

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

UNILOC USA, INC., et al,	§	
Plaintiffs,	§	
v.	§	Case No. 2:16-cv-00393-RWS
	§	LEAD CASE
	§	
AVG TECHNOLOGIES USA, INC.,	§	
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BITDEFENDER INC.,	§	Case No. 2:16-cv-00394-RWS
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PIRIFORM, INC.,	§	Case No. 2:16-cv-00396-RWS
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UBISOFT, INC.,	§	Case No. 2:16-cv-00397-RWS
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KASPERSKY LAB, INC.,	§	Case No. 2:16-cv-00871-RWS
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SQUARE ENIX, INC.,	§	Case No. 2:16-cv-00872-RWS
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Defendants.		

UNILOC USA, INC., et al,	§	
Plaintiffs,	§	
v.	§	Case No. 2:16-cv-00741- RWS
	§	LEAD CASE
	§	
ADP, LLC,	§	
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BIG FISH GAMES, INC.,	§	Case No. 2:16-cv-00858- RWS
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BLACKBOARD, INC.,	§	Case No. 2:16-cv-00859- RWS
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BOX, INC.,	§	Case No. 2:16-cv-00860- RWS
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ZENDESK, INC.,	§	Case No. 2:16-cv-00863- RWS
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Defendants.		

**DEFENDANTS' SUPPLEMENTAL CLAIM CONSTRUCTION BRIEF ON
MEANS-PLUS-FUNCTION TERMS**

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Further to their position as stated in the July 11, 2017 Joint Claim Construction statement (D.I. 202 at 7-10), Defendants Piriform, Inc., ADP, LLC, Big Fish Games, Inc., Blackboard Inc., Box, Inc., and Zendesk Inc. (hereinafter “Defendants”) provide the following argument that all system claims of the Asserted Patents¹ are indefinite for failure to disclose adequate structure under pre-AIA 35 U.S.C. §112 ¶6.

From April through August of 2016, Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg, SA (collectively, “Plaintiffs” or “Uniloc”) filed the captioned actions asserting *inter alia* various system claims under the Asserted Patents. In preparing P.R. 4-1 proposals in the consolidated cases, the parties agreed that the asserted system claims invoke pre-AIA 35 U.S.C. § 112 ¶6. Pursuant to P.R. 4-2 and P.R. 4-3, from March through July of 2017 the parties exchanged multiple proposals seeking agreement on the “structure(s), act(s), or material(s)” corresponding to each of the over 100 distinct claim elements invoking § 112 ¶6.

Plaintiffs’ proposals during this period were a moving target. Eventually, it became apparent that Plaintiffs could not meet their burden to identify sufficient corresponding structures. At the start of these cases, Plaintiffs asserted dozens of claims drafted in means-plus-function form without once identifying the supporting structure that formed the basis for their infringement allegations. Likewise, Plaintiffs’ P.R. 3-1 infringement contentions listed these claims without providing an identification of structure, instead merely pointing to corresponding allegations under the patents’ method claims (which are *not* drafted in means-plus-function form). Plaintiffs’ initial Rule 4-2 exchange listed multiple columns of contiguous text in the patent specifications for many claim elements without proposing particular structures

¹ U.S. Pat. Nos. 6,510,466 (the “466 patent”), 6,728,766 (the “766 patent”), 6,324,578 (the “578 patent”) and 7,069,293 (the “293 patent”, and collectively, the “Asserted Patents”) Each above Defendant submits this supplemental brief insofar as one or more of the Asserted Patents is asserted against that Defendant.

corresponding to those elements. After Defendants questioned Plaintiffs' approach, on April 18 Plaintiffs (in their own words) "substantially revised" their positions on all terms. On April 20, the parties acknowledged in their Joint Claim Construction Statement that they continued to disagree as to supporting structure. (D.I. 148 at 2-3.) In May, after feedback from Defendants, Plaintiffs provided revised proposals, but in June the parties acknowledged in their Joint Claim Construction Chart that they continued to disagree on structure for these terms. (D.I. 186 at 1-2.)

After the filing of the Joint Claim Construction Chart, as the parties were preparing for the Markman hearing, it became apparent to Defendants that, under the applicable case law, Plaintiffs' proposals for the means-plus-function terms are not properly supported by the patents-in-suit because the specifications (including the passages cited by Plaintiffs) only contain—at best—structure corresponding to the claimed methods as a whole, and not algorithmic, step-by-step procedures or code for accomplishing the functional acts listed in each independent claim of the patents-in-suit. Defendants recognized that each system claim in the patents-in-suit contained functions neither supported by an algorithm sufficiently disclosed in the specification and linked therein to such function, nor capable of being achieved by a general purpose computer. This omission was particularly glaring since the patents purport to implement computer software-based solutions allegedly invented by the patentee, who purports in the specifications to have created software for performing the claimed features yet omits its code from the patent filings.

Defendants understand Plaintiffs to believe that each claim element invoking pre-AIA 35 U.S.C. § 112 ¶6 has sufficient supporting structure, and that the Court need not address Defendants' proposal (*see* D.I. 202 at 6), despite Plaintiffs' responsibility to identify supporting structure in order to demonstrate infringement by Defendants. Plaintiffs' latest proposed identification of structure was provided to Defendants on July 16, 2017, after supplemental

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