 Plaintiff Uniloc 2017 LLC (“Uniloc”) has again failed to allege infringement
3 under a claim construction ruling on the two patents asserted in this case that was
4 issued two years ago by Judge Schroeder in the United States District Court for the
5 Eastern District of Texas. Accordingly, Uniloc’s Amended Complaint should be
6 dismissed under Rule 12(b)(6) for failure to state a claim.

7 Uniloc’s predecessors-in-interest—Uniloc USA, Inc. and Uniloc Luxembourg,
8 S.A.—first asserted the two patents in this case, U.S. Patent No. 6,324,578 (“the ’578
9 patent”) and U.S. Patent No. 7,069,293 (“the ’293 patent”), against defendant
10 NetSuite Inc. (“NetSuite”) in August 2016 in the Eastern District of Texas, and over
11 the years, Uniloc and its predecessors have asserted them against different companies
12 in approximately 50 separate cases. On August 16, 2017, more than a year and 100-
13 plus docket entries into Uniloc’s suit against NetSuite, Judge Schroeder issued a 68-
14 page claim construction order in a related case on many key terms from the ’293 and
15 ’578 patents that all but ended Uniloc’s chances of proving infringement against
16 NetSuite. A month later, Uniloc voluntarily dismissed its case against NetSuite under
17 Fed. R. Civ. P. 41(a)(1)(A)(i). The dismissal was without prejudice because NetSuite
18 had a motion to dismiss outstanding at the time, and had not yet answered.

19 Now, nearly two years later, Uniloc is back. It re-filed effectively the same
20 Complaint against NetSuite without any attempt to address infringement under Judge
21 Schroeder’s claim construction order, which continues to govern in those ongoing
22 related cases. NetSuite moved to dismiss (D.I. 24) and, in response, Uniloc filed an
23 Amended Complaint that mostly *deleted* factual allegations, again basing its
24 infringement read, in no uncertain terms, on a proposed construction that Judge
25 Schroeder outright rejected.

26 While full-blown claim construction proceedings may be inappropriate at the
27 pleading stage, courts often decide straightforward, case-dispositive claim construction
28 questions that turn on the intrinsic record. This is exactly that situation: another federal

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