

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

UNILOC USA, INC. and

UNILOC SINGAPORE PRIVATE LIMITED,

Plaintiffs,

v.

NATIONAL INSTRUMENTS CORP. et al.,

Defendants.

Case No. 6:10-CV-472-LED

**DECLARATION OF MARK A. FLAGEL IN SUPPORT OF
SYMANTEC CORPORATION'S MOTION TO DISMISS FOR IMPROPER VENUE,
PURSUANT TO RULE 12(B)(3), FEDERAL RULES OF CIVIL PROCEDURE**

CASE NO. 6:10-CV-472-LED

FLAGEL DECLARATION IN SUPPORT OF
SYMANTEC'S MOTION TO DISMISS

I, Mark A. Flagel, declare as follows:

1. I have personal knowledge of the facts contained in this declaration, except where indicated otherwise, and if called upon to do so, I could and would testify competently thereto.

2. I am a partner with the law firm of Latham & Watkins LLP, counsel of record for Defendant and Counterclaim-Plaintiff Symantec Corporation (“Symantec”). I am a member in good standing of the State Bar of California. I submit this declaration in support of Symantec’s Motion to Dismiss.

3. Attached hereto as **Exhibit A** is a true and correct copy of the patent license agreement regarding U.S. Patent. No. 5,490,216 between Uniloc Corporation Pty Limited and XtreamLok, Pty dated September 10, 2002.

4. Attached hereto as **Exhibit B** is a true and correct copy of the complaint filed by Uniloc Corporation Pty Limited, Uniloc USA, Inc. and Uniloc (Singapore) Private Limited (collectively “Uniloc”) against XtreamLok, Pty (“XtreamLok”) and Symantec in the Central District of California on May 30, 2008, Case No. 2:08-cv-03574-DOC-MLGx.

5. Attached hereto as **Exhibit C** is a true and correct copy of the Stipulation to Stay Case Pending Arbitration of Plaintiffs’ Breach of Contract Cause of Action, Docket No. 21, *Uniloc Corp. Pty Ltd. v. XtreamLok, Pty*, No. 2:08-cv-03574-DOC-MLGx (C.D. Cal.), entered into by Uniloc, XtreamLok and Symantec on October 21, 2008.

6. Attached hereto as **Exhibit D** is a true and correct copy of the Order Staying Case Pending Arbitration, Docket No. 22, *Uniloc Corp. Pty Ltd. v. XtreamLok, Pty*, No. 2:08-cv-03574-DOC-MLGx (C.D. Cal. Oct. 22, 2008).

7. Attached hereto as **Exhibit E** is a true and correct copy of my October 30, 2009 letter to Uniloc's attorney following the arbitration between Uniloc and XstreamLok and Symantec, with the amount of the payment redacted.

8. Attached hereto as **Exhibit F** is a true and correct copy of the complaint filed by Symantec and XstreamLok against Uniloc in the Central District of California on October 1, 2010, Case No. 8:10-cv-01483-DOC-MLGx.

9. On October 31, 2010, three days after the due date for Uniloc's response to Symantec and XstreamLok's complaint, I sent an email to Dean Bostock, Uniloc's litigation counsel, asking for Uniloc's answer to Symantec's prior request that Uniloc dismiss Symantec from this action, and notifying Mr. Bostock that it appeared Uniloc had not timely filed a response to the complaint. Mr. Bostock responded on November 1, 2010 that Uniloc would file a related complaint in California, and dismiss Symantec from this action. Mr. Bostock also requested a 14 day extension to file a response to Symantec and XstreamLok's complaint. I responded that same day, indicating that Symantec and XstreamLok would stipulate to the extension and requesting confirmation from Mr. Bostock that "Uniloc intends to file in California before [Symantec's] response is due in Texas, and that [Uniloc] will thus dismiss the Texas action before [Symantec] ha[s] to respond." Mr. Bostock provided confirmation later that day.

10. Attached hereto as **Exhibit G** is a true and correct copy of the email correspondence described in paragraph 9 above.

11. On November 5, 2010, Mr. Bostock informed me that while Uniloc intended to file an Answer and Counterclaims in the California action, Uniloc had changed its mind and would not voluntarily dismiss Symantec from this action.

12. Attached hereto as **Exhibit H** is a true and correct copy of Uniloc's Answer to Symantec and XstreamLok's Complaint, Docket No. 13, *Symantec Corp. v. Uniloc USA, Inc.*, No. 8:10-cv-01483-DOC-MLGx (C.D. Cal.).

13. Attached hereto as **Exhibit I** is a true and correct copy of Uniloc's Counterclaims against Symantec and XstreamLok, Docket No. 15, *Symantec Corp. v. Uniloc USA, Inc.*, No. 8:10-cv-01483-DOC-MLGx (C.D. Cal.).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and ability.

Executed on November 18, 2010

/s/ Mark A. Flagel
Mark A. Flagel