

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

UNILOC 2017 LLC and UNILOC USA, INC.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2:18-cv-00502-JRG-RSP

JURY TRIAL DEMANDED

**DEFENDANT GOOGLE LLC PATENT RULE 3-3
INVALIDITY CONTENTIONS**

Uniloc Ex. 2003
Google v. Uniloc

Pursuant to Local Patent Rules (“P.R.”) 3-3 and 3-4, Defendant Google LLC (“Google” or “Defendant”) hereby serves its Invalidity Contentions and accompanying document production on Plaintiffs Uniloc 2017 LLC and Uniloc USA, Inc. (collectively, “Uniloc” or “Plaintiffs”). Google’s discovery and investigation in connection with this lawsuit are continuing, and thus these disclosures are based on information reasonably obtained to date in view of the set of claims currently asserted by Uniloc. Google reserves the right to supplement or modify these contentions, consistent with any Court order, Federal Rules, and/or Local Rules, including, but not limited to, P.R. 3-6.

I. INTRODUCTION

In this case, and based on Uniloc’s P.R. 3-1 Infringement Contentions, served on May 6, 2019, Uniloc has asserted only claim 1 of U.S. Patent No. 8,407,609 (“609 Patent” or “Patent-In-Suit”). Claim 1 of the Patent-In-Suit is referred to herein as the “asserted claim.”

Defendant’s Invalidity Contentions are based in whole or in part on its present understanding of Uniloc’s contentions concerning the scope and construction of the asserted claim, including from Uniloc’s Infringement Contentions, and/or Defendant’s own understanding of the scope and construction of those claims. Uniloc’s Infringement Contentions are deficient at least insofar as they fail to articulate how any single accused product, system, or application (or its use) infringes each and every element of the asserted claim, and Defendant reserves the right to amend its Invalidity Contentions in response to any permissible supplementation or amendment of Uniloc’s Infringement Contentions. Defendant reserves the right to interpret these terms differently over the course of the litigation, and does not adopt any interpretations impliedly or expressly put forth in these contentions. Accordingly, Defendant’s Invalidity Contentions, including the attached invalidity claim charts, may reflect alternative positions as to claim

construction and scope. In particular, Defendant's Invalidity Contentions may include contentions of invalidity solely under Uniloc's apparent construction of the asserted claim. Nothing in this document is an admission that Defendant agrees with Uniloc's constructions of the claim, Uniloc's contentions, or that any claim, whether asserted or not, of the Patent-In-Suit is valid, enforceable, or infringed.

The accompanying invalidity claim charts contain specific examples of prior art references, patents, knowledge, inventions, uses, sales, methods, and/or systems which included and/or disclosed, either expressly or inherently, each limitation of the asserted claim and/or examples of prior art references and systems in view of which a person of ordinary skill in the art would have considered each limitation, and the claimed combination of such limitations, obvious. Defendant endeavored to identify exemplary relevant portions and/or features of the identified prior art. The identified prior art, however, may contain additional descriptions of or alternative support for the claim limitations that may not be cited in those charts or elsewhere in the Invalidity Contentions. Defendant hereby provides notice that it may, and shall be entitled to, rely on un-cited portions or features of any identified prior art, other documents, witnesses, and expert testimony to provide context or to aid in understanding the identified prior art. Where Defendant cites to a particular figure in a reference, the citation should be understood to encompass the caption and related description(s) of the figure and any text relating to the figure. Similarly, where Defendant cites to particular text referring to a figure, the citation should be understood to include the figure and caption as well.

Defendant reserves the right to amend these disclosures and associated document productions should Uniloc, for instance, later provide any information that it failed to provide in its P.R. 3-1 and 3-2 disclosures or should Uniloc amend its P.R. 3-1 or 3-2 disclosures in any way.

Defendant also reserves the right to revise its ultimate contentions concerning the invalidity of the asserted claim, which may change depending upon, *e.g.*, any findings as to the priority date of the asserted claim, and/or positions that Defendant or any expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues. Defendant hereby provides disclosures and related documents pertaining to only the asserted claim as identified by Uniloc in its May 6, 2019 Infringement Contentions. Defendant reserves the right to modify, amend, or supplement these Invalidity Contentions to show the invalidity of any additional claims that the Court may allow Uniloc to later assert or to address any continued modification to the set of asserted claim. Defendant further reserves the right to supplement its P.R. 3-4 document production should it later find additional, responsive documents, software and/or source code, to the extent any such materials may be, are, or become relevant.

Defendant further intends to rely on, and incorporates by reference herein, inventor admissions concerning the scope of the asserted claim, and prior art relevant to the asserted claim, found in, *e.g.*: the Patent-In-Suit; the patent prosecution history for the Patent-In-Suit, and related patents and/or patent applications; any deposition testimony of the inventor of, or other witnesses related to, the Patent-In-Suit; any previous testimony or statements of the inventor of the Patent-In-Suit, and any papers filed or any evidence produced or submitted by Uniloc or its affiliates in connection with this litigation, or any previous or parallel litigation, related to the Patent-In-Suit or related patents, or any parallel litigation against Defendant involving other patents purported to be owned and/or asserted by Uniloc. In particular, Defendant reserves the right to contend that the asserted claim is invalid in view of admitted prior art, or, to the extent the Defendant obtains evidence, that the inventor named in the Patent-In-Suit did not invent the subject matter claimed.

Should Defendant obtain such evidence, they will provide the name of the person(s) from whom and the circumstances under which the claimed invention or any part of it was derived.

Prior art not included in these contentions, whether known or not known to Defendant or any other defendant that Uniloc may allege has infringed the Patent-In-Suit, may become relevant and, to the extent not already referred to herein, are incorporated by reference into these contentions. Furthermore, Defendant is currently unaware of the extent, if any, to which Uniloc will contend that limitations of the asserted claim are not disclosed in the prior art identified by Defendant. Defendant reserves the right to identify additional references that would render obvious the allegedly missing limitation(s) of the disclosed device or method. Discovery is ongoing, and Defendant has not completed its investigation into, search for, and analysis of relevant prior art, including, but not limited to, prior art systems. Defendant therefore reserves the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references, should Defendant's continued investigation, search and analysis yield additional relevant information or references, consistent with the Patent Rules, the Federal Rules of Civil Procedure, and/or any other applicable Court order or authority.

Prior art patents or publications included in these Invalidity Contentions may be related (*e.g.*, as a divisional, continuation, continuation-in-part, parent, child, or other relation or claim of priority) to earlier or later filed patents or publications, may have counterparts filed in other jurisdictions, or may incorporate (or be incorporated by) other patents or publications by reference. The listed patents or publications are intended to be representative of these other patents or publications, to the extent they exist. Accordingly, Defendant reserves the right to modify, amend and/or supplement these contentions with these related patents or publications, as well as other prior art references, upon further investigation.

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