

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

UNILOC 2017 LLC,

Plaintiff,

vs.

PAYCHEX, INC.,

Defendant.

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Civil Action No. 1:19-CV-11272-RGS

UNILOC 2017 LLC,

Plaintiff,

vs.

ATHENAHEALTH, INC.,

Defendant.

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Civil Action No. 1:19-CV-11278-RGS

**DEFENDANTS' MOTION FOR LEAVE TO FILE BRIEFING ON INDEFINITENESS
AND FOR THE COURT TO CONSIDER INDEFINITENESS
IN CONNECTION WITH CLAIM CONSTRUCTION**

Pursuant to Local Rules 7.1(b)(3) and 16.6, Defendants Paychex Inc. (“Paychex”) and athenahealth, Inc. (“athenahealth”) (collectively “Defendants” in the above-captioned cases)¹ hereby move the Court for leave to file briefing regarding issues of claim indefiniteness, including, but not limited to, regarding means plus functions terms and Defendants’ contentions that the means plus function terms in all means plus function terms in the asserted claims of both Plaintiff’s asserted patents lack corresponding structure in the patent specifications. Issues of indefiniteness are properly taken up in conjunction with the claim construction process and would be most

¹ The above captioned cases have not been formally consolidated; however the Court has consolidated the cases for one single joint claim construction proceeding. 19-11272 *Dkt* 16; 19-11278 *Dkt* 19.

efficiently and appropriately be heard at the *Markman* hearings to be schedule in the above-captioned cases. See *Typemock, Ltd. v. Telerik, Inc.*, 2018 WL 4189692 (D. Mass. Aug. 31 2018) (consideration of indefiniteness as part of *Markman* claim construction). The parties are separately briefing issues of claim construction in accordance with the Court's Scheduling Order in this case (19-11272 *Dkt* 16-17; 19-11278 *Dkt* 19; 19-11272 *Dkt* 17) as follows:

1. Opening claim construction briefs to be filed no later than 1/23/2020;
2. Reply briefs to be filed no later than 2/20/2020;
3. The parties to submit a joint claim construction statement to the court (including a ranking of the terms in the parties' estimation of importance to the case in decreasing order) no later than 3/5/2019.

Defendants disclosed the indefiniteness issues in their respective disclosures under Local Rule 16.6(d)(4) (October 31, 2019 for Paychex and December 4, 2019 for athenahealth).

In sum, Defendants propose the following briefing to coincide with the already set briefing schedule on claim construction:

1. On January 23, 2020, Defendants shall file their opening briefs on indefiniteness (20 page limit);²
2. On February 6, 2020, Plaintiff shall file its opposition brief on indefiniteness (20 page limit);
3. On February 20, 2020, Defendants shall file their reply briefs on indefiniteness (10 page limit).

² In accord with the claim construction briefing, Defendants submit that “[t]o avoid redundant briefing, defendants may elect to divide the terms amongst themselves (or agree upon some other efficient allocation), and Uniloc may submit a single brief.”

WHEREFORE, Defendants respectfully request that the Court grant this motion and enter an order with the proposed schedule set forth herein.

Dated: January 10, 2020

Respectfully submitted,

/s/ James Sebel

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**Attorneys for Defendant
PAYCHEX, INC.**

RULE 7.1 CERTIFICATION

Counsel for the parties met and conferred regarding claim construction and specifically indefiniteness on December 19, 2019; counsel further met and conferred regarding this specific Motion and briefing schedule; Plaintiff's counsel stated that it will oppose this Motion.

/s/ James Sebel

James Sebel

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 10, 2020.

/s/ James Sebel

James Sebel