

# Exhibit J

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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 SYMANTEC CORPORATION and  
11 XTREAMLOK PTY,

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No. SACV10-01483 DOC  
(MLGx)

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF DEFENDANTS'/  
COUNTERCLAIMANTS'  
MOTION TO TRANSFER VENUE  
TO THE UNITED STATES  
DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS  
OR, IN THE ALTERNATIVE, TO  
DISMISS**

Date: December 20, 2010  
Time: 8:30 a.m.  
Courtroom No.: 9D  
Judge: Honorable David O. Carter

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

24 Counterclaimants,

25 vs.

26 SYMANTEC CORPORATION and  
XTREAMLOK PTY,

27 Counterdefendants.  
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1 Defendants Uniloc USA, Inc., Uniloc (Singapore) Private Limited and Uniloc  
2 Corporation Pty. Limited (together “Uniloc”) respectfully submit this memorandum  
3 of points and authorities in support of their motion to transfer the patent issues in this  
4 case to the Eastern District of Texas pursuant to 28 U.S.C. § 1404(a). In the  
5 alternative, Uniloc requests that the patent issues be dismissed in favor of the pending  
6 proceedings in the Eastern District of Texas. For the reasons set forth below, Uniloc  
7 requests that this motion be granted.

8 **I. BACKGROUND**

9 Uniloc USA, Inc. is a Texas Limited Liability Company with an office in  
10 Plano, Texas and a principal place of business in Irvine, California. Dkt. No. 15, ¶ 1.  
11 Uniloc (Singapore) Private Limited is a Singapore corporation located in Singapore.  
12 *Id.*, ¶ 2. Uniloc Corporation PTY Limited is an Australian corporation. *Id.*, ¶ 3.  
13 Uniloc (Singapore) Private Limited is the owner of U.S. Patent No. 5,490,216 (“the  
14 ‘216 patent”). *See* Declaration of Dean G. Bostock (“Bostock Decl.”), Ex. 1, p. 1.  
15 Uniloc USA, Inc. is the exclusive licensee under the ‘216 patent in the United States.  
16 Dkt. No. 15, ¶ 10. According to the Complaint, Symantec Corporation is a Delaware  
17 corporation having a principal place of business in Mountain View, California, and  
18 XtreamLok Ltd. is an Australian company and an indirect subsidiary of Symantec.  
19 Dkt. No. 1, ¶¶ 1-2.

20 The ‘216 patent relates to a software registration system that is used to prevent  
21 the unauthorized use of software. *See Uniloc USA, Inc. v. Microsoft Corp.*, 447 F.  
22 Supp.2d 177, 180 (D.R.I. 2006); *Uniloc USA, Inc. v. Microsoft Corp.*, 290 Fed. Appx.  
23 337, 339 (Fed. Cir. 2008) (unpublished). The subject matter claimed in the ‘216  
24 patent was invented by the sole inventor named on the patent, Frederic B. Richardson  
25 in 1992. *See* Bostock Decl., Ex. 1, p. 1. At the time, Mr. Richardson was living in  
26 his native Australia. Subsequently, Mr. Richardson formed, and assigned his patent  
27 rights to, Uniloc (Singapore) Private Limited, which is still the owner of the ‘216  
28 patent. *See id.* In the mid-1990’s, Mr. Richardson contacted Microsoft Corporation’s

1 Australian affiliate to determine whether or not Microsoft had any interest in his  
2 invention. Microsoft expressed an interest and Uniloc provided Microsoft with its  
3 product for Microsoft to sample, with an express prohibition against Microsoft  
4 reverse engineering the software. *See* Bostock Decl., Ex. 2, ¶ 8. Thereafter, Uniloc  
5 learned that Microsoft had violated its agreement not to reverse engineer the Uniloc  
6 software and had copied Uniloc’s invention when Microsoft implemented its own  
7 registration system known as “Product Activation.” As a result, in 2003, Uniloc  
8 brought suit against Microsoft for infringement of the ‘216 patent. After more than  
9 five years of litigation, the case went to trial in Rhode Island in March, 2009. The  
10 jury returned a verdict that Microsoft had willfully infringed the patent and awarded  
11 damages in the amount of \$388 million. *See* Bostock Decl., Ex. 3. Microsoft  
12 thereafter prevailed on judgment as a matter of law, the verdict was vacated, and that  
13 case is now on appeal before the Federal Circuit.

14 In 2002, Uniloc granted XstreamLok a license under the ‘216 patent.  
15 Subsequent to the grant of that license, Symantec acquired XstreamLok. Following  
16 that acquisition, Uniloc believed that XstreamLok/Symantec were under-reporting the  
17 royalties due pursuant to the license. As a result, Uniloc filed suit against Symantec  
18 and XstreamLok in this Court in May 2008 alleging infringement of the ‘216 patent,  
19 unfair competition and breach of contract. *See* Bostock Decl., Ex. 4. In October  
20 2008, the parties agreed to arbitrate the claim for breach of the license agreement and  
21 stipulated to stay that case pending resolution of the arbitration proceedings. More  
22 particularly, the parties stipulated that:

23 (3) This Court shall retain jurisdiction over Uniloc’s Patent  
24 Infringement and Unfair Competition Claims, and shall re-activate the  
25 matter upon application of the parties upon completion of the  
26 arbitration to allow the continuation of the action as to any claims and  
issues which either party may contend remain to be resolved in  
accordance with applicable law.

27 *See* Bostock Decl., Ex. 5, pp 2-3.

1 This Stipulation was embodied in the Order staying the case pending arbitration. *See*  
2 *id.*, Ex. 6, p. 1, ¶ 3.

3 As stated in Symantec/XstreamLok’s Complaint herein, in September 2009, the  
4 Arbitrator determined that royalties had been underpaid by Symantec/XstreamLok  
5 and, as a result, the License Agreement had been breached and terminated. *See* Dkt.  
6 No. 1, ¶ 12. The Arbitrator also ordered XstreamLok to pay Uniloc the unpaid  
7 royalties that were due and payable. *Id.* The Arbitrator’s findings were subject to a  
8 determination to be made subsequently on whether or not the products on which  
9 royalties had been underpaid were covered by the ‘216 patent. *Id.* Thereafter,  
10 however, neither side attempted to reactivate that case. Accordingly, Uniloc  
11 dismissed the case pursuant to Fed. R. Civ. P. 41(a). *Id.*, ¶ 13.

12 On September 14, 2010, Uniloc (Singapore) Private Limited and Uniloc USA,  
13 Inc. brought suit for infringement of the ‘216 patent against Symantec and others in  
14 the Eastern District of Texas. *See* Bostock Decl., Ex. 7. In response, on October 1,  
15 2010, Symantec and XstreamLok filed the Complaint herein requesting *inter alia*  
16 declaratory judgments that they do not infringe the ‘216 patent and that the ‘216  
17 patent is invalid. *See* Dkt. No. 1, ¶¶ 17-22. In their Complaint, Symantec and  
18 XstreamLok argue that a jurisdiction retention clause contained in the dismissal of a  
19 prior case between the parties hereto in this Court requires that the patent dispute  
20 between them regarding the ‘216 patent be resolved in this Court. *See id.*, ¶¶ 9-16.  
21 As set forth below, Uniloc asserts that this provision is not controlling in light of  
22 intervening acts and a recent decision of the Court of Appeals for the Federal Circuit.  
23 *See In re Oracle Corp.*, 2010 WL 4286372 (Fed. Cir. Nov. 1, 2010) (unpublished).

24 **II. LEGAL STANDARDS**

25 District courts have discretion to transfer according to an “individualized, case-  
26 by-case consideration of convenience and fairness.” *See Jones v. GNC Franchising,*  
27 *Inc.*, 211 F.3d 495, 498 (9th Cir.), *cert. denied*, 531 U.S. 928 (2000) (internal  
28 quotations and citations omitted). Pursuant to 28 U.S.C. § 1404(a), a case may be

1 transferred “[f]or the convenience of parties and witnesses, in the interest in justice.”  
2 To prevail on a motion to transfer, a moving party must establish (1) that venue is  
3 proper in the transferor district; (2) that the transferee district is one where the action  
4 might have been brought; and (3) that the transfer will serve the convenience of the  
5 parties and witnesses and will promote the interests of justice. *See Clip Ventures,*  
6 *LLC v. U-Dig-It Enterprises, Inc.*, No. 10-cv -3227, 2010 WL 4269199, at \*1 (N.D.  
7 Cal. Oct. 25, 2010).

8 In determining whether transfer is appropriate, relevant “convenience” factors  
9 include the following:

10 (1) the convenience of the parties, (2) the convenience of the  
11 witnesses-including the willingness of witnesses to appear, the ability  
12 to subpoena witnesses, and the adequacy of deposition testimony, (3)  
13 the accessibility to records and documents, (4) the location where the  
conduct complained of occurred, and (5) the applicability of each  
forum state’s substantive law.

14 *Irvine Pharm. Services, Inc. v. Arnold*, No. 08-cv-974, 2008 WL 4792513, at \*2  
15 (C.D. Cal. Oct. 28, 2008).

16 Relevant and somewhat overlapping factors implicating the interest of justice  
17 include,

18 (1) judicial economy, (2) the plaintiff’s choice of forum, (3) the  
19 comparative costs to the parties of litigating in each forum, (4) each  
20 party’s ability to enforce a judgment, (5) obstacles to a fair trial, (6)  
conflict of law issues, and (7) the advantages of having a local court  
determine questions of local law.

21 *Id.* at \*3.

22 Before considering whether transfer is appropriate under this provision, the transferee  
23 court must be within a district where the claim “might have been brought.” *Id.* In  
24 other words, venue must be proper in the transferee court. *See Rowsby v. Gulf Stream*  
25 *Coach, Inc.*, No. 08-cv-1213, 2009 WL 1154130, at \*3 (C.D. Cal. Feb. 9, 2009).

26 When two actions involving overlapping issues and parties are pending in two  
27 different federal courts, there is a “strong presumption across the federal circuits that  
28 favors the forum of the first-filed suit under the first filed rule.” *See, e.g., Manuel v.*

1 Convergys Corp., 430 F.3d 1132, 1135 (11th Cir. 2005); Alltrade, Inc. v. Uniweld  
2 Products, Inc., 946 F.2d 622, 625 (9th Cir. 1991). The two actions need not be  
3 identical so long as they are substantially similar. Inherent.com v. Martindale-  
4 Hubbell, 420 F. Supp. 2d 1093, 1097 (N.D. Cal. 2006). The purpose of the rule is to  
5 promote efficiency and avoid duplicative litigation. *Id.* If the rule applies, the  
6 second-filed court “has discretion to transfer, stay, or dismiss the second case in the  
7 interest of efficiency and judicial economy.” Cedars-Sinai Med. Ctr. v. Shalala, 125  
8 F.3d 765, 769 (9th Cir. 1997).

9 **III. ARGUMENT**

10 The foregoing factors are addressed below and warrant transferring this case to  
11 the Eastern District of Texas.

12 **A. Venue is Proper in this Court**

13 Uniloc does not dispute that venue is proper in this District. Rather, Uniloc  
14 asserts that this patent dispute should be resolved in the Eastern District of Texas  
15 where venue is also proper.

16 **B. The Action Might Have Been Brought in the Eastern District of**  
17 **Texas**

18 Uniloc must also demonstrate that this patent case might have been brought in  
19 the transferee court, namely the Eastern District of Texas. Uniloc is a Texas  
20 company and has maintained an office in the Eastern District of Texas since February  
21 2007. *See* Declaration of Bradley C. Davis, ¶ 4. Before Symantec/XtreamLok filed  
22 the Complaint herein, Uniloc had previously filed seven cases, six of which remain  
23 pending, in the Eastern District of Texas alleging that numerous defendants are  
24 infringing the '216 patent. *See* Bostock Decl., Ex. 8. Symantec is a named defendant  
25 on the complaint filed in Texas on September 14, 2010. *Id.*, p. 1. Symantec does  
26 business in the Eastern District of Texas. For example, Symantec has sold its  
27 “Endpoint Protection” software to the City of Plano, Texas for use on hundreds of the  
28 City’s personal computers. *See* Bostock Decl., Ex. 9, p 2. Symantec has also entered

1 into a technology partnership with Dell Computer, based in Plano, Texas. *Id.* Ex.  
2 10, p. 1. Moreover, Symantec itself has previously brought suit for patent  
3 infringement in the Eastern District of Texas wherein it alleged that “[v]enue is  
4 proper in this district pursuant to 28 U.S.C. § 1400(b) and 1391(c). *Id.*, Ex. 11, ¶ 7.  
5 In addition, Uniloc is a Texas corporation having places of business within the  
6 Eastern District of Texas in Plano, Texas. *See* Dkt. No. 15, ¶ 1. Thus, there can be  
7 no legitimate dispute that Uniloc’s patent claim asserted herein could have been  
8 brought in the Eastern District of Texas.

9 **C. Interests of Justice**

10 The interests of justice strongly favor transferring this case to the Eastern  
11 District of Texas.

12 **1. Judicial Economy**

13 In their Complaint in this case, Symantec/XstreamLok deny infringement and  
14 assert that the claims of the ‘216 patent are invalid. *See* Dkt. No. 1, ¶¶ 17-22. Uniloc  
15 counterclaims that Symantec/XstreamLok infringe the ‘216 patent and that such  
16 infringement has caused damage to Uniloc. *See* Dkt. No. 15, ¶¶ 8-13. To date, this  
17 Court has not issued a Scheduling Order or otherwise become involved substantively  
18 in this patent dispute. In contrast, as indicated above, prior to Symantec/XstreamLok  
19 filing the Complaint herein, Uniloc filed seven cases in the Eastern District of Texas  
20 alleging that numerous defendants (including Symantec) have infringed the ‘216  
21 patent. Scheduling Orders have been entered in three of the Texas cases. Pursuant  
22 thereto, claim construction briefing is ongoing, document production has been  
23 completed, depositions have been taken, a *Markman* hearing is scheduled for  
24 February 3, 2011, and trial has been scheduled to commence on November 14, 2011.  
25 *See* Bostock Decl., Ex. 12, pp. 1-5. Judicial economy would, therefore, be served by  
26 transferring the patent case herein against Symantec/XstreamLok to be resolved with  
27 those against the other fifty-three remaining defendants in Texas where Symantec is  
28

1 already a named defendant.<sup>1/</sup> It would make no sense to try Uniloc’s patent claims  
2 against Symantec in a separate trial in this court when the case is going to trial against  
3 the other defendants in Texas. “The presence of related litigation in another venue  
4 weighs heavily in favor of transfer.” *Schott v. Ivy Asset Management Corp.*, No. 10-  
5 cv -1562, 2010 WL 4117467, at \*5 (N.D. Cal. Oct. 19, 2010) (citations omitted).  
6 Thus, the presence of the pending Texas cases weighs heavily in favor of transfer  
7 because it would promote judicial economy.

8         The nature of the patent relief requested by Symantec/XtreamLok in this case  
9 also favors transferring to Texas or dismissing in favor of proceeding in Texas. In its  
10 Texas complaint against Symantec, Uniloc affirmatively alleges that Symantec has  
11 infringed the ‘216 patent. In contrast, the patent claims asserted by  
12 Symantec/XtreamLok in this case (Counts I and II) are requests for declaratory  
13 judgments that the ‘216 patent is not infringed and is invalid. *See*, Dkt. No. 1, ¶¶ 17-  
14 22. “[D]istrict courts possess discretion in determining whether and when to  
15 entertain an action under the Declaratory Judgment Act, even when the suit otherwise  
16 satisfies subject matter jurisdictional prerequisites.” *Wilton v. Seven Falls Co.*, 515  
17 U.S. 277, 282, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995). The Texas Court has no  
18 such discretion to decline to hear Uniloc’s infringement claims. Accordingly, this  
19 Court should exercise its discretion and decline to hear Symantec/XtreamLok’s  
20 declaratory judgment claims for the reasons stated above.

## 21                 **2. Symantec’s Choice of Forum Should not be Given Weight**

22         Typically the plaintiff’s choice of forum is accorded weight. *See, e.g., Irvine*  
23 *Pharm. Services v. Arnold*, 2008 WL 4792513, at \*3. A plaintiff’s choice of forum,  
24 however, is given diminished weight when the plaintiff files suit outside of its home  
25 forum. *See, e.g., Garcia v. 3M Co.*, No. 09-cv -1943, 2009 WL 3837243, at \*2 (N.D.  
26

27 \_\_\_\_\_  
28 <sup>1/</sup> During the meet-and-confer discussion between counsel regarding this dispute,  
counsel for Uniloc indicated that they would be filing the present motion and  
counsel for Symantec/XtreamLok indicated they would be filing a motion to

1 Cal. Nov. 16, 2009) (citation omitted). As Symantec is located in the Northern  
2 District, its choice of filing in this District is given little weight.

3 In any event, it is obvious that Symantec is forum-shopping. As indicated  
4 above, the prior litigation between these parties was dismissed in November 2009.  
5 Uniloc filed its patent suit against Symantec (and others) in Texas on September 14,  
6 2010. Symantec/XtreamLok did not file their Complaint in this case until October 1,  
7 2010, i.e. more than a year after the prior litigation terminated and only two weeks  
8 after Uniloc filed in Texas. Thus, it is apparent that Symantec/XtreamLok filed this  
9 retaliatory suit in an effort to forum-shop its way out of Texas. Not surprisingly, a  
10 court “should disregard a plaintiff’s forum choice where the suit is a result of forum  
11 shopping.” *Garcia v. 3M*, 2009 WL 3837243, at \*2 (citation omitted). Thus,  
12 Symantec/XtreamLok’s choice of this forum should be disregarded.

13 Symantec/XtreamLok will undoubtedly argue that it filed suit in this forum  
14 because this Court retained jurisdiction over the patent issue in the prior case between  
15 these parties. The pertinent provision of the dismissal Order is as follows:

16 (3) This Court shall retain jurisdiction over Uniloc’s Patent  
17 Infringement and Unfair Competition Claims, and shall re-activate the  
18 matter upon application of the parties upon completion of the arbitration  
19 to allow the continuation of the action as to any claims and issues which  
either party may contend remain to be resolved in accordance with  
applicable law.

20 Bostock Decl., Ex. 6, p. 1 (emphasis added).

21 As conceded in Symantec/XtreamLok’s Complaint herein, in September 2009,  
22 the Arbitrator determined the License Agreement has been terminated. See Dkt. No.  
23 1, ¶ 12. Accordingly, this provision no longer applies. In the *In re Oracle* decision  
24 referenced above, the Federal Circuit has determined that, even were such a  
25 provision still in effect, it is not always controlling. See *In re Oracle Corp.*, 2010 WL  
26 4286372, at \*2 (“district court’s sole reliance on the parties’ private expression of  
27

28 dismiss in the Texas case. See Bostock Decl., ¶ 20. Symantec/XtreamLok’s  
motion was filed in Texas on November 18, 2010.

1 venue choice and failure to provide a meaningful evaluation of the § 1404(a) factors  
2 was plainly incorrect as a matter of law”). Moreover, as neither party, let alone all  
3 parties, moved to reactivate, Uniloc dismissed that case. Symantec/XtreamLok did  
4 not cry foul or attempt to reactivate the prior case in order to resolve this patent  
5 dispute. Symantec/XtreamLok did nothing until filing this present new case in  
6 response to the Texas case filed against it in September 2010. Thus,  
7 Symantec/XtreamLok elected to forego reactivating the prior case and to pursue  
8 instead the patent issues in a new case. Accordingly, the above provision is not  
9 controlling in this case.

### 10 **3. The Comparative Costs Favor Transfer**

11 The comparative costs of litigating in the transferor and transferee courts is  
12 also a factor to be considered. As explained in the Convenience arguments above,  
13 Uniloc’s documents are already located in Texas and Uniloc’s witness residing in this  
14 District is amenable to traveling to Texas for trial. Any Uniloc witnesses, such as  
15 experts, who live outside of this District will have to travel in any event. The  
16 difference in costs for these experts, whom Uniloc intends to use in this dispute  
17 irrespective of its locus, to travel to Texas for trial as compared with to this Court is  
18 negligible.

19 Likewise, as explained above, Symantec/XtreamLok’s employee witnesses will  
20 have to travel to trial from headquarters in Mountain View whether this case is tried  
21 in this Court or in Texas. To the extent, by the time of trial, airfares to Texas may be  
22 a little higher than to this Court, Symantec is sitting on over \$2.25 billion in cash and  
23 equivalents. *See* Bostock Decl., Ex. 13. Therefore, Symantec/XtreamLok can  
24 certainly afford such expenditures. Furthermore, as also indicated above, Symantec  
25 has previously filed a patent infringement case in the Eastern District of Texas when  
26 it could have sued the defendant therein in Utah. As a result, Symantec has  
27 acknowledged that the cost of trying a case in Texas is acceptable. Symantec should  
28 not be permitted to avail itself of the Eastern District’s court when it sues Symantec,

1 only to complain later that the Eastern District is an inconvenient venue in a  
2 subsequent suit against the company.

3 The comparative actual costs of appearing for trial in Texas versus this Court  
4 will not pose any inconvenience for Symantec/XtreamLok as they have over \$2.5  
5 billion of cash and equivalents on hand. In any event, costs of hotel rooms, meals,  
6 parking etc. are, if anything, likely to be lower in the Eastern District of Texas than in  
7 this District. Accordingly, this factor also favors transfer.

#### 8 **4. Ability to Enforce a Judgment**

9 This factor is neutral. Any judgment will be federal and can be enforced  
10 against Uniloc and Symantec at their places of business in the U.S. With respect to  
11 the foreign defendants, any issues that may arise regarding enforceability will be the  
12 same irrespective of whether the case is tried in Texas or in this Court.

#### 13 **5. Obstacles to a Fair Trial**

14 This factor is neutral. Both the Eastern District of Texas and this Court handle  
15 a large numbers of patent cases and are well-versed in patent law.

#### 16 **6. Conflict of Law Issues and Advantages of Having a Local 17 Court Determine Questions of Local Law**

18 There are no conflict of law issues in either forum as this motion pertains to  
19 patent claims brought under federal statutes and Federal Circuit law is controlling in  
20 both jurisdictions. Likewise, there are no questions of local law that will need to be  
21 determined.

### 22 **D. Convenience**

#### 23 **1. Convenience of the Parties Favors Transfer**

24 Symantec is headquartered in Mountain View, California. *See* Dkt. No. 1, ¶ 1.  
25 Thus, this Court is geographically closer to Symantec's headquarters than is the  
26 Eastern District of Texas. Symantec, however, maintains substantial facilities in  
27 Dallas, Texas, thereby confirming that Texas is a convenient place for Symantec to  
28 do business. More particularly, Symantec is registered to business in Texas, *see*

1 Bostock Decl., Ex. 14, and maintains places of business in Austin, Dallas, Houston  
2 and Round Rock, Texas. *Id.*, Ex. 15. Symantec also maintains education centers in  
3 Dallas and Houston to which it invites students to fly to Texas to train. *Id.*, Ex. 16.

4 Further, as indicated above, Symantec has previously instituted patent litigation  
5 in the Eastern District of Texas, thereby confirming that Texas is a convenient place  
6 for Symantec to litigate patent disputes. Notably, the defendant in Symantec's Texas  
7 patent case was located in Utah. Bostock Decl., Ex. 11, ¶ 3. Symantec's strategy of  
8 suing the defendant in the Eastern District of Texas, rather than in California or Utah,  
9 indicates that it is very convenient for Symantec to litigate patent claims in Texas.

10 Symantec, therefore, cannot be heard to argue that the Eastern District of Texas is an  
11 inconvenient forum for resolving this patent dispute. XstreamLok is an Australian  
12 corporation located, if anywhere, in Australia. As a result, the Eastern District of  
13 Texas is not significantly, if at all, more or less inconvenient to XstreamLok than this  
14 District.

15 The Eastern District of Texas is convenient to Uniloc. Uniloc has had an office  
16 within that district since early 2007. *See* Davis Decl., ¶ 4. Also, due to the pendency  
17 of the numerous cases in the Eastern District of Texas alleging infringement of the  
18 '216 patent, Uniloc's documents relating to the infringement of that patent are  
19 already located at its Texas facilities.

## 20 2. Convenience of the Witnesses Favors Transfer

21 There are unlikely to be many fact witnesses who testify at trial in this case.  
22 Only one inventor is named on the '216 patent, Mr. Richardson, who currently  
23 resides in Australia but, health permitting, is willing to travel to Texas for trial.  
24 Uniloc's Chief Executive Officer, Brad Davis, testified at trial in Rhode Island in the  
25 *Uniloc v. Microsoft* case. Mr. Davis is likewise willing to travel to testify in Texas if  
26 this case is transferred.

27 It is probable that Symantec will argue that it will need to fly one or more fact  
28 witnesses from its headquarters in Mountain View, California to Texas for trial. This

1 should pose no real inconvenience to Symantec. No doubt the flight from San Jose or  
2 San Francisco to Los Angeles is shorter than the flight to Dallas. Symantec,  
3 however, must routinely fly its employees and others from Mountain View to its  
4 facilities in Dallas. Moreover, with over \$2.25 billion in cash and equivalents on  
5 hand, *see* Bostock Decl., Ex. 13, p. 7, the cost of flying a few employees to Dallas for  
6 trial would not pose a financial problem or inconvenience to Symantec. Also, as  
7 indicated above, Symantec previously filed a patent case in the Eastern District of  
8 Texas, thereby acknowledging that Texas is not an inconvenient venue for its  
9 witnesses. Undoubtedly, both Symantec/XtreamLok and Uniloc will use expert  
10 witnesses at trial. Such witnesses, however, are typically located around the country  
11 and are more than willing to travel to testify at trial at their client's expense.

### 12 **3. Accessibility to Records and Documents Favors Transfer**

13 As indicated above, Uniloc's documents relating to the '216 patent are already  
14 located at its offices in the Eastern District of Texas. Symantec/XtreamLok is a  
15 sophisticated software company that, in this day and age can electronically send its  
16 relevant records and documents to its facilities in Texas and be able to access its  
17 documents in Mountain View electronically from Texas. As Symantec touts on its  
18 website:

19 [m]ore than ten million end users at more than 31,000  
20 organizations ranging from small businesses to the Fortune 500 use  
21 Symantec Hosted Services to secure and manage information  
stored on endpoints and delivered via email, Web, and instant  
messaging.

22 Bostock Decl., Ex. 17, p. 1.

23 Therefore, it would not pose any real inconvenience for Symantec to transfer a copy  
24 of its relevant records and documents to Texas for trial. Thus, this factor favors  
25 transfer.

### 26 **4. Location Where the Conduct Complained of Occurred**

27 Symantec sells its products throughout the United States. Thus, the alleged  
28 infringement occurred both in Texas and in this judicial district. Uniloc believes that

1 the design and testing of the infringing Symantec product activation technology likely  
2 occurred in Mountain View. Thus, this activity did not take place in either this  
3 judicial district or the Eastern District of Texas. Accordingly, this factor is neutral.

4 **5. Applicability of Each Forum State’s Substantive Law**

5 As the patent issues will be resolved in accordance with the provisions of the  
6 Federal Patent Statute, 35 U.S.C. §§ 101 *et seq.*, state substantive law is inapplicable.  
7 Accordingly, this factor is neutral.

8 **E. Alternatively, Symantec’s Claims Should be Dismissed under the**  
9 **First-to-File Rule**

10 Uniloc’s Texas case against Symantec was filed two weeks prior to  
11 Symantec/XtreamLok filing this case. As a result, Uniloc’s Texas case is the “first-  
12 filed.” When two actions involving overlapping issues and parties are pending in two  
13 different federal courts, there is a “strong presumption across the federal circuits that  
14 favors the forum of the first-filed suit under the first filed rule.” *Manuel v.*  
15 *Convergys*, 430 F.3d at 1135; *Alltrade v. Uniweld Prods.*, 946 F.2d at 625. The two  
16 actions need not be identical so long as they are substantially similar. *Inherent.com v.*  
17 *Martindale-Hubbell*, 420 F. Supp.2d at 1097. The purpose of the rule is to promote  
18 efficiency and avoid duplicative litigation. *Id.* As this it is the “second-filed” forum,  
19 this Court “has discretion to transfer, stay, or dismiss th[is] second case in the interest  
20 of efficiency and judicial economy.” *Cedars-Sinai v. Shalala*, 125 F.3d at 769.  
21 Accordingly, as this is the second-filed suit, the Court should transfer the patent  
22 claims herein to Texas or dismiss them in favor of the Texas proceedings between  
23 Uniloc and Symantec.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, Uniloc requests that Counts I and II of the  
3 Complaint and the Counterclaims be transferred to the Eastern District of Texas or, in  
4 the alternative, be dismissed.

5 Dated: November 22, 2010

Respectfully submitted,

6 MINTZ LEVIN COHN FERRIS  
7 GLOVSKY AND POPEO P.C.

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10  
11 Attorneys for Defendants/  
12 Counterclaimants  
13 UNILOC USA, INC., UNILOC  
14 (SINGAPORE) PRIVATE LIMITED and  
15 UNILOC CORPORATION  
16 PTY LIMITED  
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**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 1370, Los Angeles, California 90067.

I hereby certify that on November 22, 2010, I electronically filed Defendants' **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS OR, IN THE ALTERNATIVE, TO DISMISSANSWER TO COMPLAINT AND COUNTERCLAIM** with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF registered parties.

I hereby certify that I have mailed the foregoing document via U.S. Postal Service First Class Mail to the non-CM/ECF participants indicated below:

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on November 22, 2010, at Los Angeles, California.

  
JAZMIN LEON