EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNILOC USA, INC., and UNILOC SINGAPORE PRIVATE LIMITED Plaintiff,	)	
v.	)	Civil Action No. 6:10-cv-00373
SONY CORPORATION OF AMERICA, et al. Defendants.	)	

DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO TRANSFER

Plaintiffs Uniloc USA, Inc. and Uniloc Singapore Private Limited (jointly "Uniloc") Opposition to Defendants' Motion to Transfer (Dkt. No.77)[1] ignores this Court's precedent that judicial economy trumps the other transfer factors. The Rhode Island District Court's ("RI District") experience with the U.S. Patent No. 5,490,216 ("'216 Patent") would conserve judicial resources, ensure consistency in claim construction, and avoid duplication of efforts. In fact, the overwhelming evidence favors transfer to the RI District.

I. Judicial Economy Warrants Transfer

Judicial economy may be determinative to a particular transfer motion, even if the convenience of the parties and the witnesses may call for a different result. *Regents of Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1565 (Fed. Cir. 1997). This District consistently recognizes the significance of judicial economy in the § 1404(a) analysis in patent cases.[2]

Uniloc contends that lawsuits filed after the present action, which have not had a preliminary scheduling conference should be given more weight than a previous case that was tried to a verdict. This argument was rejected in *U.S. Ethernet Innovations v. Acer, Inc.,* where the plaintiff contended that because "it has filed a second suit in this district, asserting the same four patents, that the Eastern District of Texas should retain the instant case so as to reduce the risk of inconsistent adjudication between the two recently filed cases." Case No. 6:09-cv-448-JDL, 2010 U.S. Dist. LEXIS 69536, at *32 (E.D. Tex. July 13, 2010). Rejecting this argument the Court stated "in granting such a request, there would be substantial risk as to inconsistent adjudication (especially inconsistent claim construction)" with the prior action. *Id.* The Court

[1] The Opposition should be struck because it is twenty (20) pages long, *i.e.*, five (5) pages longer than allowed by CV-7(a)(2). The Opposition section IV(B)(5) also violates CV-10(a)(5) which requires all pleadings to "be double spaced and in a font no smaller than twelve (12) point type."
[2] *U.S. Ethernet Innovations, LLC v. Acer, Inc.,* Case No. 6:09-cv-448-JDL, 2010 U.S. Dist. LEXIS 69536, at *18 (E.D. Tex. July 13, 2010).

concluded the cases filed in this District did not override the convenience gains established by the prior court's extensive involvement with these patents. *Id.* Here, the Court should reject Uniloc's attempt to defeat transfer by filing subsequent serial lawsuits.

In essence, Uniloc requests that the Court ignore that Uniloc has been litigating the '216 Patent for seven years in the RI District, that there are 443 docket entries in that case, and that the RI District held a 10 day jury trial that considered questions of invalidity, infringement, and damages. In addition, Uniloc's opposition asks the Court to ignore the fact that litigation over the '216 Patent remains pending before the RI District after the Federal Circuit remanded that case for a new trial on damages. *Uniloc USA, Inc. v. Microsoft Corp.* --- F.3d ---, No. 2010-1035, -1055 (Fed. Cir. Jan. 4, 2011). Like the court did in *U.S. Ethernet*, this Court should reject Uniloc's position in order to conserve judicial resources. 2010 U.S. Dist. LEXIS 69536, at *32.

II. This Case Could Have, and Should Have, Been Brought in Rhode Island

Uniloc also argues that this suit could not have been brought in Rhode Island. Uniloc claims only McAfee identifies that it sold or offered "the accused products," arguing that the remaining Defendants merely "refer generically to 'products' and/or 'services'." Pl.'s Opp'n at 5 (Doc. 77). For those Defendants for which Uniloc specifically identified products in the Complaint, the declarations identify that those products were either offered or sold into Rhode Island. Doc. 73, Ex. 13, 17, and 18. These Defendants' references to their "products" are made to the products identified as being accused. With respect to Aspyr, Borland and Activision, the Complaint failed to specify any particular product. Doc. 1 ¶¶ 18, 19, 20. For Uniloc to now suggest that these defendants should have been more specific is disingenuous. Uniloc presents *no contrary evidence* to demonstrate that the products that will be at issue in this litigation were not offered or sold into Rhode Island. *See, e.g., Applera Corp. v. Michigan Diagnostics, LLC*, No.

07-10547-GAO, 2007 WL 4370321 at *2 (D. Mass Dec. 11, 2007). The unopposed declarations establish specific jurisdiction. *See Campbell Pet v. Miale*, 542 F.3d 879, 888 (Fed. Cir. 2008) ("Unless directly contravened, [a party]'s version of the facts is taken as true, and conflicts between the facts . . . must be resolved in . . . favor [of the party seeking to establish jurisdiction] for purposes of deciding whether a prima facie case for personal jurisdiction exists.")

Without obtaining leave of court or consent, Uniloc subsequently filed an Amended Complaint which, in part, identifies certain accused products. Doc. 76 ¶¶ 18, 19, 20. Based on that Amended Complaint, certain Defendants whose products were specifically identified submit Supplemental Declarations to clarify that the named products were offered or sold into Rhode Island. *See* Supplemental Declarations of Sony, Quark and Activision. This additional evidence, as well as that already submitted to the Court, conclusively demonstrates that this case could have been filed in the RI District given the specific jurisdiction requirements of that district.

III. The Private Factors Demonstrate RI District Is the More Convenient Venue

A. The Defendants do not have a significant presence in this district

The vast majority of Defendants are located outside this District. Thus, Uniloc's assertion that "a majority of relevant evidence . . . is likely clustered in and around this district" mischaracterizes the facts. A "majority of relevant evidence" cannot be "clustered in and around this district" when the majority (six (6)) of the Defendants are located outside this District and the majority (four (4)) are located hundreds of miles outside the State of Texas. Pl.'s Opp'n at 8.

Uniloc also argues that the difference in distance between Defendants' headquarters and the respective venues makes the RI District inconvenient. "However, due to the advances in copying, storage, and transfer of data, the accessibility and location of sources of proof is given little weight in the § 1404(a) transfer analysis." *Zoltar Satellite Sys., Inc. v. LG Elecs. Mobile*

Commc'ns. Co., 2005 U.S. Dist. LEXIS 38900, *19 (E.D. Tex. Nov. 30, 2005). This factor does not weigh against transfer.

B. The availability of compulsory process is a neutral factor

The availability of compulsory process is inapplicable since no party identified *unwilling* witnesses. *Sonix Tech. Co. v. VTech Elecs. N. Am., LLC,* 2010 U.S. Dist. LEXIS 130414, *9 (E.D. Tex. Dec. 9, 2010)(J. Love, J.). Even when potential witnesses are identified, it is difficult at "such an early stage of the proceeding" to demonstrate "a showing of particularized inconvenience or refusal to testify from any of the potential witnesses identified," making "[t]he availability of compulsory process factor . . . neutral. . . ." *Aloft Media, LLC v. Adobe Sys., Inc.*, Case No. 6:07-CV-355 (Dkt. No. 66)(E.D. Tex. March 25, 2008). This factor is inapplicable, or at best neutral, and does not weigh against transfer.

C. Uniloc's cost and distance analysis is speculative

Uniloc argues that traveling great distances will carry great cost and inconvenience for willing witnesses. However, "[w]hen a particular witness will be required to travel 'a significant distance no matter where they testify,' then that witness is discounted for purposes of the '100 mile rule' analysis." *Fujitsu Ltd. v. Tellabs, Inc.*, 639 F. Supp. 2d 761, 767 (E.D. Tex. 2009)(citing *In re Genentech, Inc.*, 566 F.3d 1338 (Fed. Cir. 2009)). The majority of Defendants will have to travel a great distance to either jurisdiction. Uniloc's monetary evaluation ignored that many of the costs associated with litigation (such as the technology tutorial) may be avoided given the experience of the RI District. Uniloc's analysis is speculative and unpersuasive.

IV. The Public Factors Demonstrate RI District Is the More Convenient Venue[3]

A. Court congestion favors transfer

Uniloc erroneously contends that its third party study on this district compared to two Rhode Island cases "paint[s] a true picture of the relative congestion between the districts." Pl.'s Opp'n at 13. Uniloc cites to *Realtime Data, LLC v. Packeteer, Inc.*, stating the focus should be on patent cases, not all civil cases.[4] 2009 U.S. Dist. LEXIS 81067, *36-37 (E.D. Tex. Mar. 2, 2009). In that case, plaintiff "provided reliable evidence that patent cases go to trial . . . one year quicker" in the transferee court. *Id.* Uniloc's presentation of two patent cases in the RI District compared to a multitude of cases in this District is not reliable evidence which would suggest that the RI District is far more congested. In fact, the case load suggests otherwise.

B. There is no true local interest

Uniloc has no meaningful connection to this district. As Uniloc admits, it was still a Rhode Island corporation in 2010, well after it filed this string of cases. Pl.'s Opp'n at 1. The facts support that Uniloc established a presence in Texas in order to better situate itself for litigation. The Federal Circuit disapproves of such litigation inspired tactics.[5]

V. Conclusion

Weighing all the transfer factors and to preserve judicial economy, transfer is appropriate in this case.

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[3] The parties agree governing law and avoidance of conflicts of law are neutral. Op. at 14.

[4] Even though the statistics were not patent based, this is a neutral factor. *Realtime Data*, 2009 U.S. Dist. LEXIS 81067 at *36 (finding court congestion factor neutral when average district court times-to-trial statistics did not specifically prove patent cases).

[5] *In re* Apple, Order Denying Motion to Transfer (Fed. Cir. May 12, 2010); *Affinity Labs of Texas, LLC v. Nike, Inc.*, 2:10cv54 (E.D. Tex. Nov. 4, 2010)(granting transfer where plaintiff had long term presence in Texas, but its presence in the district "appear[ed] to be recent, ephemeral, and an artifact of litigation.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to 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). Any other counsel of record will be served by facsimile transmission and/or first class mail this 26th day of January, 2011.

/s/Tom Henson