

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

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

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

**EXPEDITED OPPOSED MOTION BY DEFENDANTS PIRIFORM, INC.,
ADP, LLC, BIG FISH GAMES, INC., BLACKBOARD INC.,
BOX, INC., AND ZENDESK INC. FOR LEAVE TO FILE
SUPPLEMENTAL CLAIM CONSTRUCTION BRIEFING**

On July 5, 2017, this Court ordered the captioned parties *inter alia* to file a new Joint Claim Construction and Prehearing Statement “reflecting the parties’ final claim construction positions by Tuesday, July 11, 2017” and to file supplemental claim construction briefing. (2:16-cv-00741-RWS D.I. 199 at 2; 2:16-cv-00393-RWS D.I. 168 at 2.)

Prior to the Court’s order, the parties, pursuant to P.R. 4-1, agreed that the system claims in suit each invoke pre-AIA 35 U.S.C. § 112 ¶6, and, pursuant to P.R. 4-2 and 4-3, had exchanged multiple proposals of “structure(s), act(s), or material(s)” corresponding to each of the over 100 distinct asserted claim elements invoking § 112 ¶6. However, as indicated in the parties’ previous joint claim construction filings, those efforts had not resulted in agreement at the time of the Court’s July 5 order. (*See* 2:16-cv-00741-RWS D.I. 148 and 186; 2:16-cv-00393-RWS D.I. 135 and 159.)

In the July 11, 2017 Joint Statement, Defendants Piriform, Inc., ADP, LLC, Big Fish Games, Inc., Blackboard Inc., Box, Inc., and Zendesk Inc. notified the Court that they were unable to reach final agreement with Plaintiffs regarding the construction of certain means-plus-function terms in the asserted claims. (2:16-cv-00741-RWS D.I. 202 at 7; 2:16-cv-00393-RWS D.I. 169 at 7.) These defendants then identified for the Court their conclusion that at least one means-plus-function term in each asserted system claim of the patents-in-suit rendered that claim indefinite, and suggested that arguments regarding this issue could be “addressed within the parties’ supplemental claim construction briefing and heard at the August 10 Markman hearing.” (*Id.* at 9.)

This issue is ripe for resolution, as the “determination of the contours of the corresponding structure in a means-plus-function claim . . . is a matter of law for courts to decide

because it is a question of claim construction.” *Smiths Indus. Med. Sys., Inc. v. Vital Signs, Inc.*, 183 F.3d 1347, 1358 (Fed. Cir. 1999).

In Its July 5 Order, the Court instructed all defendants to file a responsive supplemental claim construction brief today, August 1. Because that Order only authorized the parties to file supplemental briefs “with respect to the two newly-disputed terms,” (2:16-cv-00741-RWS D.I. 199 at 3; 2:16-cv-00393-RWS D.I. 168 at 3), the moving defendants have not included arguments regarding indefiniteness of the means-plus-function terms in their responsive supplemental claim construction brief. Nevertheless, as Plaintiffs continue to allege infringement of claims containing means-plus-function terms against all defendants, for efficiency sake, and in view of the Docket Control Order’s instruction that the parties include arguments related to indefiniteness in their Markman briefing (*see* 2:16-cv-00741-RWS D.I. 143 at 5; 2:16-cv-00393-RWS D.I. 73 at 5) the moving defendants acknowledge that the Court may wish to address these issues at the August 10 Markman hearing.

Accordingly, Defendants Piriform, Inc., ADP, LLC, Big Fish Games, Inc., Blackboard Inc., Box, Inc., and Zendesk Inc. respectfully request that the Court grant them leave to submit a supplemental brief of no more than 10 pages regarding the indefiniteness of the terms they identified in the July 11, 2017 Joint Statement. Copies of Defendants’ proposed brief and exhibits are attached to the declaration of Matthew J. Moffa, provided herewith. Should the Court enter Defendants’ proposed brief before the August 10 Markman hearing, Defendants further ask that the Court give Plaintiffs the opportunity to respond within three days of entry of Defendants’ brief.

Dated: August 1, 2017

Respectfully submitted,

/s/ Matthew J. Moffa

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