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

UNILOC USA, INC. and	
UNILOC SINGAPORE PRIVATE LIMITED,	Civil Action No. 6:10-CV-472-LED
Plaintiffs,	JURY TRIAL DEMANDED
v.	
NATIONAL INSTRUMENTS CORP., et al.,	
Defendants.	
SYMANTEC CORP.,	
Counterclaim-Plaintiff,	
v.	
UNILOC USA, INC.,	
UNILOC SINGAPORE PRIVATE LIMITED and	
UNILOC LUXEMBOURG S.A.,	
Counterclaim-Defendants.	

**SYMANTEC CORPORATION'S ANSWER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Defendant and Counterclaim-Plaintiff Symantec Corporation ("Symantec") respectfully

submits this Answer, these Affirmative Defenses, and these Counterclaims in response to the

Complaint for patent infringement filed by Plaintiffs and Counterclaim-Defendants

Uniloc USA, Inc. and Uniloc Singapore Private Limited (collectively, "Uniloc"). To the extent

not specifically admitted herein, the allegations of the Complaint are denied.

JURISDICTION AND VENUE

1.   Answering Paragraph 1, Symantec admits that the Complaint purports to be an action arising under the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.*, but denies that Uniloc's claims have any factual or legal basis. Symantec admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 inasmuch as the Complaint purports to state claims for patent infringement arising under the 35 U.S.C. §§ 271 *et seq.*, but denies any wrongdoing or infringement.

2.   Answering Paragraph 2, Symantec admits that it has solicited and conducted business in this district, but denies that it has committed acts of infringement, either directly or indirectly, within this district or elsewhere, and further denies that this action should proceed against Symantec in this district. To the extent the allegations in paragraph 2 are directed to other defendants, no answer is required. Symantec denies the remaining allegations of Paragraph 2.

3.   Paragraph 3 contains conclusions of law as opposed to allegations of fact, and as such, no answer is required. To the extent Paragraph 3 contains any factual allegations, they are denied. Symantec specifically denies that this action should proceed against Symantec in this district.

THE PARTIES

4.   Answering Paragraph 4, Symantec is informed and believes that Uniloc USA, Inc. has a principal place of business at 2151 Michelson Drive, Irvine, California 92612, and that at various times Uniloc USA, Inc. appears to have been incorporated in Rhode Island and, later, in Texas. Symantec is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4, and on that basis denies them.

5.   Answering Paragraph 5, Symantec is informed and believes that Uniloc Singapore Private Limited is a Singapore corporation. Symantec is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5, and on that basis denies them.

6-14.   The allegations of Paragraphs 6-14 are not directed to Symantec, and therefore no answer is required.

15.   Answering Paragraph 15, Symantec admits that it is a Delaware corporation with a principal place of business at 350 Ellis Street, Mountain View, California. Symantec denies that it regularly conducts business at 738 Highway 6 S., Suite 850, Houston, Texas, 810 Hesters Crossing Road, Round Rock, Texas, 6750 W. Loop S., Suite 500, Houston, Texas, or 15770 Dallas Parkway #1060, Dallas, Texas. Symantec denies that this Court is convenient to Symantec for resolution of this dispute or patent disputes generally. Symantec admits that its registered agent for service in the state of Texas is Corporation Service Co. d/b/a/ CSC - Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Symantec denies the remaining allegations of Paragraph 15, and specifically denies any wrongdoing or infringement.

16-17. The allegations of Paragraphs 16-17 are not directed to Symantec, and therefore no answer is required.

COUNT FOR INFRINGEMENT OF U.S. PATENT NO. 5,490,216

18.   Symantec incorporates each of its responses to Paragraphs 1-17 as though fully set forth herein.

19.   Answering Paragraph 19, Symantec admits that, on its face, United States Patent No. 5,490,216 ("the '216 patent") is titled "System for Software Registration," and has an

3

issue date of February 6, 1996. Symantec denies that the '216 patent was duly and legally issued. Symantec is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 19, and on that basis denies them.

20.   Symantec is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20, and on that basis denies them.

21.   Symantec is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21, and on that basis denies them.

22-30. The allegations of Paragraphs 22-30 are not directed to Symantec, and therefore no answer is required.

31.   Symantec denies the allegations of Paragraph 31, and specifically denies any wrongdoing or infringement.

32.   The allegations of Paragraph 32 are not directed to Symantec, and therefore no answer is required.

33.   Symantec denies the allegations of Paragraph 33 as to Symantec. To the extent the allegations of Paragraph 33 are directed to other defendants, no answer is required.

34.   Symantec denies the allegations of Paragraph 34 as to Symantec. In addition to the absence of an objectively high likelihood of any possible infringement of the '216 patent by Symantec, there is and was no objectively high likelihood that the '216 patent is valid. This is evidenced, in part, by the *ex parte* reexamination proceeding of the '216 patent (control number 90/010,831) currently in progress in the United States Patent and Trademark Office. In that proceeding, the Patent and Trademark Office has rejected all claims of the '216 patent as unpatentable in view of certain prior art. An invalid patent claim cannot be infringed. Accordingly, Uniloc has no reasonable basis for asserting that any alleged infringement by

4

Symantec was willful. To the extent the allegations of Paragraph 34 are directed to other defendants, no answer is required.

RESPONSE TO PRAYER FOR RELIEF

Symantec denies that it infringes or has infringed, either directly or indirectly, any valid and enforceable claim of the '216 patent. Symantec further denies that Uniloc is entitled to any of the relief requested against Symantec, or any other relief of any kind.

RESPONSE TO JURY DEMAND

Symantec admits that the Complaint purports to demand a jury trial on all issues triable by a jury.

AFFIRMATIVE DEFENSES

Symantec alleges and asserts the following defenses in response to the allegations in the Complaint, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, Symantec specifically reserves all rights to allege additional affirmative defenses that become known through the course of discovery. For its affirmative defenses to the Complaint, Symantec alleges as follows:

FIRST AFFIRMATIVE DEFENSE
(Non-Infringement)

35. Uniloc's claims are barred because Symantec has not infringed, either directly or indirectly, any valid, enforceable claim of the '216 patent. Symantec is not liable for infringement of the '216 patent, and Uniloc's allegations to the contrary are without foundation and have been made without any good faith basis.

5

SECOND AFFIRMATIVE DEFENSE
(Invalidity)

36.   Uniloc's claims are barred because the claims of the '216 patent are invalid for failure to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including without limitation the requirements in 35 U.S.C. §§ 101, 102, 103 and/or 112.

37.   In the *ex parte* reexamination proceeding of the '216 patent (control number 90/010,831), currently in progress in the United States Patent and Trademark Office, the Patent and Trademark Office has rejected all claims of the '216 patent as being unpatentable in view of certain prior art.

THIRD AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

38.   Uniloc's claims are barred by the doctrine of prosecution history estoppel.

FOURTH AFFIRMATIVE DEFENSE
(Improper Joinder)

39.   On information and belief, Uniloc improperly joined multiple unrelated defendants in an effort to circumvent the rules relating to joinder.

FIFTH AFFIRMATIVE DEFENSE
(Inconvenient Venue)

40.   Venue for this action, at least as to Symantec, is inconvenient in this district and more properly would reside in another district, including the District of Rhode Island.

SIXTH AFFIRMATIVE DEFENSE
(No Entitlement to Injunctive Relief)

41.   Uniloc is not entitled to injunctive relief under any theory, including without limitation, because any alleged injury to Uniloc is not immediate or irreparable, Uniloc has an adequate remedy at law, and/or public policy concerns weigh against any injunctive relief.

WHEREFORE, Symantec denies that it infringes or has infringed, either directly or indirectly, any valid and enforceable claim of the '216 patent, and further denies that Uniloc is

entitled to any judgment against Symantec whatsoever. Symantec asks that the Complaint be dismissed with prejudice, that judgment be entered for Symantec, and that Symantec be awarded its attorneys' fees incurred in this action, together with such other relief the Court deems appropriate. Symantec reserves the right to seek severance, dismissal and/or transfer based on improper joinder and inconvenient venue as alleged above.

COUNTERCLAIMS

For its counterclaims, Symantec alleges as follows pursuant to Federal Rule of Civil Procedure 13:

PARTIES

1.   Symantec is a Delaware corporation with a principal place of business at 350 Ellis Street, Mountain View, California 94043.

2.   Uniloc USA, Inc. ("Uniloc USA") states in the Complaint that it is a Texas corporation with a principal place of business at 2151 Michelson Drive, Irvine, California 92612.

3.   Uniloc Singapore Private Limited ("Uniloc Singapore") states in the Complaint that it is a Singapore corporation with a principal place of business at 80 Raffles Plaza, # 33-00 UOB Plaza I, Singapore 048624.

4.   Symantec is informed and believes that Uniloc Luxembourg S.A. ("Uniloc Luxembourg") is a Luxembourg corporation with a principal place of business at 15, Rue Edward Steichen, Luxembourg, Luxembourg L-2540.

JURISDICTION AND VENUE

5.   This is an action for declaratory relief over which this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202.

7

6. In the Complaint, Uniloc USA and Uniloc Singapore purport to assert claims against Symantec for infringement of the '216 patent.

7. Uniloc USA claims to be the exclusive licensee of the '216 patent in the United States.

8. Uniloc Luxembourg claims to be the present owner of the '216 patent.

9. Uniloc Singapore claims to be a wholly owned subsidiary of Uniloc Luxembourg, and to have assigned all rights, title, and interest in the '216 patent to Uniloc Luxembourg.

10. As a result of Uniloc Singapore's purported assignment, it is seeking to substitute Uniloc Luxembourg in its place for the purpose of asserting infringement claims against Symantec with respect to the '216 patent.

11. Symantec denies Uniloc USA, Uniloc Singapore and Uniloc Luxembourg's claims of infringement of the '216 patent, and further denies that such claims have been brought in good faith.

12. Thus, an immediate, real and justiciable controversy has arisen and now exists between Symantec on the one hand, and Uniloc USA, Uniloc Singapore and Uniloc Luxembourg on the other hand, as to the non-infringement and invalidity of the '216 patent.

13. Symantec does not believe that venue is proper in this district with respect to the present action brought by any of the foregoing Uniloc entities. However, if the present action remains in this district, venue is proper on these Counterclaims because these Uniloc entities have consented to jurisdiction in this district by filing suit against Symantec in this district.

14. The foregoing Uniloc entities have submitted to the personal jurisdiction of this Court by bringing the present action.

COUNTERCLAIM ONE
(Declaratory Judgment of Non-Infringement of the '216 Patent)

15.   Symantec restates and incorporates by reference each of the allegations of its Counterclaims in Paragraphs 1-14.

16.   The Uniloc entities assert, in Paragraph 31 of the Complaint, that Symantec "has directly and/or indirectly infringed at least one claim of the '216 patent in this judicial district and elsewhere in Texas and the United States by, among other things, making, using, offering for sale, selling and/or importing a system, device and/or method for reducing software piracy, reducing casual copying and/or reducing the unauthorized use of software, including without limitation Symantec's Norton Antivirus 2010 product that permits customers to activate and/or register software."

17.   Symantec denies these claims of infringement and believes that the Complaint has been filed without good cause and without any good faith basis for believing the allegations to be true.

18.   Thus, an immediate, real and justiciable controversy has arisen between Symantec on one hand, and Uniloc USA, Uniloc Singapore and Uniloc Luxembourg on the other hand, concerning the alleged infringement of the '216 patent.

19.   Symantec is entitled to declaratory judgment from this Court that it has not and does not infringe, directly or indirectly, any valid, enforceable claim of the '216 patent.

20.   Symantec is further entitled to judgment from this Court finding that this is an exceptional case entitling Symantec to recover its attorneys' fees, costs, and expenses incurred in defending against this action.

COUNTERCLAIM TWO
(Declaratory Judgment of Invalidity of the '216 Patent)

21. Symantec restates and incorporates by reference each of the allegations of its Counterclaims in Paragraphs 1-20.

22. As noted above, the Uniloc entities have sued Symantec in the present action, alleging infringement of the '216 patent. Thus, an immediate, real and justiciable controversy has arisen between Symantec on one hand, and Uniloc USA, Uniloc Singapore and Uniloc Luxembourg on the other hand, concerning the validity of the '216 patent.

23. Symantec denies that the '216 patent is valid and asserts that the '216 patent is invalid for failure to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including without limitation the requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

24. In the *ex parte* reexamination proceeding of the '216 patent (control number 90/010,831), currently in progress in the United States Patent and Trademark Office, the Patent and Trademark Office has rejected all claims of the '216 patent as being unpatentable in view of certain prior art.

25. Symantec is entitled to declaratory judgment from this Court that the claims of the '216 patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, Symantec prays that this Court:

A. Find that Uniloc USA, Uniloc Singapore and (if added to or substituted into this action) Uniloc Luxembourg take nothing by their Complaint;

B. Enter judgment against Uniloc USA, Uniloc Singapore and (if added to or substituted into this action) Uniloc Luxembourg and in favor of Symantec on the claims set forth in the Complaint and that such claims be dismissed with prejudice;

10

C.   Find and declare that Symantec has not infringed and does not infringe in any manner any valid, enforceable claim of the '216 patent;

D.   Find and declare that the claims of the '216 patent are invalid;

E.   Find that this is an exceptional case and award Symantec its attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise;

F.   Award Symantec all of its costs and expenses incurred in this action; and

G.   Grant Symantec such other and further relief as the Court shall deem just and proper.

DEMAND FOR JURY TRIAL

Symantec demands a trial by jury on all issues so triable.

Dated: July 14, 2010

Respectfully submitted,

/s/ Mark A. Flagel, with permission by
Michael E. Jones

Michael E. Jones
State Bar No. 10929400
mikejones@potterminton.com
Allen F. Gardner
State Bar No. 24043679
allengardner@potterminton.com
POTTER MINTON
A Professional Corporation
110 N. College Ave., Suite 500
Tyler, Texas 75702
Tel: (903) 597 8311
Fax: (903) 593 0846

LATHAM & WATKINS LLP
Mark A. Flagel
Yury Kapgan
Dale Chang
355 S. Grand Avenue
Los Angeles, CA 90071-1560
Tel: (213) 485-1234

11

Fax: (213) 891-8763
mark.flagel@lw.com
yury.kapgan@lw.com
dale.chang@lw.com

LATHAM & WATKINS LLP
Dean G. Dunlavey
650 Town Center Drive
20th Floor
Costa Mesa, CA 92626-1925
Tel: (714) 755-8260
Fax: (714) 755-8290
dean.dunlavey@lw.com

**ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIM-PLAINTIFF
SYMANTEC CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who 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) on July 14, 2011. Any other counsel of record will be served by electronic mail or first class U.S. mail on this same date.

/s/ Michael E. Jones
Michael E. Jones