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The Honorable Ricardo Martinez

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNILOC 2017 LLC

                    Plaintiff,

      v.

HTC AMERICA, INC.

                    Defendant.

Case No. 2:18-cv-01732-RSM

PLAINTIFF'S RESPONSIVE BRIEF AND EVIDENCE IN SUPPORT OF CLAIM CONSTRUCTION

Due Date: April 10, 2020

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TABLE OF AUTHORITIES

Cases

1   Pursuant to Rule 134(c) of the Local Patent Rules, Uniloc submits its Responsive Claim

2   Construction Brief regarding U.S. Patent No. 6,836,654 ("the '654 patent").

3   **I.   INTRODUCTION**

4   HTC's Opening Claim Construction Brief, Dkt. No. 47 ("HTC Br."), is most notable for

5   what it does not say. For example, HTC cites to and quotes from the *Samsung* court's claim

6   construction order some half-dozen times, and to the *Google* court's constructions another eight.

7   But, HTC's Opening Brief fails to even mention that another court, *Motorola*, also construed the

8   terms. Neither did HTC include a copy of the *Motorola* court's claim construction order among the

9   272 pages of exhibits attached to its Opening Brief. This is, presumably, because that court's

10   constructions vitiate HTC's proposed definitions.

11   HTC argues that the "computer readable code" terms of the '654 patent are hidden means-

12   plus-function limitations. But, HTC's Opening Brief fails to mention the key holding in *Williamson*

13   *v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015) (*en banc*)—a case it did cite—to wit: When a

14   term lacks the word "means," the presumption is on the party asserting means-plus-function

15   treatment, *i.e.*, HTC, to prove that § 112, ¶ 6 should apply:

16   When a claim term lacks the word "means," the presumption can be overcome and §
          112, para. 6 will apply *if the challenger* demonstrates that the claim term fails to
17   "recite sufficiently definite structure" or else recites "function without reciting
          sufficient structure for performing that function." The converse presumption remains
18   unaffected: "use of the word 'means' creates a presumption that § 112, ¶ 6 applies."

19   *Id.* at 1349 (emphasis added) (citations omitted). HTC's failure to mention its own burden of proof

20   is, presumably, because it cannot bear that burden.

21   Finally, HTC chastises Uniloc for adapting its constructions between earlier cases and this

22   one. Indeed, HTC goes so far as to state:

23   That Uniloc's proposed structure [for the § 112, ¶ 6 terms] has evolved during its
          litigation campaign undermines its positions in this case because corresponding
24   structure is only that which the specification or prosecution clearly links to
          performing the recited function, not what fits Uniloc's evolving litigation needs.
25
26   HTC Br. at 1. This is an odd charge for two reasons. First, Uniloc "evolved" its constructions

27   *across cases* to accept two courts' constructions of these terms. Uniloc originally proposed more

28   detailed—and frankly narrower—constructions for the § 112, ¶ 6 terms in those cases based upon

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