

**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.,	§	
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BITDEFENDER LLC,	§	Case No. 2:16-cv-00394-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,	§	
	§	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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Defendants.		

**PLAINTIFFS OPPOSITION TO DEFENDANTS' EMERGENCY MOTION
FOR PROTECTIVE ORDER TO PROHIBIT THE SEPTEMBER 13, 2017
DEPOSITIONS OF MESSRS. COX AND MCGARVEY, AND IBM**

Defendants' object to today's depositions of IBM employee-inventors David Cox and John McGarvey on the grounds of insufficient notice. The history of the noticing of these depositions contradicts Defendants' argument. Defendants themselves issued the original subpoenas noticing their intent to take the depositions of all four of the inventors of the patents-in-suit in July, 2017. Pursuant thereto, the depositions of two of the inventors, David Kaminsky and David Lindquist, were scheduled to and did take place on August 29-30, 2017.

Thereafter, the depositions of Messrs. Cox and McGarvey were previously scheduled, by agreement of Defendants and IBM's counsel, to take place on September 6 and 7, 2017. *See* Motion at 2 ("Working with the Inventors' counsel, depositions of the Inventors were a scheduled for September 6 and 7, 2017."). Accordingly, September 6 and 7 were convenient dates for Defendants' counsel (and the witnesses and IBM) to take the depositions noticed for today. The depositions did not take place on September 6-7, however, because Defendants' counsel abruptly withdrew the subpoena without prior notice to counsel for Uniloc on September 4, 2017 which was Labor Day. *See* Ex. 1 hereto. Counsel for Uniloc responded that same day and indicated that Uniloc intended to proceed with the depositions as scheduled. *See* Ex. 2 hereto.

On September 5, as a result of Defendants' counsel withdrawing the subpoenas the previous day, Uniloc served re-notices of the depositions of Messrs. McGarvey and Cox for September 7. *See* Defs.' Exs. A, B. These are the dates agreed to between IBM's counsel and Defendants' counsel as being convenient for all concerned. Nonetheless, as Defendants' had withdrawn the subpoenas for September 6-7, IBM's counsel had previously released the witnesses and September 7 was no longer convenient for the witnesses. As a result, at the request of IBM's counsel, Uniloc issued new notices on September 6, scheduling the depositions of Messrs. McGarvey and Cox for today. *See* Defs.' Ex. E.

In view of the foregoing, the depositions noticed for today should be permitted to proceed at the next earliest convenient date. September 6-7 were previously agreed to as convenient dates for the parties and these witnesses. The only reason that prevented the depositions from being taken on those dates was Defendants' abrupt withdrawal of the subpoenas.

Uniloc's counsel has already traveled to Raleigh, North Carolina and the deposition of Mr. McGarvey had already commenced with counsel for Defendants also attending in person.

Finally, third-party IBM is not objecting to these depositions.

Date: September 13, 2017

Respectfully submitted,

/s/ Kevin Gannon

Paul J. Hayes
Kevin Gannon
James J. Foster
Prince Lobel Tye LLP
One International Place - Suite 3700
Boston, MA 02110
Tel: 617-456-8000
Email: phayes@princelobel.com
Email: kgannon@princelobel.com
Email: jfoster@princelobel.com

Edward R. Nelson III
ed@nelbum.com
Texas State Bar No. 00797142
Anthony M. Vecchione
anthony@nelbum.com
Texas State Bar No. 24061270
NELSON BUMGARDNER PC
3131 West 7th Street, Suite 300
Fort Worth, Texas 76107
Phone: (817) 377-9111

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 13, 2017.

/s/ Kevin Gannon