UNITED STATES DISTRICT COURT
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-992-JRG

DEFENDANT MOTOROLA MOBILITY LLC'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

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Uniloc's brief in opposition to Motorola's motion to dismiss relies extensively on this Court's decision in *Uniloc USA, Inc. v. Avaya Inc.*, No. 6:15-cv-1169-JRG, Doc. 48, Slip Op. (E.D. Tex. May 13, 2016) ("*Avaya* Slip Op."). In fact, Uniloc refers to *Avaya* on nearly every page of its brief. But this case is not *Avaya*. Motorola is entitled to fair notice of Uniloc's claims against ***Motorola*** so that it can understand what it is accused of, adequately defend itself, and properly shape the contours of discovery. *See also Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) ("Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions."); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests"). Uniloc therefore cannot demand this Court to rubber stamp its Complaint simply because it is "substantively the same" as a complaint this Court previously approved. Opp. at 1. Indeed, pleading is not a one-size-fits-all exercise. *See also Ruby Sands LLC v. Am. Nat'l Bank of Texas*, No. 2:15-cv-1955-JRG, 2016 WL 3542430, at *5 (E.D. Tex. June 28, 2016) (noting that Rule 12(b)(6) was meant to address "cut-and-paste pleading practices"). This is a distinct case involving different parties, different patents, and different technologies. The law requires that Uniloc plead plausible facts to state a claim with respect to Motorola, but Uniloc's Complaint fails to provide any reasonable basis for this suit.

I. UNILOC'S COMPLAINT FAILS TO IDENTIFY THE ACCUSED INSTRUMENTALITIES

Uniloc's Complaint alleges that certain Motorola smartphones "and associated servers perform instant voices messaging over Wi-Fi and the Internet." Complaint ¶¶ 30, 41, 52, 63. Nevertheless, as set forth in Motorola's opening brief, Uniloc's Complaint never identifies what these accused "associated servers" might be. Mot. at 5. Tellingly, Uniloc does not dispute that these servers are critical to its infringement allegations against Motorola. *See id.*

Though Uniloc refers in its brief to "servers using WiFi and the Internet" (Opp. at 5), it has stopped short of articulating what the accused "associated servers" might be. Instead, Uniloc points to screenshots from the Complaint and images in Exhibit E. Opp. at 2, 7-10. However, these only purport to show various aspects of Motorola smartphones themselves, not identify any "associated servers." *See* Opp. at 7-10; Complaint ¶¶ 11-29; Complaint, Ex. E. While Uniloc is correct that Motorola smartphones can communicate via servers (Opp. at 6 n.4), nothing in these screenshots, Exhibit E, or any other portion of the Complaint allows Motorola to discern what the servers that are integral to Uniloc's direct infringement allegations might be or even what entity provides the servers. Is Uniloc accusing the wireless "Wi-Fi" routers ubiquitous in homes across the country, the servers of "Internet" service providers, severs belonging to cell phone carriers, or something else? Because the Complaint does not state any claim for joint infringement, which Uniloc does not deny, it is unclear which "servers" could plausibly give rise to a claim of direct infringement against Motorola.[1] *See* Mot. at 6-7.

Uniloc's reliance on *Avaya* is misplaced for the same reason. *See* Opp. at 4. In *Avaya*, Uniloc had clearly accused "Unified Communication software including, without limitation, the Avaya Aura Suites, Core, Power, Foundation, Mobility and Collaboration, including Avaya Communicator with Presence and Multimedia messaging capabilities." *Avaya* Slip Op. at 5. The Court there observed that Uniloc had "identified by name the accused products." *Id.* at 7. Here, unlike in *Avaya*, Uniloc has simply failed to identify some of the accused instrumentalities – the "associated servers" – central to its direct infringement allegations. Thus, this is not a request for an "element-by-element disclosure," as Uniloc contends. Opp. at 10. Rather,

[1] Motorola originally raised the lack of joint infringement allegations with respect to the servers of cell phone carriers, which Uniloc's opposition does not reference. However, this argument would similarly apply to wireless router suppliers, Internet service providers, or other servers provided by any third party.

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