

Exhibit F

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22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA

24 SACV10-01483 JVS (MLGx)

25 SYMANTEC CORPORATION and
26 XTREAMLOK, PTY,

27 Plaintiffs,

28 v.

UNILOC USA, INC., UNILOC
(SINGAPORE) PRIVATE LIMITED
and UNILOC CORPORATION PTY
LIMITED,

Defendants.

CIVIL ACTION NO.

**COMPLAINT FOR
(1) DECLARATORY JUDGMENT
AND (2) MONEY PAID TO
DEFENDANTS**

DEMAND FOR JURY TRIAL

FILED
2010 OCT - 1 AM 10:33
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

1
2 **COMPLAINT**

3 Plaintiffs Symantec Corporation (“Symantec”) and XtreamLok, Pty
4 (“XtreamLok”) hereby plead against Defendants Uniloc USA, Inc., Uniloc
5 (Singapore) Private Limited and Uniloc Corporation Pty Limited (collectively,
6 “Uniloc”) the following claims for Declaratory Judgment and Money Paid to
7 Defendants, and allege as follows:

8 **PARTIES**

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

11 2. Plaintiff XtreamLok is a Proprietary Limited Company existing
12 under the laws of Australia. XtreamLok is an indirect subsidiary of Symantec.

13 3. On information and belief, Defendant Uniloc USA, Inc. is a
14 corporation with its principal place of business at 2151 Michelson, Suite 100,
15 Irvine, CA 92612, and claims to be the exclusive licensee of U.S. Patent No.
16 5,490,216 (“the ’216 patent”), attached hereto as Exhibit A. In various actions, it
17 has described itself as a Rhode Island corporation and, more recently, a Texas
18 corporation, as described further below, but in all cases it has alleged that its
19 principal place of business is the California address noted above.

20 4. On information and belief, Defendant Uniloc (Singapore) Private
21 Limited is a limited liability company existing under the laws of Singapore, and
22 owns all right, title and interest in the ’216 patent, subject to Uniloc USA, Inc.’s
23 exclusive license.

24 5. On information and belief, Defendant Uniloc Corporation Pty
25 Limited is a Proprietary Limited Company existing under the laws of Australia. In
26 a 2002 agreement in which Uniloc licensed the ’216 patent to XtreamLok,
27 discussed further below, Uniloc Corporation Pty Limited represented that it “is the
28 owner of certain proprietary rights” to the ’216 patent.

1 6. All three Uniloc entities previously filed an action in this Court
2 against Symantec and XstreamLok for infringement of the '216 patent, which was
3 assigned to the Honorable David O. Carter and then stayed pending the resolution
4 of an arbitration, as explained further below.

5 **JURISDICTION AND VENUE**

6 7. The Court has subject matter jurisdiction over this action and the
7 matter pleaded herein under 28 U.S.C. §§ 1331 and 1338(a) because the action
8 arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* and
9 the Patent Act of the United States, 35 U.S.C. § 1, *et seq.* This Court has
10 supplemental jurisdiction over the state law claim alleged herein under
11 28 U.S.C. § 1367(a).

12 8. Venue is proper in the United States District Court for the Central
13 District of California pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part
14 of the acts giving rise to the claim occurred in this District, and all three Uniloc
15 entities, having filed an action in this District and stipulated to continuing
16 jurisdiction within this District, are subject to personal jurisdiction in this District.

17 **GENERAL ALLEGATIONS**

18 9. In May 2008, all three Uniloc entities filed an action in the Central
19 District of California against Symantec and XstreamLok, alleging infringement of
20 the '216 patent, unfair competition and breach of contract (Civil Action No.
21 CV 08-03574 DOC(MLGx)). A copy of the Complaint in that action is attached
22 hereto as Exhibit B. XstreamLok had obtained a license to the '216 patent in a
23 September 2002 agreement, and Uniloc alleged that XstreamLok failed to pay
24 certain royalties owed under the agreement based on revenue that XstreamLok
25 received from its customer, Symantec. Uniloc alleged that XstreamLok breached
26 the agreement, that the agreement was terminated, and that XstreamLok's
27 technology infringed its patent. It also alleged that Symantec was liable for
28 infringement as a result of licensing XstreamLok's technology and thereafter (in

1 May 2005) indirectly acquiring XstreamLok. Symantec and XstreamLok have
2 consistently maintained that they do not infringe, and that the XstreamLok
3 technology was never covered by, the '216 patent.

4 10. In October 2008, the parties agreed to arbitrate the breach of
5 contract claim, and to stay the remaining claims pending resolution of that
6 arbitration. Specifically, they stipulated that “once the arbitration of that [breach
7 of contract] claim is concluded, this matter may be re-activated so that this Court
8 may address any remaining claims for Patent Infringement and Unfair
9 Competition.” The parties further stipulated that “once the arbitration is
10 concluded, this Court may determine what, if any, impact the decision in the
11 arbitration has on the other claims raised in the Complaint,” and that “*this court*
12 *will retain jurisdiction to decide Uniloc’s claims for Patent Infringement and*
13 *Unfair Competition to the extent that either party contends any claims or issues*
14 *remain in accordance with applicable law.”* A copy of this Stipulation is attached
15 hereto as Exhibit C. This Court then ordered a stay pending the outcome of the
16 arbitration, specifically noting that it “*shall retain jurisdiction* over Uniloc’s
17 Patent Infringement and Unfair Competition Claims, and shall re-activate the
18 matter upon application of the parties upon completion of the arbitration to allow
19 the continuation of the action as to any claims and issues which either party may
20 contend remain to be resolved in accordance with applicable law.” A copy of this
21 Order is attached hereto as Exhibit D.

22 11. The narrow issue to be addressed in the arbitration was whether,
23 *assuming* (without admitting) that the accused technology was covered by the
24 ‘216 patent, the 2002 agreement was breached. If the arbitrator determined that
25 there was no breach of contract (with the foregoing assumption), then XstreamLok
26 would have remained licensed to the patent (and Symantec, as XstreamLok’s
27 customer, would be protected from liability by the patent exhaustion doctrine).
28 If, on the other hand, the arbitrator determined that there was a breach and

1 termination of the contract (again, with the foregoing assumption), then the issue
2 of whether XstreamLok and Symantec in fact practiced the '216 patent would be
3 squarely presented to this Court for adjudication. The parties stipulated that the
4 arbitration would not cover or address the issue of whether the technology was in
5 fact covered by the '216 patent, with that question being reserved exclusively for
6 Judge Carter's court. The parties further stipulated that this Court would retain
7 jurisdiction to resolve the infringement and other issues after the conclusion of the
8 arbitration.

9 12. In September 2009, the arbitrator issued her ruling, expressly
10 noted that no ruling was rendered on the substantive issue of whether the
11 XstreamLok technology practiced the patent, and held that, in light of the parties'
12 stipulated arbitration assumption, royalties had been underpaid and, as a result, the
13 contract had been breached and terminated. She ordered XstreamLok to pay the
14 Uniloc entities the amount she calculated as the underpayment, with interest.
15 XstreamLok did in fact pay this award to Uniloc. The payment, however, was
16 subject to the express reservation by XstreamLok of the right to seek return of the
17 money, because that money would never have been due and owing to Uniloc if
18 (and thus was not owing to Uniloc because), as XstreamLok and Symantec have
19 always contended, the XstreamLok technology is not covered by the '216 patent.

20 13. After the arbitration concluded, rather than return to this Court to
21 have the remaining issues resolved, on November 30, 2009, Uniloc unilaterally
22 dismissed the then-pending action, under Federal Rule of Civil Procedure 41(a).
23 Simultaneously, Uniloc filed an action for infringement of the '216 patent against
24 other defendants in the Eastern District of Texas. In fact, since dismissing the
25 lawsuit in this Court, Uniloc initiated no fewer than six lawsuits against at least
26 77 defendants in the Eastern District of Texas, alleging infringement of the
27 '216 patent.

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1 14. In its latest Texas lawsuit filed on September 14, 2010
2 (Civil Action No. 6:10-CV-472), Uniloc sued Symantec again for infringement of
3 the same patent, despite the parties' earlier Stipulation and this Court's Order.
4 After having voluntarily submitted to (and, indeed, affirmatively invoked) this
5 Court's jurisdiction, and after stipulating that its infringement claim against
6 Symantec would be decided in Judge Carter's court in this District (and where its
7 headquarters are located), Uniloc simply tried to do an end run around this Court in
8 favor of a different forum with little connection to either party.

9 15. Uniloc's allegations in the Texas actions are revealing. In the first
10 three of the Texas actions, Uniloc USA, Inc. (the purported exclusive licensee of
11 the '216 patent) alleges that it is a Rhode Island corporation, as it had alleged in
12 this Court in its 2008 action against Symantec and XtreamLok. In the next three
13 actions, including the one against Symantec, Uniloc USA alleges instead that it is a
14 Texas corporation. In all actions, however, Uniloc USA admits that its principal
15 place of business is in Irvine, California. On information and belief, the Texas
16 corporation was formed in July 2010, only weeks before Uniloc sued Symantec.

17 16. Symantec and XtreamLok file this action to finish what Uniloc
18 started in this forum. Symantec and XtreamLok deny that any of their products
19 infringe or have ever infringed any claim of the '216 patent, and also deny that the
20 '216 patent is valid. Because it does not and has never practiced the '216 patent,
21 and because the patent is invalid in any event, XtreamLok also seeks the return of
22 the money paid to Uniloc in connection with the arbitration, which must be
23 returned upon a finding that, contrary to the assumption utilized in the arbitration,
24 no valid claim of the '216 patent is or was infringed by the XtreamLok technology.

1 **FIRST CLAIM FOR RELIEF**

2 (By Symantec and XtreamLok Against All Defendants)

3 **Declaratory Relief Regarding Non-Infringement**

4 17. Symantec and XtreamLok incorporate herein the allegations of
5 paragraphs 1-16.

6 18. An actual and justiciable controversy exists between Symantec
7 and XtreamLok on the one hand, and Uniloc on the other, as to the non-
8 infringement of the '216 patent.

9 19. Pursuant to the Federal Declaratory Judgment Act,
10 28 U.S.C. § 2201 *et seq.*, Symantec and XtreamLok request a declaration of the
11 Court that they do not infringe and have not infringed any claim of the '216 patent.

12 **SECOND CLAIM FOR RELIEF**

13 (By Symantec and XtreamLok Against All Defendants)

14 **Declaratory Relief Regarding Invalidity**

15 20. Symantec and XtreamLok incorporate herein the allegations of
16 paragraphs 1-19.

17 21. An actual and justiciable controversy exists between Symantec
18 and XtreamLok, on the one hand, and Uniloc on the other, as to the invalidity of
19 the '216 patent.

20 22. Pursuant to the Federal Declaratory Judgment Act,
21 28 U.S.C. § 2201 *et seq.*, Symantec and XtreamLok request a declaration of the
22 Court that the '216 patent is invalid under the Patent Act, 35 U.S.C. §§ 41 *et seq.*,
23 including but not limited to sections 101, 102, 103, and 112.

24 **THIRD CLAIM FOR RELIEF**

25 (By XtreamLok Against All Defendants)

26 **Money Paid to Defendants (Common Law)**

27 23. XtreamLok incorporates herein the allegations of paragraphs 1-22.

1 24. Pursuant to an award by the arbitrator, XstreamLok paid to Uniloc
2 royalties allegedly owed under a 2002 agreement, subject to the express condition
3 that the payment would be returned to XstreamLok were this Court to later
4 determine that the XstreamLok technology did not infringe any valid claim of the
5 '216 patent.

6 25. Because XstreamLok does not and has never practiced the '216
7 patent, and because the patent is invalid in any event, XstreamLok is entitled to a
8 return of the money that it paid to Uniloc pursuant to the arbitrator's award,
9 together with interest as appropriate from the time the payment was made until the
10 time that it is returned.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff Symantec respectfully requests that the
13 Court enter declaratory judgment as follows:

- 14 1. That Symantec does not infringe and has not infringed, directly or
15 indirectly, the '216 patent;
16 2. That the '216 patent is invalid;
17 3. That Uniloc, and all persons acting on its behalf or in concert with
18 it, be permanently enjoined and restrained from charging, orally or in writing, that
19 the '216 patent is infringed by Symantec, directly or indirectly;
20 4. That Symantec be awarded its costs, expenses and reasonable
21 attorney fees in this action; and
22 5. That Symantec be awarded such other and further relief as the
23 Court may deem appropriate.

24 WHEREFORE, Plaintiff XstreamLok respectfully requests that the
25 Court enter judgment as follows:

- 26 1. That XstreamLok does not infringe and has not infringed, directly
27 or indirectly, the '216 patent;
28 2. That the '216 patent is invalid;

1 3. That Uniloc, and all persons acting on its behalf or in concert with
2 it, be permanently enjoined and restrained from charging, orally or in writing, that
3 the '216 patent is infringed by XtreamLok, directly or indirectly;

4 4. That Uniloc return forthwith to XtreamLok the money that
5 XtreamLok paid to Uniloc pursuant to the arbitrator's conditional award, plus
6 interest;

7 5. That XtreamLok be awarded its costs, expenses and reasonable
8 attorney fees in this action; and

9 6. That XtreamLok be awarded such other and further relief as the
10 Court may deem appropriate.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs respectfully demand a jury trial in this action, as to all issues
13 so triable.

14 Dated: October 1, 2010

15 LATHAM & WATKINS LLP

16
17 By

18 Mark A. Flagel
19 Attorneys for Plaintiffs
20 SYMANTEC CORPORATION AND
21 XTREAMLOK, PTY
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