Ex. 1008

Declaration of Thomas A. Day

("Day Declaration")

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BITDEFENDER INC. Petitioner, v. UNILOC USA INC. and UNILOC LUXEMBOURG SA, Patent Owner.	IPR Regarding Patent № 6,510,466 DECLARATION OF THOMAS A. DAY

1. I am Thomas A. Day, principal of Day & Company LLC, a software development and consulting firm. I am a forensic software examiner, intellectual property analyst, and professional software developer with thirty-nine years' experience in the computer industry. In my capacity as an intellectual property analyst, I have served as an expert and given testimony in matters including software and other technology patents, copyrights, trade secrets, and licensing. In my capacity as a forensic software examiner, I have served as an expert and given testimony in matters including digital forensics and electronic evidence preservation, recovery, and spoliation.

2. I have been retained by outside counsel for Petitioner in this matter, Bitdefender, Inc. (Petitioner or Bitdefender), to form an opinion on issues of claim construction and prior art

concerning *Inter Partes* Review for United States Patent № 6,510,466 to Cox, *et al.* (the '466 Patent) with a priority date of December 14, 1998 and a publication date of January 21, 2003. A copy of my curriculum vitae is attached to this Declaration as Exhibit A. I have agreed to be bound by any confidentiality or protective order on file and of record in the above-entitled matter, and to return or destroy as requested all documents submitted for my review, and to keep all opinions and conclusions confidential without disclosure other than to the parties and the Court in the above-referenced Review.

3. With respect to this Declaration, I have been asked by counsel for Petitioner whether certain United States patents constitute invalidating prior art for '466 Patent Claims 1, 2, 7–9, 15–17, 22–24, 30, and 35–37 under 35 USC § 102, Novelty; and 35 USC § 103, Obviousness; with particular deference to *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) (*KSR*). I am being compensated in this matter at a rate of US$350.00 per hour, with compensation not dependent on outcome.

4. In preparation for this Declaration I have reviewed the '466 Patent, along with additional patents referenced *infra*; the prosecution history for the '466 Patent; in *Uniloc v. Bitdefender*, Eastern District of Texas (*E.D. Tex. Litigation*), the complaint filed by Uniloc against Bitdefender (*E.D. Tex. Complaint*); proposed claim constructions in the *E.D. Tex. Litigation*; and a declaration by Leonard Laub relative to IPR № 2017-00184, *Unified Patents v. Uniloc*. I have also reviewed the user manuals for Bitdefender Total Security 2016, Bitdefender Antivirus for Mac, and Bitdefender Mobile Security.[1] Exs. 1018, 1019, 1020. These products are client-resident applications (where "client" refers to an end-user's computer), designed to be

[1] With particular attention to *Bitdefender Total Security 2016 User Manual* § 15.2, "How Do I Remove Bitdefender?" at 74 – 75; *Bitdefender Antivirus for Mac User Manual* § 1.3, "Removing Bitdefender Antivirus for Mac" at 8; and *Bitdefender Mobile Security User Manual* § 2, "Getting Started" at 2.

executed an indefinite number of times once installed at the client. I have reviewed additional documents and exhibits as cited elsewhere herein.

Legal Standards

5. I understand that a claim is obvious if the differences between the prior art and the claim are such that the claimed subject matter as a whole would have been obvious at the time the claimed invention was made to a person having ordinary skill in the art to which the subject matter pertains (POSA). Obviousness takes into account the scope and content of the prior art, the differences between the prior art and the claim, the level of ordinary skill in the art, and, if they exist, secondary considerations of non-obviousness. Secondary considerations must have a sufficient nexus (link) to the claimed invention, as opposed to other factors such as prior art features.

6. My understanding is that any relevant differences between the subject matter of a claim and the prior art are to be analyzed from the standpoint of a POSA at the time of the invention. My opinions below regarding a POSA refer to the time of the invention, even if stated in the present tense or otherwise not explicitly linked to the time of the invention.

7. I understand that the obviousness of a claim must be determined prospectively, and not using hindsight.

8. I understand that in judging the obviousness of a claim, I must consider the claim as a whole, and not merely one or more parts of the claim.

9. My understanding is that a POSA faced with a problem can use his or her experience and also look to any available prior art in order to solve the problem.

10. I understand that proving obviousness requires a clear articulation or statement of one or more reasons that the subject matter of a claim would have been obvious. Such a reason can originate from multiple sources, including:

a. Combining prior art elements according to known methods to yield predictable results;

b. Simple substitution of one known element for another to obtain predictable results;

c. Use of a known technique to improve similar devices (methods or products) in the same way;

d. Applying a known technique to a known device (method or product) ready for improvement to yield predictable results;

e. Choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success ("obvious to try");

f. Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; or

g. Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

11. I understand that a reason for modifying or combining references may originate from explicit statements in the prior art, from the knowledge of a POSA, or from the nature of any problem known in the field at the time, even if different from the particular problem addressed by the inventor(s).

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