

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

UNILOC USA, INC. and
UNILOC LUXEMBOURG, S.A.,

Plaintiffs,

v.

MOTOROLA MOBILITY LLC

Defendant.

Civil Action No. 2:16-cv-00992-JRG

(LEAD CASE)

JURY TRIAL DEMANDED

UNILOC USA, INC. and
UNILOC LUXEMBOURG, S.A.,

Plaintiffs,

v.

HTC AMERICA, INC.

Defendant.

Civil Action No. 2:16-cv-00989-JRG

(CONSOLIDATED CASE)

JURY TRIAL DEMANDED

**DEFENDANT HTC AMERICA, INC.'S REPLY IN SUPPORT OF ITS MOTION TO
STRIKE PLAINTIFFS' INFRINGEMENT CONTENTIONS (DKT. 133) AND
RESPONSE TO UNILOC'S MOTION FOR LEAVE TO AMEND ITS INFRINGEMENT
CONTENTIONS (DKT. 146)**

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I. INTRODUCTION

In response to HTC's Motion to Strike (the "Motion"), Uniloc concedes that its original contentions failed to comply with the Court's Local Patent Rules by cross-moving for leave to amend its original infringement contentions (the "Cross-Motion"). Uniloc's proposed amended contentions are deficient just like the original contentions. For example, in response to the Motion, Uniloc acknowledges that HTC does not directly infringe the "server," "communication platform system," and "message database" limitations of the asserted '890, '622, and '433 patents. Uniloc's amended contentions assert that these three limitations are found only in third-party networks—not in any HTC accused device. Because Uniloc's amended contentions do not disclose any plausible claim for infringement of those claims, they should be stricken from the case with prejudice.

Uniloc belatedly contends for each and every other claim limitation of each and every asserted claim that the limitation is a "software limitation," invoking P.R. 3-1(g). Uniloc's original contentions did not assert that any claim limitation was a "software limitation." Because Uniloc's "software-limitation" assertion is more than 5 months late and merely serves as another end-run around this Court's Local Patent Rules (and the undisputed obligation to disclose its specific theories as to how HTC allegedly infringes), the amended contentions should be stricken with prejudice.

Additionally, Uniloc does not dispute that its original contentions failed to specifically identify the accused devices by name or model number as is required by Local Patent Rule 3-1(b). In its original contentions, Uniloc accused four "lines" of HTC devices with the Android operating system. Because Uniloc's original contentions failed to specifically identify the accused devices, HTC relied on the 19 devices identified by name or model number in Uniloc's Complaint to produce technical documents and provide discovery responses. In its amended

contentions, Uniloc now seeks to add 179 devices to the ones identified in Uniloc's Complaint. Uniloc's identification of accused devices in its amended contentions is improper because Uniloc (1) adds 81 devices that are unrelated to the previously accused "lines" of devices; (2) accuses 23 devices that operate on a non-Android operating system, which was not previously disclosed in the original contentions; and (3) now accuses 117 devices from among the previously accused "lines" more than 5 months after Uniloc was obligated to accuse them. Because the name and model number of all HTC devices is publicly available and Uniloc cannot (nor has it made any attempt to) show good cause for its failure to comply with P.R. 3-1(b) in its original contentions, the accused products should be limited to the 19 HTC devices operating on the Android operating system that Uniloc identified in its Complaint.

Uniloc's counsel is well aware that flouting a court's local patent rules can be case-dispositive, having failed repeatedly to comply with them in previous cases. *See Adaptix, Inc. v. Apple, Inc.*, No. C-13-01776-PSG, Dkt. 489 at 34, 39 (N.D. Cal. Apr. 7, 2015) (Mr. Foster: "I guess I haven't practiced in this district long enough with these patent local rules, but I guess the way that the courts do it, you do enforce them very rigidly in the dates. ... [B]ut for our unfamiliarity with the way the rules work here, we might now be appellee in front of the Federal Circuit instead of appellate.").

Because Uniloc has still not corrected the deficiencies in its contentions (and, in fact, deleted the infringement theories that appeared in its original contentions) and has wholly failed to comply with the Local Patent Rules requiring Uniloc to crystallize its infringement case and provide its specific theories of infringement, HTC respectfully requests that the Court strike Uniloc's contentions for failure to comply with P.R. 3-1(b) and (c) with prejudice.

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