

**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-00741-RWS
v.	§	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.		

**REPLY IN SUPPORT OF MOTION FOR
SUPPLEMENTAL CLAIM CONSTRUCTION BRIEFING**

Defendants ADP, LLC and Big Fish Games, Inc. (“the Moving Defendants”) have asked the Court to hear supplemental briefing addressing the indefiniteness of 11 of the over 100 claim terms drafted in means-plus-function form that are presently asserted by Plaintiffs.¹ (D.I. 217.) Each such claim term lacks a corresponding algorithm in the written description sufficiently linked to its claimed function and is therefore indefinite. (*See id.* at 3 (citing *Cloud Farm Assocs. LP v. Volkswagen Grp. of Am., Inc.*, 674 F. App’x 1000, 1009 (Fed. Cir. 2017).)

Plaintiffs object to briefing this issue on the sole basis that the Moving Defendants’ request is allegedly untimely under the Local Rules. In fact, the motion is timely and ripe for determination. Plaintiffs continue to assert dozens of means-plus-function claims against each defendant, despite failing to provide any specific identifications of corresponding structure in their P. R. 3-1 Infringement Contentions for these claims. Plaintiffs will submit expert reports on infringement (for which Plaintiffs bear the burden of proof) against defendants in the *AVG* cases on September 13 (consolidated under 2:16-cv-393), and defendants in the *ADP* cases (consolidated under 2:16-cv-741) on September 22. Plaintiffs’ expert will have to understand the structure supporting these claims to address their infringement, and the scope of each of these claims is affected by the issue raised in the Moving Defendants’ brief. Yet, as set forth in Moving Defendants’ brief, Plaintiffs and the Moving Defendants presently disagree as to whether *any* structure sufficiently supports these claims. When parties disagree as to the construction and indefiniteness of a claim under 35 U.S.C. 112 ¶6, the Court resolves that

¹ Plaintiffs have repeatedly refused to provide their preliminary and final election of asserted claims as required under General Rule 13-20. Thus the large total number of means-plus-function limitations currently at issue is a result of Plaintiffs’ refusal to comply with the reduction of asserted claims mandated by the local general order. The Moving Defendants’ brief is focused on eleven critical terms, which in fact reduce to six substantive “means” terms and five duplicative “computer readable program code means” terms which Plaintiffs appear to agree are of identical scope. Those terms touch each independent system claim asserted by Uniloc across the patents-in-suit and thus could significantly reduce the scope of this case.

disagreement as a matter of law. *See Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113 (Fed. Cir. 2002).

The Moving Defendants previously raised the uncertainty of the proper construction for these claims in their Joint Submissions to the Court (D.I. 148 at 2-3, D.I. 186 at 1-2), and again at the Court's August 10 Markman hearing, where they noted their position that the specifications of the patents-in-suit lacked clear algorithmic structures linked to the claimed functions. After the Markman hearing, the Court found certain means-plus-function claim terms indefinite. *See* Markman Order (D.I. 233 at 51-55.) As acknowledged at that hearing, Plaintiffs provided only an insufficient, blanket citation to six columns of written description to support those terms. Likewise, no written description clearly supports the additional claims addressed by the Moving Defendants' brief.

Defendants ask the Court to enter their proposed brief (D.I. 218) and set a prompt response deadline for the Plaintiffs, so that the scope of the asserted means-plus-function claims can be resolved before expert reports are due.

Dated: August 21, 2017

Respectfully submitted,

/s/ Matthew J. Moffa

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