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

UNILOC USA, INC., ET AL.	§	
Plaintiffs,	§	
	§	
	§	
vs.	§	**CASE NO. 6:10-CV-373**
	§	**PATENT CASE**
SONY CORPORATION OF AMERICA,	§	
ET AL.	§	
Defendants.	§	
UNILOC USA, INC., ET AL.	§	
Plaintiffs,	§	
	§	
	§	
vs.	§	
	§	**CASE NO. 610-CV-471**
DISK DOCTORS LABS, INC., ET AL.	§	**PATENT CASE**
Defendants.	§	
	§	
	§	
UNILOC USA, INC., ET AL.	§	
Plaintiffs,	§	
	§	
	§	
vs.	§	
	§	**CASE NO. 610-CV-472**
NATIONAL INSTRUMENTS CORP., ET	§	**PATENT CASE**
AL.	§	
Defendants.	§	
UNILOC USA, INC., ET AL.	§	
Plaintiffs,	§	
	§	
	§	
vs.	§	**CASE NO. 610-CV-591**
	§	**PATENT CASE**
ENGRASP, INC., ET AL.	§	
Defendants.	§	
	§	

	§	
UNILOC USA, INC., ET AL.	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	**CASE NO. 6:10-CV-636**
BMC SOFTWARE, INC., ET AL.	§	**PATENT CASE**
Defendants.	§	
	§	

	§	
UNILOC USA, INC., ET AL.	§	
Plaintiffs,	§	
	§	
vs.	§	**CASE NO. 6:10-CV-691**
	§	**PATENT CASE**
FOXIT CORPORATION, ET AL.	§	
Defendants.	§	
	§	

	§	
SYMANTEC CORPORATION, ET AL.	§	
Plaintiffs,	§	
	§	
vs.	§	**CASE NO. 6:11-CV-33**
	§	**PATENT CASE**
UNILOC USA, INC., ET AL.	§	
Defendants.	§	
	§	

ORDER

This provisional claim construction Order sets forth the Court's initial constructions for the disputed claim terms in U.S. Patent No. 5,490,216 ("the '216 patent"). The Court will issue a Memorandum Opinion, including a full analysis of the disputed claim terms, at a later date. The Court may modify these provisional constructions when it issues the Memorandum Opinion. This Order is intended to serve as a guideline and framework with which the parties may proceed at an earlier point in the litigation.

BACKGROUND

Uniloc USA, Inc., et. al asserts the '216 patent against Defendants. The '216 patent is now before the Court for claim construction.

'216 PATENT

1. **permits use of said digital data . . . only if [the local licensee unique ID] has matched [the remote licensee unique ID][1]**

Plaintiff's Proposed Construction	Defendants' Proposed Construction
The ordinary meaning of the phrase is clear and unambiguous. Thus, the phrase does not require construction.	When [the local and remote licensee unique IDs] have matched then the use of said digital data is permitted.

The Court provisionally finds that this term does not require construction.

2. **Reexamination Disclaimer 1: Licensee Unique ID[2]**

Plaintiff's Proposed Construction	Defendants' Proposed Construction
There is no disclaimer in the reexamination file history.	The licensee unique ID/Security Key cannot be generated by a checksum, summation algorithm, summer, or equivalents thereof, used to test data integrity.

The Court provisionally finds that there is no disclaimer in the reexamination file history.

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[1] The term is used in claim 1.

[2] This will apply to all asserted claims.

3. Reexamination Disclaimer 2: Licensee Unique ID[3]

Plaintiff's Proposed Construction	Defendants' Proposed Construction
There is no disclaimer in the reexamination file history.	The licensee unique ID generated by the means recited in each of the claims must be derived from at least one piece of information that is specific to the user, such as name, billing information, or product information unique to the installation entered by the user. The information cannot be specific to the computer or independently generated by the computer.

The Court provisionally finds that there is no disclaimer in the reexamination file history.

MOTIONS

At the *Markman* hearing, the Court heard argument on various pending motions. The Court hereby **DENIES** Defendant Activision Blizzard, Inc.'s Motion to Strike Plaintiff's First Amended Infringement Contentions (*Uniloc v. Sony Corporation of America, Inc.*, 6:10cv373, Doc. No. 175) and Defendant Pervasive Software's Motion For Leave to Construe Previously Construed Term (*Uniloc v. National Instruments Corp.*, 6:10cv472, Doc. No. 243). The Court may issue Memorandum Opinions regarding these rulings at a later date.

The parties also represented during the hearing that Uniloc's Motion to Compel Defendant Intego, Inc. To Produce Sales Data (*Uniloc v. Disk Doctors Lab, Inc.*, 6:10cv471, Doc. No. 203), Motion For Protective Order (*Uniloc v. National Instruments Corp.*, 6:10cv472, Doc. No. 200) and Motion to Expedite Briefing Schedule regarding Plaintiffs Motion For Entry of Protective Order

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[3] This will apply to all asserted claims.

(*Uniloc v. National Instruments Corp.*, 6:10cv472, Doc. No. 201) have been resolved. Accordingly, those motions are **DENIED** as **MOOT**.

CASE MANAGEMENT

Early in this multiple-defendant case, the Court held a status conference to both flesh out Plaintiff's rationale for suing more than 124 defendants, and to entertain ideas regarding case management of a series of cases of this magnitude. *See Uniloc v. Sony Corp. of America, et. al.*, 610cv373, Doc. No. 126; *see also Raylon, LLC v. Complus Data Innovations, Co., et. al.*, 6:09cv355, Doc. No. 147 at 5; *Parallel Networks, LLC v. Abercrombie & Fitch Co., et. al.*, 6:10cv111, Doc. No. 338. Given the total number of defendants and the relative size of these cases, the Court requested input from the parties regarding strategies to promote the efficient and economical management of these cases. Based on the Court's assessment of the case and the parties' input, the Court modified its standard docket control order and fashioned a unique schedule regarding discovery disclosures for these cases.

First, the Court maintained the normal early disclosure of Uniloc's Infringement Contentions under P.R. 3-1 and 3-2. *Id.* at 6. The Court also implemented an early disclosure of Uniloc's previous licenses and Defendants' accused product sales data. *Id.* at 6-7. Next, the Court set an early mediation deadline, and deferred P.R. 3-3 and 3-4 (Invalidity Contentions and Accompanying Disclosures) and all other disclosures under Federal Rule of Civil Procedure 16 until after the early mediation deadline. *Id.* at 6-7. Defendants also had the option to disclose source code related to the accused instrumentalities identified in Uniloc's P.R. 3-1(c) chart(s). *Id.* If a Defendant chose to disclose its source code, Uniloc was obligated to amend its P.R. 3-1(c) chart(s), incorporating the source code, within 30 days. *Id.* The parties would then mediate the case, and only after the

mediation were Defendants required to comply with P.R. 3-3 and 3-4 and the exchange of disclosures according to the Court's Discovery Order. *Id.* at 6-7.

At the *Markman* hearing, the parties provided comments regarding the results of this modified schedule. The parties reported that of the 124 Defendants initially named and the 95 remaining Defendants that appeared at the April status conference, only 20 parties remained in the case.[4] In other words, across all cases, a total of 104 Defendants resolved their differences with Uniloc without the need for expensive and extensive early discovery. The parties agreed that the early disclosure of source code and sales data facilitated substantive discussions regarding non-infringement and allowed the parties to evaluate their relative positions at an early stage without the need for voluminous and expensive discovery. The parties also stated that the Court's approach to this type of case, *i.e.* multiple defendant software patent case, allowed the parties to narrow the number of asserted claims and accused products significantly, in turn, reducing the cost of discovery for the remaining parties.

A few Defendants voiced concern regarding the "compressed" nature of the Court's modified schedule. To which, the Court encouraged and encourages any future multiple defendant parties to substantively voice this concern early in the process so the Court can evaluate the need to extend any deadlines set out in a modified schedule.

The Court commends the parties for taking the modified schedule seriously and significantly narrowing the number of parties, claims, and accused products that are at issue in this case. The Court notes that despite the very vocal criticism of large multiple-defendant cases, this case in

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[4] The remaining 95 defendants consisted of 79 defendant groups. The remaining 20 defendants consist of 17 defendant groups.

particular demonstrates that with willing parties, the Court can fashion a litigation process that attempts to successfully address the myriad concerns of all parties. As a result, this leads to efficient and economical resolution of these cases with regard to many Defendants without the need for expensive discovery. The Court can imagine the expense that each party may have borne had these cases been filed serially in far-flung venues across the nation. Not to mention—had these cases been filed serially across the nation—the concept of any *judicial* economy would have been severely undermined. The Court has also observed that many Defendants in these multiple party suits save significantly by sharing costs for, among other things, experts and third-party discovery vendors.

In addition, the Court has increasingly faced cases involving patents that have been previously construed in another District Court and/or at the Federal Circuit. The Court notes that multiple Defendant suits, run efficiently and economically, may avoid some of the thorny *stare decisis* issues that invariably arise when a patent has been previously evaluated by another court and/or the Federal Circuit. In a multiple defendant suit, all parties with a stake in the construction of the patent terms are afforded an opportunity to have their arguments heard at one time. Absent such a scenario, a particular Defendant may be bound by a previous construction in which it had no input. *See e.g. Eolas Technologies, Inc. v. Adobe Systems, Inc., et. al.*, 6:09cv446, Doc. No. 989.

The Court again commends the parties for their willingness to work toward the efficient resolution of these cases. As mentioned at the *Markman* hearing, this provisional claim construction order triggers the parties' responsibility to meet and confer and to jointly file in each case a notice that the cases are ready for a management conference. *See Uniloc v. Sony Corp. of America, et. al.*, 610cv373, Doc. No. 126 at 7-8.

So ORDERED and SIGNED this 3rd day of November, 2011.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE