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

DEFENDANT BIG FISH GAMES, INC.'S CORRECTED RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER A PORTION OF THIS COURT'S MEMORANDUM OPINION AND ORDER CONSTRUING CERTAIN CLAIM TERMS

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Big Fish Games, Inc. ("Big Fish") hereby opposes the Motion to Reconsider a Portion of this Court's Memorandum Opinion and Order Construing Certain Terms ("Motion") filed by Plaintiffs Uniloc USA, Inc., and Uniloc Luxembourg, S.A. (together, "Uniloc").

PRELIMINARY STATEMENT

Uniloc previously waived its right to contest the Memorandum Opinion and Order construing claim terms ("Claim Construction Order") when it failed to appeal that order to the Federal Circuit at the time it appealed this Court's final judgment dismissing the action. But even if not waived, this Court has previously admonished that "motions for reconsideration should not be used to raise arguments that could, and should, have been made before entry of judgment or to re-urge matters that have already been advanced by a party."[1]

Here, Uniloc simply rehashes prior arguments and resorts to derivative arguments predicated on previously raised or available case law, in contravention of this Court's admonition. Uniloc supports its position with the untimely submission of a new expert declaration, constituting extrinsic evidence,[2] the introduction of which at this point in the litigation is yet another example of Uniloc's ongoing and flagrant disregard of this Court's Patent Rules, as laid out in other pending motions before this Court. *See, e.g.*, Dkt. Nos. 348, 349 (Defendant's Motion to Strike and Reply).

But even if the Court were to consider Uniloc's newly submitted evidence, none of Uniloc's arguments warrant reconsideration of the Court's decision, which correctly relied on statements made during prosecution of U.S. Patent Nos. 6,510,466 ("the '466 Patent") and

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[1] *eTool Dev., Inc. v. Nat'l Semiconductor Corp.*, 881 F. Supp. 2d 745, 749 (E.D. Tex. 2012) (internal quotation omitted).

[2] In fact, the declaration contains only attorney argument disguised as expert testimony, which the Federal Circuit repeatedly has warned is inappropriate.

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