EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNILOC USA, INC., and UNILOC LUXEMBOURG, S.A., Plaintiffs, v. ADP, LLC, and BIG FISH GAMES, INC. Defendant.	§	**CIVIL ACTION NO. 2:16-CV-00741-RWS** **(LEAD CASE)**
UNILOC USA, INC., and UNILOC LUXEMBOURG, S.A., Plaintiffs, v. AVG TECHNOLOGIES USA, INC., KASPERSKY LAB, INC., SQUARE ENIX, INC., Defendant.	§	**CIVIL ACTION NO. 2:16-CV-00393-RWS**

ORDER

Before the Court are three motions: Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg, S.A.'s Motion for Discovery (Docket No. 331[1]), Defendant Big Fish Games's Motion to Strike Plaintiffs' Infringement Contentions (Docket No. 335) and Plaintiffs' Motion to Reconsider a Portion of this Court's Memorandum Opinion and Order Construing Certain Terms (Docket No. 344). The Court heard argument on the motions on January 28, 2020.

[1] Citations are to the docket in the lead case, No. 2:16-cv-741.

For the reasons set forth below, Uniloc's Motion for Discovery is **DENIED**, Big Fish's Motion to Strike is **GRANTED-IN-PART** and **DENIED-IN-PART**, and Uniloc's Motion to Reconsider is **DENIED**.

BACKGROUND

In April 2016, Uniloc[2] filed a series of cases in this Court asserting U.S. Patent Nos. 6,410,466 and 6,728,766 against several defendants. Those cases were consolidated under *Uniloc USA, Inc. v. AVG Technologies USA, Inc.*, Case No. 2:12-cv-393 (E.D. Tex.). Shortly thereafter, Uniloc filed another series of cases against multiple defendants, including Big Fish, asserting different combinations of the '466 and '766 patents as well as U.S. Patent Nos. 6,324,578 and 7,069,293. *See Uniloc USA, Inc. v. Big Fish Games, Inc.*, Case No. 2:16-cv-858 (E.D. Tex.). This second round of cases was consolidated under the above-captioned lead case. Defendants ADP and Big Fish each filed motions to dismiss Uniloc's complaint for failure to state a claim. Docket Nos. 17, 80. The Court held a joint *Markman* hearing on August 10, 2017 (Docket No. 225), entered its claim construction order on August 16, 2017 (Docket No. 233), and on September 28, 2017, granted the motions to dismiss (Docket No. 267). The Court found that the asserted claims of all four patents-in-suit were drawn to patent-ineligible subject matter. Docket No. 267 at 3.

Uniloc appealed. Docket No. 271. The Federal Circuit affirmed the Court's determination that the asserted claims of the '466 and '766 patents were drawn to patent-ineligible subject matter but reversed as to the '578 and '293 patents and remanded. Docket No. 317 at 3. The parties' motions seek to define how the case will proceed.

[2] "Uniloc" refers collectively to Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg, S.A. During the appeal to the Federal Circuit, a third entity, Uniloc 2017, acquired an interest in the patents-in-suit. *See* Docket No. 232 at 3–4. The Federal Circuit substituted Uniloc 2017 as a party, *id.*, but as of the date of this order, Uniloc 2017 has not been added to this lawsuit.

DISCUSSION

I. Uniloc's Motion for Discovery (Docket No. 331)

Uniloc seeks to reopen fact discovery for 90 days, with renewed expert discovery deadlines to follow thereafter. *See* Docket No. 331 at 2. Uniloc contends that reopening discovery without limitation is appropriate because, first, circumstances have changed since the Court dismissed the case more than two years ago, and second, the parties were unable to agree on any boundaries to post-remand discovery. *Id.* at 3–6. In Uniloc's view, the following changed circumstances render unfettered fact discovery appropriate: (1) Uniloc 2017's acquisition of the patents-in-suit and Aristocrat Technologies' 2018 acquisition of Big Fish; (2) the Federal Circuit's characterization of the subject matter of the patents and the expiration of the '578 patent; and (3) possible changes to the accused systems during the pendency of the appeal. *Id.* at 3–4. Uniloc further contends that neither party found the other's discovery proposal workable, so the Court should reopen discovery and allow the parties to explore topics as they see fit. *Id.* at 4–7.

Big Fish opposes Uniloc's request and characterizes it as an attempt to obtain a "do-over" of fact discovery. Docket No. 332 at 1. Big Fish argues that Uniloc's request contravenes this Court's instructions that the parties meet and confer on specific areas of discovery agreement and that Uniloc file a motion seeking discovery that the parties could not agree on. *Id.* at 1–3. Big Fish contends that Uniloc has not only failed to establish good cause for reopening discovery but that it also did not even acknowledge the correct governing standard. *Id.* at 3–4. And in Big Fish's view, Uniloc's "changed circumstances" do not justify reopening discovery. Big Fish argues that (1) the parties have not changed in a manner that would justify unfettered discovery because Aristocrat Technologies is not a party to the case; (2) the situation of the patents has not changed and the expiration of the '578 patent simplifies the case; and (3) any changes to the accused system do not justify unrestricted discovery. *Id.* at 5–6. Finally, Big Fish contends that Uniloc

misrepresents the parties' discussions leading up to Uniloc's motion and that Uniloc in fact demonstrated an unwillingness to negotiate. *Id.* at 6–7.

A. Applicable Law

A party seeking leave to amend a court's scheduling order or, as here, reopen fact discovery must show "good cause." FED. R. CIV. P. 16(b); *S & W Enters., L.L.C. v. Southtrust Bank of Alabama, NA*, 315 F.3d 533, 535 (5th Cir. 2003). The "good cause standard requires the party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension." *S & W Enters., L.L.C.*, 315 F.3d at 535 (internal quotations omitted). Trial courts have broad discretion to allow scheduling order modifications and should consider four elements when determining whether to allow a modification: (1) the explanation for the failure to meet the deadline; (2) the importance of the thing that would be excluded; (3) potential prejudice in allowing the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice. *Id.* at 535–36. Under the first element, a party's failure to meet a deadline due to mere inadvertence "is tantamount to no explanation at all." *Id.* at 536.

B. Analysis

Uniloc has not shown that good cause exists to reopen discovery. In fact, Uniloc has not applied the above factors to its request. *See generally* Docket Nos. 331, 333. This is not to say that the case should proceed without any discovery. Though neither party acknowledged it in their briefing, both parties are obligated to supplement written discovery and document productions throughout the case. *See* FED. R. CIV. P. 26(e) (applying to written discovery); Docket No. 106 at ¶ 8 (extending duty to supplement to document production). The discovery order requires the parties to produce materials "relevant to the pleaded claims or defenses involved in this action" or that are the basis for any computation of damages. Docket No. 106 at ¶¶ 3(b), (c). The correct analysis, therefore, is to examine whether Uniloc has shown good cause for discovery beyond

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.