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

UNILOC USA, INC., et al,	§	
Plaintiffs,	§	
	§	Case No. 2:16-cv-00393-RWS
v.	§	LEAD CASE
	§	
AVG TECHNOLOGIES USA, INC.,	§	
BITDEFENDER INC.,	§	Case No. 2:16-cv-00394-RWS
PIRIFORM, INC.,	§	Case No. 2:16-cv-00396-RWS
UBISOFT, INC.,	§	Case No. 2:16-cv-00397-RWS
KASPERSKY LAB, INC.,	§	Case No. 2:16-cv-00871-RWS
SQUARE ENIX, INC.,	§	Case No. 2:16-cv-00872-RWS
Defendants.		

UNILOC USA, INC., et al,	§	
Plaintiffs,	§	
	§	Case No. 2:16-cv-00741-RWS
v.	§	LEAD CASE
	§	
ADP, LLC,	§	
BIG FISH GAMES, INC.,	§	Case No. 2:16-cv-00858-RWS
BLACKBOARD, INC.,	§	Case No. 2:16-cv-00859-RWS
BOX, INC.,	§	Case No. 2:16-cv-00860-RWS
ZENDESK, INC.,	§	Case No. 2:16-cv-00863-RWS
Defendants.		

DEFENDANTS' RESPONSIVE SUPPLEMENTAL MARKMAN BRIEF

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Defendants Bitdefender Inc., Piriform, Inc., Ubisoft, Inc., Square Enix, Inc., ADP, LLC, Big Fish Games, Inc., Blackboard Inc., Box, Inc., and Zendesk Inc. (collectively, "Defendants") respectfully submit this supplemental brief pursuant to the Court's Order of July 5, 2017 (2:16-cv-00393 D.I. 168; 2:16-cv-00741 D.I. 199) and responsive to the opening supplemental brief of Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg, SA (collectively, "Plaintiffs" or "Uniloc").[1]

Uniloc asserts four patents related to application management and distribution in a computer network.[2] The '466 and '293 patents share a written description, as do the '766 and '578 patents. (Plaintiffs' opening brief (2:16-cv-00393 D.I. 140; 2:16-cv-00741 D.I. 151) ("Op. Br.") at 2.) The '293 patent claims priority to the '466 patent, and the '766 patent claims priority to the '578 patent. The '578 patent indicates that it is "related" to the '466 patent, and vice versa. (Ex. A, '466 patent 1:8-12; Ex. B, '578 patent 1:9-13).   Finally, each Asserted Patent incorporates by reference the others' specifications. (Ex. A, '466 patent 7:41-48; Ex. B, '578 patent 7:17-24).

Despite these commonalities, Uniloc maintains that the '466 and '766 patents claim fundamentally different inventions from the '293 and '578 patents. Uniloc acknowledges that the asserted claims of the '466 patent (and those reciting application execution in the '766 patent) do not include systems that execute applications at a server, as these claims are limited on their face to execution at a client. (*See* Op. Br. at 4.) Based on the absence of similar express limitations in the asserted claims of the '293 and '578 patents, Uniloc argues that those patents *do* cover systems that execute applications at a server. But Uniloc does not identify a single embodiment

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[1] Defendant Kaspersky Lab, Inc. does not join in this brief, and proposes that the Court adopt Uniloc's constructions of the two terms addressed herein. Each other captioned Defendant submits this supplemental brief insofar as one or more of the Asserted Patents is asserted against that Defendant.
[2] U.S. Pat. Nos. 6,510,466 (the "'466 patent"), 6,728,766 (the "'766 patent"), 6,324,578 (the "'578 patent") and 7,069,293 (the "'293 patent", and collectively, the "Asserted Patents") (provided as Exhibits A-D).

in any specification in suit that does so, other than those distinguished as "background."

Two terms are addressed in this brief. Uniloc originally agreed with Defendants' proposed constructions for these terms. Those constructions come directly from the specification and file history of the patents in suit. Only after initial claim construction briefing was completed did Uniloc realize that these constructions—which Defendants maintain are correct—undermine Uniloc's attempt to broaden the claims of the '293 and '578 patents. Uniloc's about-face required a delay of the Markman hearing and resulted in the instant supplemental briefing.

I.   STATEMENT OF LAW

Defendants refer to the Statement of Law set forth in their Responsive Claim Construction Brief ("Resp. Br.") (2:16-cv-00393 D.I. 150; 2:16-cv-00741 D.I. 159). Defendants emphasize that claims cannot be broader in scope than their underlying disclosure, *see On Demand Mach. Corp. v. Ingram Indus., Inc.*, 442 F.3d 1331, 1340 (Fed. Cir. 2006), and that a patentee's statements during prosecution characterizing a claim term are relevant to understanding the scope of that term even in earlier-issued patents, *see Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1350 (Fed. Cir. 2004). A limited construction of a term is correct if nothing in the record suggests the patentees meant to use the term more broadly than they disclosed at filing. *See Nystrom v. TREX Co.*, 424 F.3d 1136, 1144–46 (Fed. Cir. 2005).

II.   ARGUMENT

A.   "application launcher program"

Defendants' Proposed Construction	Plaintiffs' Proposed Construction
a program distributed to a client to initially populate a user desktop and to request the application program from a server	a program distributed to a client to initially populate a user desktop and to request execution of the application program

The term "application launcher program" appears in—and is used consistently by—the

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