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

UNILOC USA, INC., et al.,	§	
	§	Case No. 2:16-cv-00741- RWS
Plaintiffs,	§	LEAD CASE
	§	
v.	§	Case No. 2:16-cv-00858- RWS
	§	
BIG FISH GAMES, INC.,	§	
	§	JURY TRIAL DEMANDED
Defendant.	§	
	§	

DEFENDANT BIG FISH GAMES, INC.'S MOTION TO FIND THE CASE EXCEPTIONAL AND AWARD ATTORNEYS' FEES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Pursuant to 35 U.S.C. § 285, as well as this Court's inherent authority, Defendant Big Fish Games, Inc. ("Defendant" or "Big Fish") respectfully moves for an order finding this case exceptional and awarding Big Fish its attorneys' fees, in an amount to be determined, jointly and severally, against Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together, "Uniloc" or "Plaintiffs").

PRELIMINARY STATEMENT

When compared to the mine run of patent infringement cases, this case proves exceptional under 35 U.S.C. § 285. Uniloc did not advocate a reasonable, albeit ultimately unsuccessful, position. Instead, Uniloc pursued the case despite the existence of an Order from this very Court that any reasonable plaintiff would have treated as unmistakable evidence that no legitimate validity or infringement position existed. Uniloc elected to proceed with meritless litigation that it conducted in a plainly unreasonable manner, while seeking to extract a disproportionate amount in settlement, as it had done with other prior defendants whose "license agreements" are now worthless. Big Fish is not seeking to be rewarded for having fought Uniloc to this point; rather, this case should never have required Big Fish, or any of the other defendants, to defend themselves.

When Plaintiffs' action against Big Fish was still in its early stages, this Court invalidated claims 1, 2, and 7 of U.S. Patent No. 6,510,466 ("the '466 patent") in a related, earlier-filed case.[1] Despite that ruling, Uniloc continued to assert those same invalid claims against Big Fish. Additionally, although Uniloc admitted that these invalidated claims were representative of—and therefore predictive of the invalidity of—the other asserted claims in the '466 patent and two additional, related patents, Uniloc continued to assert those ultimately invalid claims against Big Fish. Uniloc attempted to forestall the obvious conclusion that its patent infringement claims were

---

[1] *See Uniloc USA, Inc. v. AVG Techs. USA, Inc.*, Lead Case No. 2:16-cv-393, Dkt. No. 129 (hereinafter, the "Prior Order").

-1-

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.