

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**

**UNILOC 2017 LLC,**

**Plaintiff,**

**v.**

**ATHENAHEALTH, INC.,**

**Defendant.**

**Civil Action No. 1:19-cv-11278-RGS**

**ORAL ARGUMENT REQUESTED**

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**MEMORANDUM IN SUPPORT OF DEFENDANT ATHENAHEALTH'S MOTION TO  
DISMISS THE COMPLAINT WITHOUT PREJUDICE TO REPLEAD**

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The Complaint filed by Plaintiff Uniloc 2017 LLC (“Uniloc”) against Defendant athenahealth, Inc. (“athenahealth”), asserts infringement of two patents: US Patent Nos 6,324,578 (“’578 Patent”) and 7,069,293 (“’293 Patent”). athenahealth moves to dismiss the Complaint under Fed. R. Civ. P., Rule 12(b)(6) because the Complaint fails to plausibly plead claims of direct or indirect patent infringement. This motion seeks dismissal **without prejudice** for Uniloc to replead.

Given the Complaint’s barebones allegations, it does not put athenahealth on notice as to the basis for Uniloc’s infringement claim. The Complaint recites only seven alleged facts relating to the accused products. None of these alleged facts is tied to the elements of the asserted patent claims. The Complaint also does not identify whether it is athenahealth or someone else whom allegedly preforms the steps of the claimed method. The Complaint fails to identify **who** practices each step of the asserted methods claims, **what** the accused instrumentalities are, and **how** the accused instrumentalities meet each limitation of each asserted claim. Such allegations fall far short of the pleading requirements of *Iqbal* and *Twombly*. The pleading standard for patent infringement cases has changed, and in the First Circuit, Uniloc’s bare bones complaint is not sufficient.

athenahealth has no objection to Uniloc being allowed to file an amended pleading that cures these deficiencies. However, a properly pled complaint must identify who the alleged infringer is and which components in the accused product allegedly meet each claim limitation. This Complaint fails to meet that standard and should be dismissed.

## **I. STATEMENT OF FACTS**

### **A. Prior Litigation**

This is the third lawsuit filed by Uniloc entities against athenahealth for patent infringement. *See* D.I. 1, ¶¶ 15, 22. The first lawsuit was filed in the Eastern District of Texas

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