

**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' JOINT RESPONSIVE BRIEF ON CLAIM CONSTRUCTION**

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## I. Introduction

Defendants Paychex, Inc. and athenahealth, Inc. (collectively, “Defendants”) respectfully submit this responsive brief in support of their proposed constructions of disputed terms and phrases in United States Patent Nos. 6,324,578 (“the ’578 patent”) and 7,069,293 (“the ’293 patent”).

## II. Uniloc’s Improper Approach

After serving a disclosure of claim terms and proposed constructions for only two claim terms, *see* Plaintiff’s Disclosure of Claim Terms & Proposed Constructions, served December 12, 2019, Exhibit A, Uniloc filed a scant seven and a half pages of claim construction argument, which largely offloaded the heavy lifting to the declaration of its expert, Dr. Shamos. *See generally* Uniloc’s Opening Brief (Dkt. No. 26).<sup>1</sup> In at least two basic respects, Uniloc’s approach violates the rules of claim construction.

First, Uniloc’s approach violates the fundamental rules of claim construction by looking to extrinsic evidence when the claims can and should be construed by intrinsic evidence. Dr. Shamos’ declaration is itself extrinsic evidence. Here, a declaration was unnecessary, because the disputed claim terms can be construed from the intrinsic record. In *Vitronics Corp. v. Conceptiontronic, Inc.*, the Federal Circuit expressed the general rule that extrinsic evidence should only be used where the intrinsic evidence leaves the meaning of the claim ambiguous: “In most situations, an analysis of the intrinsic evidence alone will

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<sup>1</sup> Uniloc has filed an unopposed motion to substitute a corrected declaration of Dr. Shamos, which the Court granted. *See* Docket Nos. 34 and 35. Defendants agreed not to oppose the correction to the declaration, provided that Uniloc did not use Defendants’ agreement as a basis for justifying the deposition testimony and exhibit for which the Court granted Defendants’ motion to strike. Docket No. 33 (Order). The present brief cites to the substituted Corrected Declaration of Dr. Shamos (“Cor. Shamos Dec.”), Docket No. 34-2, in which the numbering of some paragraphs differs from that in Dr. Shamos’ original declaration.

resolve any ambiguity in a disputed claim term. In such circumstances, it is improper to rely on extrinsic evidence. In those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper.” 90 F.3d 1576, 1583 (Fed. Cir. 1996). As “stated in *Vitronics*, the specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (quoting *Vitronics*, 90 F.3d at 1582). More recent cases continue to apply the *Vitronics* holding. In *Rembrandt Patent Innovations, LLC v. Apple, Inc.*, 2017 WL 5632684, \*4 (Fed. Cir. 2017), the Federal Circuit held that the district court had properly disregarded the patentee’s expert testimony on claim construction that was contrary to the construction supported by the intrinsic evidence. The court found that the specification was clear in determining the scope of the claims.

Again, Dr. Shamos’ declaration, in and of itself, is extrinsic. Although the Local Rules permit proper declarations, Dr. Shamos’ declaration is improper to the extent that it opines that Uniloc’s proposed construction is consistent with unrelated patents, articles, and a dictionary to attempt to argue that a term in the patents-in-suit was used similarly. *See, e.g.*, Dkt. No. 34-2 (Cor. Shamos Dec.) at ¶¶ 43, 48, 64. There is a difference between, on the one hand, describing the state of the art at the time of the alleged invention (proper for an expert), and, on the other hand, opining that Uniloc’s proposed construction was consistent with a cherry-picked extrinsic reference (improper).

In addition, to a large extent, Dr. Shamos’ declaration simply adopts Uniloc’s attorney argument, and such testimony is unhelpful to the Court. His declaration also improperly, repeatedly paraphrases and interprets the intrinsic record. *See, e.g.*, Dkt. No.

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